

Federal Register



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Rules and Regulations

Federal Register

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

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

DEPARTMENT OF AGRICULTURE

Office of the Secretary

7 CFR Part 2

Revision of Delegations of Authority

AGENCY: Department of Agriculture.

ACTION: Final rule.

SUMMARY: This document revises the delegations of authority from the Secretary of Agriculture and general officers of the Department to delegate to the General Counsel the authority to pay tort claims that arise outside the United States, as authorized by section 920 of Public Law 104-27.

EFFECTIVE DATE: September 19, 1996.

FOR FURTHER INFORMATION CONTACT: Robert L. Siegler, Deputy Assistant General Counsel, Research and Operations Division, Office of the General Counsel, Department of Agriculture, Room 2321-S, Washington, D.C. 20250, telephone 202-720-6035.

SUPPLEMENTARY INFORMATION: Section 920 of the Federal Agriculture Improvement and Reform Act of 1996 (FAIR Act), Pub. L. No. 104-127 (7 U.S.C. 2262a), authorizes the Secretary of Agriculture to pay a tort claim if the claim arises outside the United States in connection with activities of individuals performing service for the Secretary. This document delegates the authority of the Secretary to the General Counsel to make determinations of tort claims that arise outside the United States in accordance with section 920 of the FAIR Act.

This rule relates to internal agency management. Therefore, pursuant to 5 U.S.C. 553, notice of proposed rule making and opportunity for comment are not required. Further, since this rule relates to internal agency management, it is exempt from the provisions of Executive Order Nos. 12291 and 12778. In addition, this action is not a rule as

defined by Pub. L. No. 96-354, the Regulatory Flexibility Act, and thus is exempt from the provisions of that Act. Accordingly, as authorized by section 808 of the Small Business Regulatory Enforcement Fairness Act of 1996, Pub. L. No. 104-121, this rule may be made effective upon publication in the Federal Register.

List of Subjects in 7 CFR Part 2

Authority delegations (Government agencies).

PART 2—DELEGATIONS OF AUTHORITY BY THE SECRETARY OF AGRICULTURE AND GENERAL OFFICERS OF THE DEPARTMENT

Accordingly, Part 2, Title 7, Code of Federal Regulations is amended as follows:

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

Authority: Sec. 212(a), Pub. L. 103-353, 108 Stat. 3210, 7 U.S.C. 6912(a)(1); 5 U.S.C. 301; Reorganization Plan No. 2 of 1953, 3 CFR, 1949-1953 Comp., p. 1024.

Subpart D—Delegations of Authority to Other General Officers and Agency Heads

2. Section 2.31 is amended by revising paragraph (a) to read as follows:

§ 2.31 General Counsel.

* * * * *

(a) Consider, ascertain, adjust, determine, compromise, and settle claims pursuant to the Federal Tort Claims Act, as amended (28 U.S.C. 2671-2680), and the regulations of the Attorney General contained in 28 CFR part 14; and consider, ascertain, adjust, determine, compromise, and settle claims pursuant to section 920 of the Federal Agriculture Improvement and Reform Act of 1996, Public Law 104-127 (7 U.S.C. 2262a).

Dated: September 10, 1996.

Dan Glickman,

Secretary of Agriculture.

[FR Doc. 96-23973 Filed 9-18-96; 8:45 am]

BILLING CODE 3410-01-M

FEDERAL RESERVE SYSTEM

12 CFR Part 226

[Regulation Z; Docket No. R-0927]

Truth in Lending

AGENCY: Board of Governors of the Federal Reserve System.

ACTION: Final rule.

SUMMARY: The Board is publishing revisions to Regulation Z (Truth in Lending). The revisions implement the Truth in Lending Act Amendments of 1995, which establish new creditor-liability rules for closed-end loans secured by real property or dwellings and consummated on or after September 30, 1995. The 1995 Amendments create several tolerances for accuracy in disclosing the amount of the finance charge, and creditors have no civil or administrative liability if the finance charge and affected disclosures are within the applicable tolerances. The amendments also clarify how lenders must disclose certain fees connected with mortgage loans. In addition, the Board is publishing a new rule regarding the treatment of fees charged in connection with debt cancellation agreements, which is similar to the existing rule for credit insurance premiums and provides for more uniform treatment of these fees.

DATES: This rule is effective October 21, 1996.

FOR FURTHER INFORMATION CONTACT: James A. Michaels, Senior Attorney, or Natalie E. Taylor or Michael L. Hentrel, Staff Attorneys, Division of Consumer and Community Affairs, Board of Governors of the Federal Reserve System, at (202) 452-3667 or 452-2412; users of Telecommunications Device for the Deaf (TDD) *only*, contact Dorothea Thompson at (202) 452-3544.

SUPPLEMENTARY INFORMATION:

I. Background

The purpose of the Truth in Lending Act (TILA) (15 U.S.C. 1601 *et seq.*) is to promote the informed use of consumer credit by requiring disclosures about its terms and cost. The act requires creditors to disclose the cost of credit as a dollar amount (the "finance charge") and as an annual percentage rate (the "APR"). Uniformity in creditors' disclosures is intended to assist consumers in comparison shopping.

The TILA requires additional disclosures for loans secured by a consumer's home and permits consumers to rescind certain transactions that involve their principal dwelling. The act is implemented by the Board's Regulation Z (12 CFR part 226).

II. Regulatory Provisions

On September 30, 1995, the Congress enacted the Truth in Lending Act Amendments of 1995 (1995 Amendments), Pub. L. 104-29, 109 Stat. 271. The 1995 Amendments address the concerns of mortgage lenders stemming from a 1994 court decision, *Rodash v. AIB Mortgage Co.*, 16 F.3d 1142 (11th Cir. 1994). In that case, the U.S. Court of Appeals affirmed a district court opinion that allowed a consumer to rescind a home mortgage loan and recover all fees and finance charges that had been paid, based in part on errors in the creditor's TILA disclosures. Subsequently, a number of class action lawsuits were filed, involving thousands of mortgage loans, alleging similar violations and seeking the remedy of rescission.

In response to mortgage lenders' concerns about their potential liability for finance charge violations that they viewed as minor, the Congress enacted a temporary moratorium on such litigation, which has now been replaced by the 1995 Amendments. The Amendments establish new liability rules for loans consummated before and after September 30, 1995, establish a new rule that includes mortgage broker fees in the finance charge disclosure, and clarify the proper treatment of other fees. In May 1996, the Board published proposed regulations to implement the amendments with respect to loans made after September 30 (61 FR 26126).

The Board is also amending Regulation Z to provide a rule addressing the treatment of fees charged in connection with debt cancellation agreements, which serve purposes similar to credit insurance. A specialized form of debt cancellation agreement, known as guaranteed automobile protection or "GAP," is also covered by the new rule. In response to public comments, the final rule has been modified slightly from the May 1996 proposal.

Finally, the Board is making a technical amendment to the definitions of "business day" in Regulation Z, 12 CFR 226.2(a)(6). For clarity, the Board has amended the definitions of "business day" to include a specific reference to subpart E.

Under the 1995 Amendments, the statutory provision treating mortgage broker fees as finance charges becomes

effective on September 30, 1996. The other provisions of the 1995 Amendments became effective upon the law's enactment on September 30, 1995. The Board believes that revisions to Regulation Z do not impose any additional disclosure requirements beyond those already required under the statute, as amended. Accordingly, the revisions to Regulation Z will become effective on October 21, 1996.

The new rule on debt cancellation fees will also become effective on October 21. The rule imposes no additional disclosure requirements. Creditors must continue to treat debt cancellation fees as finance charges; when the new rule becomes effective creditors will have the option of excluding voluntary debt cancellation fees from the finance charge if they meet the specified requirements.

III. Section-by-Section Analysis

Subpart A—General

Section 226.2—Definitions and Rules of Construction

2(a) Definitions

2(a)(6)

Paragraph (2)(a)(6) is adopted as proposed. For purposes of the Board's rules implementing the Home Ownership and Equity Protection Act of 1994 in Subpart E of Regulation Z, the "business day" definition for rescission applies. The Board has also updated the list of legal public holidays to include the Birthday of Martin Luther King, Jr.

Section 226.4—Finance Charge

4(a)(1) Charges by Third Parties

Paragraph 4(a)(1) reflects the general rule for third party charges currently contained in comment 4(a)-3 of the Official Staff Commentary. A slight modification has been made for clarity. In general, amounts charged by third parties are included in the finance charge if the creditor requires the use of the third party or retains any portion of the charge (in which case the portion retained is included as a finance charge).

4(a)(2) Special Rule; Closing Agent Charges

Paragraph 4(a)(2) incorporates the substance of section 2(a) of the 1995 Amendments, and is consistent with the existing interpretation in comment 4(a)-4 of the Official Staff Commentary. Under the rule, a fee charged by a third-party closing agent is included in the finance charge only if the creditor requires the imposition of the charge or the provision of the service, or retains any portion of the charge. Accordingly,

a courier fee charged by a third-party closing agent is only a finance charge if the creditor requires the use of the courier (or to the extent the creditor retains a portion of the charge). The rule only applies to the third-party serving as the closing agent with respect to that loan. The final rule has also been modified slightly to clarify the term "closing agent."

4(a)(3) Special Rule; Mortgage Broker Fees

Paragraph 4(a)(3) contains a new rule regarding the treatment of mortgage broker fees, to implement section 106(a)(6) of the TILA (15 U.S.C. 1605(a)(6)), which becomes effective on September 30, 1996. The rule requires that *all* fees charged by a mortgage broker and paid directly by the consumer be included in the finance charge, whether the fee is paid to the broker or to the lender for delivery to the broker. A fee charged by a mortgage broker will be excluded from the finance charge only if it is the type of fee that would also be excluded when it is charged by the creditor. In the case of application fees charged by a mortgage broker, such fees may be excluded from the finance charge if the mortgage broker charges the fee to all applicants for credit, whether or not credit is actually extended.

Several commenters questioned the basis for requiring creditors to disclose, as finance charges, fees that the creditor neither imposes nor requires. They also expressed concern about creditors' duty for including brokers' fees in Truth in Lending disclosures when the existence or amount of such fees may not be known to the creditor.

The new rule is mandated by the 1995 Amendments. Under the Real Estate Settlement Procedures Act (RESPA) (12 U.S.C. 2601 *et seq.*), amounts paid by a consumer directly to a mortgage broker or through the lender for delivery to the mortgage broker are already required to be disclosed to the borrower at the loan closing on the HUD-1 or HUD-1A. See 24 CFR part 3500 appendix A, appendix B ¶12. The Board believes that the new TILA disclosure requirement should not pose a significant additional burden, and that it is reasonable to require creditors to use the information from the HUD forms in calculating the finance charge. Accordingly, the Board expects that creditors will adopt practices and procedures consistent with their affirmative obligation to obtain the relevant information from the parties involved.

In the May proposal, the Board noted that fees paid by the funding party to a broker as a "yield spread premium,"

and already included in the finance charge as interest or as points should not be double counted. Several commenters sought further clarification, noting that brokers may be compensated by the lender under various arrangements. The proposal's reference to "yield spread premiums" was only intended to be one example of lender-paid compensation that must be separately disclosed on the HUD-1 under the current RESPA rules, but should not be double counted because it is already included as part of the finance charge.

4(b) Example of Finance Charge

4(b)(10) Debt Cancellation Fees

Debt cancellation agreements serve a purpose similar to credit insurance, even though the products are not identical in all respects. Paragraph 4(b)(10) clarifies that fees charged by creditors for debt cancellation coverage that is written in connection with a credit transaction are considered finance charges. Conditions under which *voluntary* debt cancellation fees may be excluded from the finance charge are set forth in paragraph 4(d)(3).

Comments by some insurance providers noted that the term "debt cancellation agreement" is not commonly used in reference to GAP agreements. For purposes of Regulation Z, however, the term "debt cancellation agreement" is used generically to refer to a contract between a debtor and creditor providing for satisfaction of all or part of the debt when a specified event occurs. This definition includes GAP agreements, even though GAP agreements only cancel the portion of the debt remaining after the application of property insurance benefits.

Some commenters disagreed with the notion that voluntary debt cancellation fees may be considered finance charges, although they generally supported the Board's approach in paragraph 4(d)(3), excluding such fees when appropriate disclosures are provided. Other commenters believed that debt cancellation agreements are an integral part of the loan agreement and argue that such fees are necessarily charged as an incident to the extension of credit, making them finance charges.

The Board believes that a debt cancellation fee charged by the creditor satisfies the definition of a finance charge because it is part of the cost of the credit. The TILA defines a finance charge to include any charge imposed as an incident to the extension of credit. The Board has interpreted this definition to include any fee charged by the creditor in connection with the loan,

if it is not charged in comparable cash transactions and is not subject to an express exemption. The Board has generally taken a case-by-case approach in determining whether particular fees are "finance charges," and does not interpret Regulation Z to automatically exclude all "voluntary" charges from the finance charge. As a practical matter, most voluntary fees are excluded from the finance charge under the separate exclusion for charges that are payable in a comparable cash transaction, such as fees for optional maintenance agreements or fees paid to process motor vehicle registrations. In the case of debt cancellation agreements, however, the voluntary nature of the arrangement does not alter the fact that debt cancellation coverage is a feature of the loan affecting the total price paid for the credit.

Thus, even though a lender may not require a particular loan feature, the feature may become a term of the credit if it is included. For example, borrowers obtaining variable-rate loans may have an option to convert the loan to a fixed interest rate at a subsequent date. Even though the lender does not require that particular feature, when it is included for an additional charge (either paid separately at closing or paid in the form of a higher interest rate or points), that amount properly represents part of the finance charge for that particular loan, even though less costly loans may be available without that feature. This is also the case with debt cancellation coverage, which alters the fundamental nature of the borrower's repayment obligation. Although the same loan may be available without that feature, with respect to a loan that has been structured in this manner, the debt cancellation fee is one that has been imposed as an incident to that particular extension of credit. The same rationale applies to premiums for voluntary credit insurance, which generally are finance charges under the TILA but may be excluded if specified disclosures are given.

Creditors have reported significant difficulty in determining the proper treatment of debt cancellation fees under Regulation Z, particularly GAP fees. Because the status of these agreements under state insurance laws and regulations is often unclear, creditors have been unsure whether they may apply the TILA rules excluding certain credit insurance premiums from the finance charge. Those rules permit the cost of credit insurance to be excluded if the purchase is voluntary and certain disclosures are made regarding the terms of the coverage. For the reasons discussed

below, the Board has determined that similar treatment for debt cancellation fees is appropriate. Accordingly, paragraph 4(d)(3) provides that debt cancellation fees may be excluded from the finance charge if the disclosures and requirements in that paragraph are satisfied.

4(c) Charges Excluded From the Finance Charge

4(c)(7) Real-Estate Related Fees

4(c)(7)(ii)

Paragraph 4(c)(7)(ii) is revised to implement the amendment to section 106(e)(2) of the TILA (15 U.S.C. 1605(e)(2)). The Board believes that the amendment does not represent a substantive change from the current rule.

4(c)(7)(iii)

Paragraph 4(c)(7)(iii) is revised by deleting the reference to appraisal fees, which is addressed separately in revised paragraph 4(c)(7)(iv).

4(c)(7)(iv)

Former paragraph 4(c)(7)(iv) is redesignated as 4(c)(7)(v). A new paragraph 4(c)(7)(iv) implements section 106(e)(5) of the TILA (15 U.S.C. 1605(e)(5)), which clarifies that fees related to property inspections conducted prior to closing for pest infestation or flood hazard determinations, may be excluded from the finance charge. In response to commenters' suggestions, the language has been modified to reflect that the same rule applies to other types of property inspections conducted as part of the lender's credit decision to assess the value or condition of the property. The revision is consistent with comment 4(c)(7)-3 of the Official Staff Commentary, which states that excluded fees are those charged solely in connection with the initial decision to extend credit. The exclusion does not apply to fees for inspections or services to be performed periodically during the term of the loan.

4(d) Insurance and Debt Cancellation Coverage

4(d)(1) Voluntary Credit Insurance Premiums

Paragraph 4(d)(1)(i) is modified consistent with existing comment 4(d)-1 of the Official Staff Commentary, to clarify that a disclosure that insurance coverage is not required by the creditor must be in writing.

4(d)(3) Voluntary Debt Cancellation Fees

The Board is amending Regulation Z by adding a provision on fees charged for debt cancellation agreements, which serve a purpose similar to credit insurance. The new rule allows creditors to exclude fees for voluntary debt cancellation coverage from the finance charge when specified disclosures are made. In disclosing debt cancellation fees, creditors may *not* use the model forms for insurance premiums unless debt cancellation coverage constitutes insurance under state law.

Under a debt cancellation agreement, the creditor agrees to cancel all or part of any remaining debt in the event of an occurrence, such as the death, disability or unemployment of the borrower. The creditor may or may not purchase insurance to cover this risk. A specific form of debt cancellation known as guaranteed automobile protection, or "GAP," is sold in connection with motor vehicle loans. GAP agreements cancel the remaining debt when the vehicle securing the loan is stolen or destroyed and the settlement payment made by the consumer's primary automobile insurance is insufficient to pay the loan balance.

Previously, debt cancellation fees have not been specifically addressed in Regulation Z. In December 1995, the Board proposed to issue its first written interpretation on the proper treatment of debt cancellation fees under then existing rules. The December interpretation recognized that debt cancellation fees are finance charges paid as an incident to the extension of credit. In some states, debt cancellation coverage may be considered insurance, thus the proposed interpretation noted that in some cases the fees might be excluded from the finance charge in accordance with the existing rules in § 226.4(d) for certain types of insurance premiums. For example, the Board noted that in a state where debt cancellation agreements are considered or regulated as insurance, § 226.4(d)(1) would allow such fees to be excluded from the finance charge if the agreement insures against the death, disability, or loss of income of the borrower and certain disclosures are given. On the other hand, fees for GAP coverage not protecting against the types of risk covered in §§ 226.4(d) (1) and (2) were to be included in the finance charge, as were other types of debt cancellation fees in states where the agreements are not considered to be insurance. The proposed interpretation also noted that charges for insurance protecting the

creditor against credit loss are finance charges under section 226.4(b)(5) and may not be excluded under § 226.4(d).

The comments received in response to the proposed December interpretation were mostly negative. Commenters expressed particular concern about the need to make a state-by-state determination of whether such agreements are considered insurance contracts. They noted that reliance on state law would not create a uniform rule for measuring the cost of credit, contrary to the purpose of the TILA. Creditors in some states could quote a lower APR for the same product, which would not assist consumers in comparison shopping. Even within a state that treats debt cancellation agreements as insurance, debt cancellation fees would not be treated uniformly under Regulation Z, which excludes such fees from the finance charge only if the agreement covers loss of life, disability, or unemployment, but not if the agreement covered other contingencies, as in the case of GAP agreements. Moreover, debt cancellation fees and credit insurance premiums would be treated differently for purposes of cost disclosures even though they served a similar purpose to the consumer.

Commenters also expressed concern about the potential compliance risks associated with making a determination about the status of debt cancellation agreements, including GAP, in states where the insurance laws are unclear. Commenters stated that some creditors have refused to make or purchase loans with GAP coverage due to the uncertainty about how fees must be disclosed under the TILA. Several lawsuits have challenged creditors' practices of excluding voluntary GAP fees from the finance charge, although some courts have held that these fees are not finance charges in the absence of a contrary ruling by the Board.

In April 1996, the proposed interpretation was withdrawn to allow the Board to consider amending Regulation Z to provide a separate rule that would explicitly address GAP and other debt cancellation fees. In May 1996, the Board proposed such a rule. The proposed rule did not mirror the withdrawn interpretation which had largely addressed the fees based on the application of the rules for insurance premiums. Instead, the Board proposed to treat debt cancellation agreements in a uniform manner, without regard to their status under state insurance law.

The Board believes that it is important for Regulation Z to promote uniformity in the disclosure of similar credit cost features to assist consumers and to

facilitate creditor compliance.

Accordingly, the Board is adopting a new rule to specifically address debt cancellation agreements, including GAP agreements. Pursuant to its authority under section 105 of the TILA, the Board is authorized to issue regulations containing such differentiations or exceptions for any class of transactions as in the Board's judgment are proper to effectuate the purposes of the TILA or facilitate compliance with the act. The Board has determined that the rule being adopted, which allows voluntary debt cancellation fees to be excluded from the finance charge when certain disclosures are given, will effectuate the TILA's purpose of providing uniform disclosures to promote comparison shopping and the informed use of credit. The new rule also addresses creditors' difficulties with the existing rules and facilitates compliance with the act.

Comments from credit insurance providers questioned the Board's authority to issue the rule based on a section 106(d)(4) of the original TILA, which was deleted in the Truth in Lending Simplification and Reform Act of 1980 ("Simplification Act"). Section 106 defines the term "finance charge" for purposes of the TILA and former section 106(d)(4) authorized the Board to issue regulations excluding from the finance charge any "type of charge which is *not* for credit" (emphasis added). Insurance providers asserted that the deletion of section 106(d)(4) curtailed the Board's general authority to exclude items from the finance charge by regulation. The Board disagrees with the insurance providers' interpretation.

The Board has express authority to issue the rule on debt cancellation fees under section 105 of the TILA. To the extent that the former section 106(d)(4) may also have provided more specific authority, its deletion merely eliminated an alternate source of authority. The Board believes, however, that these commenters have misinterpreted the purpose of section 106(d)(4) and the reason for the changes made by the Simplification Act. The Simplification Act sought to clarify the statutory definition of a "finance charge" and did so by adding language to expressly exclude from the finance charge, *all* charges "payable in a comparable *cash* transaction." This new statutory exclusion made it unnecessary for the Board to exclude *noncredit* charges on an individual basis by regulation. Thus, the authority originally granted in section 106(d)(4) became obsolete.

There is nothing to suggest that the Simplification Act's revision to section 106 was intended to limit the Board's

general regulatory authority under section 105. Section 106(d)(4) established the Board's authority to exclude charges that were not for credit. The Board's broader authority under section 105 to make exceptions also applies to credit-related charges, and was not affected by the Simplification Act. Debt cancellation fees are credit-related charges that are not payable in comparable cash transactions, and would not have been the type of fees governed by section 106(d)(4).

New paragraph 4(d)(3) closely parallels the existing rule pertaining to credit insurance in § 226.4(d)(1), and excludes fees paid for similar types of debt cancellation agreements, as well as GAP agreements, from the finance charge if the specified conditions are met. Paragraph 4(d)(3) applies whether or not the debt cancellation agreement is considered to be insurance under state law. The language of paragraph 4(d)(3) has been modified in the final rule to clarify that it applies only to specific types of debt cancellation agreements.

Under the final rule, fees for GAP coverage must be disclosed according to paragraph 4(d)(3) rather than the provisions in paragraph 4(d)(2) for property insurance. Even though GAP coverage is triggered by the loss of or damage to property, GAP agreements do not insure against such loss or damage. Instead, GAP agreements typically cover the remaining balance due on the obligation *after* traditional property insurance benefits are exhausted.

Comments from credit insurance providers expressed concern that consumers will be unaware that debt cancellation agreements differ from credit insurance. According to these commenters, the differences are significant and stem largely from the fact that insurance is heavily regulated while, to date, debt cancellation agreements are largely unregulated. They also noted that debt cancellation coverage may require consumers to pay taxes that would not apply to credit insurance policies. The insurance providers believed that, in the past, the different treatment afforded to debt cancellation fees and credit insurance premiums under Regulation Z has protected consumers from the creditors' utilization of unregulated debt cancellation agreements, but that the new rule would promote their use. These commenters asserted that if the TILA cost disclosures are identical for insurance and non-insurance products, consumers will be misled or misinformed; they believe that even though greater consumer protection is afforded by the regulated insurance

products, this difference will not be apparent to consumers.

The Board is mindful that debt cancellation agreements and traditional insurance products are not identical in all respects. From the consumer's standpoint, however, both products are available to satisfy the consumer's liability for the debt in full measure if the specified contingency occurs. The fact that debt cancellation agreements may be subject to less oversight by state regulators or different tax rules is not sufficient in the Board's judgment to suggest that the fees paid must necessarily be included in the finance charge and APR for purposes of the TILA's cost disclosures. Whatever degree of regulation may be appropriate for debt cancellation coverage, Regulation Z does not affect the ability of appropriate governmental authorities to implement such protections. The TILA cost disclosures are not intended to deter creditors from offering unregulated products.

While the TILA seeks to provide uniform disclosures about the cost and terms of credit to promote comparison shopping, the ultimate task of assessing the relative value of two different products that are similarly priced rests with the consumer. Where voluntary credit insurance and debt cancellation agreements cover the identical contingency for the same price, requiring the fee to be included in the finance charge and APR in one loan but not in the other does not fairly inform the borrower about the relative cost of the two loans. Consumers are unlikely to become better informed about the distinctions between these products simply by having the TILA disclosures make one loan appear costlier than the other. The new rule allows the cost to be excluded from the finance charge and APR in both cases, so long as the cost for the initial term of coverage is disclosed along with other specified items. Consumers are likely to find comparison shopping easier under this rule to the extent they will have similar cost disclosures for both products and will not have to account for different treatment in the finance charge or APR disclosures.

Likewise, consumers comparing loans offered by lenders in two different states will be able to comparison shop based on these cost disclosures without considering the impact state insurance laws might have on the disclosed finance charge or APR. Some commenters suggested that uniformity could be achieved just as easily if all voluntary debt cancellation fees were simply included in the finance charge rather than excluded. Uniformity would

not be achieved by the adoption of such a rule, however, given that in states where debt cancellation coverage is considered insurance the statutory exclusion for credit insurance premiums would still allow creditors to exclude some debt cancellation fees from the finance charge.

The Board believes that treating debt cancellation fees and credit insurance premiums similarly for purposes of cost disclosure should not in itself create confusion about the nature of the parties' contractual relationship or the degree to which that relationship is regulated by state insurance agencies. The Board agrees that some confusion could result if creditors use the Board's existing model forms for disclosing insurance premiums to also disclose debt cancellation fees. Although the new rule allows both types of charges to be excluded from the finance charge under similar conditions, it does not authorize creditors to characterize debt cancellation fees as insurance premiums for TILA purposes. Creditors can comply with § 226.4(d)(3) by providing a disclosure that refers to debt cancellation coverage whether or not the agreement is considered insurance. Creditors may use the Board's existing credit insurance disclosure forms only if the debt cancellation coverage constitutes insurance under state law.

4(e) Certain Security-Interest Charges

4(e)(3) Taxes on Security Instruments

Paragraph 4(e)(3), which implements section 106(d)(3) of the TILA (15 U.S.C. 1605(d)(3)) is consistent with comment 4(e)-1(i) of the Official Staff Commentary. The new provision provides that taxes levied on security instruments or on documents evidencing indebtedness ("intangible property taxes"), that must be paid to record the security instrument, are excluded from the finance charge. The language has been modified slightly from the proposal, to clarify that the exclusion applies when payment of the tax is a requirement for recording the instrument, regardless of when the fee is paid.

Subpart C—Closed-end Credit

Section 226.17—General Disclosure Requirements

17(a) Form of Disclosures

17(a)(1)

Footnote 38 in paragraph 17(a)(1) is revised to include the disclosures relating to debt cancellation agreements among those that may be made together with or separately from the other required disclosures.

17(c) Basis of Disclosures and Use of Estimates

17(c)(2)

Paragraph 17(c)(2) is redesignated as 17(c)(2)(i) and modified slightly to reflect the general rule that disclosures must be based on the best information reasonably available to the creditor at the time the disclosures are provided to the consumer.

17(c)(2)(ii)

Paragraph 17(c)(2)(ii) reflects the 1995 amendment to section 121(c) of the TILA (15 U.S.C. 1631(c)), which deals with the disclosure of per-diem interest charges collected at loan consummation.

Per-diem interest, also known as "odd-days interest," is the interest that will accrue between consummation and the first regularly-scheduled payment. A disclosure affected by the amount of per-diem interest collected at consummation will be considered accurate if the disclosure is based on the information known to the creditor at the time the disclosure is prepared, even if the actual charge differs by the time disclosures are provided to the borrower. Creditors should exercise reasonable diligence in ascertaining the correct information when preparing disclosures.

Several commenters requested clarification on how the new \$100 finance charge tolerance for mortgage loans applies when the per-diem interest charges disclosed prior to consummation are inaccurate. Under the new rule, if finance charge disclosures are affected by per-diem interest, creditors may rely on the charges known at the time the disclosures are prepared, and the disclosures will be deemed to be accurate without regard to the amount of per-diem charges actually paid at closing. In that case, the \$100 finance charge tolerance would not be needed. If in the same transaction, other components of the finance charge were understated, the creditor would still have the benefit of the full \$100 tolerance.

As commenters noted, this provision does not have any applicability in open-end credit transactions.

17(f) Early Disclosures

Paragraph 17(f) is revised to clarify the creditor's duty to provide new disclosures, which is determined by comparing the APR at the time of consummation to the APR disclosed earlier.

Section 226.18—Content of Disclosures

18(d) Finance Charge

Section 106(f) of the TILA (15 U.S.C. 1605(f)) establishes a new tolerance for accuracy in disclosing the finance charge for closed-end loans secured by real property or dwellings. Section 226.18(d) has been revised and reorganized to incorporate this change. Commenters generally supported the regulatory provisions implementing the new tolerances.

18(d)(1) Mortgage Loans

Paragraph 18(d)(1) provides a new finance charge tolerance applicable to mortgage loans consummated on or after September 30, 1995. For covered transactions, the disclosed finance charge will be considered accurate if it is understated by \$100 or less or if the finance charge is overstated. The new tolerance applies to the disclosed finance charge as well as any disclosure affected by the finance charge, including the APR. The effect of the new finance charge tolerance on the disclosed APR is explained in more detail under paragraph 22(a).

Consumer groups expressed concern that the new statutory tolerance might be viewed as an opportunity for creditors to intentionally charge consumers up to \$100 more than the finance charge stated in the TILA disclosures and they refer to the legislative history, which suggests that the new law was not intended to give lenders the right to pad fees. They argued that the new tolerances should apply, therefore, only to creditor errors made in good faith. Although this principle might appear sound, the Board notes that the existing tolerances in Regulation Z are not limited to good-faith errors and that application of a "good faith" rule would necessitate a case-by-case determination of how a particular error occurred, complicating the broad relief intended by the Congress. The Board believes that imposing a good-faith standard would be inconsistent with the purpose of the 1995 Amendments, which is to reduce potential litigation over disclosure errors. Moreover, with the new \$100 tolerance, a creditor making intentional misstatements would leave little or no margin for making bona fide errors, risking the type of potential liability that led to enactment of the 1995 Amendments.

18(d)(2) Other Credit

The existing tolerance for finance charge disclosures, currently in footnote 41, continues to apply to all closed-end

loans other than mortgage loans, and has been moved into paragraph 18(d)(2).

18(n) Insurance and Debt Cancellation Agreements

Paragraph 18(n) has been revised to include disclosures made in connection with debt cancellation agreements.

Section 226.19—Certain Residential Mortgage and Variable Rate Transactions

19(a)(2) Rediscovery Required

Paragraph 19(a)(2) has been further revised for clarity and consistency with paragraph 17(f).

Section 226.22—Determination of Annual Percentage Rate

22(a) Accuracy of Annual Percentage Rate

Paragraph 22(a) is revised to add new paragraphs (a)(4) and (a)(5). For closed-end loans secured by real property or dwellings, the new provisions establish two additional tolerances for accuracy in disclosing the APR when the disclosed finance charge is within the tolerances established by the 1995 Amendments.

The TILA contains tolerances for the APR, of either one-quarter or one-eighth of 1 percent, depending on the type of transaction. These existing statutory APR tolerances were not altered by the 1995 Amendments, although the amendments create a tolerance for the finance charge disclosed for mortgage loans as well as "any disclosure affected by the finance charge." Consumer groups argued that the Congress intended the new tolerances to apply only to numerical disclosures other than the APR (such as the "amount financed" and the "total of payments"), for which there is currently no regulatory or statutory tolerance. The Board believes, however, that the APR is one of the "affected disclosures." Otherwise, transactions in which the disclosed finance charge is misstated but considered accurate under the new tolerance would remain subject to legal challenge based on the disclosed APR, which seems inconsistent with the legislative intent. There was broad support for this approach among creditors who commented on the rule.

22(a)(4) Mortgage Loans

Paragraph 22(a)(4) provides an additional tolerance for APR disclosures in transactions where the finance charge is understated or overstated but is considered accurate under the 1995 Amendments. For example, in a secured home-improvement loan, if a creditor improperly omits a \$100 fee from the

finance charge, the understated finance charge will now be considered accurate under § 226.18(d)(1). Under paragraph 22(a)(4), the APR resulting from the understated finance charge will also be considered accurate, even if the disclosed APR falls outside of the existing tolerance of one-eighth of 1 percent provided under section 107(c) of the TILA. For purposes of determining a borrower's right to rescind a mortgage loan, an APR resulting from a finance charge that is considered accurate in accordance with the applicable rule in § 226.23(g) or (h)(2) will also be considered accurate. The language has been modified slightly to clarify that new tolerances apply in addition to the existing tolerances in paragraphs 22(a)(2) and (3).

22(a)(5) Additional Tolerance for Mortgage Loans

In light of the new APR tolerance established under the 1995 Amendments, the Board has adopted an additional APR tolerance (not provided in the statute) in § 226.22(a)(5). The purpose is to avoid the anomalous result of imposing liability on a creditor for a disclosed APR that is incorrect but is *closer* to the actual APR than the APR that would be considered accurate under the statutory tolerance in paragraph 22(a)(4).

For instance, if the omission of a \$100 fee from the finance charge results in an understatement of the finance charge and a disclosed APR that is understated by one-half of 1 percent, that APR will be considered accurate under paragraph 22(a)(4), even though it is outside of the existing APR tolerance of one-eighth of 1 percent. Under paragraph 22(a)(5), the disclosed APR is considered accurate if it is understated by *less* than one-half of 1 percent. Thus, if the actual APR in this example is 9.00 percent and the \$100 omission results in an APR of 8.50 percent that is considered accurate under paragraph 22(a)(4), a disclosed APR of 8.75 percent will be within the tolerance in paragraph 22(a)(5). Similarly, if an overstated finance charge results in an overstated APR, the creditor will not be liable for an overstatement that is closer to the actual APR.

Under section 105 of the TILA, the Board is authorized to adopt exceptions to the TILA that will facilitate compliance. Paragraph 22(a)(5) treats as accurate, a disclosed APR that is more accurate than the one resulting from a misstated finance charge that is considered accurate under the 1995 Amendments. The Board believes that this rule will facilitate compliance with the TILA, and prevent disputes over

errors that have no greater effect on consumers beyond the effects already contemplated by the statutory tolerances. The Board recognizes that this rule might allow a creditor to disclose an inaccurate APR that is not derived from either the actual or the disclosed finance charge. Presumably, this situation will not be common. On balance, however, the Board believes the rule is consistent with the intent of the 1995 Amendments.

The language in the proposed rule has been modified slightly to clarify that the new tolerance is in addition to and not in lieu of the existing tolerance.

Section 226.23—Right of Rescission

23(b) Notice of Right To Rescind

Paragraph 23(b)(2) clarifies that use of the appropriate model form approved by the Board, or a comparable form, is required for compliance with the regulation for those disclosures.

Model form H-9 was revised to ease compliance and to clarify that it may be used in loan refinancings with the original creditor, whether or not the creditor is the holder of the note at the time of refinancing. Some commenters requested further clarification on the proper use of the form, noting that it does not address the situation where the original note and mortgage are extinguished and new documents are executed to cover both the outstanding debt and the amount borrowed in the new transaction. The form has been revised in order to address these concerns.

23(g) Tolerances for Accuracy

Paragraph 23(g) implements section 106(f)(2) of the TILA (15 U.S.C. 1605(f)(2)). The Board is applying the rescission tolerances in section 106(f)(2) in addition to, rather than in lieu of, the general tolerances in section 106(f)(1). The Board believes this is consistent with the statutory language; it is unlikely that the Congress intended to allow the rescission remedy to be invoked when the disclosures would otherwise be considered accurate under the rules for civil and administrative liability. Most commenters supported these interpretations. Consumer groups expressed the view that the new rescission tolerances should only be applied to creditor errors made in good faith. For the reasons already discussed, the Board believes such an interpretation would be inconsistent with the legislative intent of the amendments.

Several commenters sought clarification of what constitutes a loan where "no new money is advanced" for

purposes of § 226.23(g)(2). The rule has been modified for consistency and now refers to a refinancing in which there has been "no new advance." This phrase applies to loans for which the new amount financed does not exceed the unpaid principal balance plus any earned unpaid finance charge on the existing debt, and amounts attributed solely to the costs of the refinancing. This is consistent with section 226.23(f)(2) and the language used in comment 23(f)-4 of the Official Staff Commentary.

23(h) Special Rules for Foreclosures

Paragraph 23(h) implements section 125(i)(2) of the TILA (15 U.S.C. 1635(i)(2)), which provides special rescission rules after a foreclosure action has been initiated. Most commenters supported the proposal, although consumer groups believed that the foreclosure rules should apply to both open- and closed-end mortgage transactions.

The Board proposed to apply the new foreclosure rules only to closed-end mortgages since there appeared to be no basis for applying them to open-end lines of credit. The Board believes the Congress clearly intended to provide additional consumer protections once foreclosure has been initiated. For example, the statute allows a consumer to rescind a closed-end loan in foreclosure if the finance charge is understated by more than \$35, even though a larger tolerance would otherwise apply. Because open-end home equity loans have *no* general tolerance for finance charge errors, applying the \$35 tolerance to open-end loans in foreclosure would actually result in less protection for consumers. The Board believes this would be inconsistent with the intent of the special foreclosure rules. Accordingly, the Board interprets the foreclosure tolerances to apply only to closed-end loans.

The 1995 Amendments also allow a consumer to rescind a loan in foreclosure if a mortgage broker fee was not properly disclosed, without regard to the dollar amount involved. Consumer groups commented that this aspect of the new foreclosure rules should be applied to open-end transactions. Because broker fees are not generally associated with open-end lines of credit, it seems unlikely that this was the legislative intent. There is also no basis for reading this portion of the foreclosure rules more broadly than the foreclosure tolerances which apply only to closed-end transactions.

The new rules covering consumers' right to rescind a loan in foreclosure

only apply to transactions that were originally subject to the right of rescission. Consequently, the new rules do not apply to purchase money loans.

Subpart E—Special Rules for Certain Mortgage Transactions

Section 226.31—General Rules

31(d) Basis of Disclosures and Use of Estimates

Paragraph 31(d) is revised and reorganized, consistent with the revisions made to § 226.17(c).

31(d)(3)

Paragraph 31(d)(3) incorporates the new rule regarding the disclosure of per-diem interest charges, consistent with the amendment in section 226.17(c)(2)(ii). In preparing disclosures, creditors are expected to exercise reasonable diligence in ascertaining the necessary information. Paragraph 31(d)(3) has been modified slightly to clarify that the rule applies to a disclosure made pursuant to Subpart E (such as the APR) that would be affected by the per-diem interest charge.

31(g) Accuracy of Annual Percentage Rate

Paragraph 31(g) is intended to clarify that for purposes of determining whether a transaction is covered under § 226.32(a) and in making the disclosures required by § 226.32(c), a creditor may rely on its APR calculations if they are considered accurate according to the APR tolerances provided in § 226.22. For this purpose, the APR tolerances in paragraph 22(a) (4) and (5) apply only if the finance charge is considered accurate under § 226.18(d)(1); the rescission tolerances in § 226.23 (g) or (h) do not apply.

Consumer groups expressed the view that the new tolerances should not apply in determining whether a loan is covered under § 226.32(a). The language of the 1995 Amendments suggests that the new tolerances apply to all closed-end mortgage loans. The Board does not believe such an interpretation would be consistent with the legislative intent of the statute.

Appendix H to Part 226—Closed-End Model Forms and Clauses

H-9 Rescission Model Form

The 1995 Amendments clarify that creditors will not be liable for the form of rescission notice they give to the consumer if the creditor uses the appropriate form published by the Board or a comparable notice. In order to ease compliance, model form H-9 has been revised slightly to clarify that it

may be used in loan refinancings with the original creditor, without regard to whether the original creditor is the holder of the note at the time of refinancing. Creditors may, however, continue to use the original forms H-8 and H-9 as appropriate.

Supplement I—Official Staff Interpretations

The revisions would conform the Official Staff Commentary consistent with the amendments to Regulation Z.

IV. Regulatory Flexibility Analysis

In accordance with section 3(a) of the Regulatory Flexibility Act (5 U.S.C. 603), the Board's Office of the Secretary has reviewed the amendments to Regulation Z. Overall, the amendments are not expected to have any significant impact on small entities. The regulatory revisions required to implement the 1995 Amendments clarify the existing disclosure requirements and ease compliance by providing new tolerances. Under the existing rules, fees charged in connection with debt cancellation agreements are generally treated as finance charges; the final rule allows creditors to exclude these fees from the finance charge if additional disclosures are provided to the consumer.

V. Paperwork Reduction Act

In accordance with the Paperwork Reduction Act of 1995 (44 U.S.C. 3501 *et seq.*), the Board has reviewed the amendments to Regulation Z under the authority delegated to the Board by the Office of Management and Budget. 5 CFR part 1320 appendix A.1.

The respondents are individuals or businesses that regularly offer or extend consumer credit. The purpose of the TILA and Regulation Z is to promote the informed use of consumer credit by requiring creditors to disclose its terms and cost. Creditors must retain records of compliance for 24 months. The revisions to the requirements in this regulation are found in 12 CFR 226.4, 226.17, 226.18, 226.19, 226.23, and 226.31.

The disclosures made by creditors to consumers under Regulation Z are mandatory pursuant to the Truth in Lending Act (15 U.S.C. 1601 *et seq.*). Since the Federal Reserve does not collect any information, no issue of confidentiality under the Freedom of Information Act arises. Disclosures relating to specific transactions or accounts are not publicly available.

The Board's Regulation Z applies to all types of creditors, not just state member banks. Under the Paperwork Reduction Act, however, the Federal

Reserve accounts for the paperwork burden associated with Regulation Z only for state member banks. Any estimates of paperwork burden for institutions other than state member banks that would be affected by the amendments would be provided by the federal agency or agencies that supervise those lenders.

There are 1,042 state member banks with an average frequency of 136,294 responses per bank each year. The current estimated burden for Regulation Z ranges from 5 seconds per response (for disclosures prior to opening a credit card account) to 30 minutes per response (for inclusion of information in an advertisement). The combined annual burden for all state member banks under Regulation Z is estimated to be 1,975,605 hours (an average of 1,896 hours per state member bank).

As stated in the notice of proposed rulemaking, the changes to the regulation are not expected to increase the ongoing annual burden of Regulation Z. The Federal Reserve also estimated the associated startup cost to be \$160 per respondent for changing disclosures (or disclosure-producing software) to include disclosures relating to voluntary debt cancellation agreements.

The Federal Reserve received comments on the burden estimates from a multi-bank holding company and from a bank and its affiliated mortgage company. Both believed that the Federal Reserve's estimate of the cost of revising the disclosures was too low. However, some activities cited by the commenters, such as recordkeeping, filing, auditing, and monitoring, should be ongoing under the current rule. The burden for these activities is included in the figures above, estimated to be 1,896 hours per state member bank per year. Also, under the Paperwork Reduction Act, some activities, while associated with complying with the regulation, are not considered paperwork burden. Nonetheless, the Federal Reserve is revising its estimate of the typical startup cost at a state member bank to \$3,000 to include the cost of additional legal services.

An agency may not collect or sponsor the collection or disclosure of information, and an organization is not required to collect or disclose information unless a currently valid OMB control number is displayed. The OMB control number for the Recordkeeping and Disclosure Requirements in Connection with Regulation Z is 7100-0199.

Send comments regarding the burden estimate, or any other aspect of this collection of information, including

suggestions for reducing the burden, to: Secretary, Board of Governors of the Federal Reserve System, 20th and C Streets, NW., Washington, DC 20551; and to the Office of Management and Budget, Paperwork Reduction Project (7100-0199), Washington, DC 20503.

List of Subjects in 12 CFR Part 226

Advertising, Banks, banking, Consumer protection, Credit, Federal Reserve System, Mortgages, Reporting and recordkeeping requirements, Truth in lending.

For the reasons set forth in the preamble, the Board amends 12 CFR Part 226 as follows:

PART 226—TRUTH IN LENDING (REGULATION Z)

1. The authority citation for part 226 continues to read as follows:

Authority: 12 U.S.C. 3806; 15 U.S.C. 1604 and 1637(c)(5).

2. Section 226.2 is amended by revising paragraph (a)(6) to read as follows:

§ 226.2 Definitions and rules of construction.

(a) *Definitions.* * * *

(6) *Business day* means a day on which the creditor's offices are open to the public for carrying on substantially all of its business functions. However, for purposes of rescission under §§ 226.15 and 226.23, and for purposes of § 226.31, the term means all calendar days except Sundays and the legal public holidays specified in 5 U.S.C. 6103(a), such as New Year's Day, the Birthday of Martin Luther King, Jr., Washington's Birthday, Memorial Day, Independence Day, Labor Day, Columbus Day, Veterans Day, Thanksgiving Day, and Christmas Day.

3. Section 226.4 is amended as follows:

- a. Paragraph (a) is revised;
 - b. New paragraph (b)(10) is added;
 - c. A heading is added to paragraph (c)(7), the introductory text to paragraph (c)(7) is republished, paragraphs (c)(7)(ii) and (c)(7)(iii) are revised, paragraph (c)(7)(iv) is redesignated as paragraph (c)(7)(v) and republished, and a new paragraph (c)(7)(iv) is added;
 - d. The paragraph (d) heading is revised, the paragraph (d)(1) heading and introductory text are revised, paragraph (d)(1)(i) is revised, and a new paragraph (d)(3) is added.
 - e. A new paragraph (e)(3) is added.
- The revisions and additions are to read as follows:

§ 226.4 Finance charge.

(a) *Definition.* The finance charge is the cost of consumer credit as a dollar amount. It includes any charge payable directly or indirectly by the consumer and imposed directly or indirectly by the creditor as an incident to or a condition of the extension of credit. It does not include any charge of a type payable in a comparable cash transaction.

(1) *Charges by third parties.* The finance charge includes fees and amounts charged by someone other than the creditor, unless otherwise excluded under this section, if the creditor:

- (i) requires the use of a third party as a condition of or an incident to the extension of credit, even if the consumer can choose the third party; or
- (ii) retains a portion of the third-party charge, to the extent of the portion retained.

(2) *Special rule; closing agent charges.* Fees charged by a third party that conducts the loan closing (such as a settlement agent, attorney, or escrow or title company) are finance charges only if the creditor:

- (i) Requires the particular services for which the consumer is charged;
- (ii) Requires the imposition of the charge; or
- (iii) Retains a portion of the third-party charge, to the extent of the portion retained.

(3) *Special rule; mortgage broker fees.* Fees charged by a mortgage broker (including fees paid by the consumer directly to the broker or to the creditor for delivery to the broker) are finance charges even if the creditor does not require the consumer to use a mortgage broker and even if the creditor does not retain any portion of the charge.

(b) *Example of finance charge* * * *

(10) *Debt cancellation fees.* Charges or premiums paid for debt cancellation coverage written in connection with a credit transaction, whether or not the debt cancellation coverage is insurance under applicable law.

(c) *Charges excluded from the finance charge.* * * *

(7) *Real-estate related fees.* The following fees in a transaction secured by real property or in a residential mortgage transaction, if the fees are bona fide and reasonable in amount:

- (i) Fees for preparing loan-related documents, such as deeds, mortgages, and reconveyance or settlement documents.
- (ii) Notary and credit report fees.
- (iv) Property appraisal fees or fees for inspections to assess the value or

condition of the property if the service is performed prior to closing, including fees related to pest infestation or flood hazard determinations.

(v) Amounts required to be paid into escrow or trustee accounts if the amounts would not otherwise be included in the finance charge.

(d) *Insurance and debt cancellation coverage.*—(1) *Voluntary credit insurance premiums.* Premiums for credit life, accident, health or loss-of-income insurance may be excluded from the finance charge if the following conditions are met:

(i) The insurance coverage is not required by the creditor, and this fact is disclosed in writing.

(3) *Voluntary debt cancellation fees.*

(i) Charges or premiums paid for debt cancellation coverage of the type specified in paragraph (d)(3)(ii) of this section may be excluded from the finance charge, whether or not the coverage is insurance, if the following conditions are met:

(A) The debt cancellation agreement or coverage is not required by the creditor, and this fact is disclosed in writing;

(B) The fee or premium for the initial term of coverage is disclosed. If the term of coverage is less than the term of the credit transaction, the term of coverage also shall be disclosed. The fee or premium may be disclosed on a unit-cost basis only in open-end credit transactions, closed-end credit transactions by mail or telephone under § 226.17(g), and certain closed-end credit transactions involving a debt cancellation agreement that limits the total amount of indebtedness subject to coverage;

(C) The consumer signs or initials an affirmative written request for coverage after receiving the disclosures specified in this paragraph. Any consumer in the transaction may sign or initial the request.

(ii) Paragraph (d)(3)(i) of this section applies to fees paid for debt cancellation coverage that provides for cancellation of all or part of the debtor's liability for amounts exceeding the value of the collateral securing the obligation, or in the event of the loss of life, health, or income or in case of accident.

(e) *Certain security interest charges.*

(3) *Taxes on security instruments.*

Any tax levied on security instruments or on documents evidencing indebtedness if the payment of such taxes is a requirement for recording the

instrument securing the evidence of indebtedness.

* * * * *

4. Section 226.17 is amended as follows:

- a. In paragraph (a)(1), footnote 38 is revised;
- b. Paragraph (c)(2) is redesignated as paragraph (c)(2)(i) and revised, and paragraph (c)(2)(ii) is added;
- c. Paragraph (f) is revised.

The revisions and additions are to read as follows:

§ 226.17 General disclosure requirements.

(a) *Form of disclosures.* (1) * * * ³⁸
* * *

* * * * *

(c) *Basis of disclosures and use of estimates.* * * *

(2)(i) If any information necessary for an accurate disclosure is unknown to the creditor, the creditor shall make the disclosure based on the best information reasonably available at the time the disclosure is provided to the consumer, and shall state clearly that the disclosure is an estimate.

(ii) For a transaction in which a portion of the interest is determined on a per-diem basis and collected at consummation, any disclosure affected by the per-diem interest shall be considered accurate if the disclosure is based on the information known to the creditor at the time that the disclosure documents are prepared for consummation of the transaction.

* * * * *

(f) *Early disclosures.* If disclosures required by this subpart are given before the date of consummation of a transaction and a subsequent event makes them inaccurate, the creditor shall disclose before consummation:³⁹

(1) any changed term unless the term was based on an estimate in accordance with § 226.17(c)(2) and was labelled an estimate;

(2) all changed terms, if the annual percentage rate at the time of consummation varies from the annual percentage rate disclosed earlier by more than 1/8 of 1 percentage point in a regular transaction, or more than 1/4 of 1 percentage point in an irregular transaction, as defined in § 226.22(a).

* * * * *

5. Section 226.18 is amended as follows:

³⁸The following disclosures may be made together with or separately from other required disclosures: the creditor's identity under § 226.18(a), the variable rate example under § 226.18(f)(4), insurance or debt cancellation under § 226.18(n), and certain security interest charges under § 226.18(o).

³⁹For certain residential mortgage transactions, § 226.19(a)(2) permits redisclosure no later than consummation or settlement, whichever is later.

a. Footnote 41 in paragraph (d) is removed and paragraph (d) introductory text is republished;

b. New paragraphs (d)(1) and (d)(2) are added;

c. Footnotes 39 and 40 in paragraph (c) are redesignated as footnotes 40 and 41 respectively; and

d. Paragraph (n) is revised.

The revisions and additions are to read as follows:

§ 226.18 Content of disclosures.

* * * * *

(d) *Finance charge.* The *finance charge*, using that term, and a brief description such as "the dollar amount the credit will cost you."

(1) *Mortgage loans.* In a transaction secured by real property or a dwelling, the disclosed finance charge and other disclosures affected by the disclosed finance charge (including the amount financed and the annual percentage rate) shall be treated as accurate if the amount disclosed as the finance charge:

(i) is understated by no more than \$100; or

(ii) is greater than the amount required to be disclosed.

(2) *Other credit.* In any other transaction, the amount disclosed as the finance charge shall be treated as accurate if, in a transaction involving an amount financed of \$1,000 or less, it is not more than \$5 above or below the amount required to be disclosed; or, in a transaction involving an amount financed of more than \$1,000, it is not more than \$10 above or below the amount required to be disclosed.

* * * * *

(n) *Insurance and debt cancellation.* The items required by § 226.4(d) in order to exclude certain insurance premiums and debt cancellation fees from the finance charge.

* * * * *

6. Section 226.19 is amended by revising paragraph (a)(2) to read as follows:

§ 226.19 Certain residential mortgage and variable-rate transactions.

(a) * * *

(2) *Redisclosure required.* If the annual percentage rate at the time of consummation varies from the annual percentage rate disclosed earlier by more than 1/8 of 1 percentage point in a regular transaction or more than 1/4 of 1 percentage point in an irregular transaction, as defined in § 226.22, the creditor shall disclose all the changed terms no later than consummation or settlement.

* * * * *

7. Section 226.22 is amended by adding new paragraphs (a)(4) and (a)(5) to read as follows:

§ 226.22 Determination of annual percentage rate.

(a) *Accuracy of annual percentage rate.* * * *

* * * * *

(4) *Mortgage loans.* If the annual percentage rate disclosed in a transaction secured by real property or a dwelling varies from the actual rate determined in accordance with paragraph (a)(1) of this section, in addition to the tolerances applicable under paragraphs (a)(2) and (3) of this section, the disclosed annual percentage rate shall also be considered accurate if:

(i) The rate results from the disclosed finance charge; and

(ii) (A) The disclosed finance charge would be considered accurate under § 226.18(d)(1); or

(B) For purposes of rescission, if the disclosed finance charge would be considered accurate under § 226.23(g) or (h), whichever applies.

(5) *Additional tolerance for mortgage loans.* In a transaction secured by real property or a dwelling, in addition to the tolerances applicable under paragraphs (a)(2) and (3) of this section, if the disclosed finance charge is calculated incorrectly but is considered accurate under § 226.18(d)(1) or § 226.23(g) or (h), the disclosed annual percentage rate shall be considered accurate:

(i) If the disclosed finance charge is understated, and the disclosed annual percentage rate is also understated but it is closer to the actual annual percentage rate than the rate that would be considered accurate under paragraph (a)(4) of this section;

(ii) If the disclosed finance charge is overstated, and the disclosed annual percentage rate is also overstated but it is closer to the actual annual percentage rate than the rate that would be considered accurate under paragraph (a)(4) of this section.

* * * * *

8. Section 226.23 is amended as follows:

a. Paragraphs (b)(1) through (b)(5) are redesignated as paragraphs (b)(1)(i) through (b)(1)(v);

b. The introductory text of paragraph (b) is redesignated as (b)(1) and republished;

c. A new paragraph (b)(2) is added; and

d. New paragraphs (g) and (h) are added.

The revisions and additions are to read as follows:

§ 226.23 Right of rescission.

* * * * *

(b)(1) *Notice of right to rescind.* In a transaction subject to rescission, a creditor shall deliver two copies of the notice of the right to rescind to each consumer entitled to rescind. The notice shall be on a separate document that identifies the transaction and shall clearly and conspicuously disclose the following:

- (i) The retention or acquisition of a security interest in the consumer's principal dwelling.
- (ii) The consumer's right to rescind the transaction.
- (iii) How to exercise the right to rescind, with a form for that purpose, designating the address of the creditor's place of business.
- (iv) The effects of rescission, as described in paragraph (d) of this section.
- (v) The date the rescission period expires.

(2) *Proper form of notice.* To satisfy the disclosure requirements of paragraph (b)(1) of this section, the creditor shall provide the appropriate model form in Appendix H of this part or a substantially similar notice.

* * * * *

(g) *Tolerances for accuracy.*—(1) *One-half of 1 percent tolerance.* Except as provided in paragraphs (g)(2) and (h)(2) of this section, the finance charge and other disclosures affected by the finance charge (such as the amount financed and the annual percentage rate) shall be considered accurate for purposes of this section if the disclosed finance charge:

- (i) is understated by no more than 1/2 of 1 percent of the face amount of the note or \$100, whichever is greater; or
- (ii) is greater than the amount required to be disclosed.

(2) *One percent tolerance.* In a refinancing of a residential mortgage transaction with a new creditor (other than a transaction covered by § 226.32), if there is no new advance and no consolidation of existing loans, the finance charge and other disclosures affected by the finance charge (such as the amount financed and the annual percentage rate) shall be considered accurate for purposes of this section if the disclosed finance charge:

- (i) is understated by no more than 1 percent of the face amount of the note or \$100, whichever is greater; or
- (ii) is greater than the amount required to be disclosed.

(h) *Special rules for foreclosures.*—(1) *Right to rescind.* After the initiation of foreclosure on the consumer's principal dwelling that secures the credit obligation, the consumer shall have the right to rescind the transaction if:

(i) A mortgage broker fee that should have been included in the finance charge was not included; or

(ii) The creditor did not provide the properly completed appropriate model form in Appendix H of this part, or a substantially similar notice of rescission.

(2) *Tolerance for disclosures.* After the initiation of foreclosure on the consumer's principal dwelling that secures the credit obligation, the finance charge and other disclosures affected by the finance charge (such as the amount financed and the annual percentage rate) shall be considered accurate for purposes of this section if the disclosed finance charge:

- (i) is understated by no more than \$35; or
- (ii) is greater than the amount required to be disclosed.

9. Section 226.31 is amended by revising paragraphs (d) and (g) to read as follows:

§ 226.31 General rules.

* * * * *

(d) *Basis of disclosures and use of estimates*—(1) *Legal Obligation.* Disclosures shall reflect the terms of the legal obligation between the parties.

(2) *Estimates.* If any information necessary for an accurate disclosure is unknown to the creditor, the creditor shall make the disclosure based on the best information reasonably available at the time the disclosure is provided, and shall state clearly that the disclosure is an estimate.

(3) *Per-diem interest.* For a transaction in which a portion of the interest is determined on a per-diem basis and collected at consummation, any disclosure affected by the per-diem interest shall be considered accurate if the disclosure is based on the information known to the creditor at the time that the disclosure documents are prepared.

* * * * *

(g) *Accuracy of annual percentage rate.* For purposes of § 226.32, the annual percentage rate shall be considered accurate, and may be used in determining whether a transaction is covered by § 226.32, if it is accurate according to the requirements and within the tolerances under § 226.22. The finance charge tolerances for rescission under § 226.23(g) or (h) shall not apply for this purpose.

10. In Part 226, Appendix H is amended by revising the H-9 Rescission Model Form and the contents listing at the beginning of Appendix H to read as follows:

Appendix H to Part 226—Closed End Model Forms and Clauses

- H-1—Credit Sale Model Form (§ 226.18)
- H-2—Loan Model Form (§ 226.18)
- H-3—Amount Financed Itemization Model Form (§ 226.18(c))
- H-4(A)—Variable-Rate Model Clauses (§ 226.18(f)(1))
- H-4(B)—Variable-Rate Model Clauses (§ 226.18(f)(2))
- H-4(C)—Variable-Rate Model Clauses (§ 226.19(b))
- H-4(D)—Variable-Rate Model Clauses (§ 226.20(c))
- H-5—Demand Feature Model Clauses (§ 226.18(l))
- H-6—Assumption Policy Model Clause (§ 226.18(q))
- H-7—Required Deposit Model Clause (§ 226.18(r))
- H-8—Rescission Model Form (General) (§ 226.23)
- H-9—Rescission Model Form (Refinancing With Original Creditor) (§ 226.23)
- H-10—Credit Sale Sample
- H-11—Installment Loan Sample
- H-12—Refinancing Sample
- H-13—Mortgage with Demand Feature Sample
- H-14—Variable-Rate Mortgage Sample (§ 226.19(b))
- H-15—Graduated Payment Mortgage Sample
- H-16—Mortgage Sample (§ 226.32)

* * * * *

H-9—Rescission Model Form (Refinancing with Original Creditor)

NOTICE OF RIGHT TO CANCEL

Your Right to Cancel

You are entering into a new transaction to increase the amount of credit previously provided to you. Your home is the security for this new transaction. You have a legal right under federal law to cancel this new transaction, without cost, within three business days from whichever of the following events occurs last:

- (1) the date of this new transaction, which is _____; or
- (2) the date you received your new Truth in Lending disclosures; or
- (3) the date you received this notice of your right to cancel.

If you cancel this new transaction, it will not affect any amount that you presently owe. Your home is the security for that amount. Within 20 calendar days after we receive your notice of cancellation of this new transaction, we must take the steps necessary to reflect the fact that your home does not secure the increase of credit. We must also return any money you have given to us or anyone else in connection with this new transaction.

You may keep any money we have given you in this new transaction until we have done the things mentioned above, but you must then offer to return the money at the address below.

If we do not take possession of the money within 20 calendar days of your offer, you may keep it without further obligation.

How To Cancel

If you decide to cancel this new transaction, you may do so by notifying us in writing, at

(Creditor's name and business address).

You may use any written statement that is signed and dated by you and states your intention to cancel, or you may use this notice by dating and signing below. Keep one copy of this notice because it contains important information about your rights.

If you cancel by mail or telegram, you must send the notice no later than midnight of

(Date) (or midnight of the third business day following the latest of the three events listed above).

If you send or deliver your written notice to cancel some other way, it must be delivered to the above address no later than that time.

I WISH TO CANCEL

Consumer's Signature

Date

11. In Supplement I to Part 226, under Section 226.4—Finance Charge, under 4(a) Definition, paragraph 3.ii. is removed.

12. In Supplement I to Part 226, under Section 226.17—General Disclosure Requirements, under 17(c) Basis of disclosures and use of estimates, paragraph 17(c)(2) is redesignated as paragraph 17(c)(2)(i):

Supplement I—Official Staff Interpretations

* * * * *

Section 226.17—General Disclosure Requirements

* * * * *

17(c) Basis of Disclosures and Use of Estimates

* * * * *

Paragraph 17(c)(2)(i).

* * * * *

13. In Supplement I to Part 226, under Section 226.18—Content of Disclosures, under 18(d) Finance charge, paragraph 2 is removed.

14. In Supplement I to Part 226, under Section 226.23—Right of Rescission, under 23(b) Notice of right to rescind, the first sentence of paragraph 3 is revised to read as follows:

Section 226.23—Right of Rescission.

* * * * *

23(b) Notice of right to rescind

* * * * *

3. Content. The notice must include all of the information outlined in Section 226.23(b)(1)(i) through (v). * * *

* * * * *

By order of the Board of Governors of the Federal Reserve System, September 13, 1996. William W. Wiles,

Secretary of the Board.

[FR Doc. 96-23951 Filed 9-18-96; 8:45 am]

BILLING CODE 6210-01-P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. 95-NM-59-AD; Amendment 39-9762; AD 96-19-16]

RIN 2120-AA64

Airworthiness Directives; Fokker Model F28 Mark 0100 Series Airplanes

AGENCY: Federal Aviation Administration, DOT.

ACTION: Final rule.

SUMMARY: This amendment adopts a new airworthiness directive (AD), applicable to certain Fokker Model F28 Mark 0100 series airplanes, that requires inspections to detect cracking of the Hi-lok bolt holes in the main hinge fittings of the horizontal stabilizer, and repair, if necessary. The amendment also requires modification of the main hinge fitting, modification or replacement of rib connecting angles, and modification of ribs. This amendment is prompted by a report indicating that cracking was found in the main hinge fittings of the horizontal stabilizer during fatigue testing. The cracking was a result of higher-than-anticipated loads induced during operation of the thrust reverser. The actions specified by this AD are intended to prevent deterioration of the fatigue life of the main hinge fittings of the horizontal stabilizer and reduced structural integrity of the horizontal stabilizer due to higher induced loads.

DATES: Effective October 24, 1996.

The incorporation by reference of certain publications listed in the regulations is approved by the Director of the Federal Register as of October 24, 1996.

ADDRESSES: The service information referenced in this AD may be obtained from Fokker Aircraft USA, Inc., 1199 North Fairfax Street, Alexandria, Virginia 22314. This information may be examined at the Federal Aviation Administration (FAA), Transport Airplane Directorate, Rules Docket, 1601 Lind Avenue, SW., Renton, Washington; or at the Office of the

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

FOR FURTHER INFORMATION CONTACT: Tim Dulin, Aerospace Engineer, Standardization Branch, ANM-113, FAA, Transport Airplane Directorate, 1601 Lind Avenue, SW., Renton, Washington 98055-4056; telephone (206) 227-2141; fax (206) 227-1149.

SUPPLEMENTARY INFORMATION: A proposal to amend part 39 of the Federal Aviation Regulations (14 CFR part 39) to include an airworthiness directive (AD) that is applicable to certain Fokker Model F28 Mark 0100 series airplanes was published in the Federal Register on February 13, 1996 (61 FR 5524). That action proposed to require a rotor probe inspection and a pencil probe inspection to detect cracks of the Hi-lok bolt holes in the main hinge fittings of the horizontal stabilizer. For certain airplanes, that action also proposed to require modification of the Hi-lok bolt holes by cold expansion and stiffening of the ribs at Station 215.

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

Support for the Proposal

One commenter supports the proposed rule.

Request To Extend the Compliance Time

One commenter requests that the compliance time for the initial inspection be extended from the proposed 15,000 total flight cycles to 16,000 flight cycles. The commenter considers that extending the compliance time to 16,000 flight cycles would allow an operator to accomplish the inspection during regularly scheduled maintenance, and would prevent any disruption of service. The commenter states that the adoption of the proposed compliance time would require scheduling of special times for the accomplishment of this inspection at considerable expense beyond what was estimated in the cost impact of the proposed rule.

The FAA does not concur. In developing the compliance time for this rulemaking action, the FAA took into consideration not only the safety implications associated with the addressed unsafe condition and the normal maintenance schedules for the majority of affected operators, but also the results of fatigue tests and analysis performed by the manufacturer, the manufacturer's recommended compliance time specified in the

applicable service bulletin, and the foreign airworthiness authority's recommended compliance time of 15,000 total flight cycles. In consideration of these factors, the FAA finds that a compliance time of 15,000 total flight cycles (or within 1 year after the effective date of this date) is appropriate and should fall during a time of scheduled maintenance for the majority of affected operators. However, paragraph (d) of the final rule does provide affected operators the opportunity to apply for an adjustment of the compliance time if data are presented to justify such an adjustment.

Conclusion

After careful review of the available data, including the comments noted above, the FAA has determined that air safety and the public interest require the adoption of the rule as proposed.

Cost Impact

The FAA estimates that 90 airplanes of U.S. registry will be affected by this AD, that it will take approximately 136 work hours per airplane to accomplish the required actions, and that the average labor rate is \$60 per work hour. Required parts will cost approximately \$1,800 per airplane. Based on these figures, the cost impact of the AD on U.S. operators is estimated to be \$896,400, or \$9,960 per airplane.

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

Regulatory Impact

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

For the reasons discussed above, I certify that this action (1) is not a "significant regulatory action" under Executive Order 12866; (2) is not a "significant rule" under DOT Regulatory Policies and Procedures (44 FR 11034, February 26, 1979); and (3) will not have a significant economic impact, positive or negative, on a substantial number of small entities under the criteria of the Regulatory Flexibility Act. A final evaluation has

been prepared for this action and it is contained in the Rules Docket. A copy of it may be obtained from the Rules Docket at the location provided under the caption **ADDRESSES**.

List of Subjects in 14 CFR Part 39

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

Adoption of the Amendment

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

PART 39—AIRWORTHINESS DIRECTIVES

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

Authority: 49 U.S.C. 106(g), 40113, 44701.

§ 39.13 [Amended]

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

96-19-16 Fokker: Amendment 39-9762. Docket 95-NM-59-AD.

Applicability: Model F28 Mark 0100 airplanes; having serial numbers 11244 through 11420 inclusive, 11422, 11424 through 11428 inclusive, 11432 through 11439 inclusive, and 11443 through 11445 inclusive; certificated in any category.

Note 1: This AD applies to each airplane identified in the preceding applicability provision, regardless of whether it has been otherwise modified, altered, or repaired in the area subject to the requirements of this AD. For airplanes that have been modified, altered, or repaired so that the performance of the requirements of this AD is affected, the owner/operator must request approval for an alternative method of compliance in accordance with paragraph (d) of this AD. The request should include an assessment of the effect of the modification, alteration, or repair on the unsafe condition addressed by this AD; and, if the unsafe condition has not been eliminated, the request should include specific proposed actions to address it.

Compliance: Required as indicated, unless accomplished previously.

To prevent reduced structural integrity of the horizontal stabilizer, accomplish the following:

Note 2: Inspections and modifications accomplished prior to the effective date of this amendment in accordance with Fokker Service Bulletin SBF100-55-021, Revision 1, dated September 6, 1993, are considered acceptable for compliance with the inspections and modifications required by this amendment.

(a) Prior to the accumulation of 15,000 total flight cycles, or within 1 year after the effective date of this AD, whichever occurs later: Perform a rotor probe inspection and a

pencil probe inspection to detect cracking of the Hi-lok bolt holes in the main hinge fittings of the horizontal stabilizer, in accordance with Part 5 of the Accomplishment Instructions of Fokker Service Bulletin SBF100-55-021, Revision 2, dated December 27, 1993. This inspection is not required for airplanes that have been modified as specified in paragraph (b) of this AD, provided that the modification is accomplished prior to the accumulation of 1,000 total flight cycles.

(b) Either prior to the accumulation of 1,000 total flight cycles; or prior to further flight after the inspection required by paragraph (a) of this AD if, as a result of that inspection, no cracking is found, or all cracks that are found are less than or equal to the values specified in the Decision Diagram (Figure 2) of Fokker Service Bulletin SBF100-55-021, Revision 2, dated December 27, 1993: Accomplish the modification requirements specified in paragraph (b)(1) and (b)(2) of this AD.

(1) Modify the main hinge fittings of the horizontal stabilizer; and replace or modify the connecting angles at Rib 215, as applicable; in accordance with Fokker Service Bulletin SBF100-55-021, Revision 2, dated December 27, 1993, and as specified in either paragraph (b)(1)(i) or (b)(1)(ii) of this AD, as applicable.

(i) For airplanes that have accumulated less than 1,000 total flight cycles at the time of modification: Accomplish the modification in accordance with either Part 3 or Part 4 of the Accomplishment Instructions of the service bulletin, as applicable.

(ii) For airplanes that have accumulated 1,000 or more total flight cycles at the time of modification: Accomplish the modification in accordance with either Part 6 or Part 7 of the Accomplishment Instructions of the service bulletin, as applicable.

(2) Modify Rib 215 of the horizontal stabilizer to close the lightening holes in accordance with Part 8 of the Accomplishment Instructions of Fokker Service Bulletin SBF100-55-021, Revision 2, dated December 27, 1993.

(c) If any cracking is found as a result of the inspection required by paragraph (a) of this AD, and the cracking exceeds the values specified in the Decision Diagram (Figure 2) of Fokker Service Bulletin SBF100-55-021, Revision 2, dated December 27, 1993: Prior to further flight, repair in accordance with a method approved by the Manager, Standardization Branch, ANM-113, FAA, Transport Airplane Directorate.

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

Note 3: Information concerning the existence of approved alternative methods of compliance with this AD, if any, may be obtained from the Standardization Branch, ANM-113.

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

(f) The actions shall be done in accordance with Fokker Service Bulletin SBF100-55-021, Revision 2, dated December 27, 1993. This incorporation by reference was approved by the Director of the Federal Register in accordance with 5 U.S.C. 552(a) and 1 CFR part 51. Copies may be obtained from Fokker Aircraft USA, Inc., 1199 North Fairfax Street, Alexandria, Virginia 22314. Copies may be inspected at the FAA, Transport Airplane Directorate, 1601 Lind Avenue, SW., Renton, Washington; or at the Office of the Federal Register, 800 North Capitol Street, NW., suite 700, Washington, DC.

(g) This amendment becomes effective on October 24, 1996.

Issued in Renton, Washington, on September 10, 1996.

James V. Devany,

Acting Manager, Transport Airplane Directorate, Aircraft Certification Service.

[FR Doc. 96-23712 Filed 9-18-96; 8:45 am]

BILLING CODE 4910-13-U

14 CFR Part 39

[Docket No. 96-CE-50-AD; Amendment 39-9765; AD 96-19-07]

RIN 2120-AA64

Airworthiness Directives; Burkhardt Grob Luft-und Raumfahrt Models G115C, G115C2, G115D, and G115D2 Airplanes

AGENCY: Federal Aviation Administration, DOT.

ACTION: Final rule; request for comments.

SUMMARY: This document publishes in the Federal Register an amendment adopting Airworthiness Directive (AD) 96-19-07, which was sent previously to all known U.S. owners and operators of Burkhardt Grob Luft-und Raumfahrt (Grob) Models G115C, G115C2, G115D, and G115D2 airplanes. This AD requires installing a placard that restricts the never exceed speed (Vne) of the affected airplane models from 184 knots to 160 knots; installing on the airspeed indicator glass a red line at 296 km/h (160 knots); installing a placard that prohibits aerobatic maneuvers; and placing a copy of this AD in the Limitations Section of the airplane flight manual. An in-flight breakup of a Grob Model G115D airplane prompted priority letter AD 96-19-07. The actions specified by this AD are intended to prevent loss of control of the airplane caused by excessive speed or aerobatic maneuvers.

DATES: Effective September 27, 1996, to all persons except those to whom it was made immediately effective by priority letter AD 96-19-07, issued September 6, 1996, which contained the requirements of this amendment.

Comments for inclusion in the Rules Docket must be received on or before November 19, 1996.

ADDRESSES: Submit comments in triplicate to the Federal Aviation Administration (FAA), Central Region, Office of the Assistant Chief Counsel, Attention: Rules Docket 96-CE-50-AD, Room 1558, 601 E. 12th Street, Kansas City, Missouri 64106.

The service information and placards specified in this AD may be obtained from Burkhardt Grob Luft-und Raumfahrt, D-8939 Mattsies, Germany. This information may also be examined at the Rules Docket at the address above.

FOR FURTHER INFORMATION CONTACT: Mr. Greg Holt, Program Officer, Brussels Aircraft Certification Division, FAA, Europe, Africa, and Middle East Office, c/o American Embassy, B-1000 Brussels, Belgium; telephone (32 2) 508.26.92; facsimile (32 2) 230.68.99; or Mr. Mike Kiesov, Aerospace Engineer, FAA, Small Airplane Directorate, 1201 Walnut Street, suite 900, Kansas City, Missouri 64106; telephone (816) 426-6934; facsimile (816) 426-2169.

SUPPLEMENTARY INFORMATION:

Events Leading to the AD

The Federal Aviation Administration (FAA) is currently involved with investigating an in-flight breakup of a Grob Model G115D airplane. Preliminary investigation of the accident reveals that the empennage separated from the airplane. Both crew members were killed in the accident. Involved in the on-going investigation are:

- The FAA;
- The National Transportation Safety Board (NTSB); and
- Grob (the manufacturer of the accident airplane).

Applicable Service Information

Grob has issued Service Bulletin (SB) 1078-59/2, dated September 2, 1996, which specifies (1) installing a placard that restricts the never exceed speed (Vne) of the affected airplanes from 184 knots to 160 knots; (2) installing on the airspeed indicator a red line at 296 km/h (160 knots); and (3) installing a placard that prohibits aerobatic maneuvers. The placards are included in this service bulletin.

The FAA's Determination

Although the on-going investigation of the in-flight breakup of the Grob Model G115D airplane is not complete, the FAA has determined (1) that the actions specified in Grob SB 1078-59/2, dated September 2, 1996, should be accomplished by all owners/operators of Grob Models G115C, G115C2, G115D, and G115D2 airplanes; and (2) airworthiness directive (AD) action should be taken to prevent loss of control of the airplane caused by excessive speed or aerobatic maneuvers. Further rulemaking may be required when the results of the accident investigation are known.

These airplane models are manufactured in Germany and are type certificated for operation in the United States under the provisions of section 21.29 of the Federal Aviation Regulations (14 CFR 21.29) and the applicable bilateral airworthiness agreement. The Luftfahrt-Bundesamt (LBA), which is the airworthiness authority for Germany, is preparing an AD in order to assure the continued airworthiness of these airplanes in Germany.

Explanation of the Provisions of This AD

Since an unsafe condition has been identified that is likely to exist or develop on other Grob Models G115C, G115C2, G115D, and G115D2 airplanes of the same type design that are registered for operation in the United States, the FAA issued priority letter AD 96-19-07 on September 5, 1996, to prevent loss of control of the airplane caused by excessive speed or aerobatic maneuvers. The AD requires the following:

- Installing a placard that restricts the never exceed speed (Vne) of the affected airplane models from 184 knots to 160 knots;
- Installing on the airspeed indicator glass a red line at 296 km/h (160 knots);
- Installing a placard that prohibits aerobatic maneuvers; and
- Placing a copy of this AD in the Limitations Section of the airplane flight manual.

The placards are included with Grob SB 1078-59/2, dated September 2, 1996.

Since it was found that immediate corrective action was required, notice and opportunity for prior public comment thereon were impracticable and contrary to the public interest, and good cause existed to make the AD effective immediately by individual letters issued on September 5, 1996, to all known U.S. operators of Grob G115C,

G115C2, G115D, and G115D2 airplanes. These conditions still exist, and the AD is hereby published in the Federal Register as an amendment to section 39.13 of the Federal Aviation Regulations (14 CFR 39.13) to make it effective as to all persons.

Comments Invited

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

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

Commenters wishing the FAA to acknowledge receipt of their comments submitted in response to this rule must submit a self-addressed, stamped postcard on which the following statement is made: "Comments to Docket No. 96-CE-50-AD." The postcard will be date stamped and returned to the commenter.

Regulatory Impact

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

The FAA has determined that this regulation is an emergency regulation

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

List of Subjects in 14 CFR Part 39

Air transportation, Aircraft, Aviation safety, Safety.

Adoption of the Amendment

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

PART 39—AIRWORTHINESS DIRECTIVES

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

Authority: 49 U.S.C. 106(g), 40113, 44701.

§ 39.13 [Amended]

2. Section 39.13 is amended by adding a new airworthiness directive (AD) to read as follows:

96-19-07 Burkhardt Grob Luft-Und Raumfahrt: Amendment 39-9765; Docket No. 96-CE-50-AD.

Applicability: Models G115C, G115C2, G115D, and G115D2 airplanes (all serial numbers), certificated in any category.

Note 1: This AD applies to each airplane identified in the preceding applicability provision, regardless of whether it has been modified, altered, or repaired in the area subject to the requirements of this AD. For airplanes that have been modified, altered, or repaired so that the performance of the requirements of this AD is affected, the owner/operator must request approval for an alternative method of compliance in accordance with paragraph (f) of this AD. The request should include an assessment of the effect of the modification, alteration, or repair on the unsafe condition addressed by this AD; and, if the unsafe condition has not been eliminated, the request should include specific proposed actions to address it.

Compliance: Required prior to further flight after the effective date of this AD, unless already accomplished, except to those operators receiving this action by priority letter issued September 6, 1996, which made these actions effective immediately upon receipt.

To prevent loss of control of the airplane caused by excessive speed or aerobatic maneuvers, accomplish the following:

(a) Install, on the limitation placard at the left-hand cabin wall, the airspeed placard that is included with Grob Service Bulletin (SB) 1078-59/2, dated September 2, 1996. This placard reduces the maximum airspeed to 296 kilometers per hour (km/h); equal to 160 knots per hour.

(b) Modify the airspeed indicator glass by accomplishing the following:

(1) Place a red radial line on the indicator glass at 296 km/h (160 knots). The minimum dimensions for this radial line are 0.05-inch in width and 0.30-inch in length.

(2) Place a white 0.05-inch minimum width slippage index mark that connects both the instrument glass and bezel. This slippage index mark shall not obscure any airspeed markings.

(c) Install, near the airspeed indicator, the red placard included with Grob SB 1078-59/2 that has the words: "Aerobatic maneuvers are prohibited."

(d) Insert a copy of this AD into the Limitations Section of the airplane flight manual.

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

(f) An alternative method of compliance or adjustment of the compliance time that provides an equivalent level of safety may be approved by the Manager, Brussels Aircraft Certification Division, FAA, Europe, Africa, and Middle East Office, c/o American Embassy, B-1000 Brussels, Belgium. The request shall be forwarded through an appropriate FAA Maintenance Inspector, who may add comments and then send it to the Manager, Brussels Aircraft Certification Division.

Note 2: Information concerning the existence of approved alternative methods of compliance with this AD, if any, may be obtained from the Brussels Aircraft Certification Division.

(g) The service information and placards specified in this AD may be obtained from Burkhardt Grob Luft-und Raumfahrt, D-8939 Mattsies, Germany. This information may also be examined at the FAA, Central Region, Office of the Assistant Chief Counsel, Room 1558, 601 E. 12th Street, Kansas City, Missouri 64106.

(h) This amendment (39-9765) becomes effective on September 27, 1996, to all persons except those persons to whom it was made immediately effective by priority letter AD 96-19-07, issued September 6, 1996, which contained the requirements of this amendment.

Issued in Kansas City, Missouri, on September 12, 1996.

Michael Gallagher,
Manager, Small Airplane Directorate, Aircraft Certification Service.

[FR Doc. 96-23988 Filed 9-18-96; 8:45 am]

BILLING CODE 4910-13-U

14 CFR Part 39

[Docket No. 95-CE-67-AD; Amendment 39-9766; AD 95-19-18]

RIN 2120-AA64

Airworthiness Directives; SOCATA Groupe AEROSPATIALE TBM 700 Airplanes

AGENCY: Federal Aviation Administration, DOT.

ACTION: Final rule.

SUMMARY: This amendment adopts a new airworthiness directive (AD) that applies to certain SOCATA Groupe AEROSPATIALE (Socata) TBM 700 airplanes. This action requires installing four rivets on the right side of the rudder and drilling drainage holes at the areas of the elevators and rudder. Reports of water accumulating in the areas of the elevators and rudder and a report of a bonding defect between the skin and rudder rear spar on the affected airplanes prompted this action. The actions specified by this AD are intended to prevent the wing skin and the rear spar from becoming unbonded or water accumulating in either the elevators or rudder, which could result in loss of control of the airplane.

DATES: Effective November 8, 1996.

The incorporation by reference of certain publications listed in the regulations is approved by the Director of the Federal Register as of November 8, 1996.

ADDRESSES: Service information that applies to this AD may be obtained from the SOCATA Groupe AEROSPATIALE, Socata Product Support, Aeroport Tarbes-Ossun-Lourdes, B P 930, 65009 Tarbes Cedex, France; telephone 62.41.74.26; facsimile 62.41.74.32; or the Product Support Manager, U.S. AEROSPATIALE, 2701 Forum Drive, Grand Prairie, Texas 75053; telephone (214) 641-3614; facsimile (214) 641-3527. This information may also be examined at the Federal Aviation Administration (FAA), Central Region, Office of the Assistant Chief Counsel, Attention: Rules Docket No. 95-CE-67-AD, Room 1558, 601 E. 12th Street, Kansas City, Missouri 64106; or at the Office of the Federal Register, 800 North Capitol Street, NW., suite 700, Washington, DC.

FOR FURTHER INFORMATION CONTACT: Mr. William J. Timberlake, Program Officer, Brussels Aircraft Certification Division, FAA, Europe, Africa, and Middle East Office, c/o American Embassy, B-1000 Brussels, Belgium; telephone (32 2) 513.38.30; facsimile (32 2) 230.68.99; or Mr. Mike Kiesov, Aerospace Engineer, FAA, Small

Airplane Directorate, 1201 Walnut Street, suite 900, Kansas City, Missouri 64106; telephone (816) 426-6934; facsimile (816) 426-2169.

SUPPLEMENTARY INFORMATION:**Events Leading to This Action**

A proposal to amend part 39 of the Federal Aviation Regulations (14 CFR part 39) to include an AD that would apply to certain Socata TBM 700 airplanes registered in the United States was published in the Federal Register on April 9, 1996 (61 FR 15738). The action proposed to require installing four rivets on the right side of the rudder and drilling drainage holes at the specified areas of the elevators and rudder. Accomplishment of the proposed installation as specified in the notice of proposed rulemaking (NPRM) would be in accordance with Socata Service Bulletin (SB) TBM 70-027 and Socata SB TBM 70-028, both dated September 1993.

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

Comment Issue No. 1: Divide the Proposal Into Two Different AD's

Socata suggests that the actions specified by the NPRM would be clearer if they were broken out into two separate AD's. The reasons that Socata gives are:

- the Direction Générale de l'Aviation Civile (DGAC), which is the airworthiness authority for France, issued two separate AD's;
- there are two separate Socata service bulletins: Socata SB TBM 70-027 and Socata SB TBM 70-028, both dated September 1993; and
- justification, causes, and effects of each action proposed in the NPRM are different.

The FAA concurs that the DGAC issued two separate AD's and that there are two service bulletins. However, the FAA does not concur that the justification, causes, and effects of each action proposed in the NPRM are entirely different. Socata SB TBM 70-027 requires installing four rivets on the rudder. If this is not accomplished and debonding occurs, then moisture can accumulate in the rudder. Thus, Socata SB TBM 70-028 contains procedures for drilling drainage holes in the elevator and rudder to reduce corrosion effects caused by moisture accumulation that could lead to control surface imbalance. The FAA has determined that one AD is justified because accomplishment of

the actions specified in both service bulletins will help prevent control surface imbalance and the compliance times are exactly the same (thus preventing the owner/operator from having to schedule the accomplishment of two separate AD actions). No changes have been made to the AD as a result of this comment.

Comment Issue No. 2: Need More Justification for Stating That the Existing Conditions Could Cause Loss of Control of the Airplane

Socata states that, if the FAA believes that the conditions specified in the NPRM, " * * * if not detected and corrected, could result in loss of control of the airplane", then the FAA should be more precise in stating how this is correct. Also, concerning the bonding defect between the skin and the rear spar (Socata SB TBM 70-027), Socata states that loss of control of the airplane is improbable with the assumption that the safe life of the rudder will be affected over time without corrective action.

The FAA believes that the conditions, if not detected and corrected, could result in loss of control of the airplane. The objective of Socata SB 70-028 is to provide control surface drainage (elevator and rudder). Moisture that accumulates in the control surfaces can freeze when the aircraft climbs to a high altitude, which then could result in control surface imbalance. This effect can cause flutter, which can result in loss of control of the airplane. As earlier explained (Comment Issue No. 1), the accomplishment of the actions specified in both Socata SB TBM 70-027 and Socata SB TBM 70-028 will help prevent these control surface imbalances. No changes to the AD have been made as a result of this comment.

Comment Issue No. 3: Problems With the Absence of Elevator and Rudder Drainage Holes

Socata states that different problems could occur with the absence of drainage holes in the elevator and rudder. These problems are:

- Corrosion for airplanes which could stay at parking for a long time where water would stagnate,
- if the water freezes, it may slightly affect the controls balance.

No specific changes to the AD or recommendations for additional or different AD action were presented by the commenter regarding this issue. No changes to the AD have been made as a result of this comment.

Comment Issue No. 4: Workhours for Accomplishing Actions are Incorrect

Socata states that the workhours for accomplishing the actions specified in the NPRM are incorrect. For example:

- For installing the rivets, one workhour is required instead of two as specified in the NPRM; and
- For drilling the drainage holes, 1.5 hours is needed instead of two as specified in the NPRM.

The FAA concurs. However, FAA policy is to round fractional numbers concerning workhours to the next whole number. Therefore, the workhours for installing rivets will be changed in the AD to reflect 1 workhour; however, the workhours for drilling the drainage holes will remain at 2 workhours.

The FAA's Determination

After careful review of all available information related to the subject presented above, including the referenced service information, the FAA has determined that air safety and the public interest require the adoption of the rule as proposed except for the change to the economic information and minor editorial corrections. The FAA has determined that the change and minor corrections will not change the meaning of the AD and will not add any additional burden upon the public than was already proposed.

Cost Impact

The FAA estimates that 31 airplanes in the U.S. registry will be affected by the required rivet installation and 35 airplanes will be affected by the required drainage hole drillings, that it will take 1 workhour to install the rivets and 2 workhours to drill the drainage holes, and that the average labor cost is \$60 per hour. No cost is attributed to parts that would be necessary to accomplish the required actions since these parts are available through common operator stock and an approximate cost cannot be traced. Based on these figures, the total cost impact of this AD on U.S. operators is estimated to be \$1,860 or \$60 per airplane for the rivet installation and \$4,200 or \$120 per airplane for the drainage hole drilling. Since parts are not sold through the manufacturer, the FAA has no method of determining the number of parts already distributed, and thus bases this cost impact upon the assumption that no owner/operator of the affected airplanes has accomplished the required actions.

Regulatory Impact

The regulations adopted herein will not have substantial direct effects on the

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

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

List of Subjects in 14 CFR Part 39

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

Adoption of the Amendment

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

PART 39—AIRWORTHINESS DIRECTIVES

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

Authority: 49 U.S.C. 106(g), 40113, 44701.

§ 39.13 [Amended]

2. Section 39.13 is amended by adding a new airworthiness directive (AD) to read as follows:

96-19-18 Socata Groupe Aerospatiale: Amendment 39-9766; Docket No. 95-CE-67-AD.

Applicability: TBM 700 airplanes (serial numbers 1 through 19, 21, 22, 25 through 34, 38, 39, 46, 49, 50, 52, 53, 57, 59 through 63, 67, 68, 70 through 78, 80, and 82 through 85), certificated in any category.

Note 1: This AD applies to each airplane identified in the preceding applicability provision, regardless of whether it has been modified, altered, or repaired in the area subject to the requirements of this AD. For airplanes that have been modified, altered, or repaired so that the performance of the requirements of this AD is affected, the owner/operator must request approval for an alternative method of compliance in

accordance with paragraph (d) of this AD. The request should include an assessment of the effect of the modification, alteration, or repair on the unsafe condition addressed by this AD; and, if the unsafe condition has not been eliminated, the request should include specific proposed actions to address it.

Compliance: Required within the next 100 hours time-in-service after the effective date of this AD, unless already accomplished.

To prevent the wing skin and the rear spar from becoming unbonded or water accumulating in either the elevators or rudder, which could result in loss of control of the airplane, accomplish the following:

(a) For any TBM 700 airplane with a serial number in the following range: 1 through 19, 21, 22, 25 through 34, 38, 39, 46, 49, 50, 52, 53, 57, 59, 61 through 63, 67, 68, and 71 through 75; install four rivets on the right side of the rudder in accordance with the DESCRIPTION section of Socata Service Bulletin (SB) TBM 70-027, dated September 1993.

(b) For any TBM 700 airplane with a serial number in the following range: 2 through 19, 21, 22, 24 through 34, 38, 39, 46, 49, 50, 52, 53, 57, 59 through 63, 67, 68, 70 through 78, 80, and 82 through 85; drill drainage holes in the area of the elevators and rudder in accordance with the DESCRIPTION section of Socata SB TBM 70-028, dated September 1993.

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

(d) An alternative method of compliance or adjustment of the compliance time that provides an equivalent level of safety may be approved by the Manager, Brussels Aircraft Certification Division, FAA, Europe, Africa, and Middle East Office, c/o American Embassy, B-1000 Brussels, Belgium. The request shall be forwarded through an appropriate FAA Maintenance Inspector, who may add comments and then send it to the Manager, Brussels Aircraft Certification Division.

Note 2: Information concerning the existence of approved alternative methods of compliance with this AD, if any, may be obtained from the Brussels Aircraft Certification Division.

(e) The rivet installation required by this AD shall be done in accordance with Socata Service Bulletin TBM 70-027, dated September 1993. The drainage hole drilling required by this AD shall be done in accordance with Socata Service Bulletin TBM 70-028, dated September 1993. This incorporation by reference was approved by the Director of the Federal Register in accordance with 5 U.S.C. 552(a) and 1 CFR part 51. Copies may be obtained from the SOCATA Groupe AEROSPATIALE, Socata Product Support, Aeroport Tarbes-Ossun-Lourdes, BP 930, 65009 Tarbes Cedex, France; or the Product Support Manager, U.S. AEROSPATIALE, 2701 Forum Drive, Grand Prairie, Texas 75053. Copies may be inspected at the FAA, Central Region, Office of the Assistant Chief Counsel, Room 1558, 601 E. 12th Street, Kansas City, Missouri, or

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

(f) This amendment (39-9766) becomes effective on November 8, 1996.

Issued in Kansas City, Missouri, on September 12, 1996.

Michael Gallagher,
Manager, Small Airplane Directorate, Aircraft Certification Service.

[FR Doc. 96-23989 Filed 9-18-96; 8:45 am]

BILLING CODE 4910-13-U

14 CFR Part 71

[Airspace Docket No. 96-ASO-15]

Amendment to Class D Airspace; Smyrna, TN

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Final rule.

SUMMARY: This amendment modifies Class D surface area airspace at Smyrna, TN. Due to the relocation of the Nashville VORTAC, an airspace review of the Smyrna, TN, Class D airspace area was conducted. As a result of the airspace review, it was determined that the Smyrna Class D airspace area for the Smyrna Airport requires redefinition by removing a small exclusion and reducing the height from 3,000 feet to 2,000 feet MSL in the northwest quadrant of the Smyrna Class D airspace area.

EFFECTIVE DATE: 0901 UTC, December 5, 1996.

FOR FURTHER INFORMATION CONTACT: Benny L. McGlamery, System Management Branch, Air Traffic Division, Federal Aviation Administration, P.O. Box 20636, Atlanta, Georgia 30320; telephone (404) 305-5570.

SUPPLEMENTARY INFORMATION:

History

On July 17, 1996, the FAA proposed to amend Part 71 of the Federal Aviation Regulations (14 CFR Part 71) by modifying Class D airspace at Smyrna, TN (61 FR 37230). This action would provide adequate Class D airspace for IFR operations at the Smyrna Airport.

Interested parties were invited to participate in this rulemaking proceeding by submitting written comments on the proposal to the FAA. No comments objecting to the proposal were received. Class D airspace designations are published in Paragraph 5000 of FAA Order 7400.9D, dated September 4, 1996, and effective September 16, 1996, which is incorporated by reference in 14 CFR

71.1. The Class D airspace designation listed in this document will be published subsequently in the Order.

The Rule

This amendment to Part 71 of the Federal Aviation Regulations (14 CFR part 71) modifies Class D airspace at Smyrna, TN, for Smyrna Airport by removing a small exclusion and reducing the height from 3,000 feet to 2,000 feet MSL in the northwest quadrant of the Smyrna Class D airspace area.

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

List of Subjects in 14 CFR Part 71

Airspace, Incorporation by reference, Navigation (air).

Adoption of the Amendment

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

PART 71—[AMENDED]

1. The authority citation for 14 CFR Part 71 continues to read as follows:

Authority: 49 U.S.C. 106(g); 40103, 40113, 40120; EO 10854, 24 FR 9565, 3 CFR, 1959-1963 Comp., p. 389; 14 CFR 11.69.

§ 71.1 [Amended]

2. The incorporation by reference in 14 CFR 71.1 of Federal Aviation Administration Order 7400.9D, Airspace Designations and Reporting Points, dated September 4, 1996, and effective September 16, 1996, is amended as follows:

Paragraph 5000 Class D airspace.

* * * * *

ASO TN D Smyrna, TN [Revised]

Smyrna Airport, TN,

(Lat. 36°00'32" N, long. 86°31'12" W)

That airspace extending upward from the surface to and including 3,000 feet MSL within a 3.9-mile radius of the Smyrna

Airport, excluding that airspace within the Nashville Class C airspace area. This Class D airspace area is effective during the specific dates and times established in advance by a Notice to Airmen. The effective dates and times will thereafter be continuously published in the Airport/Facility Directory.

* * * * *

Issued in College Park, Georgia, on September 10, 1996.

Benny L. McGlamery
Acting Manager, Air Traffic Division, Southern Region.

[FR Doc. 96-23947 Filed 9-18-96; 8:45 am]

BILLING CODE 4910-13-M

14 CFR Part 71

[Airspace Docket No. 96-ASO-16]

Establishment of Class E Airspace; Currituck, NC

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Final rule.

SUMMARY: This amendment establishes Class E airspace at Currituck, NC. A GPS RWY 22 Standard Instrument Approach Procedure (SIAP) has been developed for Currituck County Airport. Controlled airspace extending upward from 700 feet above the surface (AGL) is needed to accommodate this SIAP and for instrument flight rules (IFR) operations at the airport. The operating status of the airport will change from VFR to include IFR operations concurrent with publication of this SIAP.

EFFECTIVE DATE: 0901 UTC, December 5, 1996.

FOR FURTHER INFORMATION CONTACT: Benny L. McGlamery, Operations Branch, Air Traffic Division, Federal Aviation Administration, P.O. Box 20636, Atlanta, Georgia 30320; telephone (404) 305-5570.

SUPPLEMENTARY INFORMATION:

History

On July 10, 1996, the FAA proposed to amend Part 71 of the Federal Aviation Regulations (14 CFR Part 71) by establishing Class E airspace at Currituck, NC, (61 FR 36312). This action will provide adequate Class E airspace for IFR operations at Currituck County Airport.

Interested parties were invited to participate in this rulemaking proceeding by submitting written comments on the proposal to the FAA. No comments objecting to the proposal were received. Designations for Class E airspace extending upward from 700 feet or more above the surface are published in Paragraph 6005 of FAA Order 7400.9D dated September 4, 1996,

and effective September 16, 1996. The Class E airspace designation listed in this document will be published subsequently in the Order.

The Rule

This amendment to Part 71 of the Federal Aviation Regulations (14 CFR part 71) establishes Class E airspace at Currituck, NC, to accommodate a GPS RWY 22 SIAP and for IFR operations at Currituck County Airport. The operating status of the airport will be changed from VFR to include IFR operations concurrent with publication of this SIAP.

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

List of Subjects in 14 CFR Part 71

Airspace, Incorporation by reference, Navigation (air).

Adoption of the Amendment

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

PART 71—[AMENDED]

1. The authority citation for 14 CFR Part 71 continues to read as follows:

Authority: 49 U.S.C. 106(g); 40103, 40113, 40120; EO 10854, 24 FR 9565, 3 CFR, 1959-1963 Comp., p. 389; 14 CFR 11.69.

§ 71.1 [Amended]

2. The incorporation by reference in 14 CFR 71.1 of Federal Aviation Administration Order 7400.9D, Airspace Designations and Reporting Points, dated September 4, 1996, and effective September 16, 1996, is amended as follows:

Paragraph 6005 Class E airspace areas extending upward from 700 feet above the surface of the earth.

* * * * *

ASO NC E5 Currituck, NC [New]

Currituck County Airport, NC,
(Lat. 36°23'56"N, long. 76°00'59"W).

That airspace extending upward from 700 feet above the surface within a 6.4-mile radius of Currituck County Airport.

* * * * *

Issued in College Park, Georgia, on September 10, 1996.

Benny L. McGlamery,
*Acting Manager, Air Traffic Division,
Southern Region.*

[FR Doc. 96-23948 Filed 9-18-96; 8:45 am]

BILLING CODE 4910-13-M

14 CFR Part 71

[Airspace Docket No. 96-ASO-13]

Amendment to Class E Airspace; Bowling Green, KY

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Final rule.

SUMMARY: This amendment modifies the Class E airspace area at Bowling Green, KY. An automated weather observing system has been installed at the Bowling Green-Warren County Regional Airport. This system transmits the required weather observations continuously to the Memphis Air Route Traffic Control Center, which is the controlling facility for the airport. Therefore, the Class E2 surface area is amended from part time to continuous.

EFFECTIVE DATE: 0901 UTC, December 5, 1996.

FOR FURTHER INFORMATION CONTACT: Benny L. McGlamery, System Management Branch, Air Traffic Division, Federal Aviation Administration, P.O. Box 20636, Atlanta, Georgia 30320; telephone (404) 305-5570.

SUPPLEMENTARY INFORMATION:

History

On July 10, 1996, the FAA proposed to amend Part 71 of the Federal Aviation Regulations (14 CFR Part 71) by modifying Class E airspace at Bowling Green, KY (61 Fr 36311). This action would provide adequate Class E airspace for IFR operations at the Bowling Green-Warren County Regional Airport.

Interested parties were invited to participate in this rulemaking proceeding by submitting written comments on the proposal to the FAA. No comments objecting to the proposal were received. Class E airspace areas designated as a surface area for an airport are published in Paragraph 6002 of FAA Order 7400.9D dated September

4, 1996, and effective September 16, 1996, which is incorporated by reference in 14 CFR 71.1. The Class E airspace designation listed in this document will be published subsequently in the Order.

The Rule

This amendment to Part 71 of the Federal Aviation Regulations (14 CFR part 71) modifies Class E airspace at Bowling Green, KY. An automated weather observing system has been installed at the Bowling Green-Warren County Regional Airport. This system transmits the required weather observations continuously to the Memphis Air Route Traffic Control Center, which is the controlling facility for the airport. Therefore, the Class E2 surface area is amended from part time to continuous.

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

List of Subjects in 14 CFR Part 71

Airspace, Incorporation by reference, Navigation (air).

Adoption of the Amendment

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

PART 71—[AMENDED]

1. The authority citation for 14 CFR Part 71 continues to read as follows:

Authority: 49 U.S.C. 106(g); 40103, 40113, 40120; EO 10854, 24 FR 9565, 3 CFR, 1959-1963 Comp., p. 389; 14 CFR 11.69.

§ 71.1 [Amended]

2. The incorporation by reference in 14 CFR 71.1 of Federal Aviation Administration Order 7400.9D, Airspace Designations and Reporting Points, dated September 4, 1996, and effective September 16, 1996, is amended as follows:

Paragraph 6002 Class E airspace areas designated as a surface area for an airport.
* * * * *

ASO KY E2 Bowling Green, KY [Revised]

Bowling Green-Warren County Regional Airport, KY,
(Lat. 36°57'52" N, long. 86°25'11" W).
Bowling Green VORTAC,
(Lat. 36°55'43" N, long. 86°26'36" W).

Within a 4.2-mile radius of Bowling Green-Warren County Regional Airport and within 3.5 miles each side of Bowling Green VORTAC 206° radial, extending from the 4.2-mile radius to 7 miles southwest of the VORTAC.

* * * * *

Issued in College Park, Georgia, on September 10, 1996.

Benny L. McGlamery,
Acting Manager, Air Traffic Division,
Southern Region.

[FR Doc. 96-23946 Filed 9-19-96; 8:45 am]

BILLING CODE 4910-13-M

14 CFR Part 95

[Docket No. 28654; Amdt. No. 398]

IFR Altitudes; Miscellaneous Amendments

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Final rule.

SUMMARY: This amendment adopts miscellaneous amendments to the required IFR (instrument flight rules) altitudes and changeover points for certain Federal airways, jet routes, or direct routes for which a minimum or maximum en route authorized IFR altitude is prescribed. This regulatory action is needed because of changes occurring in the National Airspace System. These changes are designed to provide for the safe and efficient use of

the navigable airspace under instrument conditions in the affected areas.

EFFECTIVE DATE: 0901 UTC, October 10, 1996.

FOR FURTHER INFORMATION CONTACT: Paul J. Best, Flight Procedures Standards Branch (AFS-420), Technical Programs Division, Flight Standards Service, Federal Aviation Administration, 800 Independence Avenue SW., Washington, D.C. 20591; telephone: (202) 267-8277.

SUPPLEMENTARY INFORMATION: This amendment to part 95 of the Federal Aviation Regulations (14 CFR part 95) amends, suspends, or revokes IFR altitudes governing the operation of all aircraft in flight over a specified route or any portion of that route, as well as the changeover points (COPs) for Federal airways, jet routes, or direct routes as prescribed in part 95.

The Rule

The specified IFR altitudes, when used in conjunction with the prescribed changeover points for those routes, ensure navigation aid coverage that is adequate for safe flight operations and free of frequency interference. The reasons and circumstances that create the need for this amendment involve matters of flight safety and operational efficiency in the National Airspace System, are related to published aeronautical charts that are essential to the user, and provide for the safe and efficient use of the navigable airspace. In addition, those various reasons or circumstances require making this amendment effective before the next schedule charting and publication date of the flight information to assure its timely availability to the user. The effective date of this amendment reflects those considerations. In view of the close and immediate relationship between these regulatory changes and

safety in air commerce, I find that notice and public procedure before adopting this amendment are impracticable and contrary to the public interest and that good cause exists for making the amendment effective in less than 30 days. The FAA has determined that this regulation only involves an established body of technical regulations for which frequent and routine amendments are necessary to keep them operationally current.

It, therefore—(1) is not a “significant regulatory action” under Executive Order 12866; (2) is not a “significant rule” under DOT Regulatory Policies and Procedures (44 FR 11034; February 26, 1979); and (3) does not warrant preparation of a regulatory evaluation as the anticipated impact is so minimal. For the same reason, the FAA certifies that this amendment will not have a significant economic impact on a substantial number of small entities under the criteria of the Regulatory Flexibility Act.

List of Subjects in 14 CFR Part 95

Airspace, Navigation (air).

Issued in Washington, D.C. on September 27, 1996.

Thomas C. Accardi,
Director, Flight Standards Service.

Adoption of the Amendment

Accordingly, pursuant to the authority delegated to me by the Administrator, part 95 of the Federal Aviation Regulations (14 CFR part 95) is amended as follows effective at 0901 UTC.

1. The authority citation for part 95 continues to read as follows:

Authority: 49 U.S.C. 106(g), 40103, 40106, 40113, 40114, 40120, 44502, 44514, 44719, 44721.

2. Part 95 is amended as follows:

REVISIONS TO MINIMUM ENROUTE IFR ALTITUDES & CHANGEOVER POINTS AMENDMENT 398 EFFECTIVE DATE, OCTOBER 10, 1996

From	To	MEA
§ 95.1001 DIRECT ROUTES—U.S. § 95.48 GREEN FEDERAL AIRWAY 8 IS AMENDED TO READ IN PART CAMPBELL LAKE, AK NDB	GLENNALLEN, AK NDB	10200
ATLANTIC ROUTES A638 GUYRO, VI FIX	SLUGO, VI FIX	4000
SLUGO, VI FIX	SAINT MAARTEN, NA VOR/DME	3000
§ 95.6002 VOR FEDERAL AIRWAY 2 IS AMENDED TO READ IN PART ALBANY, NY VORTAC	WARIC, MA FIX	5000
WARIC, MA FIX	GARDNER, MA VORTAC	*4000
*3500—MOCA		
§ 95.6014 VOR FEDERAL AIRWAY 14 IS AMENDED TO READ IN PART ALBANY, NY VORTAC	WARIC, MA FIX	5000

REVISIONS TO MINIMUM ENROUTE IFR ALTITUDES & CHANGEOVER POINTS AMENDMENT 398 EFFECTIVE DATE, OCTOBER 10, 1996—Continued

From	To	MEA
WARIC, MA FIX *3500—MOCA	GARDNER, MA VORTAC	*4000
§ 95.6015 VOR FEDERAL AIRWAY 15 IS AMENDED TO READ IN PART		
WACO, TX VORTAC	CEDAR CREEK, TX VORTAC	2500
CEDAR CREEK, TX VORTAC	BONHAM, TX VORTAC	*3500
*2200—MOCA		
BONHAM, TX VORTAC	ARDMORE, OK VORTAC	3600
§ 95.6016 VOR FEDERAL AIRWAY 16 IS AMENDED TO READ IN PART		
MILLSAP, TX VORTAC	GLEN ROSE, TX VORTAC	3000
GLEN ROSE, TX VORTAC	CEDAR CREEK, TX VORTAC	*3000
*2200—MOCA		
CEDAR CREEK, TX VORTAC	QUITMAN, TX VOR/DME	*2500
*1900—MOCA		
§ 95.6017 VOR FEDERAL AIRWAY 17 IS AMENDED TO READ IN PART		
WACO, TX VORTAC	GLEN ROSE, TX VORTAC	3000
GLEN ROSE, TX VORTAC	MILLSAP, TX VORTAC	3000
MILLSAP, TX VORTAC	BOWIE, TX VORTAC	*3000
*2500—MOCA		
BOWIE, TX VORTAC	DUNCAN, OK VOR/DME	*3000
*2500—MOCA		
§ 95.6018 VOR FEDERAL AIRWAY 18 IS AMENDED TO READ IN PART		
MILLSAP, TX VORTAC	GLEN ROSE, TX VORTAC	3000
GLEN ROSE, TX VORTAC	CEDAR CREEK, TX VORTAC	*3000
*2200—MOCA		
CEDAR CREEK, TX VORTAC	QUITMAN, TX VOR/DME	*2500
*1900—MOCA		
§ 95.6054 VOR FEDERAL AIRWAY 54 IS AMENDED TO READ IN PART		
WACO, TX VORTAC	CEDAR CREEK, TX VORTAC	2500
CEDAR CREEK, TX VORTAC	QUITMAN, TX VOR/DME	*2500
*1900—MOCA		
§ 95.6062 VOR FEDERAL AIRWAY 62 IS AMENDED TO READ IN PART		
ABILENE, TX VORTAC	FLECK, TX FIX	3300
FLECK, TX FIX	GEENI, TX FIX	*4000
*3300—MOCA		
GEENI, TX FIX	GLEN ROSE, TX VORTAC	*3500
*3000—MOCA		
§ 95.6063 VOR FEDERAL AIRWAY 63 IS AMENDED TO READ IN PART		
BONHAM, TX VORTAC	MC ALESTER, OK VORTAC	*3000
*2100—MOCA		
§ 95.6066 VOR FEDERAL AIRWAY 66 IS AMENDED TO READ IN PART		
ABILENE, TX VORTAC	BOWIE, TX VORTAC	3500
BOWIE, TX VORTAC	BONHAM, TX VORTAC	3700
BONHAM, TX VORTAC	SULPHUR SPRINGS, TX VOR/DME	2500
§ 95.6094 VOR FEDERAL AIRWAY 94 IS AMENDED TO READ IN PART		
TUSCOLA, TX VOR/DME	GEENI, TX FIX	4000
GEENI, TX FIX	GLEN ROSE, TX VORTAC	*3500
*3000—MOCA		
GLENROSE, TX VORTAC	CEDAR CREEK, TX VORTAC	*3000
*2200—MOCA		
CEDAR CREEK, TX VORTAC	GREGG COUNTY, TX VORTAC	2500
§ 95.6114 VOR FEDERAL AIRWAY 114 IS AMENDED TO READ IN PART		
WICHITA FALLS, TX VORTAC	BONHAM, TX VORTAC	3000
BONHAM, TX VORTAC	QUITMAN, TX VOR/DME	2500
§ 95.6124 VOR FEDERAL AIRWAY 124 IS AMENDED TO READ IN PART		
BONHAM, TX VORTAC	PARIS, TX VOR/DME	2200
§ 95.6161 VOR FEDERAL AIRWAY 161 IS AMENDED TO READ IN PART		
LLANO, TX VORTAC	*BUILT, TX FIX	**4500

REVISIONS TO MINIMUM ENROUTE IFR ALTITUDES & CHANGEOVER POINTS AMENDMENT 398 EFFECTIVE DATE, OCTOBER 10, 1996—Continued

From	To	MEA	
*6000—MRA			
**2800—MOCA			
BUILT, TX FIX	DUFFA, TX FIX	*6000	
*2700—MOCA			
DUFFA, TX FIX	MILLSAP, TX VORTAC	3000	
MILLSAP, TX VORTAC	BOWIE, TX VORTAC	*3000	
*2500—MOCA			
BOWIE, TX VORTAC	ARDMORE, OK VORTAC	3000	
§ 95.6163 VOR FEDERAL AIRWAY 163			
IS AMENDED TO READ IN PART			
LAMPASAS, TX VORTAC	GLEN ROSE, TX VORTAC	*3500	
*3000—MOCA			
GLEN ROSE, TX VORTAC	MILLSAP, TX VORTAC	3000	
MILLSAP, TX VORTAC	BOWIE, TX VORTAC	*3000	
*2500—MOCA			
BOWIE, TX VORTAC	ARDMORE, OK VORTAC	3000	
§ 95.6194 VOR FEDERAL AIRWAY 194			
IS AMENDED TO READ IN PART			
CEDAR CREEK, TX VORTAC	KISER, TX FIX	2100	
KISER, TX FIX	COLLEGE STATION, TX VORTAC	4000	
§ 95.6205 VOR FEDERAL AIRWAY 205			
IS AMENDED TO READ IN PART			
BRADLEY, CT VORTAC	DARTH, CT FIX	*6000	
*2200—MOCA			
DARTH, CT FIX	PUTNAM, CT VOR/DME	*3000	
2300—MOCA			
§ 95.6234 VOR FEDERAL AIRWAY 234			
IS AMENDED TO READ IN PART			
VICHY, MO VOR/DME	DELMA, MO DIX	3000	
§ 95.6238 VOR FEDERAL AIRWAY 238			
IS AMENDED TO READ IN PART			
LENOX MO FIX	DELMA, MO FIX	3000	
§ 95.6278 VOR FEDERAL AIRWAY 278			
IS AMENDED TO READ IN PART			
GUTHRIE, TX VORTAC	BOWIE, TX VORTAC	3300	
BOWIE, TX VORTAC	BONHAM, TX VORTAC	3700	
BONHAM, TX VORTAC	PARIS, TX VOR/DME	2200	
§ 95.6355 VOR FEDERAL AIRWAY 355			
IS AMENDED TO READ IN PART			
BOWIE, TX VORTAC	WICHITA FALLS, TX VORTAC	3000	
§ 95.6358 VOR FEDERAL AIRWAY 358			
IS AMENDED TO READ IN PART			
WACO, TX VORTAC	GLEN ROSE, TX VORTAC	3000	
GLEN ROSE, TX VORTAC	MILLSAP, TX VORTAC	3000	
MILLSAP, TX VORTAC	BOWIE, TX VORTAC	*3000	
*2500—MOCA			
BOWIE, TX VORTAC	ARDMORE, OK VORTAC	3000	
§ 95.6477 VOR FEDERAL AIRWAY 477			
IS ADMENDED TO READ IN PART			
LEONA, TX VORTAC	CEDAR CREEK TX VORTAC	2100	
§ 95.6568 VOR FEDERAL AIRWAY 568			
IS AMENDED TO READ IN PART			
BUILT, TX FIX	GLEN ROSE, TX VORTAC	*3500	
*3000—MOCA			
GLEN ROSE, TX VORTAC	MILLSAP, TX VORTAC	3000	
§ 95.6569 VOR FEDERAL AIRWAY 569			
IS AMENDED TO READ IN PART			
FRANKSTON, TX VOR/DME	CEDAR CREEK, TX VORTAC	1800	
§ 95.6571 VOR FEDERAL AIRWAY 571			
IS AMENDED TO READ IN PART			
LEONA, TX VORTAC	CEDAR CREEK, TX VORTAC	2100	
§ 95.6583 VOR FEDERAL AIRWAY 583			
IS AMENDED BY ADDING			
QUITMAN, TX VOR/DME	PARIS, TX VOR/DME	2100	
PARIS, TX VOR/DME	MC ALESTER, OK VORTAC	2600	
From	To	MEA	MAA
§ 95.7066 JET ROUTE NO. 66			
IS AMENDED TO READ IN PART			

From	To	MEA	MAA
DALLAS/FORT WORTH, TX VORTAC	BONHAM, TX VORTAC	18000	45000
BONHAM, TX VORTAC	LITTLE ROCK, AR VORTAC	18000	45000
§ 95.7181 JET ROUTE NO. 181 IS ADDED TO READ			
DALLAS/FORT WORTH, TX VORTAC	OKMULGEE, OK VOR	19000	45000
OKMULGEE, OK VOR	NEOSHO, MO VOR/DME	18000	45000
NEOSHO, MO VOR/DME	BRADFORD, IL VORTAC	18000	45000

From	To	Change over points	
		Distance	From
§ 95.8003 VOR FEDERAL AIRWAYS CHANGEOVER POINTS V-15 IS AMENDED BY ADDING AIRWAY SEGMENT CEDAR CREEK, TX VORTAC			
BONHAM, TX VORTAC		20	CEDAR CREEK
V-569 IS AMENDED BY ADDING AIRWAY SEGMENT FRANKSTON, TX VOR/DME			
CEDAR CREEK, TX VORTAC		5	FRANKSTON
§ 95.8005 JET ROUTES CHANGEOVER POINTS J-181 IS AMENDED BY ADDING AIRWAY SEGMENT DALLAS/FORT WORTH, TX VORTAC			
OKMULGEE, OK VOR		139	DALLAS/FORT WORTH
OKMULGEE, OK VOR			
NEOSHO, MO VOR/DME		58	OKMULGEE

[FR Doc. 96-23945 Filed 9-18-96; 8:45 am]
BILLING CODE 4910-13-M

DEPARTMENT OF JUSTICE

Office of Justice Programs

28 CFR Part 50

[OJP No. 1078]

RIN 1121-AA37

Young American Medals Program

AGENCY: United States Department of Justice, Office of Justice Programs.

ACTION: Interim rule with request for comments.

SUMMARY: The United States Department of Justice, Office of Justice Programs (OJP), is publishing this Interim Rule to implement the Young American Medals Program authorized by 42 U.S.C. 1921 et seq. This Interim Rule provides an outline of the program governing awards of the Young American Medals for Bravery and Service.

EFFECTIVE DATES: This Interim Rule is effective September 19, 1996. Comments must be submitted on or before November 18, 1996.

ADDRESSES: All comments concerning the Interim Rule should be addressed to the Young American Medals

Coordinator, Office of Justice Programs, 633 Indiana Avenue, N.W., Room 408, Washington, D.C. 20531.

FOR FURTHER INFORMATION CONTACT: Ellen Wesley at (202) 616-3558.

SUPPLEMENTARY INFORMATION:

Youth Medals

Congress authorized the Department of Justice to promulgate rules and regulations establishing medals under the Youth Medals Act, codified at 42 U.S.C. 1921 et seq. The Act establishes two medals: the Young American Medal for Bravery, 42 U.S.C. 1921, and the Young American Medal for Service, 42 U.S.C. 1922. The method of selecting the recipients is based on criteria specified by the Act; the criteria for the two medals are different. The Young American Medal for Bravery is awarded to a person who has exhibited exceptional courage, extraordinary decisiveness, presence of mind, and unusual swiftness of action, regardless of his or her own personal safety, and who was eighteen years of age or younger at the time of the occurrence. The Young American Medal for Service is awarded to a person who has displayed outstanding character and service and who was eighteen years of age or younger at the time of the contribution.

The Young American Medals Committee is a part of the Office of the Attorney General. The Committee is authorized to issue regulations relating to the establishment of the two medals and, pursuant to that authority, is issuing the following Interim Rule.

Request for Comment

The Office of Justice Programs seeks to fulfill Congressional intent by soliciting, encouraging, and incorporating comments on all aspects of this program while ensuring that the statutory requirements are applied appropriately to all applicants.

Regulatory Flexibility Act

The Assistant Attorney General, Office of Justice Programs, in accordance with the Regulatory Flexibility Act (5 U.S.C. 605(b)), has reviewed this Interim Rule and, by approving it, certifies that the Interim Rule will not have a significant economic impact on a substantial number of small entities. The Assistant Attorney General, Office of Justice Programs determined: (1) Interim Rule provides the outline of a program governing the award of medals to individuals for bravery or service; and (2) the award of such medals impose no requirements on small businesses or on other small entities.

Paperwork Reduction Act

In addition, no information requirements are contained in this interim rule. Any information collection requirements contained in future application notices for this program will be reviewed by OMB, as required by provisions of the Paperwork Reduction Act, 44 U.S.C. 3504(h).

Executive Order 12866

This Interim Rule has been drafted and reviewed in accordance with Executive Order 12866, § 1(b), Principles of Regulation. The Office of Justice Programs has determined that this Interim Rule is not a "significant regulatory action" under Executive Order 12866, § 3(f), Regulatory Planning and Review, and accordingly this Interim Rule has not been reviewed by the Office of Management and Budget.

List of Subjects in 28 CFR Part 50**Medals.**

Accordingly, Title 28, Part 50 of the Code of Federal Regulations is amended by adding new Section 50.22 as set forth below:

PART 50—[AMENDED]

1. The authority citation for part 50 is revised to read as follows:

Authority: 5 U.S.C. 301; 28 U.S.C. 509, 510; AND 42 U.S.C. 1921 et seq., 1973c.

2. A new § 50.22 is added to read as follows:

§ 50.22 Young American Medals Program

Authority: The United States Department of Justice is authorized under 42 U.S.C. 1921 et seq. to promulgate rules and regulations establishing medals, one for bravery and one for service. This authority was enacted by Chapter 520, of Pub. L. 81-638 (August 3, 1950).

(a) *Scope.* There are hereby established two medals, one to be known as the Young American Medal for Bravery and the other to be known as the Young American Medal for Service.

(b) Young American Medal for Bravery

(1)(i) The Young American Medal for Bravery may be awarded to a person—

(A) Who during a given calendar year has exhibited exceptional courage, attended by extraordinary decisiveness, presence of mind, and unusual swiftness of action, regardless of his or her own personal safety, in an effort to save or in saving the life of any person or persons in actual imminent danger;

(B) Who was eighteen years of age or younger at the time of the occurrence; and

(C) Who habitually resides in the United States (including its territories

and possessions), but need not be a citizen thereof.

(ii) These conditions must be met at the time of the event.

(2) The act of bravery must have been public in nature and must have been acknowledged by the Governor, Chief Executive Officer of a State, county, municipality, or other political subdivision, or by a civic, educational, or religious institution, group, or society.

(3) No more than two such medals may be awarded in any one calendar year.

(c) Young American Medal for Service

(1) The Young American Medal for Service may be awarded to any citizen of the United States eighteen years of age or younger at the time of the occurrence, who has achieved outstanding or unusual recognition for character and service during a given calendar year.

(2) Character attained and service accomplished by a candidate for this medal must have been such as to make his or her achievement worthy of public report. The outstanding and unusual recognition of the candidate's character and service must have been public in nature and must have been acknowledged by the Governor, Chief Executive Officer of a State, county, municipality, or other political subdivision, or by a civic, educational, or religious institution, group, or society.

(3) The recognition of the character and service upon which the award of the Medal for Service is based must have been accorded separately and apart from the Young American Medals program and must not have been accorded for the specific and announced purpose of rendering a candidate eligible, or of adding to a candidate's qualifications, for the award of the Young American Medal for Service.

(4) No more than two such medals may be awarded in any one calendar year.

(d) Eligibility

(1) The act or acts of bravery and the recognition for character and service that make a candidate eligible for the respective medals must have occurred during the calendar year for which the award is made.

(2) A candidate may be eligible for both medals in the same year. Moreover, the receipt of either medal in any year will not affect a candidate's eligibility for the award of either or both of the medals in a succeeding year.

(3) Acts of bravery performed and recognition of character and service

achieved by persons serving in the Armed Forces, which arise from or out of military duties, shall not make a candidate eligible for either of the medals, provided, however, that a person serving in the Armed Forces shall be eligible to receive either or both of the medals if the act of bravery performed or the recognition for character and service achieved is on account of acts and service performed or rendered outside of and apart from military duties.

(e) Request for Information

(1) A recommendation in favor of a candidate for the award of a Young American Medal for Bravery or for Service must be accompanied by:

(i) a full and complete statement of the candidate's act or acts of bravery or recognized character and service (including the times and places) that supports qualification of the candidate to receive the appropriate medal;

(ii) statements by witnesses or persons having personal knowledge of the facts surrounding the candidate's act or acts of bravery or recognized character and service, as required by the respective medals;

(iii) a certified copy of the candidate's birth certificate, or, if no birth certificate is available, other authentic evidence of the date and place of the candidate's birth; and

(iv) a biographical sketch of the candidate, including information as to his or her citizenship or habitual residence, as may be required by the respective medals.

(f) Procedure

(1)(i) All recommendations and accompanying documents and papers should be submitted to the Governor or Chief Executive Officer of the State, territory, or possession of the United States where the candidate's act or acts of bravery or recognized character and service were demonstrated. In the case of the District of Columbia, the recommendations should be submitted to the Mayor of the District of Columbia.

(ii) If the act or acts of bravery or recognized character and service did not occur within the boundaries of any State, territory, or possession of the United States, the papers should be submitted to the Governor or Chief Executive Officer of the territory or other possession of the United States wherein the candidate habitually maintains his or her residence.

(2) The Governor or Chief Executive Officer, after considering the various recommendations received after the close of the pertinent calendar year, may nominate therefrom no more than two

candidates for the Young American Medal for Bravery and no more than two candidates for the Young American Medal for Service. Nominated individuals should have, in the opinion of the appropriate official, shown by the facts and circumstances to be the most worthy and qualified candidates from the jurisdiction to receive consideration for awards of the above-named medals.

(3) Nominations of candidates for either medal must be submitted no later than 120 days after notification that the Department of Justice is seeking nominations under this program for a specific calendar year. Each nomination must contain the necessary documentation establishing eligibility, must be submitted by the Governor or Chief Executive Officer, together with any comments, and should be submitted to the address published in the notice.

(4) Nominations of candidates for medals will be considered only when received from the Governor or Chief Executive Officer of a State, territory, or possession of the United States.

(5) The Young American Medals Committee will select, from nominations properly submitted, those candidates who are shown by the facts and circumstances to be eligible for the award of the medals. The Committee shall make recommendations to the Attorney General based on its evaluation of the nominees. Upon consideration of these recommendations, the Attorney General may select up to the maximum allowable recipients for each medal for the calendar year.

(g) Presentation

(1) The Young American Medal for Bravery and the Young American Medal for Service will be presented personally by the President of the United States to the candidates selected. These medals will be presented in the name of the President and the Congress of the United States. Presentation ceremonies shall be held at such times and places selected by the President in consultation with the Attorney General.

(2) The Young American Medals Committee will officially designate two adults (preferably the parents of the candidate) to accompany each candidate selected to the presentation ceremonies. The candidates and persons designated to accompany them will be furnished transportation and other appropriate allowances.

(3) There shall be presented to each recipient an appropriate Certificate of Commendation stating the circumstances under which the act of bravery was performed or describing the outstanding recognition for character

and service, as appropriate for the medal awarded. The Certificate will bear the signature of the President of the United States and the Attorney General of the United States.

(4) There also shall be presented to each recipient of a medal, a miniature replica of the medal awarded in the form of a lapel pin.

(h) Posthumous Awards

In cases where a medal is awarded posthumously, the Young American Medals Committee will designate the father or mother of the deceased or other suitable person to receive the medal on behalf of the deceased. The decision of the Young American Medals Committee in designating the person to receive the posthumously awarded medal, on behalf of the deceased, shall be final.

(i) Young American Medals Committee

The Young American Medals Committee shall be represented by the following:

- (1) Director of the FBI, Chairman;
- (2) Administrator of the Drug Enforcement Administration, Member;
- (3) Director of the U.S. Marshals Service, Member; and
- (4) Assistant Attorney General, Office of Justice Programs, Member and Executive Secretary.

Dated: September 13, 1996.
Laurie Robinson,
Assistant Attorney General, Office of Justice Programs, Executive Secretary, Young American Medals Committee.
[FR Doc. 96-23881 Filed 9-18-96; 8:45 am]
BILLING CODE 4410-18-P

LIBRARY OF CONGRESS

36 CFR Part 701

[Docket No. LOC 96-2]

Acquisition of Library Materials by Nonpurchase Means and Disposition of Surplus Library Materials

AGENCY: Library of Congress.

ACTION: Final rule.

SUMMARY: The Library of Congress issues this final rule to revise its policy on the transfer of surplus library materials to reduce the volume and type of materials it receives from Federal agencies. The Library will eliminate the transfer of all bound and unbound serials and restrict all other transfers to certain specific categories.

EFFECTIVE DATE: September 19, 1996.

FOR FURTHER INFORMATION CONTACT: Johnnie M. Barksdale, Regulations Officer, Office of the General Counsel,

Library of Congress, Washington, D.C. 20540-1050. Telephone No. (202) 707-1593.

SUPPLEMENTARY INFORMATION: Under 2 U.S.C. 131, 136, and 149, the Librarian of Congress has general and specific authority for the administration and disposition of Library materials; it pertains to the organization and handling of duplicate materials and to the exchange and transfer operations of the Library, sale, donation to domestic educational institutions and public bodies, and the disposition of materials not needed for any of these uses. In order to enhance these operations and to fill gaps in its permanent collections, the Library of Congress has encouraged libraries and other agencies of the Federal Government to send to the Library's Exchange and Gift Division all library materials that are surplus to their needs. For several decades this program benefitted the Library, the Federal library community and the general public. Because of reductions in staffing levels, due to budgetary constraints, and reduced demand in some categories, the Library can no longer fully utilize these materials. In analyzing the costs and benefits to the Federal Government, the Library found that the expenses to administer the current program far outweigh the benefits. The Library issues this revised subpart to set forth the general policy on the transfer of surplus library materials to reduce the volume and type of materials it receives from Federal agencies and to redirect its remaining fiscal and human resources to efficiently administer a reduced, but more focused, program. Other Federal agencies will achieve considerable savings in labor and postage by not having to handle and ship unwanted materials to the Library of Congress. The proposed rule was published in the Federal Register on May 23, 1996, for public comment. No comments were received and no changes were made to the original text.

List of Subjects in 36 CFR Part 701

Libraries, Seals and insignias.

Proposed Regulations

In consideration of the foregoing the Library of Congress amends 36 CFR part 701 to read as follows:

PART 701—PROCEDURES AND SERVICES

1. The authority citation for part 701 will continue to read as follows:

Authority: 2 U.S.C. § 131, § 136 & § 149.

2. Section 701.33(a)(4) is revised to read as follows:

§ 701.33 Acquisition of library materials by non-purchase means and disposition of surplus library materials.

* * * * *

(4) *Transfer.* Libraries and other agencies of the Federal Government are encouraged to send to the Library for disposition soft or hard-bound books that are surplus to their needs in the following categories: (1) Novels and (2) Reference works (e.g. encyclopedias, directories, guides, such as Encyclopedia of Associations, The World of Learning, The Statesman's Yearbook, Books in Print, etc.) not older than three years. And not older than five years in: (1) Humanities (art, music, belles letters etc.); (2) History and area studies; (3) Social sciences (economics, politics, etc.); (4) Education; and (5) Science (agriculture, medicine, computer science, mathematics, physics, etc.). Such transferred materials are needed to fill gaps in the Library's holdings, for exchanges, to transfer to other Federal agencies, and to make available through the Surplus Books Program to qualified recipients. The Library's Exchange and Gift Division (E&G) requests notification at the earliest possible date of any government libraries that are scheduled to close or be substantially reduced. The Library also requests that shipments of 1,000 pounds or more be cleared with E&G in advance. The Library does not accept bound and unbound serials. Federal agencies should dispose of surplus serials, and other surplus library materials not specified above, in accordance with their agency's regulations governing the disposal of surplus materials.

* * * * *

Dated: September 10, 1996.

Approved by:

James H. Billington,

The Librarian of Congress.

[FR Doc. 96-23998 Filed 9-18-96; 8:45 am]

BILLING CODE 1410-04-M

ENVIRONMENTAL PROTECTION AGENCY**40 CFR Part 52****[Region 2 Docket No. NY23-2-156; FRL-5607-2]****Interim Final Determination That State Has Corrected a Deficiency Leading to Sanctions; State of New York****AGENCY:** Environmental Protection Agency (EPA).**ACTION:** Interim final determination.**SUMMARY:** In the proposed rules section of this Federal Register, the

Environmental Protection Agency (EPA) has proposed to approve the State Implementation Plan revision submitted by the State of New York for the purpose of meeting the requirement to submit the heavy duty vehicle portion of the Clean Fuel Fleet program (CFFP), part of the CFFP requirements mandated by the Clean Air Act. Based on the proposed conditional approval, EPA is making an interim final determination by this action that New York has corrected the deficiency for which a sanctions clock began on March 7, 1995. By this action EPA defers application of the emission offset sanction previously scheduled to be imposed on September 7, 1996 and defer the application of the highway funds sanction, scheduled to be imposed on March 7, 1997. Although this action is effective upon signature, EPA will take comment and will publish a final determination, taking into consideration any comments received on this interim final determination and the related proposed SIP approval.

EFFECTIVE DATE: This action is effective August 29, 1996.**ADDRESSES:** Comments should be sent to: Ronald Borsellino, Chief, Air Programs Branch, Environmental Protection Agency, Region II Office, 290 Broadway, New York, New York 10007-1866.

The State submittal and EPA's analysis for that submittal, which are the basis for this action, are available for public review at the above address.

FOR FURTHER INFORMATION CONTACT: Michael P. Moltzen, Air Programs Branch, Environmental Protection Agency, 290 Broadway, 25th Floor, New York, New York 10007-1866, (212) 637-4249.**SUPPLEMENTARY INFORMATION:****I. Background**

On May 15, 1994 and August 9, 1994 the State submitted a State Implementation Plan (SIP) revision intended to fulfill Clean Fuel Fleet program requirements under the Clean Air Act. EPA partially disapproved the 1994 submittals on January 6, 1995 (60 FR 2022). EPA's disapproval action started an 18-month clock for the application of one sanction (emissions offsets), followed by a second sanction (withholding of highway funds) 6 months later under section 179 of the Clean Air Act, and a 24-month clock for the promulgation of a Federal implementation plan under section 110(c)(1) of the Clean Air Act. The State subsequently submitted a request to EPA for review of its proposed, and emergency adopted, heavy duty CFFP

on August 9, 1996. In the proposed rules section of this Federal Register, EPA has proposed conditional approval of the State of New York's submittal of its heavy duty Clean Fuel Fleet SIP revision.

II. EPA Action

Based on the proposed conditional approval set forth in the proposed rules section of this Federal Register, EPA believes that the State, with full adoption of its heavy duty CFFP regulation, will have corrected the original disapproval deficiency that started the sanction clock. Therefore, EPA is taking this interim, final action, finding that the State has corrected the disapproval deficiency. This interim final action is effective upon signature. While this action does not stop the sanctions clocks that started for this area on March 7, 1995, it will defer the application of the emissions offsets sanction and the application of the highway funds sanction. See 59 FR 39832 (Aug. 4, 1994) codified at 40 CFR 52.31. If EPA takes final action fully approving the State's submittal, such action will stop the sanctions clock and will permanently lift any applied, stayed or deferred sanctions.

At this time, EPA is also providing the public with an opportunity to comment on this final action. If, based on the comments on this action and the comments on EPA's proposed approval of the State's submittal, EPA determines that the State's submittal is not approvable and this final action was inappropriate, EPA will take further action to disapprove the State's revision and to find that the State has not corrected the original disapproval deficiency. Such action will reinstate the sanctions consequences as described in the sanctions rule. See 59 FR 39832.

III. Administrative Requirements

Because EPA has preliminarily determined that the State has an approvable plan, relief from sanctions should be provided as quickly as possible. Therefore, EPA invokes the good cause exception under the Administrative Procedure Act (APA) in not providing an opportunity for comment before this action takes effect. See 5 U.S.C. 553(b)(B). See 59 FR 39832 at 39850, (August 4, 1994). As previously noted, by this action EPA is providing the public with a chance to comment on EPA's determination after the effective date and EPA will consider any comments received in determining whether to reverse such action. The EPA believes that notice-and-comment rulemaking before the effective date of this action is impracticable and contrary

to the public interest. The EPA has reviewed the State's submittal and, through its proposed action, is indicating that it believes the State has corrected the deficiency that started the sanctions. Therefore, it is not in the public interest to initially apply sanctions or to keep applied sanctions in place when the State has proposed and emergency adopted a measure which will correct the deficiency that triggered the sanctions clock, provided it is not substantially changed prior to full adoption. Moreover, it would be impracticable to go through notice-and-comment rulemaking on a finding that the State has corrected the deficiency prior to the rulemaking approving the State's submittal. Therefore, EPA believes that it is necessary to use the interim final rulemaking process to temporarily stay or defer sanctions while EPA completes its rulemaking process on the approvability of the State's submittal. In addition, EPA invokes the good cause exception to the 30-day notice requirement of the APA because the purpose of this notice is to relieve a restriction. See 5 U.S.C. 553(d)(1). For a complete analysis of the application of the good cause exception, the reader is referred to the Federal Register cited above, in which EPA adopted the rule being applied here.

The Office of Management and Budget has exempted this action from review under Executive Order 12866.

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

This action temporarily relieves sources of an additional burden potentially placed on them by the sanctions provisions of the Clean Air Act. Therefore, I certify that this action will not have a significant impact on a substantial number of small entities.

Under sections 202, 203 and 205 of the Unfunded Mandates Reform Act of 1995 (Unfunded Mandates Act), signed into law on March 22, 1995, EPA must undertake various actions in association with proposed or final rules that include a Federal mandate that may result in estimated annual costs of \$100 million or more to the private sector, or to a State, local and/or tribal government(s) in the aggregate. The EPA must also develop a plan with regard to small

governments that would be significantly or uniquely affected by the rule.

Because this interim final determination is estimated to result in the expenditure by State, local and tribal governments or the private sector of less than \$100 million in any one year, EPA has not prepared a budgetary impact statement or specifically addressed the selection of the least costly, most cost effective, or least burdensome alternative because small governments will not be significantly or uniquely affected by this rule, EPA is not required to develop a plan for small governments. Further, this final determination only defers the imposition of sanctions; it imposes no new requirements.

Under 5 U.S.C. 801(a)(1)(A) as added by the Small Business Regulatory Enforcement Fairness Act of 1996, EPA submitted a report containing this rule and other required information to the U.S. Senate, the U.S. House of Representatives and the Comptroller General of the General Accounting Office prior to publication of this rule in today's Federal Register. This rule is not a "major rule" as defined by 5 U.S.C. 804(2).

List of Subjects in 40 CFR Part 52

Environmental protection, Air pollution control, Hydrocarbons, Incorporation by reference, Reporting and recordkeeping requirements, Ozone, Volatile organic compounds.

Authority: 42 U.S.C. 7401-7671q.

Dated: August 29, 1996.

Jeanne M. Fox,

Regional Administrator.

[FR Doc. 96-23819 Filed 9-18-96; 8:45 am]

BILLING CODE 6560-50-P

40 CFR Part 63

[AD-FRL-5612-2]

RIN 2060-AF90

National Emission Standards for Hazardous Air Pollutants for Source Categories: Perchloroethylene Dry Cleaning Facilities; Amendments

AGENCY: Environmental Protection Agency (EPA).

ACTION: Final amendments to rule.

SUMMARY: This action promulgates amendments to the national emission standards for hazardous air pollutants (NESHAP) for perchloroethylene (PCE) dry cleaning facilities. These amendments were proposed in the Federal Register on May 3, 1996; the NESHAP was promulgated in the Federal Register on September 22, 1993.

The Administrator is promulgating these amendments to implement a settlement agreement that the EPA has entered into regarding a small number of transfer machines.

EFFECTIVE DATE: September 19, 1996.

ADDRESSES: Docket. Docket Number A-95-16, containing supporting information used in developing the proposed amendments, is available for public inspection and copying between the hours of 8 a.m. and 5:30 p.m., Monday through Friday (except for government holidays) at The Air and Radiation Docket and Information Center, U.S. Environmental Protection Agency, 401 M Street, SW, Washington, DC 20460. The Air and Radiation Docket and Information Center may be reached at (202) 260-7548. A reasonable fee may be charged for copying.

FOR FURTHER INFORMATION CONTACT: Mr. George Smith at (919) 541-1549, Emission Standards Division (MD-13), U.S. Environmental Protection Agency, Research Triangle Park, North Carolina 27711.

SUPPLEMENTARY INFORMATION:

Regulated entities. Entities regulated by this action are dry cleaning facilities that use perchloroethylene. Regulated categories and entities include:

Category	Examples of regulated entities
Perchloroethylene dry cleaning facilities.	Perchloroethylene dry cleaning facilities that installed transfer machines between proposal and promulgation.

The above table provides a guide for readers regarding entities likely to be regulated by this action. However, to determine whether your facility is regulated by this action you should carefully examine the applicability criteria in 40 CFR. 63.320 as amended by today's action. If you have questions regarding the applicability of this action to a particular entity, consult the person listed in the preceding **FOR FURTHER INFORMATION CONTACT** section.

The information presented in this preamble is organized as follows:

- I. Background, Summary, and Rationale for Promulgated Changes to Rule
- II. Comments Received on Proposed Changes to Rule
- III. Administrative Requirements
 - A. Paperwork Reduction Act
 - B. Executive Order 12866 Review
 - C. Unfunded Mandates Reform Act
 - D. Regulatory Flexibility Analysis
 - E. Submission to Congress and the General Accounting Office

I. Background, Summary, and Rationale for Promulgated Changes To Rule

National emission standards for hazardous air pollutants (NESHAP) for perchloroethylene (PCE) dry cleaning facilities were promulgated on September 22, 1993 (58 FR 49354), and amended on December 20, 1993 (58 FR 66287), as 40 CFR part 63, subpart M. On November 19, 1993, the International Fabricare Institute (IFI), a trade association representing commercial and industrial dry cleaners nationwide, filed in the U.S. Court of Appeals for the District of Columbia Circuit a petition for judicial review challenging the NESHAP. The Agency subsequently entered into a settlement agreement with IFI, notice of which was published prior to being filed with the court (60 FR 52000, October 4, 1995).

In the litigation, IFI raised the issue of new transfer machines purchased or installed between proposal and promulgation. The IFI's concern stemmed from the fact that the Agency did not propose to ban new transfer machines, yet at promulgation effectively banned such machines. The IFI argued that dry cleaners who installed new transfer machines between proposal and promulgation did so with the understanding that the Agency had not proposed any prohibitions against this. These dry cleaners would have had no recourse but to scrap these new transfer machines and replace them with new dry-to-dry machines in order to comply with the NESHAP. The IFI asserted that this was unfair, given these dry cleaners acted in accordance with the law to the best of their knowledge at the time.

At the time of proposal, the Agency believed that no new transfer machines were being sold or installed, and for this reason did not propose to ban purchase of new transfer machines. However, due to new information that the Agency received after proposal that is explained in the preamble to the final rule of the NESHAP, the Agency effectively banned the purchase of new transfer machines (58 FR 49,368-49,370). This was considered reasonable because the Agency's analysis showed that emissions from clothing transfer could be eliminated through the use of dry-to-dry machines. Emissions from clothing transfer account for about 25 percent of transfer machine emissions. The Agency's analysis also showed that in the typical case where a new dry-to-dry machine was installed instead of a new transfer machine, a net savings of \$300 per ton of emission reductions would be realized by the dry cleaner. Hence, the

Agency decided at promulgation to effectively ban new transfer machines by setting an emission limit which new transfer machines could not achieve. It was believed this decision would have no impact on dry cleaners, since no new transfer machines were being purchased or installed. It was only after promulgation that it became apparent that a few new transfer machines had been sold and installed between proposal and promulgation of the NESHAP.

The Agency has agreed with IFI on this issue. Consequently, the Administrator has subcategorized new transfer machines into two types: New transfer machines installed after promulgation (i.e., September 22, 1993) and new transfer machines installed between proposal (i.e., December 9, 1991) and promulgation (i.e., September 22, 1993). The requirements the Administrator is finalizing today for new transfer machines installed after promulgation do not change. The requirements the Administrator is promulgating today for the new subcategory, new transfer machines installed between proposal and promulgation, however, are similar to those for existing transfer machines.

Today's action does not sacrifice significant emissions reductions because the number of affected machines is approximately one-tenth of one percent of all dry cleaning machines (possibly 30 machines). Today's action allows for the greatest achievable emissions reductions by both those who had installed transfer machines prior to issuance of the final rule and all other new sources and maintains the prospective prohibition on new transfer machines.

II. Comments Received on Proposed Changes to Rule

Four comments were received on the proposed amendments to the NESHAP. Two comments were received from industry trade associations and two comments were received from states. All four commenters were supportive of the proposed amendments for basically the same reasons outlined at proposal (61 FR 19887, May 3, 1996). Therefore, no changes have been made to the proposed amendments to the NESHAP.

III. Administrative Requirements

A. Paperwork Reduction Act

The information collection requirements of the previously promulgated NESHAP for PCE Dry Cleaning Facilities were submitted to and approved by the Office of Management and Budget. A copy of this

Information Collection Request (ICR) document (OMB control number 2060-0234) may be obtained from Sandy Farmer, Information Policy Branch (PM-223Y), U.S. Environmental Protection Agency, 401 M Street, SW, Washington, DC 20460 or by calling (202) 260-2740. Today's changes to the NESHAP for PCE Dry Cleaning Facilities do not affect the information collection burden estimates made previously.

B. Executive Order 12866 Review

Under Executive Order 12866 (58 FR 51735, (October 4, 1993)), the Agency must determine whether the regulatory action is "significant" and, therefore, subject to OMB review and the requirements of the Executive Order. The Order defines a "significant regulatory action" as one that is likely to result in a rule that may:

1. Have an annual effect on the economy of \$100 million or more or adversely affect in a material way the economy, a sector of the economy, productivity, competition, jobs, the environment, public health or safety, or State, local, or tribal governments or communities;
2. Create a serious inconsistency or otherwise interfere with an action taken or planned by another agency;
3. Materially alter the budgetary impact of entitlements, grants, user fees, or land programs or the rights and obligations of recipients thereof; or
4. Raise novel legal or policy issues arising out of legal mandates, the President's priorities, or the principles set forth in the Executive Order.

This rule was classified "non-significant" under Executive Order 12866 and, therefore, was not reviewed by the Office of Management and Budget.

C. Unfunded Mandates Reform Act

Under Section 202 of the Unfunded Mandates Reform Act of 1995 ("Unfunded Mandates Act"), signed into law on March 22, 1995, EPA must prepare a statement to accompany any proposed rule where the estimated costs to State, local, or tribal governments, or to the private sector, will be \$100 million or more in any one year. Under Section 205, EPA must select the most cost-effective and least burdensome alternative that achieves the objective of the rule and is consistent with statutory requirements. Section 203 requires EPA to establish a plan for informing and advising any small governments that may be significantly impacted by the rule. The unfunded mandates statement under Section 202 must include: (1) A citation of the statutory authority under which the rule is proposed, (2) an

assessment of the costs and benefits of the rule, including the effect of the mandate on health, safety, the environment, and the federal resources available to defray the costs, (3) where feasible, estimates of future compliance costs and disproportionate impacts upon particular geographic or social segments of the nation or industry, (4) where relevant, an estimate of the effect on the national economy, and (5) a description of EPA's prior consultation with State, local, and tribal officials.

The amendments to the NESHAP that the Administrator is proposing today will not cause State, local, or tribal governments, or the private sector to incur costs that will be \$100 million or more in any one year. Rather, the costs involved in this rulemaking are relatively insignificant in comparison to the \$100 million threshold of the Unfunded Mandates Act. Therefore, the requirements of the Unfunded Mandates Act are not applicable to this rulemaking.

D. Regulatory Flexibility Analysis

EPA has determined that it is not necessary to prepare a regulatory flexibility analysis in connection with this final rule. This rule will reduce regulatory burdens on small businesses because it will allow small businesses that own or operate those few transfer machines installed after December 9, 1991, but before September 22, 1993, to keep these machines in use rather than requiring such businesses to replace these machines or stop operations. EPA has determined that this rule will not have a significant adverse economic impact on a substantial number of small businesses.

E. Submission to Congress and the General Accounting Office

Under 5 U.S.C. 801(a)(1)(A) as added by the Small Business Regulatory Enforcement Fairness Act of 1996, EPA submitted a report containing this rule and other required information to the U.S. Senate, the U.S. House of Representatives and the Comptroller General of the General Accounting Office prior to publication of the rule in today's Federal Register. This rule is not a "major rule" as defined by 5 U.S.C. 804(2).

List of Subjects in 40 CFR Part 63

Environmental protection, Air pollution control, Intergovernmental relations, Reporting and recordkeeping requirements.

Dated: September 11, 1996.
Carol M. Browner,
Administrator.

Title 40, chapter I, part 63, of the Code of Federal Regulations is amended to read as follows:

PART 63—NATIONAL EMISSION STANDARDS FOR HAZARDOUS AIR POLLUTANTS FOR SOURCE CATEGORIES

1. The authority citation for part 63 continues to read as follows:

Authority: 42 U.S.C. 7401, *et seq.*

Subpart M—National Perchloroethylene Air Emission Standards for Dry Cleaning Facilities

2. Section 63.320 is amended by revising paragraphs (c), (d), (e), and (f) to read as follows:

§ 63.320 Applicability.

* * * * *

(c) Each dry cleaning system that commenced construction or reconstruction before December 9, 1991, and each new transfer machine system and its ancillary equipment that commenced construction or reconstruction on or after December 9, 1991 and before September 22, 1993, shall comply with §§ 63.322 (c), (d), (i), (j), (k), (l), and (m), 63.323(d), and 63.324 (a), (b), (d)(1), (d)(2), (d)(3), (d)(4), and (e) beginning on December 20, 1993, and shall comply with other provisions of this subpart by September 23, 1996.

(d) Each existing dry-to-dry machine and its ancillary equipment located in a dry cleaning facility that includes only dry-to-dry machines, and each existing transfer machine system and its ancillary equipment and each new transfer machine system and its ancillary equipment installed between December 9, 1991 and September 22, 1993, as well as each existing dry-to-dry machine and its ancillary equipment, located in a dry cleaning facility that includes both transfer machine system(s) and dry-to-dry machine(s) is exempt from § 63.322, § 63.323, and § 63.324, except paragraphs 63.322 (c), (d), (i), (j), (k), (l), and (m), 63.323(d), and 63.324 (a), (b), (d)(1), (d)(2), (d)(3), (d)(4), and (e) if the total perchloroethylene consumption of the dry cleaning facility is less than 530 liters (140 gallons) per year. Consumption is determined according to § 63.323(d).

(e) Each existing transfer machine system and its ancillary equipment, and each new transfer machine system and its ancillary equipment installed between December 9, 1991 and

September 22, 1993, located in a dry cleaning facility that includes only transfer machine system(s) is exempt from § 63.322, § 63.323, and § 63.324, except paragraphs 63.322 (c), (d), (i), (j), (k), (l), and (m), 63.323(d), and 63.324 (a), (b), (d)(1), (d)(2), (d)(3), (d)(4), and (e) if the perchloroethylene consumption of the dry cleaning facility is less than 760 liters (200 gallons) per year. Consumption is determined according to § 63.323(d).

(f) If the total yearly perchloroethylene consumption of a dry cleaning facility determined according to § 63.323(d) is initially less than the amounts specified in paragraph (d) or (e) of this section, but later exceeds those amounts, the existing dry cleaning system(s) and new transfer machine system(s) and its (their) ancillary equipment installed between December 9, 1991 and September 22, 1993 in the dry cleaning facility must comply with § 63.322, § 63.323, and § 63.324 by 180 calendar days from the date that the facility determines it has exceeded the amounts specified, or by September 23, 1996, whichever is later.

* * * * *

3. Section 63.322 is amended by revising paragraphs (a) introductory text and (b) introductory text to read as follows:

§ 63.322 Standards.

(a) The owner or operator of each existing dry cleaning system and of each new transfer machine system and its ancillary equipment installed between December 9, 1991 and September 22, 1993 shall comply with either paragraph (a)(1) or (a)(2) of this section and shall comply with paragraph (a)(3) of this section if applicable.

* * * * *

(b) The owner or operator of each new dry-to-dry machine and its ancillary equipment and of each new transfer machine system and its ancillary equipment installed after September 22, 1993:

* * * * *

[FR Doc. 96-23911 Filed 9-18-96; 8:45 am]
BILLING CODE 6560-50-P

40 CFR Part 272

[FRL-5601-5]

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. The 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 Sections 3008, 3013 and 7003. 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 November 18, 1996 unless EPA publishes a prior Federal Register (FR) action withdrawing this immediate final rule. All comments on this action must be received by the close of business October 21, 1996. The incorporation by reference of certain New Mexico statutes and regulations was approved by the Director of the Federal Register as of November 18, 1996 in accordance with 5 U.S.C. 552(a) and 1 CFR part 51.

ADDRESSES: Written comments should be sent to Alima Patterson, Authorization Coordinator for Region 6, Grants and Authorization Section (6PD-G), Multimedia Planning and Permitting Division, EPA Region 6, First Interstate Bank Tower at Fountain Place, 1445 Ross Avenue, Suite 1200, Dallas, TX 75202, Phone number: 214-665-8533.

FOR FURTHER INFORMATION CONTACT: Alima Patterson, Authorization Coordinator for Region 6, Grants and Authorization Section (6PD-G), Multimedia Planning and Permitting Division, EPA Region 6, First Interstate Bank Tower at Fountain Place, 1445 Ross Avenue, Suite 1200, Dallas, TX 75202, Phone number: 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 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 and August 21, 1995, Environmental

Protection Agency incorporated by reference New Mexico's then authorized hazardous waste program (see 58 FR 52677 and 60 FR 32113). Effective July 10, 1995 and January 2, 1996 (see 60 FR 20238 and 60 FR 53708, respectively), Environmental Protection Agency 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.

The Environmental Protection Agency 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 sections 3008, 3013 and 7003 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

The Environmental Protection Agency 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 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); 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); amendments to the F037 and F038 listings as published on May 13, 1991 (56 FR 21955) and amendments to 40 CFR Parts 260, 261, 264, 265 and 266 relative to the Recycled Used Oil Management Standards, as published on September 10, 1992 (57 FR 41566) and May 3, 1993 (58 FR 26420). Therefore, these Federal amendments included in New Mexico's adoption by reference of Federal code at Title 20, Chapter 4, Part 1, New Mexico Administrative Code (20 NMAC 4.1), Subparts 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 nonauthorized States. Thus, Environmental Protection Agency has immediate authority to implement a HSWA requirement or prohibition once it is effective. A HSWA requirement or prohibition supersedes 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, the Environmental Protection Agency 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. The Environmental Protection Agency 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), Environmental Protection Agency 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.

Unfunded Mandates Reform Act

Title II of the Unfunded Mandates Reform Act of 1995 (UMRA), Public Law 104-4, establishes requirements for Federal agencies to assess the effects of their regulatory actions on State, local, and tribal governments and the private sector. Under section 202 of the UMRA, EPA generally must prepare a written statement, including a cost-benefit analysis, for proposed and final rules with "Federal mandates" that may result in expenditures to State, local, and tribal governments, in the aggregate, or to the private sector, of \$100 million or more in any one year. Before promulgating an Environmental Protection Agency rule for which a written statement is needed, section 205 of the UMRA generally requires EPA to identify and consider a reasonable number of regulatory alternatives and adopt the least costly, most cost-effective, or least burdensome alternative that achieves the objectives of the rule. The provisions of section 205 do not apply when they are inconsistent with applicable law. Moreover, section 205 allows EPA to adopt an alternative other than the least

costly, most cost-effective, or least burdensome alternative if the Administrator publishes with the final rule an explanation why that alternative was not adopted. Before the Environmental Protection Agency establishes any regulatory requirements that may significantly or uniquely affect small governments, including tribal governments, it must have developed under section 203 of the UMRA a small government agency plan. The plan must provide for notifying potentially affected small governments, enabling officials of affected small governments to have meaningful and timely input in the development of Environmental Protection Agency regulatory proposals with significant Federal intergovernmental mandates, and informing, educating, and advising small governments on compliance with the regulatory requirements. The Environmental Protection Agency has determined that this rule does not contain a Federal mandate that may result in expenditures of \$100 million or more for State, local, and tribal governments, in the aggregate, or the private sector in any one year. The EPA does not anticipate that the approval of New Mexico' hazardous waste program referenced in today's notice will result in annual costs of \$100 million or more.

Today's rule contains no Federal mandates for State, local or tribal governments or the private sector. The Act excludes from the definition of a "Federal mandate" duties that arise from participation in a voluntary Federal program, except in certain cases where a "federal intergovernmental mandate" affects an annual federal entitlement program of \$500 million or more that are not applicable here. New Mexico's request for approval of a hazardous waste program is voluntary; if a state chooses not to seek authorization for administration of a hazardous waste program under RCRA Subtitle C, RCRA regulation is left to EPA.

In any event, the Environmental Protection Agency has determined that this rule does not contain a Federal mandate that may result in expenditures \$100 million or more for state, local, and tribal governments in the aggregate, or the private sector in any one year. The Environmental Protection Agency does not anticipate that the approval of New Mexico's hazardous waste program referenced in today's notice will result in annual costs of \$100 million or more. The Environmental Protection Agency's approval of state programs generally may reduce, not increase, compliance costs for the private sector since the State, by virtue of the approval, may

now administer the program in lieu of Environmental Protection Agency and exercise primary enforcement. Hence, owners and operators of treatment, storage, or disposal facilities (TSDFs) generally no longer face dual federal and state compliance requirements, thereby reducing overall compliance costs. Thus, today's rule is not subject to the requirements of sections 202 and 205 of the UMRA.

The Environmental Protection Agency has determined that this rule contains no regulatory requirements that might significantly or uniquely affect small governments. The Agency recognizes that small governments may own and/or operate TSDFs that will become subject to the requirements of an approved state hazardous waste program. However, such small governments which own and/or operate TSDFs are already subject to the requirements in 40 CFR parts 264, 265, and 270 and are not subject to any additional significant or unique requirements by virtue of this program approval. Once the Environmental Protection Agency authorizes a State to administer its own hazardous waste program and any revisions to that program, these same small governments will be able to own and operate their TSDFs under the approved state program, in lieu of the Federal program.

Certification Under the Regulatory Flexibility Act

The Environmental Protection Agency has determined that this authorization will not have a significant economic impact on a substantial number of small entities. The Environmental Protection Agency recognizes that small entities may own and/or operate TSDFs that will become subject to the requirements of an approved state hazardous waste program. However, since such small entities which own and/or operate TSDFs are already subject to the requirements in 40 CFR Parts 264, 265 and 270, this authorization does not impose any additional burdens on these small entities. This is because EPA's authorization would result in an administrative change (i.e., whether the Environmental Protection Agency or the state administers the RCRA Subtitle C program in that state), rather than result in a change in the substantive requirements imposed on small entities. Once EPA authorizes a state to administer its own hazardous waste program and any revisions to that program, these same small entities will be able to own and operate their TSDFs under the approved state program, in lieu of the federal program. Moreover, this authorization, in approving a state

program to operate in lieu of the federal program, eliminates duplicative requirements for owners and operators of TSDFs in that particular state.

Therefore, EPA provides the following certification under the Regulatory Flexibility Act, as amended by the Small Business Regulatory Enforcement Fairness Act. Pursuant to the provisions of 5 U.S.C. 605(b), I hereby certify that this authorization will not have a significant economic impact on a substantial number of small entities. This authorization effectively suspends the applicability of certain Federal regulations in favor of New Mexico's program, thereby eliminating duplicative requirements for handlers of hazardous waste in the State. It does not impose any new burdens on small entities. This rule, therefore, does not require a regulatory flexibility analysis.

Submission to Congress and the General Accounting Office

Under 5 U.S.C. 801(a)(1)(A) as added by the Small Business Regulatory Enforcement Fairness Act of 1996, the Environmental Protection Agency submitted a report containing this rule and other required information to the U.S. Senate, the U. S. House of Representatives and the Comptroller General of the General Accounting Office prior to publication of the rule in today's Federal Register. This rule is not a "major rule" as defined by 5 U.S.C. 804(2).

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: August 19, 1996.

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 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, December 21, 1994, July 10, 1995, and January 2, 1996.

(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 April, 1996.

(ii) EPA Approved New Mexico Regulatory Requirements Applicable to the Hazardous Waste Management Program, dated April, 1996.

(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) Title 20, Chapter 4, Part 1, New Mexico Administrative Code (20 NMAC 4.1), effective September, 23, 1994, Subpart IX, Section 902 (except 902.B.1

through 902.B.6); and Subpart XI, Sections 1101, 1105, and 1106.
 (3)(i) The following statutory 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
Recycled Used Oil	57 FR 41566: Amendments to 40 CFR Parts 260, 261 and 266	09/10/92
Management Standards	58 FR 26420: Amendments to 40 CFR Parts 261, 264 and 265	05/03/93

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
Toxicity Characteristic;	55 FR 40834	10/05/90
Hydrocarbon Recovery	56 FR 3978	02/01/91
Operations	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 6 and the State of New Mexico signed by the EPA Regional Administrator on December 18, 1995 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 on 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, August 11, 1994, November 28, 1994, and August 24, 1995, 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.*

Appendix A to Part 272—[Amended]

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

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:
 Title 20, Chapter 4, Part 1, New Mexico Annotated Code (20 NMAC 4.1), Subparts I through Subpart VIII; Subpart IX, Sections 901, 902.B.1 through 902.B.6; and Subpart XI, Section 1103. Copies of the New Mexico regulations can be obtained from the New Mexico Commission of Public Records, State Records Center and Archives, State Rules Division, 404 Montezuma, Santa Fe, NM 87501.

[FR Doc. 96-23910 Filed 9-18-96; 8:45 am]

BILLING CODE 6560-50-P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

**Health Care Financing Administration
 42 CFR Parts 401 and 405**

[BPD-869-F]

Medicare Program; Waiver of Recovery of Overpayments

AGENCY: Health Care Financing Administration (HCFA), HHS.

ACTION: Final rule.

SUMMARY: This final rule duplicates in HCFA's regulations the content of two sections of the Social Security Administration's regulations concerning waiver of recovery of overpayments. In the past, regulations in 20 CFR part 404 were applicable to both the Federal Old-Age, Survivors and Disability Insurance program (OASDI), which provides monthly Social Security checks directly to beneficiaries or their representatives, and the Medicare program. Since the Social Security Administration (SSA) is now independent of HHS, and SSA is restructuring its regulations to apply only to the OASDI program, we are establishing the content of these sections in 42 CFR part 405 to preserve

provisions that are applicable to the Medicare program.

EFFECTIVE DATE: These regulations are effective on October 21, 1996.

FOR FURTHER INFORMATION CONTACT: David Walczak, (410) 786-4475.

SUPPLEMENTARY INFORMATION:

I. Background

Until 1977, HCFA was a part of SSA and all Medicare rules were located in title 20 of the Code of Federal Regulations (20 CFR). Since then, we have developed separate Medicare rules in title 42. However, some Medicare rules remain in 20 CFR, and we have been working with SSA to restructure those rules.

Recently, we and SSA mutually agreed to restructure regulations on recovery or adjustment of overpayments in the OASDI program (title II) and the Medicare program (title XVIII). The overpayment recovery provisions for both the OASDI and Medicare programs have historically been located in 20 CFR part 404, subpart F. The SSA project revises part 404, subpart F, so that it applies only to the OASDI program, and removes all reference to the Medicare program. We are developing separate regulations, which would, similarly, apply only to the Medicare program and provide more specific criteria for applying waiver authority.

Unfortunately, our regulations are not yet ready for publication, whereas SSA has already published a proposed rule on June 2, 1995 (60 FR 28767), and the SSA final rule revising several of its provisions is in preparation. With the publication of the SSA final rule, all references to the Medicare program are removed from 20 CFR 404.502a and 404.506, thus eliminating certain regulatory authorities necessary for continuation of these provisions in the Medicare program. Therefore, until we publish final regulations, we are moving the content of those two sections of the regulations from 20 CFR part 404 to 42 CFR part 405 so that this content is preserved until our final rule is published.

II. Provisions of the Rule

We are incorporating the content of 20 CFR 404.502a, "Notice of right to waiver consideration," as new 42 CFR 405.357, and the content of 20 CFR 404.506, "When waiver of adjustment or recovery may be applied," as new 42 CFR 405.358, with minor editorial changes. In new §§ 405.357 and 405.358, we are removing reference to section 204(b) of the Act, since it is the basis for the OASDI provisions. In § 405.358, we are adding another reference (in paragraph

(b)(1)) to the Medicare program (title XVIII) to conform to the actual wording of the Medicare statute (section 1870(c) of the Social Security Act). We are also making conforming changes to existing §§ 401.601(d)(2)(ii), 401.607(d)(2), 405.350, and 405.356 to revise cross-references that reflect the addition of §§ 405.357 and 405.358.

This is a technical regulation and no changes in Medicare policies concerning waiver result from this action. Any restructuring or expansion of the applicability of waiver to Medicare would be issued as a proposed rule.

III. Waiver of Proposed Rulemaking

We ordinarily publish a notice of proposed rulemaking in the Federal Register and invite prior public comment on proposed rules. The notice of proposed rulemaking includes a reference to the legal authority under which the rule is proposed, and the terms and substances of the proposed rule or a description of the subjects and issues involved. This procedure can be waived, however, if an agency finds good cause that a notice-and-comment procedure is impracticable, unnecessary, or contrary to the public interest and incorporates a statement of the finding and its reasons in the rule issued.

Since this rule merely incorporates, with minor editorial changes, content from one part of the CFR to another, we believe that it is unnecessary to publish a proposed rule. Therefore, we find good cause to waive the notice of proposed rulemaking and to issue this final rule.

IV. Regulatory Impact Statement

A. Introduction

We generally prepare a regulatory flexibility analysis that is consistent with the Regulatory Flexibility Act (RFA) (5 U.S.C. 601 through 612) unless the Secretary certifies that a final rule will not have a significant economic impact on a substantial number of small entities. Individuals and States are not included in the definition of a small entity.

In addition, section 1102(b) of the Act requires the Secretary to prepare a regulatory impact analysis if a rule may have a significant impact on the operations of a substantial number of small rural hospitals. This analysis must conform to the provisions of section 604 of the RFA. For purposes of section 1102(b) of the Act, we define a small rural hospital as a hospital that is located outside of a Metropolitan

Statistical Area and has fewer than 50 beds.

B. Provisions of the Final Regulations

This is a technical rule that makes no changes to Medicare policy. It incorporates in 42 CFR part 405, with only minor editorial changes, the content of 20 CFR 404.502a and 404.506. This rule also makes conforming changes to cross references in 42 CFR parts 401 and 405 resulting from the transfer of content from 20 CFR part 404 to 42 CFR part 405. We are not preparing analyses for either the RFA or section 1102(b) of the Act, since we have determined, and the Secretary certifies, that this final rule will not result in a significant economic impact on a substantial number of small entities and will not have a significant impact on the operations of a substantial number of small rural hospitals.

This rule is not a major rule as defined at 5 U.S.C. 804(2).

In accordance with the provisions of Executive Order 12866, this regulation was not reviewed by the Office of Management and Budget.

C. Collection of Information Requirements

This document does not impose information collection and recordkeeping requirements. Consequently, it need not be reviewed by the Office of Management and Budget under the authority of the Paperwork Reduction Act of 1995.

List of Subjects

42 CFR Part 401

Claims, Freedom of information, Health facilities, Medicare, Privacy.

42 CFR Part 405

Administrative practice and procedure, Health facilities, Health professions, Kidney diseases, Medicare, Reporting and recordkeeping requirements, Rural areas, X-rays.

42 CFR chapter IV is amended as follows:

A. Part 401 is amended as set forth below:

PART 401—GENERAL ADMINISTRATIVE REQUIREMENTS

1. The authority citation for part 401 continues to read as follows:

Authority: Secs 1102 and 1871 of the Social Security Act (42 U.S.C. 1302 and 1895hh). Subpart F is also issued under the authority of the Federal Claims Collection Act (31 U.S.C. 3711).

2. Section 401.601 is amended by revising paragraph (d)(2)(ii) to read as follows:

§ 401.601 Basis and scope.

* * * *

(d) * * *

(2) * * *

(ii) Adjustments in Railroad Retirement or Social Security benefits to recover Medicare overpayments to individuals are covered in §§ 405.350–405.358 of this chapter.

* * * *

3. Section 401.607 is amended by revising paragraph (d)(2) to read as follows:

§ 401.607 Claims collection.

* * * *

(d) * * *

(2) Under regulations at § 405.350–405.358 of this chapter, HCFA may initiate adjustments in program payments to which an individual is entitled under title II of the Act (Federal Old Age, Survivors, and Disability Insurance Benefits) or under the Railroad Retirement Act of 1974 (45 U.S.C. 231) to recover Medicare overpayments.

B. Part 405 is amended as set forth below:

PART 405—FEDERAL HEALTH INSURANCE FOR THE AGED AND DISABLED

1. The authority citation for part 405 subpart C continues to read as follows:

Authority: Secs. 1102, 1862, and 1871 of the Social Security Act (42 U.S.C. 1302, 1395y, and 1895hh).

2. Section 405.350 is amended by revising the introductory paragraph to read as follows:

§ 405.350 Individual's liability for payments made to providers and other persons for items and services furnished the individual.

Any payment made under title XVIII of the Act to any provider of services or other person with respect to any item or service furnished an individual shall be regarded as a payment to the individual, and adjustment shall be made pursuant to §§ 405.352 through 405.358 where:

* * * *

3. Section 405.356 is revised to read as follows:

§ 405.356 Principles applied in waiver of adjustment or recovery.

The principles applied in determining waiver of adjustment or recovery (§ 405.355) are the applicable principles of § 405.358 and 20 CFR 404.507–404.509, 404.510a, and 404.512.

4. New § 405.357 is added to subpart C to read as follows:

§ 405.357 Notice of right to waiver consideration.

Whenever an initial determination is made that more than the correct amount of payment has been made, notice of the provisions of section 1870(c) of the Act regarding waiver of adjustment or recovery shall be sent to the overpaid individual and to any other individual against whom adjustment or recovery of the overpayment is to be effected (see § 405.358).

5. New § 405.358 is added to subpart C to read as follows:

§ 405.358 When waiver of adjustment or recovery may be applied.

Section 1870(c) of the Act provides that there shall be no adjustment or recovery in any case where an incorrect payment under title XVIII (hospital and supplementary medical insurance benefits) has been made (including a payment under section 1814(e) of the Act with respect to an individual:

(a) Who is without fault, and

(b) Adjustment or recovery would either:

(1) Defeat the purposes of title II or title XVIII of the Act, or

(2) Be against equity and good conscience.

(Catalog of Federal Domestic Assistance Program No. 93.773, Medicare—Hospital Insurance; and Program No. 93.774, Medicare—Supplementary Medical Insurance Program)

Dated: July 1, 1996.

Bruce C. Vladeck,
Administrator, Health Care Financing Administration.

[FR Doc. 96–23957 Filed 9–18–96; 8:45 am]

BILLING CODE 4120–01–P

42 CFR Part 421

[BPO–105–F]

RIN 0938–AF85

Medicare Program; Part B Advance Payments to Suppliers Furnishing Items or Services Under Medicare Part B

AGENCY: Health Care Financing Administration (HCFA), HHS.

ACTION: Final rule.

SUMMARY: This rule establishes requirements and procedures for advance payments to suppliers of Medicare Part B services. An advance payment will be made only if the carrier is unable to process a claim timely; the supplier requests advance payment; we determine that payment of interest is insufficient to compensate the supplier for loss of the use of the funds; and, we

expressly approve the advance payment in writing.

These rules are necessary to address deficiencies noted by the General Accounting Office in its report analyzing current procedures for making advance payments. The intent of this rule is to ensure more efficient and effective administration of this aspect of the Medicare program.

EFFECTIVE DATE: This rule is effective October 21, 1996.

FOR FURTHER INFORMATION CONTACT: Robert Shaw, (410) 786–3312.

SUPPLEMENTARY INFORMATION:**I. Background****A. General**

The Medicare Supplementary Medical Insurance (Part B) program is a voluntary program that pays all or part of the costs for physicians' services; outpatient hospital services; certain home health services; services furnished by rural health clinics, ambulatory surgical centers and comprehensive outpatient rehabilitation facilities; and certain other items or medical and hospital health services not covered by the Medicare Hospital Insurance program (Part A).

B. Use of Carriers

1. **Statutory basis.** Under section 1842(a) of the Social Security Act (the Act), public and private organizations and agencies may participate in the administration of the Medicare program under contracts entered into with the Secretary. These Medicare contractors, known as "carriers," process and pay Part B claims.

Usually, these payments are made on a claim-by-claim basis. Regulations at 42 CFR part 421, subpart C—Carriers, set forth the functions performed by Medicare carriers, which include the following:

- Determining the eligibility status of a beneficiary.
- Determining whether the services for which payment is claimed are covered under Medicare, and if so, the correct payment amounts.
- Making correct payment to the beneficiary or the supplier of the items or services, as appropriate.

Carriers must also observe the "prompt payment" requirements set forth in section 1842(c) of the Act. As amended by section 13568 of the Omnibus Budget Reconciliation Act of 1993 (OBRA '93) (Public Law 103–66), enacted on August 10, 1993, this provision currently requires interest to be paid on all "clean" claims for which payment is not issued within 30 calendar days.

2. Advance payments to suppliers. Under Part B, a carrier may make an advance partial payment to a supplier if the carrier is not able to process a claim. (For purposes of the Medicare program, § 400.202 defines "supplier" as a physician or other practitioner, or an entity other than a provider, that furnishes health care services under Medicare. Section 400.202 defines "services" as medical care or services and items, such as medical diagnosis and treatment, drugs and biologicals, supplies, appliances, and equipment, medical social services, and use of the facilities of a hospital, a rural primary care hospital, or a skilled nursing facility.) An advance payment may be made to a supplier eligible to receive Medicare payments.

At the present time, there are no regulations or guidelines for making advance payments. In rare instances, such as when major administrative changes are made in processing Part B claims, a backlog of pending claims may occur. To avoid or reduce the payment of interest on claims that are not processed timely, we sometimes authorize advance payments for pending backlogged claims, subject to later recoupment from amounts we owe, once the claims are processed.

II. General Accounting Office Report Finding—"HCFA Should Improve Internal Controls Over Part B Advance Payments"

As a result of administrative changes made in processing Part B claims at two carriers in two States during 1988, a large backlog of pending claims occurred. In order to minimize the effects of these claims payment disruptions on suppliers, in 1989 we authorized the two carriers to make advance payments for pending backlogged claims, subject to later recoupment, once the claims were actually processed. The difficulties experienced by the suppliers resulted in the General Accounting Office investigating these two carriers and their claims processing systems. This investigation led the General Accounting Office to question whether we had sufficient guidelines and safeguards in place to ensure that advance payments were promptly recouped. A full report of the General Accounting Office findings is included in the proposed rule published in the Federal Register on July 18, 1994 (59 FR 36415).

As a result of its review of these cases, the General Accounting Office recommended that we determine whether it is appropriate for carriers to make advance payments to suppliers

and that we be in compliance with the Federal Managers' Financial Integrity Act (31 U.S.C. 3512) when making these determinations. A full discussion of the requirements of the Federal Managers' Financial Integrity Act was included in the proposed rule (59 FR 36416).

In applying this standard to Part B advance payments, the General Accounting Office expressed the opinion that HCFA, rather than the carriers, should authorize advance payments to be executed by the carriers. In addition, the General Accounting Office asserted that we should clearly communicate to carriers our approval to make advance payments and include the terms under which these payments must be made. Therefore, the General Accounting Office recommended that we develop regulations and instructions for carriers regarding Part B advance payments to suppliers. (General Accounting Office report, GAO/HRD-91-81 (April 1991), entitled "Medicare: HCFA Should Improve Internal Controls Over Part B Advance Payments.")

III. Summary of the Proposed Regulations

We published a proposed rule in the Federal Register on July 18, 1994 (59 FR 36415) to announce our intention to establish requirements and procedures for advance payments to suppliers of Medicare Part B services. The proposed rule responded to the General Accounting Office report and recommendation and proposed to add § 421.214 ("Advance payments to suppliers furnishing items or services under Part B") to 42 CFR part 421, subpart C.

Proposed § 421.214 would ensure the smooth and uniform issuance and recoupment of Part B advance payments that may be authorized from time to time to counter the negative consequences of disruptions in Medicare Part B claims processing. The regulation, as proposed, would be entirely self-contained. Advance payments would be made when a carrier is unable to process a claim timely, not when delay is the result of late or incomplete submittal of a claim by a supplier. Processing delays would be highlighted to us to ensure that payment disruptions and risks to the Medicare trust fund would be minimized.

There are some entities with provider agreements under section 1866 of the Act that are paid for certain Part B services from the Part B Trust Fund through intermediaries (performing as a carrier when making Part B payments). These providers generally have access to the existing accelerated payment provisions under § 413.64(g). The

purpose of the proposed regulation is to create a Part B advance payment procedure for suppliers, not to supplant the existing Part A advance payment procedure for some providers. Therefore, this section would not apply to claims for Part B items or services that are furnished by entities with provider agreements under section 1866 of the Act that receive payments from intermediaries.

Proposed § 421.214(b) defines the term "advance payment" to mean a carrier's conditional partial payment to a supplier on a Part B claim that the carrier is unable to process within the prescribed time limits.

Proposed § 421.214(c) specifies that an advance payment may be made if the carrier is unable to process claims timely; if we determine that the prompt payment interest provision in section 1842(c) of the Act is insufficient to make claimants whole; and, if the advance payment is expressly approved by us in writing. The prompt payment interest provision currently requires us to pay interest on clean claims when the carrier is unable to make payment within 30 calendar days. The determination to issue advance payments must take into consideration elements that are, or may be, subject to changes, such as legislation related to prompt payment; system enhancements; severity of system malfunctions; changes to regulations; change in contractors; and any number of other factors that may necessitate the issuance of advance payments. Therefore, we stated we would implement the threshold criterion or criteria through manual instructions to the carriers. This would give us the flexibility to respond promptly to providers without going through the rulemaking process each time a unique situation occurs. We specifically requested public comments on this approach. In making changes, we would ensure that advance payments would be made in a way that would ensure budget neutrality.

Section 421.214(d) specifies that no advance payment would be made to any supplier who is delinquent in repaying a Medicare overpayment, or one that has been advised that it is under active medical review or program integrity investigation. Also, an advance payment would not be made to a supplier that has not submitted any claims, or has not accepted claims' assignments within the most recent 180-day period preceding the system malfunction that created the need for the advance payment.

Proposed § 421.214(e)(1) specifies that a supplier must request, in writing to the carrier, an advance payment for providing Part B services. Paragraph

(e)(2) specifies that a supplier must accept an advance payment as a conditional payment subject to adjustment, recoupment, or both based on an eventual determination of the actual amount due on the claim and subject to the other rules found in § 421.214.

Proposed § 421.214(f)(1) states that a carrier must calculate an advance payment for a specific claim at no more than 80 percent of the historical assigned claims payment data paid a supplier. "Historical data" are defined as a representative 90-day assigned claims payment trend within the most recent 180-day experience before the system malfunction. Based on this amount, the carrier must determine and issue an advance payment on a particular claim not to exceed 80 percent of the average per claim amount paid during the 90-day trend period. If historical data are not available or if backlogged claims cannot be identified, the carrier would determine and issue advance payments based on some other methodology approved by us. Advance payments would be made no more frequently than once every 2 weeks to a supplier.

Proposed § 421.214(f)(2) specifies that generally, a supplier would not receive advance payments for more assigned claims than were paid, on a daily average, for the 90 days before the system malfunction. This would prevent and discourage suppliers from submitting assigned claims that may lack merit in order to maximize the receipt of advance payments. However, an example of a permissible exception would be when a supplier does not receive payments from a carrier for services during the early months of the year when beneficiary deductibles are being met. In this case, the carrier would use more representative payment months for the suppliers' daily average.

Proposed § 421.214(f)(3) specifies that a carrier must recover an advance payment by applying it against the amount due on the claim on which the advance payment was made. Under the proposal, if the advance payment exceeds the Medicare payment amount, the carrier must apply the unadjusted balance of the advance payment against further Medicare payments due the supplier.

It is not our intent to permit repayment of an advance payment by an option that could delay the recovery process or that would create a duplicate payment or an overpayment. Thus, a supplier of Part B services could not elect to receive the full payment amount for a claim and repay the advance payment separately at some other time.

Proposed § 421.214(f)(4) specifies that in accordance with our instructions, a carrier must maintain financial records in accordance with the Statement of Federal Financial Accounting Standards for tracking each advance payment and its recoupment.

Proposed § 421.214(g)(1) permits us to waive the requirements of paragraph (e)(1) if we determine it is appropriate to make advance payments to all affected suppliers. Paragraph (g)(2) specifies that if adjusting Medicare payments fails to recover an advance payment, we may authorize the use of any other recoupment method available (for example, lump sum repayment or an extended repayment schedule). Paragraph (g)(2) also allows an unpaid balance from a past advance payment to be converted into an overpayment. In the unlikely event that, after the adjustment process is completed, more money has been advanced to the supplier than was due, we would consider that amount to be an overpayment. We could then attempt to recover the overpayment under the Medicare recovery procedures in part 401, subpart F and part 405, subpart C.

Proposed § 421.214(h) clarifies that the advance payment would be considered a payment that would satisfy the "prompt payment" requirements of section 1842(c)(2) of the Act for the amount of the advance. Therefore, if an advance payment is made before the "prompt payment" time limit and the actual amount of payment for the claim is determined after the time limit, interest would be paid only on the balance due the supplier after the carrier deducts the amount of the advance. (Of course, no interest would accrue if the amount of the advance exceeds the actual payment amount to be made on the claim.) If the advance payment is issued after the time limit for making a prompt payment, interest would accrue on the advance (or on the amount of the claim, whichever is smaller) up to the date that the advance payment is issued, and on the balance due the supplier, if any, up to the date of payment.

Proposed § 421.214(i) explains that the decision to advance payments and the determination of the amount to be advanced on any given claim are committed to agency discretion and are not subject to review or appeal. However, the carrier would notify the supplier receiving the advance payment about the amounts advanced and recouped, and how any Medicare payment amounts have been adjusted. If the supplier believes the carrier's reconciliation of the amounts advanced and recouped is incorrectly computed, it may request an administrative review

from the carrier. If a review is requested, the carrier would provide a written explanation of the adjustments. This review and explanation would be separate from a supplier's right to appeal the amount and computation of benefits paid on the claim, as provided at 42 CFR part 405, subpart H. The carrier's reconciliation of amounts advanced and recouped would not be an initial determination as defined at § 405.803, and any written explanation of this reconciliation would not be subject to further administrative review. We expect that this review process would help to eliminate unnecessary appeals that might result from errors in computation.

IV. Analysis of Public Comments

In response to the July 1994 proposed rule, we received three timely items of correspondence. Comments were received from two national trade associations—one is a nonprofit association comprised of over 2,100 home medical equipment suppliers and one represents over 850 wholesale and retail distributors of health and medical products. The third comment was sent by a 30,000-member professional association representing pharmacists in various health settings. These comments and our responses are discussed below.

Comment: One commenter stated that the term "established time limit" that is referenced in the definition of advance payment (§ 421.214(b)) should be specific for purposes of this rule. The commenter suggested that after 30 to 60 days, interest should be paid by the carrier on outstanding claims and after 60 days, advance payments should be made automatically.

Response: Carriers must adhere to the "prompt payment" requirements set forth in section 1842(c) of the Act. As amended by section 13568 of OBRA '93, this provision currently requires interest to be paid on all "clean" claims for which payment is not made within 30 calendar days. We expect that the need for advance payment would be determined in much less than 60 days. Additionally, as outlined in § 421.214(c) ("When advance payments may be made") and § 421.214(d) ("When advance payments are not made"), advance payments will be paid when the requirements of the rule are met. However, it would be presumptuous for us or the carrier to assume that all suppliers would want an advance payment.

Comment: Two commenters stated that it should be the obligation of the carrier to notify suppliers as soon as the carrier discovers that payment would not be made in a timely manner and

advance payments would be necessary. One of the commenters suggested that, after an initial request, suppliers should not have to request an advance payment in writing each time an advance payment is warranted.

Response: We agree that the carrier should notify a supplier when there is a need to make advance payment. If the reason for not making prompt payment is associated with the carriers' inability to process Medicare claims in a timely manner, the carrier will notify the supplier. The supplier will have the option of receiving an advance payment, as long as the conditions as outlined in this final rule are met. Additionally, it is not our intention to require suppliers to request an advance payment each time a claim is submitted during a period that advance payments are deemed to be necessary. Advance payments will be automatic until the condition that caused the need for advance payments is corrected.

Comment: One commenter disagreed with our position that the decision to advance payments and the determination of the amount of any advance payment are committed to agency discretion and are not subject to review or appeal (§ 421.214(i)). The commenter believed that this position does not ensure more efficient and effective administration of this aspect of the Medicare program.

Response: Advance payments are discretionary because the Medicare statute imposes no obligation to advance these monies before a final payment determination is made. The final payment determination is not affected by the advance payment process; suppliers can only be advantaged by receiving these advances. Agency discretion for the amount to be advanced is based on a valid and fair formula, as outlined in § 421.214(f)(1) and (f)(2). This is an efficient and effective administration of the program that minimizes the risks to the Medicare trust fund, without prejudice to the supplier.

Comment: One commenter objected to the provision in the proposed rule instructing a carrier that the amount of an advance payment should be no more than 80 percent of the historical assigned claims payment data (§ 421.214(f)(1)). The commenter believed the supplier should get an advance payment of 100 percent of its submitted charges, minus the supplier's historical percentage differential between submitted and approved charges.

Response: We have determined that the fairest method of calculating advance payments to suppliers without

risking an overpayment is to calculate an advance payment for a particular claim at no more than 80 percent of the anticipated payment for that claim based upon the historical assigned claims payment data for claims paid to the supplier. This payment methodology balances the financial needs of the supplier with our responsibility to protect the Medicare trust fund.

Comment: One commenter was concerned that a provision in the proposed rule (§ 421.214(f)(3)) would allow the carrier to recover payment from the supplier without requiring the carrier to resolve the problem that actually caused the claims processing problem.

Response: The commenter's concern is unfounded. It is not our intent to recover any part of the advance payment before the carrier resolves the problem that made the advance payment necessary.

Comment: One commenter recommended that the supplier be given the opportunity to repay the advance payment by check or wire transfer to avoid the offsetting against claims because offsetting claims often results in accounting problems.

Response: Permitting suppliers to refund advance payments (as opposed to having the advanced payment offset against the actual payment amount) would undoubtedly produce systemic overpayments and duplicate payments to suppliers. This would be directly contrary to the intent and purpose of this final rule. It is not our intent to permit repayment of an advance payment by an option that could delay the recovery process or that will create a duplicate payment or an overpayment. A supplier of Part B services could not elect to receive full payment for a claim and repay the advance payment separately at some other time.

Permitting suppliers to refund the advance payment by check or wire transfer also conflicts with the definition of "advance payment" in § 421.214(b) and the concept of advancing a portion of what is owed. The recommendation by the commenter would, in all probability, increase the frequency of overpayments and duplicate payments to providers, could be prone to abuse, and is inconsistent with the intent of this rule.

Comment: One commenter had concerns about the provision prohibiting an advance payment to a supplier if the supplier is under active medical review or undergoing a program integrity investigation (§ 421.214(d)(2)). The same commenter also believed that suppliers that do not take assignment

should not be excluded from receiving a cash advance (§ 421.214(d)(4)).

Response: A supplier that is under an active medical review or undergoing a program integrity investigation is in a status that we do not treat lightly. These reviews and investigations could culminate in actions that result in civil, criminal, and administrative remedies. To authorize an advance payment without final resolution of the medical review or program integrity investigation is not in the best interest of the Medicare trust fund. A supplier that does not accept assignment receives no monies from Medicare. Therefore, there is no basis for an advance payment.

Comment: One commenter suggested that within 3 business days of a carrier's receipt of an advance payment request, the carrier should inform the supplier in writing of the amount of the advance payment and, within the following 5 business days, the carrier should forward a check for the advance payment to the supplier.

Response: The commenter proposes an administratively burdensome time frame for carrier action that is far shorter than (and inconsistent with) the "prompt payment" standard for "clean" claims provided by Congress in section 1842(c)(2) of the Act. In accordance with this provision, we pay interest when the carrier does not pay a claim within 30 calendar days of receipt. Under 421.214(b), we will issue advance payments only if the carrier is unable to process claims timely, that is, within this 30 day period. Once we decide that the carrier should issue advance payments, continuing advance payments will be timed to be consistent with these prompt payment rules and the carrier's usual operating procedures. This should minimize the obligation to pay interest, as well as reduce the administrative burden on the carrier during difficult circumstances. In addition, to adopt the commenter's suggestion would likely aggravate the situation because it would appear to create an incentive to seek advance payments.

Comment: One commenter stated that it opposed our proposed method of calculating the amount of the advance payment (§ 421.214(f)) if the payment is based on 80 percent of assigned claims submitted in the past 90 days. The commenter further stated that if a carrier is unable to process claims, the advance payment provision should allow that carrier to pay at 100 percent of the supplier's submitted charges, minus the supplier's historical percentage differential between submitted and approved charges.

Response: We chose to base the advance payment on 80 percent of assigned claims submitted in the past 90 days to meet the needs of a supplier to continue to be a viable business and our responsibility to protect the Medicare trust fund. If we chose to base the advance payment on 100 percent of its submitted charges, minus the supplier's historical percentage differential between submitted and approved charges, we would likely create a situation in which a carrier overpays a supplier and subsequently must recover the overpayment. This situation creates an administrative burden on the carrier to develop procedures to recover the overpayment successfully and results in increased costs to the Medicare program.

V. Provisions of the Final Rule

We are making the following changes in this final rule as a result of written comments received on the proposed rule. We are adding the following paragraph (1) at the beginning of § 421.214(f), which concerns requirements for carriers:

"(1) A carrier must notify a supplier as soon as it is determined that payment will not be made in a timely manner, and an advance payment option is to be offered to the supplier."

We are also clarifying § 421.214(f)(1)(i) to eliminate possible uncertainty regarding how advance payments will be calculated.

VI. Collection of Information

Under the Paperwork Reduction Act of 1995, we are required to provide 60-day notice in the Federal Register and solicit public comment before a collection of information requirement is submitted to the Office of Management and Budget (OMB) for review and approval. In order to fairly evaluate whether an information collection should be approved by OMB, section 3506(c)(2)(A) of the Paperwork Reduction Act requires that we solicit comment on the following issues:

- Whether the information collection is necessary and useful to carry out the proper functions of our agency;
- The accuracy of our estimate of the information collection burden;
- The quality, utility, and clarity of the information to be collected.
- Recommendations to minimize the information collection burden on the affected public, including automated collection techniques.

We are soliciting public comment on each of these issues for § 421.214(f)(4) of this document that contains information collection requirements. The information collection in that section

requires carriers to maintain a system of financial data in accordance with the Statement of Federal Financial Accounting Standards for tracking each advance payment and its recoupment. We estimate that it will take a carrier 4 minutes for entry of an advance payment into the tracking system and 2 minutes for any update (including recoupment).

For comments that relate to information collection requirements, mail a copy of comments to: Health Care Financing Administration, Office of Financial and Human Resources, Management Planning and Analysis Staff, Room C2-26-17, 7500 Security Boulevard, Baltimore, Maryland 21244-1850.

VII. Regulatory Impact Statement

Consistent with the Regulatory Flexibility Act (RFA) (5 U.S.C. 601 through 612), we prepare a regulatory flexibility analysis unless the Secretary certifies that a rule will not have a significant economic impact on a substantial number of small entities. For purposes of the RFA, we consider all suppliers that provide services under Medicare Part B to be small entities. We do not consider carriers to be small entities.

Also, section 1102(b) of the Act requires the Secretary to prepare a regulatory impact analysis for any rule that may have a significant impact on the operations of a substantial number of small rural hospitals. This analysis must conform to the provisions of section 604 of the RFA. For purposes of section 1102(b) of the Act, we define a small rural hospital as a hospital that is located outside of a Metropolitan Statistical Area and has fewer than 50 beds.

This final rule amends Medicare regulations to ensure that if carriers make advance payments to suppliers and those payments are greater than the amounts actually due after the claim is processed, the excess payments are recovered promptly. We expect this rule will result in marginal administrative savings to carriers and suppliers. In addition, we do not believe this regulation will have a negative effect on the economy. Therefore, the overall benefits are positive and indeed provide stability for suppliers during potentially disruptive claims processing delays.

We have determined, and we certify, that this final rule will not have a significant economic impact on a substantial number of small entities or a significant impact on the operations of a substantial number of small rural hospitals. Therefore, we have not

prepared analyses for either the RFA or section 1102(b) of the Act.

In accordance with the provisions of Executive Order 12866, this regulation was not reviewed by the Office of Management and Budget.

This rule is not a major rule as defined at 5 U.S.C. 804(2).

List of Subjects in 42 CFR Part 421

Administrative practice and procedure, Health facilities, Health professions, Medicare, Reporting and recordkeeping requirements.

42 CFR part 421 is amended as follows:

PART 421—INTERMEDIARIES AND CARRIERS

1. The authority citation for part 421 continues to read as follows:

Authority: Secs. 1102 and 1871 of the Social Security Act (42 U.S.C. 1302 and 1395hh).

Subpart C—Carriers

2. A new § 421.214 is added to subpart C to read as follows:

§ 421.214 Advance payments to suppliers furnishing items or services under Part B.

(a) *Scope and applicability.* This section provides for the following:

- (1) Sets forth requirements and procedures for the issuance and recovery of advance payments to suppliers of Part B services and the rights and responsibilities of suppliers under the payment and recovery process.
- (2) Does not limit HCFA's right to recover unadjusted advance payment balances.
- (3) Does not affect suppliers' appeal rights under part 405, subpart H of this chapter relating to substantive determinations on suppliers' claims.
- (4) Does not apply to claims for Part B services furnished by suppliers that have in effect provider agreements under section 1866 of the Act and part 489 of this chapter, and are paid by intermediaries.

(b) *Definition.* As used in this section, *advance payment* means a conditional partial payment made by the carrier in response to a claim that it is unable to process within established time limits.

(c) *When advance payments may be made.* An advance payment may be made if all of the following conditions are met:

- (1) The carrier is unable to process the claim timely.
- (2) HCFA determines that the prompt payment interest provision specified in section 1842(c) of the Act is insufficient to make a claimant whole.

(3) HCFA approves, in writing to the carrier, the making of an advance payment by the carrier.

(d) *When advance payments are not made.* Advance payments are not made to any supplier that meets any of the following conditions:

(1) Is delinquent in repaying a Medicare overpayment.

(2) Has been advised of being under active medical review or program integrity investigation.

(3) Has not submitted any claims.

(4) Has not accepted claims' assignments within the most recent 180-day period preceding the system malfunction.

(e) *Requirements for suppliers.* (1) Except as provided for in paragraph (g)(1) of this section, a supplier must request, in writing to the carrier, an advance payment for Part B services it furnished.

(2) A supplier must accept an advance payment as a conditional payment subject to adjustment, recoupment, or both, based on an eventual determination of the actual amount due on the claim and subject to the provisions of this section.

(f) *Requirements for carriers.* (1) A carrier must notify a supplier as soon as it is determined that payment will not be made in a timely manner, and an advance payment option is to be offered to the supplier.

(i) A carrier must calculate an advance payment for a particular claim at no more than 80 percent of the anticipated payment for that claim based upon the historical assigned claims payment data for claims paid the supplier.

(ii) "Historical data" are defined as a representative 90-day assigned claims payment trend within the most recent 180-day experience before the system malfunction.

(iii) Based on this amount and the number of claims pending for the supplier, the carrier must determine and issue advance payments.

(iv) If historical data are not available or if backlogged claims cannot be identified, the carrier must determine and issue advance payments based on some other methodology approved by HCFA.

(v) Advance payments can be made no more frequently than once every 2 weeks to a supplier.

(2) Generally, a supplier will not receive advance payments for more assigned claims than were paid, on a daily average, for the 90-day period before the system malfunction.

(3) A carrier must recover an advance payment by applying it against the amount due on the claim on which the

advance was made. If the advance payment exceeds the Medicare payment amount, the carrier must apply the unadjusted balance of the advance payment against future Medicare payments due the supplier.

(4) In accordance with HCFA instructions, a carrier must maintain a financial system of data in accordance with the Statement of Federal Financial Accounting Standards for tracking each advance payment and its recoupment.

(g) *Requirements for HCFA.* (1) In accordance with the provisions of this section, HCFA may determine that circumstances warrant the issuance of advance payments to all affected suppliers furnishing Part B services. HCFA may waive the requirement in paragraph (e)(1) of this section as part of that determination.

(2) If adjusting Medicare payments fails to recover an advance payment, HCFA may authorize the use of any other recoupment method available (for example, lump sum repayment or an extended repayment schedule) including, upon written notice from the carrier to the supplier, converting any unpaid balances of advance payments to overpayments. Overpayments are recovered in accordance with part 401, subpart F of this chapter concerning claims collection and compromise and part 405, subpart C of this chapter concerning recovery of overpayments.

(h) *Prompt payment interest.* An advance payment is a "payment" under section 1842(c)(2)(C) of the Act for purposes of meeting the time limit for the payment of clean claims, to the extent of the advance payment.

(i) *Notice, review, and appeal rights.* (1) The decision to advance payments and the determination of the amount of any advance payment are committed to HCFA's discretion and are not subject to review or appeal.

(2) The carrier must notify the supplier receiving an advance payment about the amounts advanced and recouped and how any Medicare payment amounts have been adjusted.

(3) The supplier may request an administrative review from the carrier if it believes the carrier's reconciliation of the amounts advanced and recouped is incorrectly computed. If a review is requested, the carrier must provide a written explanation of the adjustments.

(4) The review and explanation described in paragraph (i)(3) of this section is separate from a supplier's right to appeal the amount and computation of benefits paid on the claim, as provided at part 405, subpart H of this chapter. The carrier's reconciliation of amounts advanced and recouped is not an initial determination

as defined at § 405.803 of this chapter, and any written explanation of a reconciliation is not subject to further administrative review.

(Catalog of Federal Domestic Assistance Program No. 93.773, Medicare—Hospital Insurance and No. 93.774 Supplementary Medical Insurance Program)

Dated: August 30, 1996.

Bruce C. Vladeck,
Administrator, Health Care Financing Administration.

[FR Doc. 96-23958 Filed 9-18-96; 8:45 am]

BILLING CODE 4120-01-P

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

50 CFR Part 648

[Docket No. 960216032-6246-07; I.D. 082096H]

RIN 0648-AH70

Fisheries of the Northeastern United States; Northeast Multispecies Fishery; Exception to Permit Requirements

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

ACTION: Final rule with request for comments.

SUMMARY: NMFS issues this final rule to modify the regulations implementing the Northeast Multispecies Fishery Management Plan. This rule allows vessels fishing exclusively with pot gear, which are not otherwise allowed to possess multispecies finfish, to possess multispecies frames as bait, provided that a receipt for purchase of that specific bait is on board the vessel. The intended effect is to allow the current practice of using multispecies frames as bait in the pot gear fishery to continue.

DATES: This rule is effective September 13, 1996. Comments must be received on or before October 15, 1996.

ADDRESSES: Comments on the rule should be sent to Dr. Andrew A. Rosenberg, Regional Director, NMFS, Northeast Regional Office, 1 Blackburn Drive, Gloucester, MA 01930, Attention: Susan A. Murphy.

FOR FURTHER INFORMATION CONTACT: Susan A. Murphy, NMFS, Fishery Policy Analyst, 508-281-9252.

SUPPLEMENTARY INFORMATION: Amendment 7 to the FMP, effective on July 1, 1996 (61 FR 27710, May 31, 1996), implemented comprehensive

measures to rebuild the important multispecies stock complex. Among the measures implemented was a measure eliminating the open access possession limit permit category. Possession of such a permit allowed vessels to retain up to 500 lb (226.8 kg) of regulated multispecies per trip. Under this new measure, vessels fishing for, retaining, or possessing regulated multispecies must either possess a limited access multispecies permit and be fishing under a days-at-sea, or possess an open access permit endorsed for appropriate gear type (i.e., handline, rod and reel, or scallop dredge).

An unintended consequence of this provision is its prohibition on the use of multispecies "frames," also known as "racks," as bait in the pot fishery. A multispecies frame or rack is the remains of a multispecies finfish after it has been filleted. Because many pot vessel fishers have traditionally utilized multispecies frames as bait in their fish traps, the elimination of the possession limit permit category prevents many vessels from continuing this practice. The New England Fishery Management Council (Council) did not immediately recognize the need for an exception to this provision and recently indicated that it was never its intent to prohibit pot fishers, that are not otherwise allowed to possess multispecies finfish, from possessing multispecies frames as bait. The Council stated that its main purpose in eliminating the possession limit permit category was to reduce fishing mortality by reducing the catch of regulated multispecies. The Council further stated that prohibiting the possession of multispecies frames does not contribute to this objective because multispecies frames are the remains of finfish that have already been caught, and that to prohibit their possession by pot fishers would reduce the economic value of the landings at a time when the fishing industry needs to capitalize on landings to the largest extent possible.

Modifications to the regulations made by this rule are intended to allow pot fishers, who are not otherwise allowed

to possess multispecies finfish, to possess multispecies frames for the purpose of using them as bait, provided that a receipt for purchase of that specific bait is on board the vessel.

Classification

Because prohibiting the possession of multispecies frames for use as bait in pot gear does not contribute to the goal of reducing fishing mortality by reducing the catch of regulated multispecies and needlessly reduces the economic value of multispecies landings at a time when the fishing industry needs to capitalize on the value of such landings to the largest extent possible, the delay associated with providing prior notice and opportunity for comment would be contrary to the public interest. Accordingly, the Assistant Administrator for Fisheries, NOAA (AA), finds good cause to waive the requirement to provide prior notice and opportunity for public comment, pursuant to the authority set forth at 5 U.S.C. 553(b)(B). Because this rule relieves a restriction under 5 U.S.C. 553(d)(1), it may be made immediately effective. Comments on the final rule are invited and must be received on or before October 15, 1996, (see ADDRESSES). The Regional Director will review all comments received and, if the comments warrant, will take further rulemaking action.

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

List of Subjects in 50 CFR Part 648

Fisheries, Fishing, Reporting and recordkeeping requirements.

Dated: September 13, 1996.
 Rolland A. Schmitten,
*Assistant Administrator for Fisheries,
 National Marine Fisheries Service.*

For the reasons set out in the preamble, 50 CFR part 648 is amended as follows:

PART 648—FISHERIES OF THE NORTHEASTERN UNITED STATES

1. The authority citation for part 648 continues to read as follows:

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

2. In § 648.2, the definition for "Multispecies frames" is added in alphabetical order to read as follows:

§ 648.2 Definitions.

* * * * *

Multispecies frames, also known as multispecies racks, means the remains of the multispecies finfish after it has been filleted or processed, not including the fillet.

* * * * *

3. In § 648.4, paragraph (a)(1) introductory text is revised to read as follows:

§ 648.4 Vessel permits.

(a) * * *

(1) *NE multispecies vessels*. Any vessel of the United States, including a charter or party boat, must have been issued and have on board a valid multispecies permit to fish for, possess or land multispecies finfish in or from the EEZ. Multispecies frames used as, or to be used as, bait on a vessel fishing exclusively with pot gear are deemed not to be multispecies finfish for purposes of this part provided that there is a receipt for the purchase of those frames on board the vessel.

* * * * *

4. In § 648.83, paragraph (b)(3) is added to read as follows:

§ 648.83 Minimum fish sizes.

* * * * *

(b) * * *

(3) Vessels fishing exclusively with pot gear may possess multispecies frames used, or to be used, as bait that measure less than the minimum fish size, if there is a receipt for purchase of those frames on board the vessel.

* * * * *

[FR Doc. 96-23971 Filed 9-13-96; 4:09 pm]

BILLING CODE 3510-22-F

Proposed Rules

Federal Register

Vol. 61, No. 183

Thursday, September 19, 1996

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

DEPARTMENT OF AGRICULTURE

Animal and Plant Health Inspection Service

9 CFR Part 156

[Docket No. 93-168-1]

Export Certification of Animal Products

AGENCY: Animal and Plant Health Inspection Service, USDA.

ACTION: Proposed rule.

SUMMARY: We are proposing to amend the regulations concerning inspection and certification of animal byproducts by removing references to "inedible animal byproducts" and replacing them with references to "animal products," and by providing for the issuance of export certificates for animal products which do not require inspection. These amendments appear to be necessary to facilitate trade in U.S. animal products.

DATES: Consideration will be given only to comments received on or before November 18, 1996.

ADDRESSES: Please send an original and three copies of your comments to Docket No. 93-168-1, Regulatory Analysis and Development, PPD, APHIS, Suite 3C03, 4700 River Road Unit 118, Riverdale, MD 20737-1238. Comments received may be inspected at USDA, room 1141, South Building, 14th Street and Independence Avenue SW., Washington, DC, between 8 a.m. and 4:30 p.m., Monday through Friday, except holidays. Persons wishing to inspect comments are requested to call ahead on (202) 690-2817 to facilitate entry into the comment reading room.

FOR FURTHER INFORMATION CONTACT: Dr. Marolo Garcia, Senior Staff Veterinarian, Products Staff, National Center for Import and Export, VS, APHIS, Suite 3B05, 4700 River Road Unit 40, Riverdale, MD 20737-1231. Telephone: (301) 734-4401; or E-mail: mgarcia:aphis.usda.gov.

SUPPLEMENTARY INFORMATION:

Background

The regulations in 9 CFR part 156 (referred to as the regulations) govern the inspection and certification of animal byproducts. These regulations were promulgated under authority contained in sections 203 and 205 of The Agriculture Marketing Act of 1946, as amended (7 U.S.C. 1622 and 1624) (the Act). The Act authorizes the Secretary of Agriculture, among other things, to "inspect, certify, and identify the class, quality, quantity, and condition of agricultural products when shipped or received in interstate commerce, under such rules and regulations as the Secretary of Agriculture may prescribe. * * *" The Act further states that the intended effect of this authority is that agricultural products "may be marketed to the best advantage" and "that trading may be facilitated." The Act also authorizes the Secretary "to perform such other activities as will facilitate the marketing [and] distribution of agricultural products through commercial channels." In addition, the Act states that no person shall be required to use the service.

Animal Byproducts/Animal Products

Until recently, the Animal and Plant Health Inspection Service (APHIS) was delegated authority under the Act with respect to voluntary inspection and certification of *inedible animal byproducts*. Based on this authority, our regulations currently provide for APHIS to issue export certificates for inedible animal byproducts.

However, effective November 8, 1995, APHIS was granted broader authority under revised delegations of authority from the Secretary of Agriculture and general officers of the Department (see 60 FR 56392, *et seq.*) Among other changes, authority was delegated to the Administrator, APHIS, to administer the Act "with respect to voluntary inspection and certification of animal products" (see 60 FR 56457, 7 CFR 2.80(a)(28)). The effect of this amendment was to give APHIS authority to issue export certificates for all animal products, edible and inedible.

To reflect this change, we are proposing to amend the regulations to remove the term "animal byproduct" wherever it appears, and replace it with the term "animal product." We would

also remove the current definition of "animal byproduct" and add a definition of "animal product."

Export Certificates Without Inspection

Most countries require imported animal products to be accompanied by an official export certificate issued by the country of origin. Without such a certificate, the products cannot be brought into the country. However, depending upon the product involved, many importing countries require the export certificate to state only that the exporting country is free of certain diseases. Often there is no requirement that the product itself have been inspected.

The regulations as now written do not provide for APHIS to issue export certificates for uninspected animal products. We are proposing to amend the regulations to provide that we would issue such certificates on request. Providing export certificates for uninspected animal products would enable exporters to sell products outside the United States and would facilitate international trade, both stated goals of the Act.

Executive Order 12866 and Regulatory Flexibility Act

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

This proposed change in the regulations would enable APHIS to issue export certificates for certain animal products without inspecting the products. This is a service many prospective exporters have asked the Agency to provide. Under the proposed regulations, exporters would not be required to use this service. However, exporters who choose to obtain export certificates from APHIS would be required to pay a user fee of \$21.50 for each certificate.

According to *Foreign Agriculture Trade of the United States, FY 1995 Supplement*, approximately \$3.5 billion worth of animal products of all types were exported from the United States during FY 94. During FY 1994, the latest year for which figures are available, APHIS issued approximately 35,000 export certificates for inedible animal byproducts.

However, no data is available to us indicating the number of entities that export animal products, how many entities might export edible animal products under our proposed rule, or how many of these entities might be small entities. For these reasons, we are unable to determine whether this proposed action might have a significant economic impact on a substantial number of small entities. We invite comments on this impact. In particular, we are interested in determining the number of small entities that may incur costs associated with obtaining export certificates for inedible animal products. Executive Order 12998

This proposed rule has been reviewed under Executive Order 12998, Civil Justice Reform. If this proposed rule is adopted: (1) All State and local laws and regulations that are inconsistent with this rule will be preempted; (2) no retroactive effect will be given to this rule; and (3) administrative proceedings will not be required before parties may file suit in court challenging this rule.

Paperwork Reduction Act

This proposed rule contains no new information collection or recordkeeping requirements under the Paperwork Reduction Act of 1995 (44 U.S.C. 3501 *et seq.*).

Regulatory Reform

This action is part of the President's Regulatory Reform Initiative, which, among other things, directs agencies to remove obsolete and unnecessary regulations and to find less burdensome ways to achieve regulatory goals.

List of Subjects in 9 CFR Part 98

Exports, Livestock, Poultry and poultry products, Reporting and recordkeeping requirements.

Accordingly, 9 CFR part 156, would be amended as follows:

PART 156—VOLUNTARY INSPECTION AND CERTIFICATION SERVICE

1. The authority citation for part 156 would continue to read as follows:

Authority: 7 U.S.C. 1622 and 1624; 21 U.S.C. 136a; 7 CFR 2.22, 2.80, and 371.2(d).

2. The part heading would be revised as set forth above.

3. Section 156.2 would be amended as follows:

- a. Paragraph (g) would be removed;
- b. All paragraph designations would be removed;
- c. All definitions would be placed in alphabetical order; and

d. A definition of *Animal product* would be added, in alphabetical order, to read as follows:

§ 156.2 Definitions.

* * * * *

Animal product. Anything made of, derived from, or containing any material of animal origin.

* * * * *

§§ 156.3, 156.5, and 156.8 [Amended]

4. In the following sections, the word "byproducts" would be removed and the word "products" would be added in its place:

- a. § 156.3, each time it appears;
- b. § 156.5; and
- c. § 156.8(b), each time it appears.

5. In § 156.6, the first sentence would be revised to read as follows:

§ 156.6 Certificates.

The inspector shall sign and issue certificates in forms approved by the Administrator for animal products, if the inspector finds that the requirements as stated in the certification have been met. * * *

Done in Washington, DC, this 13th day of September 1996.

A. Strating,

Acting Administrator, Animal and Plant Health Inspection Service.

[FR Doc. 96-24039 Filed 9-18-96; 8:45 am]

BILLING CODE 3410-34-P

DEPARTMENT OF THE TREASURY

Internal Revenue Service

26 CFR Part 1

[REG-245562-96]

RIN 1545-AU46

Relief From Disqualification for Plans Accepting Rollovers

AGENCY: Internal Revenue Service (IRS), Treasury.

ACTION: Proposed regulations.

SUMMARY: This document contains proposed regulations that would provide guidance on the qualification of retirement plans that accept rollover contributions from employees. These regulations affect plan administrators of qualified plans that accept rollover contributions.

DATES: Written comments must be received by December 18, 1996.

ADDRESSES: Send submissions to CC:DOM:CORP:R (REG-245562-96), room 5228, Internal Revenue Service, POB 7604, Ben Franklin Station, Washington, DC 20044. In the

alternative, submissions may be hand delivered between the hours of 8 a.m. and 5 p.m. to CC:DOM:CORP:R (REG-245562-96), Courier's Desk, Internal Revenue Service, 1111 Constitution Avenue NW., Washington, DC.

Alternatively, taxpayers may submit comments electronically via the Internet by selecting the "Tax Regs" option on the IRS Home Page, or by submitting comments directly to the IRS Internet site at http://www.irs.ustreas.gov/prod/tax_regs/comments.html

FOR FURTHER INFORMATION CONTACT: Marjorie Hoffman, (202) 622-6030 (not a toll-free number).

SUPPLEMENTARY INFORMATION:

Background

On September 22, 1995, Final Income Tax Regulations (TD 8619) under sections 401(a)(31) and 402(c) were published in the Federal Register (60 FR 49199). The final regulations provide guidance for complying with the Unemployment Compensation Amendments of 1992 (UCA).

UCA expanded the types of distributions from a qualified plan that are eligible to be rolled over to an individual retirement account or individual retirement annuity, or to another qualified plan that accepts rollovers (collectively referred to as eligible retirement plans). Such distributions are referred to as eligible rollover distributions. UCA also added a new qualification provision under section 401(a)(31) that requires qualified plans to provide employees with a direct rollover option. Under a direct rollover option, an employee may elect to have an eligible rollover distribution paid directly to an eligible retirement plan. The direct rollover option is provided in addition to the pre-existing rollover provisions under section 402. Thus, an employee who receives an eligible rollover distribution but who does not elect a direct rollover still has the option to roll over the distribution to an eligible retirement plan within 60 days of receipt.

The final regulations under section 401(a)(31) provide that a plan that accepts a direct rollover from another plan will not fail to satisfy section 401(a) or 403(a) merely because the plan making the distribution is, in fact, not qualified under section 401(a) or 403(a) at the time of the distribution, if, prior to accepting the rollover, the receiving plan reasonably concluded that the distributing plan was qualified under section 401(a) or 403(a). The regulations provide, as an example, that the receiving plan may reasonably conclude that the distributing plan was qualified

under section 401(a) or 403(a) if, prior to accepting the rollover, the plan administrator of the distributing plan provided the receiving plan with a statement that the distributing plan had received a determination letter from the Commissioner indicating that the plan was qualified. The plan administrator is not required to verify this information, such as by obtaining a copy of the distributing plan's plan document or determination letter, in order to reasonably conclude that the distributing plan is qualified under section 401(a) or 403(a).

Explanation of Provisions

1. Overview

The relief to be provided in these proposed regulations is intended to increase the portability of qualified plan benefits when an employee changes jobs. This objective would be achieved by reassuring a plan sponsor that acceptance of an amount as a rollover contribution, in appropriate circumstances, will not affect the plan's qualification under section 401(a) or 403(a).

2. Expansion of Existing Relief for Receiving Plans

These proposed regulations would expand and clarify in several respects the relief provided in the regulations under section 401(a)(31) issued last year. First, the proposed regulations would clarify and expand the relief from disqualification currently provided for plans that accept direct rollovers. The protection would be expanded to be available not only if the plan administrator reasonably concludes the distributing plan is qualified under section 401(a) or 403(a) (even if later it is determined that the distributing plan is not a qualified plan), but also if the plan administrator reasonably concludes that a distribution meets the other requirements to be an eligible rollover distribution (but later it is determined that this conclusion was incorrect). Further, the proposed regulation would clarify that if the plan administrator reaches these conclusions reasonably, and satisfies the corrective distribution requirement described below, the contribution will be treated as a rollover contribution for purposes of applying qualification requirements under section 401(a) or 403(a) to the plan. Thus, if the contribution was not, in fact, a distribution from a qualified plan or for any other reason fails to be an eligible rollover distribution within the meaning of section 402(c), the contribution nevertheless would be treated as a rollover contribution as

opposed to, for example, an employee contribution for purposes of section 401(m) or for purposes of section 415.

Second, the regulations would extend this expanded relief from disqualification to plans that accept rollover contributions other than direct rollover contributions. Thus, the relief would apply to plans that accept rollover contributions made by an employee within 60 days of the date of the distribution from a plan. Further, the relief would apply to plans that accept rollover contributions from a "conduit IRAs," i.e., an individual retirement plan that does not contain any amount attributable to any source other than a rollover contribution (as defined in section 402) from a plan qualified under section 401(a) or an annuity qualified under section 403(a). The relief would apply if (a) when accepting a rollover contribution, the plan administrator of the receiving plan reasonably concludes that the contribution is an eligible rollover distribution from a qualified plan (or an amount distributed from a conduit IRA) and that the contribution satisfies the other applicable requirements of section 402(c) or 408(d)(3) for treatment as a rollover contribution and (b) the receiving plan satisfies the corrective distribution requirement described below.

The regulations would provide examples of the actions that a plan administrator might take to reasonably conclude that an employee's contribution satisfies the requirements for treatment as a rollover contribution. The examples are intended to be merely illustrative. Plan administrators may develop other approaches or procedures for reasonably reaching this conclusion.

Finally, the regulations would provide that if the receiving plan later obtains actual knowledge or otherwise determines that the distributing plan was not qualified at the time of the distribution, that any portion of the distribution was not an eligible rollover distribution or an amount distributed from a conduit IRA, or that the contribution to the plan otherwise did not satisfy the applicable requirements of section 402 or 408 for treatment as a rollover contribution, a corrective distribution equal to the amount of the contribution plus any earnings attributable to the contribution would be required to be made to the employee within a reasonable time after such determination.

Special Analyses

It has been determined that this notice of proposed rulemaking is not a significant regulatory action as defined

in EO 12866. Therefore, a regulatory assessment is not required. It also has been determined that section 553(b) of the Administrative Procedure Act (5 U.S.C. chapter 5) does not apply to these regulations, and because the regulation does not impose a collection of information on small entities, the Regulatory Flexibility Act (5 U.S.C. chapter 6) does not apply. Pursuant to section 7805(f) of the Internal Revenue Code, this notice of proposed rulemaking will be submitted to the Chief Counsel for Advocacy of the Small Business Administration for comment on its impact on small business.

Comments and Requests for a Public Hearing

Before these proposed regulations are adopted as final regulations, consideration will be given to any written comments (a signed original and eight (8) copies) or comments transmitted via Internet that are submitted timely to the IRS. All comments will be available for public inspection and copying.

A public hearing may be scheduled if requested in writing by a person that timely submits written comments. If a public hearing is scheduled, notice of the date, time, and place for the hearing will be published in the Federal Register.

Drafting Information

The principal author of these regulations is Marjorie Hoffman, Office of the Associate Chief Counsel (Employee Benefits and Exempt Organizations), IRS. However, other personnel from the IRS and Treasury Department participated in their development.

List of Subjects in 26 CFR Part 1

Income taxes, Reporting and recordkeeping requirements.

Proposed Amendments to the Regulations

Accordingly, 26 CFR part 1 is amended as follows:

PART 1—INCOME TAXES

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

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

Par. 2. Section 1.401(a)(31)-1 is amended as follows:

1. Under the heading "List of Questions," redesignating Q-14 through Q-18 as Q-15 through Q-19, respectively, and adding new Q-14.
2. Under the heading "Question and Answers," removing designation (a) and

the paragraph heading, and removing paragraph (b) from A-13.

3. Under the heading "Question and Answers," redesignating Q&A-14 through Q&A-18 as Q&A-15 through Q&A-19, respectively, and adding Q&A-14.

The additions read as follows:

§ 1.401(a)(31)-1 Requirement to offer direct rollover of eligible rollover distributions; questions and answers.

* * * * *

List of Questions

* * * * *

Q-14: If a plan accepts an invalid rollover contribution, whether or not as a direct rollover, how will the contribution be treated for purposes of applying the qualification requirements of section 401(a) or 403(a) to the plan?

* * * * *

Questions and Answers

* * * * *

Q-14: If a plan accepts an invalid rollover contribution, whether or not as a direct rollover, how will the contribution be treated for purposes of applying the qualification requirements of section 401(a) or 403(a) to the plan?

A-14: (a) *Acceptance of invalid rollover contribution.* If a plan accepts an invalid rollover contribution, the contribution will be treated, for purposes of applying the qualification requirements of section 401(a) or 403(a) to the receiving plan, as if it were a valid rollover contribution, if the following two conditions are satisfied. First, when accepting the amount from the employee as a rollover contribution, the plan administrator of the receiving plan reasonably concludes that the contribution is a valid rollover contribution. Second, if the plan administrator of the receiving plan later determines that the contribution was an invalid rollover contribution, the amount of the invalid rollover contribution, plus any earnings attributable thereto, is distributed to the employee within a reasonable time after such determination.

(b) *Definitions.* For purposes of this Q&A-14:

(1) An invalid rollover contribution is an amount that is accepted by a plan as a rollover within the meaning of Q&A-1 of § 1.402(c)-2 (or as a rollover contribution within the meaning of section 408(d)(3)(A)(ii) but that is not an eligible rollover distribution from a qualified plan (or an amount described in section 408(d)(3)(A)(ii) or that does not satisfy the other requirements of section 401(a)(31), 402(c), or 408(d)(3) for treatment as a rollover or a rollover contribution.

(2) A valid rollover contribution is a contribution that is accepted by a plan as a rollover within the meaning of Q&A-1 of § 1.402(c)-2 or as a rollover contribution within the meaning of section 408(d)(3) and that satisfies the requirements of section 401(a)(31), 402(c), or 408(d)(3) for treatment as a rollover or a rollover contribution.

(c) The provisions of paragraph (a) of this Q&A-14 are illustrated by the following examples:

Example 1. (a) Employer X maintains for its employees Plan M, a profit sharing plan qualified under section 401(a). Plan M provides that any employee of Employer X may make a rollover contribution to Plan M. Employee A is an employee of Employer X, will not have attained age 70½ by the end of the year, and has a vested account balance in Plan O (a plan maintained by Employee A's prior employer). Employee A elects a single sum distribution from Plan O and elects that it be paid to Plan M in a direct rollover.

(b) Employee A provides the plan administrator of Plan M with a letter from the plan administrator of Plan O stating that Plan O has received a determination letter from the Commissioner indicating that Plan O is qualified.

(c) Based upon such a letter, absent facts to the contrary, a plan administrator may reasonably conclude that Plan O is qualified and that the amount paid as a direct rollover is an eligible rollover distribution.

Example 2. (a) Same facts as *Example 1*, except that Employee A elects to receive the distribution from Plan O and wishes to make a rollover contribution described in section 402 rather than a direct rollover.

(b) When making the rollover contribution, Employee A certifies that, to the best of Employee A's knowledge, Employee A is entitled to the distribution as an employee and not as a beneficiary, the distribution from Plan O to be contributed to Plan M is not one of a series of periodic payments, the distribution from Plan O was received by Employee A not more than 60 days before the date of the rollover contribution, and the entire amount of the rollover contribution would be includible in gross income if it were not being rolled over.

(c) As support for these certifications, Employee A provides the plan administrator of Plan M with two statements from Plan O. The first is a letter from the plan administrator of Plan O, as described in *Example 1*, stating that Plan O has received a determination letter from the Commissioner indicating that Plan O is qualified. The second is the distribution statement that accompanied the distribution check. The distribution statement indicates that the distribution is being made by Plan O to Employee A, indicates the gross amount of the distribution, and indicates the amount withheld as Federal income tax. The amount withheld as Federal income tax is 20 percent of the gross amount of the distribution. Employee A contributes to Plan M an amount not greater than the gross amount of the distribution stated in the letter from Plan O

and the contribution is made within 60 days of the date of the distribution statement from Plan O.

(d) Based on the certifications and documentation provided by Employee A, absent facts to the contrary, a plan administrator may reasonably conclude that Plan O is qualified and that the distribution otherwise satisfies the requirements of section 402(c) for treatment as a rollover contribution.

Example 3. (a) The facts are the same as in *Example 2*, except that, rather than contributing the distribution from Plan O to Plan M, Employee A contributes the distribution from Plan O to IRA P, an individual retirement account described in section 408(a). After the contribution of the distribution from Plan O to IRA P, but before the year in which Employee A attains age 70½, Employee A requests a distribution from IRA P and decides to contribute it to Plan M as a rollover contribution. To make the rollover contribution, Employee A endorses the check received from IRA P as payable to Plan M.

(b) In addition to providing the certifications described in *Example 2* with respect to the distribution from Plan O, Employee A certifies that, to the best of Employee A's knowledge, the contribution to IRA P was made not more than 60 days after the date Employee A received the distribution from Plan O, no amount other than the distribution from Plan O has been contributed to IRA P, and the distribution from IRA P was received not more than 60 days earlier than the rollover contribution to Plan M.

(c) As support for these certifications, in addition to the two statements from Plan O described in *Example 2*, Employee A provides copies of statements from IRA P. The statements indicate that the account is identified as an IRA, the account was established within 60 days of the date of the letter from Plan O informing Employee A that an amount had been distributed, and the opening balance in the IRA does not exceed the amount of the distribution described in the letter from Plan O. There is no indication in the statements that any additional contributions have been made to IRA P since the account was opened. The date on the check from IRA P is less than 60 days before the date that Employee A makes the contribution to Plan M.

(d) Based on the certifications and documentation provided by Employee A, absent facts to the contrary, a plan administrator may reasonably conclude that Plan O is qualified and that the contribution by Employee A is a rollover contribution described in section 408(d)(3)(A)(ii) that satisfies the other requirements of section 408(d)(3) for treatment as a rollover contribution.

Par. 3. Section 1.402(c)-2 is amended by adding a sentence to the end of A-11 to read as follows:

§ 1.402(c)-2 Eligible rollover distributions; questions and answers.

* * * * *

A-11. * * * See § 1.401(a)(31)-1, Q&A-14, for guidance concerning the

qualification of a plan that accepts a rollover contribution.

* * * * *

Michael P. Dolan,

Acting Commissioner of Internal Revenue.

[FR Doc. 96-24059 Filed 9-18-96; 8:45 am]

BILLING CODE 4830-01-U

DEPARTMENT OF THE INTERIOR

Office of Surface Mining Reclamation and Enforcement

30 CFR Part 936

[SPATS No. OK-017-FOR]

Oklahoma Regulatory Program

AGENCY: Office of Surface Mining Reclamation and Enforcement (OSM), Interior.

ACTION: Proposed rule; reopening and extension of public comment period on proposed amendment.

SUMMARY: OSM is announcing receipt of revisions pertaining to a previously proposed amendment to the Oklahoma regulatory program (hereinafter referred to as the "Oklahoma program") under the Surface Mining Control and Reclamation Act of 1977 (SMCRA). The revisions for Oklahoma's proposed rules pertain to protected activities. The proposed amendment is intended to revise the Oklahoma regulations to be consistent with the Federal regulations.

DATES: Written comments must be received by 4:00 p.m., c.d.t., October 4, 1996.

ADDRESSES: Written comments should be mailed or hand delivered to Jack R. Carson, Acting Director, Tulsa Field Office at the address listed below.

Copies of the Oklahoma program, the proposed amendment, and all written comments received in response to this document will be available for public review at the addresses listed below during normal business hours, Monday through Friday, excluding holidays. Each requester may receive one free copy of the proposed amendment by contacting OSM's Tulsa Field Office.

Jack R. Carson, Acting Director, Tulsa Field Office, Office of Surface Mining Reclamation and Enforcement, 5100 East Skelly Drive, Suite 470, Tulsa, Oklahoma 74135-6547, Telephone: (918) 581-6430.

Oklahoma Department of Mines, 4040 N. Lincoln Blvd., Suite 107, Oklahoma City, Oklahoma 73105, Telephone: (405) 521-3859.

FOR FURTHER INFORMATION CONTACT:

Jack R. Carson, Acting Director, Tulsa Field Office, Telephone: (918) 581-6430.

SUPPLEMENTARY INFORMATION:

- I. Background on the Oklahoma Program
- II. Discussion of the Proposed Amendment
- III. Public Comment Procedures
- IV. Procedural Determinations

I. Background on the Oklahoma Program

On January 19, 1981, the Secretary of the Interior conditionally approved the Oklahoma program. Background information on the Oklahoma program, including the Secretary's findings, the disposition of comments, and the conditions of approval can be found in the January 19, 1981, Federal Register (46 FR 4902). Subsequent actions concerning the conditions of approval and program amendments can be found at 30 CFR 936.15 and 936.16.

II. Discussion of the Proposed Amendment

By letter dated February 21, 1996, (Administrative Record No. OK-973), Oklahoma submitted a proposed amendment to its program pursuant to SMCRA. Oklahoma submitted the proposed amendment at its own initiative. The provisions of the Oklahoma regulations that Oklahoma proposed to amend were at Oklahoma Administrative Code (OAC) 460:20-15-7 concerning permit conditions. Specifically, Oklahoma proposed to revise OAC 460:20-15-7 by adding a new permit condition at subsection (5) concerning protected activity and by renumbering existing subsections (5) through (8) to be (6) through (9).

OSM announced receipt of the proposed amendment in the March 5, 1996, Federal Register (61 FR 8536) and invited public comment on its adequacy. The public comment period ended April 4, 1996.

During its review of the amendment, OSM identified concerns relating to Oklahoma's proposed addition, at OAC 460:20-15-7(5), of a new permit condition concerning protected activities. OSM was specifically concerned that the existing state enforcement and citizens complaint regulations do not contain the procedures necessary to implement the requirements of the Federal regulations dealing with protected activities at 30 CFR Part 865. OSM notified Oklahoma of the concerns by letter dated June 25, 1996 (Administrative Record No. OK-973.06). Oklahoma responded in a letter dated August 28, 1996, (Administrative Record No. OK-973.08) by submitting a revised amendment.

Oklahoma proposed the additions of a new subchapter at OAC 460:20-16, concerning protection of employees, to replace the changes originally proposed for OAC 460:20-15-7.

Specifically, Oklahoma proposes to add new subchapter 16 concerning protection of employees that reads as follows.

460:20-16-1. Scope

This subchapter establishes procedures regarding:

- (1) The reporting of acts of discriminatory discharge or other acts of discrimination under the Act and this Chapter caused by any person. Forms of the discrimination include, but are not limited to:
 - (A) Firing,
 - (B) suspension,
 - (C) transfer or demotion,
 - (D) denial or reduction of wages and benefits,
 - (E) coercion of promises of benefits or threats of reprisal, and
 - (F) interference with the exercise of any rights afforded under the Act and this Chapter;
- (2) The investigation of applications for review and holding of informal conferences about the alleged discrimination; and
- (3) The request for formal hearings with the Department's Legal Division.

460:20-16-2. Protected activity

- (a) No person shall discharge or in any other way discriminate against or cause to be fired or discriminated against any employee or any authorized representative of employees because that employee or representative has:
 - (1) Filed, instituted or caused to be filed or instituted any proceedings under the Act and this chapter by:
 - (A) Reporting alleged violations or dangers to the Director, the Department of Mines, or the employer or his representative.
 - (B) Requesting an inspection or investigation; or
 - (C) Taking any other action which may result in a proceeding under the Act and this Chapter.
 - (2) Made statements, testified, or is about to do so:
 - (A) In any informal or formal adjudicatory proceedings;
 - (B) In any informal conference proceeding;
 - (C) In any rulemaking proceeding;
 - (D) In any investigation, inspection or other proceeding under the Act and this Chapter;
 - (E) In any judicial proceeding under the Act and this Chapter.
 - (3) Has exercised on his own behalf or on behalf of other any right granted by the Act and this Chapter.
- (b) Each employer conducting operations which are regulated under this Act and this Chapter, shall within 30 days from the effective day of these regulations, provide a copy of this Subchapter to all current employees and to all new employees at the time of their hiring.

460:20-16-3. Procedures for filing an application for review of discrimination

- (a) Who may file. Any employee, or any authorized representative or employees, who believes that he has been discriminated against by any person in violation of 460:20-16-2(a) of this subchapter may file an application for review. For the purpose of this subchapter, an application for review means the presentation of a written report of discrimination stating the reasons why the person believes he has been discriminated against and the facts surrounding the alleged discrimination.
- (b) Where to file. The employee or representative may file the application for review at any location of the Office and each office shall maintain a log of all filing.
- (c) Time for filing. The employee or representative shall file an application for review within 30 days after the alleged discrimination occurs. An application is considered filed:
- (1) On the date delivered if delivered to the Office, or
 - (2) On the date received by the Office.
- (d) Running of the time of filing. The time for filing begins when the employee knows or has reason to know of the alleged discriminatory activity.
- 460:20-16-4. Investigation and conference procedures
- (a) Within 7 days after receipt of any application for review, the Office shall mail a copy of the application for review to the person alleged to have caused the discrimination, shall file the application for review with the Department's Legal Division and shall notify the employee and the alleged discriminating person that the Department will investigate the complaint. The alleged discriminating person may file a response to the application for review within 10 days after he receives the copy of the application for review. The response shall specifically admit, deny or explain each of the facts alleged in the application unless the alleged discriminating person is without knowledge in which case he shall so state.
- (b) The Department shall initiate an investigation of the alleged discrimination with 30 days after receipt of the application for review. The Department shall complete the investigation within 60 days of the date of receipt of the application for review. If circumstances surrounding the investigation prevent completion within the 60-day period, the Department shall notify the person who filed the application for review and the alleged discriminating person of the delay, the reason for the delay, and the expected completion date for the investigation.
- (c) Within 7 days after completion of the investigation the Department shall invite the parties to an informal conference to discuss the findings and preliminary conclusions of the investigation. The purpose of the informal conference is to attempt to conciliate the matter. If a complaint is resolved at an informal conference, the terms of the agreement will be recorded in a written document that will be signed by the alleged discriminating person, the employee and the representative of the Department. If the Department concludes on the basis of a subsequent investigation that any party to the agreement has failed in any material respect to comply with the terms of any agreement reached during an informal conference, the Department shall take appropriate action to obtain compliance with the agreement.
- (d) Following the investigation and any informal conference held, the Department shall complete a report of investigation which shall include a summary of the results of the conference. Copies of this report shall be available to the parties in the case.
- 460:20-16-5. Request for hearing
- (a) If the Department determines that a violation of this subchapter has probably occurred and was not resolved at an informal conference, the Director shall request a formal hearing on the employee's behalf before the Hearing Examiner within 10 days of the scheduled informal hearing. The parties shall be notified of the determination. If the Director declines to request a hearing the employee shall be notified within 10 days of the scheduled informal conference and informed of his right to request a hearing on his own behalf.
- (b) The employee may request a formal hearing with the Hearing Examiner after 60 days have elapsed from the filing of his application.
- 460:20-16-6. Formal adjudicatory proceedings
- (a) Formal adjudication of a complaint filed under this subchapter shall be conducted in the Legal Divisions pursuant to this Subchapter and OAC 460:2, Rules of Practice and Procedure for the Coal Reclamation Act of 1979.
- (b) A hearing shall be held as promptly as possible consistent with the opportunity for discovery provided for under OAC 460:2.
- (c) Upon a finding of violation of 460:20-16-2 of this subchapter, the Director shall order the appropriate affirmative relief including, but not limited to, the rehiring or reinstatement of the employee or representative of employees to his former position with compensation. At the request of the employee a sum equal to the aggregate amount of all costs and expenses including attorney's fees which have been reasonably incurred by the employee for, or in connection with, the institution and prosecution of the proceedings shall be assessed against the person committing the violation.
- (d) On or after 10 days after filing an application for review under this subchapter the Director or the employee may seek temporary relief with the Legal Division.

III. Public Comment Procedures

OSM is reopening the comment period on the proposed Oklahoma program amendment to provide the public an opportunity to reconsider the adequacy of the proposed amendment in light of the additional materials submitted. In accordance with the provisions of 30 CFR 732.17(h), OSM is seeking comments on whether the proposed amendment satisfies the applicable program approval criteria of 30 CFR 732.15. If the amendment is deemed adequate, it will become part of the Oklahoma program.

Written Comments

Written comments should be specific, pertain only to the issues proposed in this rulemaking, and include explanations in support of the commenter's recommendations. Comments received after the time indicated under **DATES** or at locations other than the Tulsa Field Office will not necessarily be considered in the final rulemaking or included in the Administrative Record.

IV. Procedural Determinations

Executive Order 12866

This proposed rule is exempted from review by the Office of Management and Budget (OMB) under Executive Order 12866 (Regulatory Planning and Review.

Executive Order 12988

The Department of the Interior has conducted the reviews required by section 3 of Executive Order 12988 (Civil Justice Reform) and has determined that, to the extent allowed by law, this rule meets the applicable standards of subsections (a) and (b) of that section. However, these standards are not applicable to the actual language of State regulatory programs and program amendments since each such program is drafted and promulgated by a specific State, not by OSM. Under sections 503 and 505 of SMCRA (30 U.S.C. 1253 and 1255) and 30 CFR 730.11, 732.15, and 732.17(h)(10), decisions on proposed State regulatory programs and program amendments submitted by the States must be based solely on a determination of whether the submittal is consistent with SMCRA and its implementing Federal regulations and whether the other requirements of 30 CFR Parts 730, 731, and 732 have been met.

National Environmental Policy Act

No environmental impact statement is required for this rule since section 702(d) of SMCRA (30 U.S.C. 1292(d)) provides that agency decisions on proposed State regulatory program provisions do not constitute major Federal actions within the meaning of section 102(2)(C) of the National Environmental Policy Act (42 U.S.C. 4332(2)(C)).

Paperwork Reduction Act

This rule does not contain information collection requirements that require approval by OMB under the Paperwork Reduction Act (44 U.S.C. 3507 *et seq.*).

Regulatory Flexibility Act

The Department of the Interior has determined that this rule will not have a significant economic impact on a substantial number of small entities under the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*). The State submittal which is the subject of this rule is based upon counterpart Federal regulations for which an economic analysis was prepared and certification made that such regulations would not have a significant economic effect upon a substantial number of small entities. Accordingly, this rule will ensure that existing requirements previously promulgated by OSM will be implemented by the State. In making the determination as to whether this rule would have a significant economic impact, the Department relied upon the data and assumptions for the counterpart Federal regulations.

Unfunded Mandates

This rule will not impose a cost of \$100 million or more in any given year on any governmental entity or the private sector.

List of Subjects in 30 CFR Part 913

Intergovernmental relations, Surface mining, Underground mining.

Dated: September 11, 1996.

Michael C. Wolfrom,

Acting Regional Director, Mid-Continent Regional Coordinating Center.

[FR Doc. 96-23942 Filed 9-18-96; 8:45 am]

BILLING CODE 4310-05-M

30 CFR Part 936

[SPATS No. OK-019-FOR]

Oklahoma Regulatory Program

AGENCY: Office of Surface Mining Reclamation and Enforcement (OSM), Interior.

ACTION: Proposed Rule; Reopening and Extension of Public Comment Period on Proposed Amendment.

SUMMARY: OSM is announcing receipt of revisions pertaining to a previously proposed amendment to the Oklahoma regulatory program (hereinafter referred to as the "Oklahoma program") under the Surface Mining Control and Reclamation Act of 1977 (SMCRA). The revisions for Oklahoma's proposed amendment pertain to repair or compensation for material damage resulting from subsidence caused by underground coal mining operations and to replacement of water supplies adversely impacted by underground coal mining operations. The amendment is intended to revise the Oklahoma program to be consistent with the corresponding Federal regulations.

DATES: Written comments must be received by 4:00 p.m., c.d.t., October 4, 1996.

ADDRESSES: Written comments should be mailed or hand delivered to Jack R. Carson, Acting Director, Tulsa Field Office at the address listed below.

Copies of the Oklahoma program, the proposed amendment, and all written comments received in response to this document will be available for public review at the addresses listed below during normal business hours, Monday through Friday, excluding holidays. Each requester may receive one free copy of the proposed amendment by contacting OSM's Tulsa Field Office.

Jack R. Carson, Acting Director, Tulsa Field Office, Office of Surface Mining Reclamation and Enforcement, 5100 East Skelly Drive, Suite 470, Tulsa, Oklahoma 74135-6547, Telephone: (918) 581-6430.

Oklahoma Department of Mines, 4040 N. Lincoln Blvd., Suite 107, Oklahoma City, Oklahoma 73105, Telephone: (405) 521-3859.

FOR FURTHER INFORMATION CONTACT: Jack R. Carson, Acting Director, Tulsa Field Office, Telephone: (918) 581-6430.

SUPPLEMENTARY INFORMATION:

- I. Background on the Oklahoma Program
- II. Discussion of the Proposed Amendment
- III. Public Comment Procedures
- IV. Procedural Determinations

I. Background on the Oklahoma Program

On January 19, 1981, the Secretary of the Interior conditionally approved the Oklahoma program. Background information on the Oklahoma program, including the Secretary's findings, the disposition of comments, and the

conditions of approval can be found in the January 19, 1981, Federal Register (46 FR 4902). Subsequent actions concerning the conditions of approval and program amendments can be found at 30 CFR 936.15 and 936.16.

II. Discussion of the Proposed Amendment

By letter dated July 17, 1996 (Administrative Record No. OK-975), Oklahoma submitted a proposed amendment to its program pursuant to SMCRA. Oklahoma submitted the proposed amendment in response to a May 20, 1996, letter (Administrative Record No. OK-976) that OSM sent to Oklahoma in accordance with 30 CFR 732.17(c). The provisions of the Oklahoma Administrative Code (OAC) that Oklahoma proposes to amend are OAC 460:20-3-5, Definitions; OAC 460:20-31-7, Hydrologic information; OAC 460:20-31-13, Subsidence control plan; OAC 460:20-45-8, Hydrologic-balance protection; and OAC 460:20-45-47, Subsidence control.

OSM announced receipt of the proposed amendment in the August 2, 1996, Federal Register (61 FR 40369) and invited public comment on its adequacy. The public comment period ended September 3, 1996.

During its review of the amendment, OSM identified a concern relating to OAC 460:20-3-5, Definitions. Oklahoma had not proposed a definition for "occupied residential dwelling and structures related thereto." This definition was required in OSM's May 20, 1996, letter to Oklahoma. OSM notified Oklahoma of this concern by letter dated August 20, 1996 (Administrative Record No. 975.07). Oklahoma responded in a letter dated August 28, 1996 (Administrative Record No. 975.06, by submitting a revised amendment which contained the missing definition.

Specifically, Oklahoma proposes to add the following definition at OAC 460:20-3-5.

"Occupied residential dwelling and structures" means for purposes of 460:20-31-13 and 460:20-45-47, any building or other structure that, at the time the subsidence occurs, is used either temporarily, occasionally, seasonally, or permanently for human habitation. This term also includes: (A) Any building, structure or facility installed on, above or below, or a combination thereof, the land surface if that building, structure or facility is adjunct to or used in connection with an occupied residential dwelling. (B) Examples of such structures include, but are not limited: (1) garages; (2) storage sheds and barns; (3) greenhouses and related buildings; (4) utilities and cables; (5) fences and other enclosures; (6) retaining walls; (7) paved or

improved patios; (8) walks and driveways; (9) septic sewage treatment facilities; (10) and lot drainage and lawn and garden irrigation systems. (C) Any structure used only for commercial agricultural, industrial, retail or other commercial purposes is excluded.

III. Public Comment Procedures

OSM is reopening the comment period on the proposed Oklahoma program amendment to provide the public an opportunity to reconsider the adequacy of the proposed amendment in light of the additional materials submitted. In accordance with provisions of 30 CFR 732.17(h), OSM is seeking comments on whether the proposed amendment satisfies the applicable program approval criteria of 30 CFR 732.15. If the amendment is deemed adequate, it will become part of the Oklahoma program.

Written Comments

Written comments should be specific, pertain only to the issues proposed in this rulemaking, and include explanations in support of the commenter's recommendations. Comments received after the time indicated under "DATES" or at locations other than the Tulsa Field Office will not necessarily be considered in the final rulemaking or included in the Administrative Record.

IV. Procedural Determinations

Executive Order 12866

This proposed rule is exempted from review by the Office of Management and Budget (OMB) under Executive Order 12866 (Regulatory Planning and Review).

Executive Order 12988

The Department of the Interior has conducted the reviews required by section 3 of Executive Order 12988 (Civil Justice Reform) and has determined that, to the extent allowed by law, this rule meets the applicable standards of subsections (a) and (b) of that section. However, these standards are not applicable to the actual language of State regulatory programs and program amendments since each such program is drafted and promulgated by a specific State, not by OSM. Under sections 503 and 505 of SMCRA (30 U.S.C. 1253 and 1255) and 30 CFR 730.11, 732.15, and 732.17(h)(10), decisions on proposed State regulatory programs and program amendments submitted by the States must be based solely on a determination of whether the submittal is consistent with SMCRA and its implementing Federal regulations and whether the other requirements of

30 CFR Parts 730, 731, and 732 have been met.

National Environmental Policy Act

No environmental impact statement is required for this rule since section 702(d) of SMCRA (30 U.S.C. 1292(d)) provides that agency decisions on proposed State regulatory program provisions do not constitute major Federal actions within the meaning of section 102(2)(C) of the National Environmental Policy Act (42 U.S.C. 4332(2)(C)).

Paperwork Reduction Act

This rule does not contain information collection requirements that require approval by OMB under the Paperwork Reduction Act (44 U.S.C. 3507 *et seq.*).

Regulatory Flexibility Act

The Department of the Interior has determined that this rule will not have a significant economic impact on a substantial number of small entities under the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*). The State submittal which is the subject of this rule is based upon counterpart Federal regulations for which an economic analysis was prepared and certification made that such regulations would not have a significant economic effect upon a substantial number of small entities. Accordingly, this rule will ensure that existing requirements previously promulgated by OSM will be implemented by the State. In making the determinations as to whether this rule would have a significant economic impact, the Department relied upon the data and assumptions for the counterpart Federal regulations.

Unfunded Mandates

This rule will not impose a cost of \$100 million or more in any given year on any governmental entity or the private sector.

List of Subjects in 30 CFR Part 936

Intergovernmental relations, Surface mining, Underground mining.

Dated: June 10, 1996.
Michael C. Wolfrom,
*Acting Regional Director, Mid-Continent
Regional Coordinating Center.*
[FR Doc. 96-23941 Filed 9-18-96; 8:45 am]

BILLING CODE 4310-05-M

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 52

[Region 2 Docket No. NY23-1-155, FRL-5607-1]

Approval and Promulgation of Implementation Plans; State of New York; Heavy Duty Clean Fuel Fleet Program

AGENCY: Environmental Protection Agency (EPA).

ACTION: Proposed rule.

SUMMARY: The Environmental Protection Agency (EPA) is proposing conditional approval of the State Implementation Plan revision submitted by the State of New York for the purpose of meeting the requirement to submit the heavy duty vehicle portion of the Clean Fuel Fleet program (CFFP) required by the Clean Air Act. This revision will establish and require the implementation of a Clean Fuel Fleet Program applicable to centrally fueled heavy duty vehicle fleets in the New York severe ozone nonattainment area. **DATES:** Comments must be received on or before October 21, 1996.

ADDRESSES: All comments should be addressed to: Ronald Borsellino, Chief, Air Programs Branch, Environmental Protection Agency, Region II Office, 290 Broadway, New York, New York 10007-1866.

Copies of the state submittals are available at the following addresses for inspection during normal business hours:

Environmental Protection Agency,
Region II Office, Air Programs Branch,
290 Broadway, 25th Floor, New York,
New York 10007-1866
New York State Department of
Environmental Conservation, Division
of Air Resources, 50 Wolf Road,
Albany, New York 12233

FOR FURTHER INFORMATION CONTACT:
Michael P. Moltzen, Air Programs
Branch, Environmental Protection
Agency, 290 Broadway, 25th Floor, New
York, New York 10007-1866, (212) 637-
4249.

SUPPLEMENTARY INFORMATION:

I. Background

Section 182(c)(4)(A) of the Clean Air Act requires certain States, including New York, to submit for EPA approval a State Implementation Plan (SIP) revision that includes measures to implement a Clean Fuel Fleet program (CFFP). Under this program, a certain specified percentage of vehicles purchased by fleet operators for covered

fleets must meet emission standards that are more stringent than those that apply to conventional vehicles beginning in model year 1998. Covered fleets are defined as fleets of 10 or more vehicles that are centrally fueled or capable of being centrally fueled. The program applies in the New York portion of the New York-Northern New Jersey-Long Island nonattainment area.

Section 182(c)(4)(B) of the Act allows states to "opt out" of the CFFP by submitting for EPA approval a SIP revision consisting of a program or programs that will result in at least equivalent long term reductions in ozone-producing and toxic air emissions as achieved by the CFFP. The Clean Air Act directs EPA to approve a substitute program if it achieves the long-term emissions reductions equivalent to those that would have been achieved by the CFFP or the portion of the CFFP for which the measure is to be substituted.

New York chose to opt out of the light duty vehicle portion of the CFFP requirements with its May 15, 1994 and August 9, 1994 SIP revisions that transmitted the New York State Code of Rules and Regulations, Part 218, "Emission Standards for Motor Vehicles and Motor Vehicle Engines," the State's low emission vehicle program (LEV). However, the State also chose not to opt out of the heavy duty vehicle portion of the CFFP in the 1994 submissions. A proposed heavy duty vehicle CFFP regulation was included in the May 15, 1994 submittal that was intended by New York to fulfill the heavy duty portion of the required program. EPA took final action in a Federal Register notice dated January 6, 1995 approving the State's LEV program as an adequate light duty vehicle CFFP substitute measure, as permitted by section 182(c)(4) of the Clean Air Act (see 60 FR 2022).

However EPA, in the same notice, disapproved the heavy duty portion of that submittal (the reader is referred to the January 6, 1995 notice for a detailed discussion of the severable nature of the CFFP). At that time the heavy duty CFFP was unadopted by the State. Therefore, pursuant to 40 CFR 52.31(c)(2), EPA found that New York failed to meet one or more of the elements of SIP submission required by the Act, namely that measures must be state-adopted. As a result of the partial disapproval of the SIP, the January 6, 1995 notice initiated the sanction process, mandated by section 179(a)(2) of the Clean Air Act. The Clean Air Act prescribes two mandatory sanctions that the Administrator must impose: (1) A requirement for two-for-one emissions offsets in nonattainment areas for

construction of major new and modified sources, and (2) a cutoff of federal funding for certain highway projects. The first sanction must be imposed eighteen months from the date of the finding that the SIP revision is not approvable, if the deficiency causing the disapproval is not corrected by that time. New York's August 1996 heavy duty Clean Fuel Fleet regulation was submitted to EPA in advance of the first sanction, which was scheduled to take effect on September 7, 1996. In this notice, EPA is proposing conditional approval of the State's heavy duty Clean Fuel Fleet program as satisfying the requirements of the Clean Air Act and correcting the deficiency identified in New York's first CFFP submittal. Elsewhere in today's Federal Register, EPA is also publishing an Interim Final Determination that New York has corrected the deficiency which started the sanctions clocks and which will defer imposition of the sanctions.

II. Program Requirements

Unless a state chooses to opt-out of the CFFP under section 182(c)(4) of the Clean Air Act, section 246 of the Clean Air Act directs a state containing covered areas to revise its SIP to establish a CFFP. The CFFP shall require a specified percentage of all newly acquired vehicles of covered fleets, beginning with model year (MY) 1998 and thereafter, to be Clean Fuel Vehicles (CFVs) and shall require such vehicles to use the fuel on which the vehicle was certified to be a CFV, when operating in the covered area.

III. State Submittal

The State of New York did not choose to opt-out of the heavy duty portion of the CFFP pursuant to section 182(c)(4) of the Clean Air Act and, therefore, submitted as part of its SIP revision on May 15, 1994, a proposed heavy duty CFFP. However, because this portion of the submittal did not include a fully adopted rule establishing a heavy duty CFFP, EPA disapproved that portion of the submittal as required by the Clean Air Act. On August 9, 1996, the State submitted to EPA a letter requesting review of its heavy duty CFFP, that was proposed and emergency adopted in the *New York State Register* on July 24, 1996. In a letter dated August 23, 1996, EPA transmitted comments to New York on its proposed addition to 6 NYCRR of Part 210, "Centrally Fueled Fleets." The State responded to EPA's August 23 letter with a letter dated August 28, 1996, in which New York stated its intent to address EPA's comments prior to fully adopting 6 NYCRR Part 210. Because the State has a rule in place and

has submitted a commitment to make specific revisions to its program, EPA is proposing to conditionally approve the rule submitted on August 9, 1996.

IV. Analysis of State Submittal

EPA has reviewed the State's submittal for consistency with the requirements of EPA regulations. A summary of EPA's analysis is provided below. More detailed support for approval of the State's submittal is contained in a Technical Support Document (TSD), which is available from the Region 2 Office, listed above.

A. Covered Areas

As required by section 246(a)(2) of the Clean Air Act, the SIP revision needs to list those areas where the CFFP will be implemented. In New York, the applicable area defined by section 246(a)(2) is comprised of New York City, Long Island, Westchester and Rockland Counties, and the seven southern-most townships in Orange County. Part 210.1(as) of 6 New York Code of Rules and Regulations (6 NYCRR) defines the covered area to include the following counties: Bronx, Kings, Queens, New York, Richmond, Rockland, Putnam, Westchester, Nassau and Suffolk, and the lower Orange County towns of Blooming Grove, Chester, Highlands, Monroe, Tuxedo, Warwick and Woodbury. The areas covered under 6 NYCRR Part 210.1(as) are the same areas as required by the Clean Air Act.

B. Definitions

Sections 241 (1) to (7) of the Clean Air Act, and 40 CFR 88.302-94, define specific terms that are to be used in the state CFFP regulations. 6 NYCRR Part 210.1 contains definitions of the terms used by New York in the heavy duty CFFP rule. With three minor exceptions, the revision's definitions are consistent with section 241 (1) to (7) of the Clean Air Act as well as 40 CFR 88.302-94. In its August 28, 1996 letter of intent, New York indicated that it would address EPA's comments regarding the following subparts of 6 NYCRR Part 210, based on EPA's August 23, 1996 comments: (g), Capable of being centrally fueled, (y), Financial hardship, and (an), Majority of travel. The first and third of these would allow the State to use methods other than those listed in the Clean Air Act or the CFR to determine which fleets are covered by the CFFP. EPA believes the State has discretion to use other methods to assist in that determination, although those methods would be subject to EPA approval (see 58 FR 64682). The State's 6 NYCRR Part 210 needs to reflect the

dependance of such methods on EPA's approval. Subpart 210.1(y) of 6 NYCRR, defines the term "financial hardship" as it would relate to covered fleet operators and the relative cost of compliance they would incur. While not a Clean Air Act-required CFFP element, EPA does agree that use of such a term would be reasonable in certain situations. If the State chooses to retain this definition in the regulation, it should modify it to be less specific or provide justification for the detail it intends to employ in determining if a covered fleet operator can claim financial hardship for the purpose of being exempted from the CFFP requirements.

C. Covered Fleets

Section 241(5) of the Clean Air Act defines a "covered fleet" as 10 or more motor vehicles that are owned or operated by a single person. Part 210.1(aq) and 210.2 of 6 NYCRR, taken together, identify the vehicles/fleets that are included in New York's heavy duty CFFP, and are consistent with section 241(5) of the Clean Air Act. Section 210.2 of 6 NYCRR correctly identifies federal fleets as among those that would be required to participate in the CFFP if they were determined to be covered. However, subpart (d) of that section imposes federal agencies operating covered fleets to obtain CFV's from original equipment manufacturers (OEM). EPA does not believe that such a requirement is a necessary element of a state's CFFP, as it is not an explicit requirement of section 246 to be included in states' SIP revisions. In its August 28, 1996 letter of intent, New York agreed to address EPA's comment that 6NYCRR Part 210.2 should be amended to eliminate the specific requirement that covered federal fleets comply with the CFFP by purchasing OEMs. Pursuant to section 248 of the Clean Air Act, federal fleets are subject to the requirements of part C of Title II of the Act. Federal fleets in the covered area would be sufficiently subject to the requirements of New York's CFFP, once approved by EPA, in the same manner as privately-owned fleets.

D. Vehicles Classes Covered

Sections 242 and 243 of the Clean Air Act and 40 CFR part 88, subpart C, define the vehicle classes covered by the CFFP. Section 210.1(j) of 6 NYCRR defines the vehicle weight classes covered by the New York heavy duty CFFP. These classes are light duty trucks between 6,000 and 8,500 pounds gross vehicle weight rating (GVWR) and heavy duty trucks between 8,500 pounds and 26,000 pounds. New York's subsections 210.1 (ad), (ae) and (af)

further subdivide the heavy duty vehicle class into light heavy duty vehicles (8,501 to 19,500 pounds), medium heavy duty vehicles (19,501 to 26,000 pounds) and heavy heavy duty vehicles (26,001 pounds and greater). Heavy heavy duty vehicles are not affected by the heavy duty CFFP. The classes of vehicles included in the revision are identical to those set forth in sections 242 and 243 of the Clean Air Act and 40 CFR part 88, subpart C, as they apply to the two weight classes regulated in New York's CFFP.

E. Clean-Fuel Vehicles (CFVs)

Section 241(7) of the Clean Air Act defines a CFV to mean a vehicle in a class or category of vehicles that has been certified to meet, for any model year, the applicable CFV standards. 40 CFR 88.104-94 and 40 CFR 88.306-94 establish three categories of increasingly stringent CFV standards, which are referred to as low-emission vehicle (LEV) standards, ultra low-emission vehicle (ULEV) standards, and zero-emission vehicle (ZEV) standards. In addition, a vehicle certified by the EPA to meet the inherently low-emission vehicle (ILEV) standard, found in 40 CFR 88.311-93, is also considered a CFV. Section 210.1(j) of 6 NYCRR also defines a CFV as a vehicle which has been certified to meet, for any model year, a set of emission standards, contained in Tables 1 through 6 of the New York CFFP rule. The standards specified in the rule are the same as those established in 40 CFR 88.104-94, 40 CFR 88.311-93, and 40 CFR 88.306-944, with one exception: in Table 6, Emission standards for heavy-duty trucks, the ULEV formaldehyde (HCHO) emission standard reads 0.05 grams per brake horsepower-hour(g/bhp-h); it should read 0.025 g/bhp-h (see 40 CFR 88.105-94). In its August 28, 1996 letter of intent, New York agreed to address this concern.

F. Percentage Requirements

Section 246(b) of the Clean Air Act establishes phase-in requirements for covered fleets applicable to new vehicle acquisitions. Section 210.3 of 6 NYCRR contains the CFV purchase requirements for the New York's heavy duty CFFP. The phase-in schedule in New York's rule is identical to the schedule in the Clean Air Act. Sections 210.4 (a)(2) and (b)(3) of 6NYCRR are similar to Clean Air Act section 246(c)(1), which allows for an effective delay in the CFFP phase-in schedule upon an EPA determination that clean fuel vehicles are not reasonably available. In its August 28, 1996 letter of intent, New York agreed to address EPA's comment regarding the

need to modify its CFFP phase-in schedule delay provision to make it necessarily more consistent with Clean Air Act section 246(c)(1) and EPA policy. Section 246(c)(1) allows for an effective delay in the CFFP phase-in schedule for clean fuel vehicle purchases until one model year after vehicles of those classes which meet the applicable clean fuel vehicle emission standards are offered for sale in California; section 246 limits such a delay to last no longer than Model Year 2001 vehicles.

G. Credit Program

Section 246(f) of the Clean Air Act and 40 CFR 88.304-94 require the State to implement a credit program as part of the CFFP. Briefly, the Clean Fuel Fleet (CFF) credit program establishes a market-based mechanism that allows fleet owners some flexibility in complying with the CFF purchase requirement. Fleet owners may meet the purchase requirements by trading emission reduction credits earned in any the following ways: (1) By the purchase of more CFVs than the minimum required by a CFFP; (2) by the purchase of CFVs which meet more stringent emission standards than the minimum required by the CFFP; (3) by the purchase of CFVs otherwise exempt from the CFFP; and (4) by the purchase of CFVs before MY 1998. The credits generated may be used by a covered fleet operator to satisfy the purchase requirements of a CFFP or may be traded by one covered fleet operator to another, provided the credits were generated and used in, and both operators are located in, the same nonattainment area. Certain restrictions on the trading of the credits between classes must be observed. The credits do not depreciate with time and are to be freely traded without interference by the state.

Section 210.5 of 6 NYCRR establishes a credit program that provides credits for operators who: (1) Acquire more CFVs than the New York heavy duty CFFP requires in any year, (2) acquire CFVs which meet more stringent emission standards than the minimum requirements, (3) acquire CFVs in exempted vehicle categories, or (4) acquire CFVs prior to the effective date of New York's CFFP regulation. These eligibility requirements are consistent with section 246(f) of the Clean Air Act. Section 210.5 of 6NYCRR includes Tables 8 and 9, which set forth the amount of credit granted for the various ways of meeting the purchasing requirements explained above. These tables are identical to Tables C94-1.1 and C94-4.1 of 40 CFR part 88, subpart

C. However, in Table 7 of 6NYCRR Part 210.4, Emission standards for determining credit weighting, the LEV combined emission standard (NMHC+NO_x) reads 3.8 g/bhp-h; it should read 3.5 g/bhp-h (see Table 3.2, 58 FR 11888, 3/1/93). In its August 28, 1996 letter of intent, New York agreed to address this concern.

The SIP revision requires credits for vehicles in separate weight classes to be kept separate. Trading of credits between heavy duty vehicle (HDV) subclasses in a downward direction only is permitted. Trading is not allowed between vehicles greater than 8,500 pounds GVWR and vehicles between 6,000 pound GVWR up to and including 8,500 pound GVWR weight classes in an upward direction. These limitations and restrictions are consistent with those specified in section 246(f)(2) of the Clean Air Act.

H. Fuel Use

40 CFR 88.304-94(b)(3) requires that the fuel on which a dual-fuel or flexible-fuel CFV was certified to be used at all times in such a vehicle when it is operated in the covered area. Section 210.5(b)(3) of 6 NYCRR requires that for any dual-fuel/bi-fuel or flexible-fuel vehicle to be considered a CFV (and therefore capable of generating credit), the vehicle must be operated in the program area on the fuel on which it was certified as a CFV. This limitation is consistent with 40 CFR 88.304-94(b)(3).

I. Fuel Availability

Section 246(e) of the Clean Air Act requires the SIP revision to require fuel providers to make clean alternative fuel available to the covered fleets at central locations. Section 210.7 of 6 NYCRR requires fuel providers to make clean fuels available to covered fleet operators at central locations, similarly to Clean Air Act section 246(e). In its August 28, 1996 letter of intent, New York agreed to address EPA's comment that its heavy duty CFFP should be amended to relieve affected fuel providers, and the State, of unnecessary administrative burden by simplifying 6NYCRR Part 210.7 to make it more consistent with Clean Air Act section 246(e). Such a modification would eliminate the need for the State to include a variance provision in its Fuel Provider Requirements section; such a provision, if ultimately included, would require EPA approval prior to State granting of any applicable waivers, variances or extensions.

J. Consultation

Section 246(a)(4) of the Clean Air Act requires that the SIP revision must be developed in consultation with fleet operators, vehicle manufacturers, fuel producers, distributors of motor vehicle fuel, and other interested parties, taking into consideration operational range, specialty uses, vehicle and fuel availability, costs, safety, resale values, and other relevant factors. In its August 28, 1996 letter of intent, New York agreed to address EPA's comment that it include documentation that adequate consultation was used in developing its heavy duty CFFP regulation. The documentation should indicate that their consultation took into consideration the factors specified in section 246(a)(4) of the Clean Air Act.

K. Recordkeeping and Reporting

Although not specifically required by section 246 of the Clean Air Act or 40 CFR 88.304-94, EPA believes that certain recordkeeping and reporting requirements to be imposed on fleet operators participating in the CFFP are a necessarily prudent component of a state's CFFP regulation.

New York's Part 210 contains recordkeeping and reporting requirements for covered fleet owners and operators in section 210.6 of 6 NYCRR which are adequate to ensure program compliance. This section requires each covered fleet owner to submit annual compliance certification which indicates the number of covered fleet vehicles by weight class, the number of new covered fleet vehicles by weight class, the number of new CFVs purchased by weight class and emission standard (LEV, ULEV, ZEV), the current model year credit balance, and the cumulative credit balance. New York's heavy duty CFFP regulation also requires fleet owners to report vehicle number and type projections needed to comply with the phase-in schedule. Fleet fuel needs, including type and quantity of fuel required on an annual basis, is also a reporting requirement of New York's regulation. If the required fuel is unavailable, the regulation requires fleet owners to request the State to make it available.

The regulation ensures that New York State Department of Environmental Conservation (NYSDEC) will, on receipt of each fleet owner certification, determine completeness/incompleteness and take appropriate action. In addition, NYSDEC is required to verify the existence of credits prior to any credit transactions and to approve of all credit transactions prior to transaction commitment. The State

imposes these same reporting requirements on non-covered fleet owners who wish to generate credits.

L. Enforcement

EPA believes the State should provide adequate enforcement to ensure that covered fleet owners comply with the requirements of the regulations adopted for implementation of the heavy duty CFFP. In addition to enforcement authorities applicable to the State program, the State also provides for enforcement in section 210.6 of the heavy duty CFFP reporting requirements through the authority of New York's Penal Law regarding certification requirements, including punishment for submission of false certification statements.

M. Transportation Control Measure Exemptions

40 CFR 88.307-94(a) requires states to exempt any CFV, required by law to participate in a CFFP, from temporal-based (e.g., time-of-day or day-of-week) transportation control measures (TCM) existing for air quality reasons as long as the exemption does not create a clear and direct safety hazard. In the case of high occupancy vehicle (HOV) lanes, this exemption only applies to CFVs that are certified to be ILEVs pursuant to 40 CFR 88.313-93. Section 210.8 exempts CFVs from temporal based TCMs as long as the CFV is in compliance with applicable emission standards. In addition, section 210.8(b) exempts ILEVs from TCM restrictions that primarily depend on a non-temporal element, such as HOV restrictions. These TCM exemptions are consistent with those provided for in 40 CFR 88.307-94 and 40 CFR 88.313-93.

V. Action

EPA is proposing conditional approval of New York's heavy duty CFFP SIP regulation as fulfilling requirements under the Clean Air Act. If the conditions are not met as required by the Clean Air Act, such conditional approval converts to a disapproval. If the State meets its commitments before EPA takes final action on this notice of proposed rulemaking, EPA will fully approve the SIP revision as meeting the requirements of the Clean Air Act without further notice.

Conclusion

EPA has reviewed the New York heavy duty CFFP regulation, submitted to the EPA as described above. EPA proposes to find that the State's regulation represents an acceptable approach to the heavy duty CFFP requirements and that it meets all the

criteria required for approvability provided the State meets the conditions described herein. EPA will evaluate all comments received on this action and the Interim Final Determination action. Assuming no substantial changes are made other than those areas cited in this document when New York adopts and formally submits its heavy duty CFFP to EPA and EPA receives no substantive negative comments, EPA will publish a final rulemaking approving or conditionally approving the CFFP regulation which will remove the need to impose sanctions on the State regarding this Clean Air Act requirement at this time.

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

Administrative Requirements

Executive Order 12866

This action has been classified as a Table 3 action for signature by the Regional Administrator under the procedures published in the Federal Register on January 19, 1989 (54 FR 2214-2225), as revised by a July 10, 1995 memorandum from Mary Nichols, Assistant Administrator for Air and Radiation. The Office of Management and Budget (OMB) has exempted this regulatory action from E.O. 12866 review.

Regulatory Flexibility Act

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

SIP approvals under sections 110 and 301, and subchapter I, part D of the Clean Air Act do not create any new requirements but simply approve requirements that the State is already imposing. Therefore, because the federal SIP approval does not impose any new requirements, I certify that it does not have a significant impact on any small entities affected. Moreover, due to the

nature of the Federal-State relationship under the Clean Air Act, preparation of a flexibility analysis would constitute federal inquiry into the economic reasonableness of state action. The Clean Air Act forbids EPA to base its actions concerning SIPs on such grounds. *Union Electric Co. v. U.S. EPA*, 427 U.S. 246, 255-66 (1976); 42 U.S.C. 7410(a)(2).

Unfunded Mandates

Under section 202 of the Unfunded Mandates Reform Act of 1995 ("Unfunded Mandates Act"), signed into law on March 22, 1995, EPA must prepare a budgetary impact statement to accompany any proposed or final rule that includes a federal mandate that may result in estimated annual costs to State, local, or tribal governments in the aggregate; or to private sector, of \$100 million or more. Under section 205, EPA must select the most cost-effective and least burdensome alternative that achieves the objectives of the rule and is consistent with statutory requirements. Section 203 requires EPA to establish a plan for informing and advising any small governments that may be significantly or uniquely impacted by the rule.

EPA has determined that the approval action proposed does not include a federal mandate that may result in estimated annual costs of \$100 million or more to either State, local, or tribal governments in the aggregate, or to the private sector. This federal action approves pre-existing requirements under State or local law, and imposes no new federal requirements. Accordingly, no additional costs to State, local, or tribal governments, or to the private sector, result from this action.

The Administrator's decision to approve or disapprove the SIP revision will be based on whether it meets the requirements of section 110(a)(2)(A)-(K) and part D of the Clean Air Act, as amended, and EPA regulations in 40 CFR Part 51.

List of Subjects in 40 CFR Part 52

Environmental protection, Air pollution control, Carbon monoxide, Hydrocarbons, Incorporation by reference, Nitrogen dioxide, Ozone, Reporting and recordkeeping requirements, Volatile organic compounds.

Authority: 42 U.S.C. 7401-7671q.

Dated: August 29, 1996.

Jeanne M. Fox,

Regional Administrator.

[FR Doc. 96-23818 Filed 9-18-96; 8:45 am]

BILLING CODE 6560-50-P

40 CFR Part 70

[AD-FL-5611-5]

Clean Air Act Interim Approval of Operating Permits Program; Delegation of Sections 111 and 112 Standards; State of Maine

AGENCY: Environmental Protection Agency (EPA).

ACTION: Proposed rule.

SUMMARY: The EPA proposes source category-limited interim approval of the Operating Permits Program submitted by Maine for the purpose of complying with Federal requirements for an approvable State program to issue operating permits to all major stationary sources, and to certain other sources. EPA is also proposing to approve Maine's authority to implement hazardous air pollutant requirements. **DATES:** Comments on this proposed action must be received in writing by October 21, 1996.

ADDRESSES: Comments should be addressed to Donald Dahl, Air Permits, CAP, U.S. Environmental Protection Agency, Region I, JFK Federal Building, Boston, MA 02203-2211. Copies of the State's submittal and other supporting information used in developing the proposed interim approval are available for inspection during normal business hours at the following location: U.S. Environmental Protection Agency, Region 1, One Congress Street, 11th floor, Boston, MA 02203-2211.

FOR FURTHER INFORMATION CONTACT: Donald Dahl, CAP, U.S. Environmental Protection Agency, Region 1, JFK Federal Building, Boston, MA 02203-2211, (617) 565-4298.

I. Background and Purpose

A. Introduction

As required under title V of the 1990 Clean Air Act Amendments (sections 501-507 of the Clean Air Act ("the Act")), EPA has promulgated rules which define the minimum elements of an approvable State operating permits program and the corresponding standards and procedures by which the EPA will approve, oversee, and withdraw approval of State operating permits programs (see 57 FR 32250 (July 21, 1992)). These rules are codified at 40 Code of Federal Regulations (CFR) Part 70. Title V requires States to develop, and submit to EPA, programs for issuing these operating permits to all major stationary sources and to certain other sources.

The Act requires that States develop and submit these programs to EPA by November 15, 1993, and that EPA act to

approve or disapprove each program within 1 year after receiving the submittal. The EPA's program review occurs pursuant to section 502 of the Act and the Part 70 regulations, which together outline criteria for approval or disapproval. Where a program substantially, but not fully, meets the requirements of Part 70, EPA may grant the program interim approval. Additionally, where a state can demonstrate to the satisfaction of EPA that reasons exist to justify granting a source category-limited interim approval, EPA may so exercise its authority. A program with a source category-limited interim approval is one that substantially meets the requirements for Part 70 and that applies to at least 60% of all affected sources which account for 80% of the total emissions in the state. If EPA has not fully approved a program by 2 years after the November 15, 1993 date, or by the end of an interim program, it must establish and implement a Federal program.

B. Federal Oversight and Sanctions

If EPA were to finalize this proposed interim approval, it would extend for two years following the effective date of final interim approval. During the interim approval period, the State of Maine would be protected from sanctions, and EPA would not be obligated to promulgate, administer and enforce a Federal permits program for the State of Maine. Permits issued under a program with interim approval have full standing with respect to Part 70, and the 1-year time period for submittal of permit applications by subject sources begins upon the effective date of interim approval, as does the 3-year time period for processing the initial permit applications except for source category-limited interim approval.¹

Following final interim approval, if the State of Maine failed to submit a complete corrective program for full approval by the date 6 months before expiration of the interim approval, EPA would start an 18-month clock for mandatory sanctions. If the State of Maine then failed to submit a corrective program that EPA found complete before the expiration of that 18-month period, EPA would apply sanctions as required by section 502(d)(2) of the Act, which would remain in effect until EPA determined that the State of Maine had corrected the deficiency by submitting a complete corrective program. If, six

months after application of the first sanction, the State of Maine still has not submitted a corrective program that EPA finds complete, a second sanction will be required.

If, following final interim approval, EPA were to disapprove the State of Maine's complete corrective program, EPA would be required under section 502(d)(2) to apply sanctions on the date 18 months after the effective date of the disapproval, unless prior to that date the State of Maine had submitted a revised program and EPA had determined that it corrected the deficiencies that prompted the disapproval. If, six months after EPA applies the first sanction, the State of Maine has not submitted a revised program that EPA has determined corrected the deficiencies that prompted disapproval, a second sanction will be required.

Moreover, if EPA has not granted full approval to the State of Maine's program by the expiration of an interim approval and that expiration occurs after November 15, 1995, EPA must promulgate, administer and enforce a Federal permits program for the State of Maine upon interim approval expiration.

II. Proposed Action and Implications

A. Analysis of State Submission

The analysis contained in this document focuses on specific elements of Maine's title V operating permits program that must be corrected to meet the minimum requirements of 40 CFR Part 70. The full program submittal, technical support document (TSD), dated July 5, 1996 entitled "Technical Support Document—Maine Operating Permits Program," which contains a detailed analysis of the submittal, and other relevant materials are available for inspection as part of the public docket. The docket may be viewed during regular business hours at the address listed above.

1. Title V program support materials. Maine's title V program was submitted by the State on October 23, 1995 (PROGRAM). The submittal was found to be administratively complete on December 29, 1995. The PROGRAM consisted of a Governor's letter, program description, Attorney General's legal opinion, license regulations and enabling legislation, program documentation, and a detailed license fee demonstration. On June 24, 1996, Maine submitted a supplement to their PROGRAM, which included a supplemental opinion from the Attorney General's Office and a clarification from DEP on several aspects of the PROGRAM.

2. Title V operating permit regulations and implementation. Maine's regulations implementing Part 70 include Department of Environmental Protection, Bureau of Air Quality Control Regulation, Chapters 100 and 140.² The Maine PROGRAM, including the operating license regulations, substantially meets the requirements of 40 CFR Part 70, including §§ 70.2 and 70.3 with respect to applicability, §§ 70.4, 70.5 and 70.6 with respect to permit content and operational flexibility, §§ 70.7 and 70.8 with respect to public participation and review by affected states and EPA, and § 70.11 with respect to requirements for enforcement authority. Although the regulations substantially meet Part 70 requirements, there are program deficiencies that are outlined in section II.B. below as Interim Approval issues. Those Interim Approval issues are more fully discussed in the TSD. The "Issues" section of the TSD also contains a detailed discussion of elements of Part 70 that are not explicitly contained in Maine's program regulations, but which are satisfied by other elements of Maine's program submittal or other Maine State law. Also discussed in the TSD are certain elements of Maine's title V regulation that are in need of a legal interpretation and which EPA is interpreting to be consistent with Part 70 with the understanding that Maine shares such interpretation. Those elements include: (1) What constitutes an increase of a regulated pollutant in the definition of "modification or modified source;" (2) license modification procedures when replacing pollution control equipment; (3) the process for adjusting test methods; (4) the due date for license renewal applications; (5) what types of changes are allowed to occur off permit; (6) State limitations on emission trading under operational flexibility; (7) how a source loses its application shield for failure to submit additional information; (8) the enforcement consequences for a source operating using a general permit for which it does not qualify; and (9) the liability of the original licensees until DEP approves a license transfer and the timing of applications for license transfers. EPA understands that Maine will implement its program consistent with EPA's interpretations, and will base this interim approval on these

² The DEP regulations use the term "license" where EPA's regulations use the term "permit." In an attempt to be consistent with the underlying regulations, this document will generally use the term "license" when describing the state regulation and the term "permit" when describing the federal regulation.

¹ Note that states may require applications to be submitted earlier than required under section 503(c). See Chapter 140, Appendix C.3. of Maine's rules.

interpretations unless Maine comments to the contrary.

Variances. Pursuant to 38 M.R.S.A. § 587 the Maine DEP has the authority to issue a variance under certain circumstances from air pollution control requirements imposed by State law. Additionally pursuant to 38 M.R.S.A. §§ 590(3) and (6) the DEP has authority under state law to include in an air license compliance schedules up to 24 months and to grant allowances for excess emissions during cold start-ups and planned shutdowns. Each of these authorities could be interpreted to provide for variances under state law from the obligation to comply with air pollution control requirements that correspond to federal applicable requirements in the Part 70 permit. The EPA regards Maine's variance provisions as wholly external to the program submitted for approval under Part 70 and consequently is proposing to take no action on these provisions of State law. The EPA has no authority to approve provisions of State law that are inconsistent with the Act. The EPA does not recognize the ability of a permitting authority to grant relief from the duty to comply with a federally enforceable Part 70 permit, except where such relief is granted through procedures allowed by Part 70. A Part 70 permit may be issued or revised (consistent with Part 70 procedures), to incorporate those terms of a variance that are consistent with applicable requirements. A Part 70 permit may also incorporate, via Part 70 permit issuance or revision procedures, the schedule of compliance set forth in a variance. However, EPA reserves the right to pursue enforcement of applicable requirements notwithstanding the existence of a compliance schedule in a DEP license. This is consistent with 40 CFR 70.5(c)(8)(iii)(C), which states that a schedule of compliance "shall be supplemental to, and shall not sanction noncompliance with, the applicable requirements on which it is based." Additionally, the Maine Attorney General's Opinion specifically addresses these variance provisions and clarifies that were DEP to grant a variance and seek to modify the operating license to incorporate the variance as a Part 70 permit term, EPA would have the opportunity to object if the variance were not in compliance with the applicable requirements of the Act. See Legal Opinion of Andrew Ketterer, Maine Attorney General, November 13, 1995, at pages 3-4.

3. Permit fee demonstration. Section 502(B)(3) of the Act requires that each permitting authority collect fees sufficient to cover all reasonable direct

and indirect costs required to develop and administer its title V operating permit program. Each title V program submittal must contain either a detailed demonstration of fee adequacy or a demonstration that the fees collected exceed \$25 per ton of actual emissions per year, adjusted from the August, 1989 consumer price index ("CPI").

As part of its PROGRAM, Maine submitted a detailed fee demonstration. Maine has demonstrated that PROGRAM costs will be \$1.7 million dollars per year and that the State will collect 2.1 million dollars from title V sources. EPA has reviewed Maine's fee demonstration and believes that DEP has made reasonable assumptions concerning permit processing costs, license oversight, and resource demands to support the program. DEP has specifically enumerated its expected fee revenues from Part 70 sources in the State to support its income projections. Therefore, Maine has demonstrated that the State will collect sufficient permit fees to meet EPA requirements. For more information, see the detailed fee demonstration of Maine's title V Program in the docket supporting this action.

4. Provisions implementing the requirements of other titles of the act. a. Authority and/or commitments for section 112 implementation. Maine has demonstrated in its title V program submittal adequate legal authority to implement and enforce all section 112 requirements through the title V permit. This legal authority is contained in Maine's enabling legislation, regulatory provisions defining "applicable requirements," and the requirement that a title V permit must incorporate all applicable requirements. EPA has determined that this legal authority is sufficient to allow Maine to issue permits that assure compliance with all section 112 requirements and to carry out all section 112 activities. In addition, given Maine's commitments regarding implementation of the State's title V program, EPA has determined that the State will issue permits that assure compliance with all section 112 requirements, and will carry out all section 112 activities. For further discussion of this subject, please refer to the April 13, 1993 guidance memorandum titled "Title V Program Approval Criteria for Section 112 Activities," signed by John Seitz, Director of the Office of Air Quality Planning and Standards.

b. Implementation of 112(g) upon program approval. On February 14, 1995, EPA published an interpretive notice (see 60 FR 8333) that postpones the effective date of section 112(g) until

after EPA has promulgated a rule addressing the requirements of that provision. The section 112(g) interpretive notice explains that EPA is still considering whether the effective date of section 112(g) should be delayed beyond the date of promulgation of the Federal rule so as to allow States time to adopt rules implementing the Federal rule, and that EPA will provide for any such additional delay in the final section 112(g) rulemaking. Unless and until EPA provides for such an additional postponement of the effective date of section 112(g), Maine must be able to implement section 112(g) during the period between promulgation of the Federal section 112(g) rule and adoption of implementing State regulations for section 112(g) requirements. EPA believes that Maine can utilize the provisions found in Section 140.6 governing the licensing of new or reconstructed HAP sources to serve as a procedural vehicle for implementing the section 112(g) rule and making these requirements Federally enforceable between promulgation of the Federal section 112(g) rule and adoption of implementing State regulations for section 112(g). Maine has generally patterned these provisions on EPA's most recent proposals for implementing section 112(g) of the Act. For this reason, EPA is proposing to approve Maine's preconstruction permitting program found in Section 140.6 under the authority of title V and Part 70 solely for the purpose of implementing section 112(g) during the transition period between title V approval and adoption of a State rule implementing EPA's section 112(g) regulations.

Since the approval would be for the single purpose of providing a mechanism to implement section 112(g) during the transition period, the approval would be without effect if EPA decides in the final section 112(g) rule that sources are not subject to the requirements of the rule until State regulations are adopted and Maine's Section 140.6 needs to be revised to accord with EPA's final section 112(g) rule. Also, since the approval would be for the limited purpose of allowing the State sufficient time to adopt regulations, EPA proposes to limit the duration of the approval to 18 months following promulgation by EPA of its section 112(g) rule. Finally, since Maine has already adopted program regulations imposing MACT on the types of changes addressed under section 112(g), Maine may be in a position to fully implement section 112(g) immediately upon final promulgation of section 112(g) rule,

without further modification of Chapter 140, if Maine's current regulation corresponds to EPA's final 112(g) rule.

c. Program for straight delegation of sections 111 and 112 standards. The Part 70 requirements for approval of a State operating permit program, specified in 40 CFR 70.4(b), encompass section 112(l)(5) requirements for approval of a program for delegation of the hazardous air pollutant program General Provisions, Subpart A, of 40 CFR Parts 61 and 63, promulgated under section 112 of the Act, and MACT standards as promulgated by EPA as they apply to Part 70 sources. Section 112(l)(5) requires that a State's program contain adequate legal authorities, adequate resources for implementation, and an expeditious compliance schedule, which are also requirements under Part 70. The Maine Department of Environmental Protection provided a supplemental request on June 24, 1996, for delegation of non-part 70 sources and along with the PROGRAM submitted information regarding adequate legal authorities, adequate resources for implementation, and an expeditious compliance schedule. Therefore, EPA is also proposing to grant approval under section 112(l)(5) and 40 CFR § 63.91 of Maine's mechanism for receiving delegation for both major and area sources of section 112 standards that are unchanged from the Federal standards as promulgated (straight delegation) and section 112 infrastructure programs such as those programs authorized under sections 112(i)(5), 112(g), 112(j), and 112(r). In addition, EPA is reconfirming the delegation of 40 CFR Parts 60 and 61 standards currently delegated to Maine as indicated in Table I.³ The original delegation agreement between EPA and Maine was set forth in a letter to Henry E. Warren on September 30, 1982. For future delegation of Part 60 standards Maine will use the process as outlined in letter from James Brooks to Gerald C. Potamis, dated June 24, 1996. Please note EPA has withdrawn delegation of the following NESHAPs at Maine's request: Subpart L "Benzene-Coke By Product Recovery," Subpart Q "Radon-DOE," Subpart Y "Benzene Storage Vessels," Subpart T "Radon Disposal of Uranium," Subpart BB "Benzene Transfer Operations," and Subpart FF "Benzene Waste Operations." Maine requested the withdrawal because there currently are no applicable sources in the State.

EPA is proposing to delegate all applicable future 40 CFR Part 61 and 63

³ Please note that federal rulemaking is not required for delegation of section 111 standards.

standards pursuant to the following mechanism unless otherwise requested by Maine.⁴ Maine will accept future delegation of standards using incorporation by reference. The details of this delegation mechanism will be set forth in a future Memorandum of Agreement between EPA and Maine. This program will apply to both existing and future standards for both major and area sources. In addition, Maine has indicated that for some section 112 standards it may choose to submit a more stringent State rule or program for EPA approval under section 112(l). EPA will need to take public notice and comment for any section 112 delegation other than straight delegation.

d. Implementation of Title IV of the Act. Maine makes a commitment in Attachment H of its Program submittal to revise its regulations as necessary in order to implement the Acid Rain provisions.

e. New source review requirements. Maine's program submittal included definitions under Chapter 100 and licensing requirements under Chapters 115 and 140 designed to implement preconstruction new source review (NSR) permitting requirements for new and modified major and minor sources of air pollutants. This action under Title V of the Act and 40 CFR Part 70 is not an approval of these NSR provisions into the Maine State implementation plan (SIP), nor does EPA take any position under the Act in this action on the adequacy of Chapters 100, 115, and 140 to the extent they modify NSR requirements currently approved into the SIP. EPA will act on these provisions under section 110 of the Act after Maine requests EPA to approve them into the SIP.⁵

⁴ The radionuclide National Emission Standards for Hazardous Air Pollutants (NESHAP) is a section 112 regulation and, therefore, also an applicable requirement under the State operating permits program for part 70 sources. There is not yet a Federal definition of "major source" for radionuclide sources. Therefore, until a major source definition for radionuclide is promulgated, no source would be a major section 112 source solely due to its radionuclide emissions. However, a radionuclide source may, in the interim, be a major source under Part 70 for another reason, thus requiring a Part 70 permit. The EPA will work with the State in the development of its radionuclide program to ensure that permits are issued in a timely manner.

⁵ Note that the Attorney General's opinion at several points appears to assume that EPA will be approving all of Maine's licensing program into the SIP. See Attorney General's Opinion at pages 3, 10, 11, and 19. As discussed further in the TSD, DEP has not requested EPA to approve all of these license requirements in the SIP, and some licensing provisions that relate primarily to operating requirements as opposed to new or modified sources may not be appropriate for approval into the SIP.

B. Proposed Action

The scope of Maine's Part 70 program covers all Part 70 sources within the state of Maine, except any sources of air pollution over which an Indian Tribe has jurisdiction. See, e.g., 59 FR 55813, 55815-18 (Nov. 9, 1994). The term "Indian Tribe" is defined under the Act as "any Indian tribe, band, nation, or other organized group or community, including any Alaska Native village, which is Federally recognized as eligible for the special programs and services provided by the United States to Indians because of their status as Indians." See section 302(r) of the CAA; see also 59 FR 43956, 43962 (Aug. 25, 1994); 58 FR 54364 (Oct. 21, 1993). EPA is not taking any position in this action on whether any Federally recognized tribe in Maine has jurisdiction over sources of air pollution.

Requirements for approval of an operating permit program, specified in 40 CFR 70.4(b), encompass section 112(l)(5) requirements for approval of a program for delegation of section 112 standards as promulgated by EPA as they apply to Part 70 sources. Maine has also demonstrated it has the authority and capacity to implement and enforce section 112 standards for non-Part 70 sources. As discussed above, Maine's submittal meets the requirements for EPA approval of delegation of section 112 standards. Therefore, EPA is also proposing to grant approval under section 112(l)(5) and 40 CFR § 63.91 of the State's mechanism for receiving delegation of section 112 standards that are unchanged from Federal standards as promulgated. Maine will be incorporating by reference section 112 standards for both major and area sources.

The EPA is proposing to grant source category-limited interim approval to the operating permits program submitted by Maine on October 24, 1995. Maine has proposed to permit 74% of its Title V sources which emit 89% of the total emissions of all Title V sources within the first three years of program approval. If promulgated, the State must make the following changes in its rule to receive full approval:

1. Maine does not allow for "section 502(b)(10)" changes at a title V source. See 40 CFR § 70.4(b)(12)(i). In an August 29, 1994 (59 FR 44572) rulemaking proposal, EPA proposed to eliminate section 502(b)(10) changes as a mechanism for implementing operational flexibility. However, the Agency solicited comment on the rationale for this proposed elimination. If EPA should conclude, during a final rulemaking, that section 502(b)(10)

changes are no longer required as a mechanism for operational flexibility, then Maine will not be required to address 502(b)(10) changes in its rule.

2. Maine's rules do not require the DEP to process a "Part 70 Minor Change" within 90 days of receiving an application. See 40 CFR § 70.7(e)(2)(iv). A "Part 70 Minor Change" is similar to a minor permit modification under Part 70, except for the exclusion of construction projects which are excluded in the State's rule. A "Part 70 Minor Change," as defined by the State, includes a provision allowing facilities to implement a proposed permit modification upon application and prior to DEP's review. Maine must revise its program regulations to require that DEP process all Part 70 minor changes within 90 days of receiving the application to avoid the possibility of a source operating indefinitely based on an unreviewed proposed permit modification.

3. Section 140.7 contains provisions for a "Part 70 Minor Revisions." This permitting track allows Maine to process emission increases under 4 tons per year of one regulated pollutant or under 8 tons per year total for all regulated pollutants without EPA, affected state, or public review. This provision is inconsistent with the most nearly analogous permit modification requirements in EPA's current rule, which require minor permit modifications to receive at least affected state and EPA review. On August 31, 1995, EPA proposed changes in the Part 70 permit modification procedures that might accommodate such changes. (See 60 FR 45530, 45538). If EPA amends Part 70 to allow for such changes, then Maine may not need to revise this provision depending on whether netting transactions can qualify under the 4 and 8 ton per year thresholds. Under EPA's current rule, however, Maine must revise its program regulations to make Part 70 Minor Revisions consistent with EPA's minor permit modification process at 40 CFR § 70.7(e)(2).

4. In Section 140.5(B)(6)(j), Maine allows a source under certain circumstances to continue to emit up to the previously licensed level for up to 24 months after the license is amended, potentially not in compliance with applicable requirements. Maine must revise its program regulations to limit this section to requirements enforceable only by the State, as provided in Section 140.5(A)(6)(m). As discussed above in connection with Maine's statutory variance authorities, EPA is required to object to any permit terms not in compliance with applicable requirements, including any such terms

incorporated into a license, pursuant to Section 140.4(B)(6)(j), being issued as a title V permit.

5. Appendix B of Chapter 140 contains a list of activities which the State plans on treating as insignificant. Section B(1) of this Appendix allows for any activity with emissions less than 1 ton per year of any pollutant or 4 tons per year of all pollutants to be treated as insignificant. In addition, Section B(2) incorporates emission level thresholds for HAPs which are equal to or in many cases far less than one ton per year. It is possible to interpret these two sections to allow an activity emitting one ton per year of even a very potent HAP to be treated as insignificant under Section B(1), even if it emits in excess of any lower threshold set under Section B(2). EPA understands this is a result DEP did not intend. Moreover, Sections B(1) and B(2) could be read to allow a permittee to treat a combination of up to four tons per year of HAPs to be treated as insignificant, as long as no one HAP exceeded the thresholds in Section B(2). EPA has required insignificant activities to emit no more than one ton per year of HAPs. DEP must revise Appendix B to limit insignificant HAP emissions to one ton per year for single HAPs and one ton per year for a combination of HAPs.

III. Administrative Requirements

A. Request for Public Comments

The EPA is requesting comments on all aspects of this proposed interim approval. Copies of the State's submittal and other information relied upon for the proposed interim approval are contained in a docket maintained at the EPA Regional Office. The docket is an organized and complete file of all the information submitted to, or otherwise considered by, EPA in the development of this proposed interim approval. The principal purposes of the docket are:

- (1) to allow interested parties a means to identify and locate documents so that they can effectively participate in the approval process, and
- (2) to serve as the administrative record in the event of judicial review. The EPA will consider any comments received by October 21, 1996.

B. Executive Order 12866

The Office of Management and Budget has exempted this action from Executive Order 12866 review.

C. Regulatory Flexibility Act

The EPA's actions under section 502 of the Act do not create any new requirements, but simply address operating permits programs submitted

to satisfy the requirements of 40 CFR Part 70. Because this action does not impose any new requirements, it does not have a significant impact on a substantial number of small entities.

D. Unfunded Mandates

Under Section 202 of the Unfunded Mandates Reform Act of 1995 ("Unfunded Mandates Act"), signed into law on March 22, 1995, EPA must prepare a budgetary impact statement to accompany any proposed or final rule that includes a Federal mandate that may result in estimated costs to State, local, or tribal governments in the aggregate; or to the private sector, of \$100 million or more. Under Section 205, EPA must select the most cost-effective and least burdensome alternative that achieves the objectives of the rule and is consistent with statutory requirements. Section 203 requires EPA to establish a plan for informing and advising any small governments that may be significantly or uniquely impacted by the rule.

EPA has determined that the action promulgated today does not include a Federal mandate that may result in estimated costs of \$100 million or more to either State, local, or tribal governments in the aggregate, or to the private sector. This Federal action approves preexisting requirements under State or local law, and imposes no new Federal requirements. Accordingly, no additional costs to State, local, or tribal governments, or to the private sector, result from this action.

List of Subjects in 40 CFR Part 70

Administrative practice and procedure, Air pollution control, Intergovernmental relations, Operating permits, and Reporting and recordkeeping requirements.

Authority: 42 U.S.C. 7401-7671q.

Dated: September 8, 1996.

John P. DeVillars,

Regional Administrator, Region I.

Table I to the preamble—Reconfirmation of Part 60 and 61 Delegations

	Part 60 Subpart Categories
D	Fossil-Fuel Fired Steam Generators
Da	Electric Utility Steam Generators
Db	Industrial-Commercial-Institutional Steam Generating Units
Dc	Small Industrial-Commercial-Institutional Steam Generating Units
E	Incinerators
Ea	Municipal Waste Combustors
F	Portland Cement Plants
G	Nitric Acid Plants

Table I to the preamble—Reconfirmation of Part 60 and 61 Delegations—Continued

H	Sulfuric Acid Plants
I	Asphalt Concrete Plants
J	Petroleum Refineries
K	Petroleum Liquid Storage Vessels
Ka	Petroleum Liquid Storage Vessels 5/18/78
Kb	Volatile Organic Liquid Storage Vessels 7/23/84
L	Secondary Lead Smelters
M	Secondary Brass and Bronze Production Plants
N	Basic Oxygen Process Furnaces Primary Emissions
O	Sewage Treatment Plants
P	Primary Copper Smelters
Q	Primary Zinc Smelters
R	Primary Lead Smelters
S	Primary Aluminum Reduction
T	Phosphate Fertilizer Wet Process
U	Phosphate Fertilizer-Superphosphoric Acid
V	Phosphate Fertilizer-Diammonium Phosphate
W	Phosphate Fertilizer-Granular Triple Superphosphate
X	Phosphate Fertilizer-Granular Triple Superphosphate Storage
Y	Coal Preparation Plants
Z	Ferroalloy Production Facilities
AA	Steel Plants—Electric Arc Furnaces
BB	Kraft Pulp Mills
CC	Glass Manufacturing
DD	Grain Elevators
EE	Surface Coating of Metal Furniture
GG	Stationary Gas Turbines
HH	Lime Manufacturing Plants
KK	Lead-Acid Battery Manufacturing
LL	Metallic Mineral Processing Plants
NN	Phosphate Rock Plants
PP	Ammonium Sulfate Manufacturing
QQ	Graphic Arts-Rotogravure Printing
RR	Tape and Label Surface Coatings
SS	Surface Coating: Large Appliances
TT	Metal Coil Surface Coating
UU	Asphalt Processing—Roofing
VV	Equipment Leaks of VOC in SOCM I
WW	Beverage Can Surface Coating
XX	Bulk Gasoline Terminals
BBB	Rubber Tire Manufacturing
DDD	VOC Emissions From Polymer Manufacturing Industry
FFF	Flexible Vinyl and Urethan Coating and Printing
GGG	Equipment Leaks of VOC in Petroleum Refineries
HHH	Synthetic Fiber Production
III	VOC From SOCM I Air Oxidation Unit
JJJ	Petroleum Dry Cleaners
NNN	VOC From SOCM I Distillation
OOO	Nonmetallic Mineral Plants
QQQ	VOC From Petroleum Refinery Wastewater Systems
SSS	Magnetic Tape Coating

Table I to the preamble—Reconfirmation of Part 60 and 61 Delegations—Continued

VVV	Polymeric Coating of Supporting Substrates
C	Beryllium
E	Mercury
F	Vinyl Chloride
J	Equipment Leaks of Benzene
M	Asbestos
V	Equipment Leaks (Fugitive Emission Sources)

[FR Doc. 96-23791 Filed 9-18-96; 8:45 am]
BILLING CODE 6560-50-P

DEPARTMENT OF DEFENSE

48 CFR Parts 45 and 52

Federal Acquisition Regulation; Government Property

AGENCY: Department of Defense.
ACTION: Notice of public meetings.

SUMMARY: The next public meetings of the Government Property Rewrite Team are scheduled for October 3 and 4, 1996. Discussion will focus on a draft revision of Federal Acquisition Regulation (FAR) Part 45, Government Property, and the associated contract clauses.

DATES: Public Meetings: The public meetings will be conducted at the address shown below from 9:30 a.m. to 5:00 p.m., local time, on October 3 and 4, 1996.

ADDRESSES: Public Meetings: The public meetings will be held in the EPA Auditorium, 401 M Street SW, Washington, DC.

FOR FURTHER INFORMATION CONTACT: Ms. Angelena Moy, by telephone at (703) 695-1097/1098, or by FAX at (703) 695-7596.

Draft Materials: Drafts of the materials to be discussed at the public meetings are available from Ms. Angelena Moy, (PDUSD (A&T) DP/MPI), Room 3C128, the Pentagon, Washington DC 20301-3060. Access to the materials will be provided electronically on the Major Policy Initiatives Office Internet Home Page: <http://www.acq.osd.mil//dp/mp/>
Background: On September 16, 1994, (59 FR 47583) the Director of Defense Procurement, Department of Defense, announced an initiative to rewrite FAR Part 45, Government Property, to make it easier to understand and to minimize the burdens imposed on contractors and contracting officers. The Director of Defense Procurement is providing a forum for an exchange of ideas and information with government and industry personnel by holding public

meetings, soliciting public comments, and publishing notices of the public meetings in the Federal Register.

Michele P. Peterson,
Executive Editor, Defense Acquisition Regulations Council.
[FR Doc. 96-24063 Filed 9-18-96; 8:45 am]
BILLING CODE 5000-04-M

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

50 CFR Part 679

[I.D. 091296A]

RIN 0648-A161

Fisheries of the Exclusive Economic Zone Off Alaska; Individual Fishing Quota Program; Sweep-up Adjustments

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

ACTION: Notice of availability of amendments to fishery management plans; request for comments.

SUMMARY: The North Pacific Fishery Management Council (Council) has submitted Amendment 43 to the Fishery Management Plan (FMP) for the Groundfish Fishery of the Bering Sea and Aleutian Islands Area (BSAI) and Amendment 43 to the FMP for Groundfish of the Gulf of Alaska (GOA) and a regulatory amendment to the halibut Individual Fishing Quota (IFQ) regulations. This action is necessary to increase the consolidation ("sweep-up") levels for small quota share (QS) blocks for Pacific halibut and sablefish managed under the IFQ program. This action is intended to maintain consistency with the objectives of the IFQ program (i.e., prevent excessive consolidation of QS, maintain diversity of the fishing fleet, and allow new entrants into the fishery), while increasing the program's flexibility by allowing a moderately greater amount of QS to be swept-up into amounts that can be fished more economically.

DATES: Comments on the FMP amendments must be received by November 12, 1996.

ADDRESSES: Comments on the proposed FMP amendments must be submitted to Ronald J. Berg, Chief, Fisheries Management Division, Alaska Region, NMFS, 709 West 9th Street, Room 453, Juneau, AK 99801, or P.O. Box 21668, Juneau, AK 99802, Attn: Lori J. Gravel. Copies of the proposed amendments

and the Environmental Assessment/Regulatory Impact Review (EA/RIR) prepared for the amendments may be obtained from the North Pacific Fishery Management Council, 605 West 4th Avenue, Anchorage, AK 99510.

FOR FURTHER INFORMATION CONTACT: John Lepore, 907-586-7228.

SUPPLEMENTARY INFORMATION: The Magnuson Fishery Conservation and Management Act (Magnuson Act) requires that each Regional Fishery Management Council submit any fishery management plan or plan amendment it prepares to NMFS for review and approval, disapproval, or partial disapproval. The Magnuson Act also requires that NMFS, upon reviewing the

plan or amendment, must immediately publish a notice that the plan or amendment is available for public review and comment.

Amendments 43/43 would increase the sweep-up levels for small QS blocks for Pacific halibut and sablefish from the current 1,000 lb (0.45 metric tons (mt)) maximum for Pacific halibut and 3,000 lb (1.4 mt) maximum for sablefish to a 3,000 lb (1.4 mt) maximum and a 5,000 lb (2.3 mt) maximum, respectively. Two other changes were recommended to accompany these increases. First, the base year total allowable catch (TAC) for determining the pounds would be the 1996 TAC, rather than 1994 TAC, which was used for the first sweep-up levels. Second,

once QS levels are established for the appropriate regulatory areas based on the 1996 TAC, those QS levels would be fixed and codified. This would eliminate any confusion as to the appropriate sweep-up level in pounds, which would fluctuate with changes in the annual TAC.

NMFS will consider the public comments received during the comment period in determining whether to approve the proposed amendments.

Dated: September 13, 1996.

Gary Matlock,

*Director, Office of Sustainable Fisheries,
National Marine Fisheries Service.*

[FR Doc. 96-23970 Filed 9-13-96; 4:09 pm]

BILLING CODE 3510-22-F

This section of the FEDERAL REGISTER contains documents other than rules or proposed rules that are applicable to the public. Notices of hearings and investigations, committee meetings, agency decisions and rulings, delegations of authority, filing of petitions and applications and agency statements of organization and functions are examples of documents appearing in this section.

DEPARTMENT OF AGRICULTURE

Agricultural Marketing Service

[Docket No. FV96-958-4 NC]

Notice of Request for Extension and Revision of a Currently Approved Information Collection

AGENCY: Agricultural Marketing Service, USDA.

ACTION: Notice and request for comments.

SUMMARY: In accordance with the Paperwork Reduction Act of 1995 (44 U.S.C. Chapter 35), this notice announces the Agricultural Marketing Service's (AMS) intention to request an extension for and revision of a currently approved information collection for Onions Grown in Certain Designated Counties in Idaho, and Malheur County, Oregon, Marketing Order No. 958.

DATES: Comments must be received by November 18, 1996.

ADDITIONAL INFORMATION OR COMMENTS: Contact Robert J. Curry, Northwest Marketing Field Office, Marketing Order Administration Branch, Fruit and Vegetable Division, Agricultural Marketing Service, U.S. Department of Agriculture, 1220 SW Third Avenue, room 369, Portland, OR 97204; telephone: (503) 326-2724; Fax: (503) 326-7440.

SUPPLEMENTARY INFORMATION:

Title: Onions Grown in Certain Designated Counties in Idaho, and Malheur County, Oregon, Marketing Order 958.

OMB Number: 0581-0087.

Expiration Date of Approval: December 31, 1996.

Type of Request: Extension and revision of a currently approved information collection.

Abstract: Marketing order programs provide an opportunity for producers of fresh fruits, vegetables and specialty

crops, in a specified production area, to work together to solve marketing problems that cannot be solved individually. Order regulations help ensure adequate supplies of high quality product and adequate returns to producers. Under the Agricultural Marketing Agreement Act of 1937 (AMAA), as amended (7 U.S.C. 601-674), marketing order programs are established if favored by producers in referenda. The handling of the commodity is regulated. The Secretary of Agriculture is authorized to oversee order operations and issue regulations recommended by a committee of representatives from each commodity industry.

The Idaho-Eastern Oregon onion marketing order, which has been operating since 1957, authorizes the issuance of grade, size, quality, maturity, pack, inspection, and reporting requirements. Regulatory provisions apply to onions shipped both within and outside of the production area to any market, except those specifically exempt.

The information collection requirements in this request are essential to carry out the intent of the AMAA, to provide the respondents the type of service they request, and to administer the Idaho-Eastern Oregon onion marketing order program.

Under the Idaho-Eastern Oregon onion marketing order, onions shipped for processing, planting, livestock feed, and charity are exempt from minimum grade, size, maturity, assessment, and inspection requirements. Shipments for such onions may only be made under a special purpose shipment exemption granted by the Idaho-Eastern Oregon Onion Committee (Committee), which locally administers the marketing order. Such an exemption, termed a Certificate of Privilege, helps to ensure that special purpose onions do not enter fresh market channels. Any handler desiring to ship onions under a Certificate of Privilege must first apply to the Committee for an exemption from the regulations. Such exemptions must be approved annually. Once an exemption is granted, the handler must submit a diversion report to the Committee on each individual shipment made to the authorized outlets. Further, any processor purchasing onions that fail to meet fresh market grade, must certify such onions will not be diverted to the

fresh market. Any time a handler alters inspected onions by peeling, chopping, or slicing, a report must be filed with the Committee indicating the intended use and destination of the onions. These forms enable the Committee, and thus, the Secretary to better monitor special purpose onion shipments and ensure compliance with provisions of the marketing order and the AMAA.

Onion producers and handlers who are nominated by their peers to serve as representatives on the Committee must file nomination forms with the Secretary.

Formal rulemaking amendments to the order must be approved in referenda conducted by the Secretary. Also, the Secretary may conduct a continuance referendum to determine industry support for continuation of the order. Handlers are asked to sign an agreement to indicate their willingness to abide by the provisions of the order whenever the order is amended. These forms are included in this request.

The information collected is used only by authorized representatives of the USDA, including AMS, Fruit and Vegetable Division regional and headquarter's staff, and authorized employees of the Committee. AMS is the primary user of the information and authorized Committee employees are the secondary user.

Estimate of Burden: Public reporting burden for this collection of information is estimated to average 0.1368 hours per response.

Respondents: Onion producers, handlers, and processors handling fresh and processed onions produced in designated counties in Idaho, and in Malheur County, Oregon.

Estimated Number of Respondents: 484.

Estimated Number of Responses per Respondent: 3.035.

Estimated Total Annual Burden on Respondents: 215 hours.

Comments are invited on:

(1) Whether the proposed collection of the information is necessary for the proper performance of the functions of the agency, including whether the information will have practical utility;

(2) the accuracy of the agency's estimate of the burden of the proposed collection of information including the validity of the methodology and assumptions used;

(3) ways to enhance the quality, utility, and clarity of the information to be collected; and

(4) ways to minimize the burden of the collection of information on those who are to respond, including through the use of appropriate automated, electronic, mechanical, or other technological collection techniques or other forms of information technology.

Comments should reference OMB No. 0581-0087 and Marketing Order No. 958, and be sent to USDA in care of Robert J. Curry, Northwest Marketing Field Office, Marketing Order Administration Branch, Fruit and Vegetable Division, Agricultural Marketing Service, U.S. Department of Agriculture, 1220 SW Third Avenue, room 369, Portland, OR 97204. All comments received will be available for public inspection during regular business hours at the same address.

All responses to this notice will be summarized and included in the request for OMB approval. All comments will become a matter of public record.

Dated: September 13, 1996.

Robert C. Keeney,

Director, Fruit and Vegetable Division.

[FR Doc. 96-24041 Filed 9-19-96; 8:45 am]

BILLING CODE 3410-02-P

Forest Service

Environmental Impact Statement, Sedona Alternate Crossing of Oak Creek, Coconino National Forest, Sedona Ranger District, Yavapai County, Sedona, AZ

AGENCY: Forest Service, USDA.

ACTION: Notice of intent to prepare an environmental impact statement.

SUMMARY: Yavapai County in the vicinity of Sedona, Arizona, proposes to develop a safe and fully functional 2-lane, paved, through-route between the Village of Oak Creek and State Route 89A for general traffic, but especially for medical, fire and law enforcement emergencies. Ultimately, this development, much of which is within the Coconino National Forest and an existing transportation easement, will require, over time and in phases, the replacement of a vehicular crossing of Oak Creek, segmented realignment of both the Verde Valley School and Upper Red Rock Loop roads, segment surfacing, construction of scenic viewpoints, mitigation of driveway safety issues, etc. In the short run (the next 5 years), because the existing roads are capable of safely handling the anticipated low volume increases in traffic during this time as is, the County

proposes to focus on the construction of a replacement vehicular crossing of Oak Creek at what is known as Red Rock Crossing. The only exception and inclusion besides the bridge and its approaches may be the upgrading of selected drainage crossings (concrete or asphalt bottoms) along the unpaved Verde Valley School Road corridor. The remaining improvements would be scheduled after the crossing installation on an as-needed basis in conformance with the Yavapai County Road Ordinance 1995-1 and in response to traffic changes. While the County is unable to "obligate" future funding, it appears likely (because of the route's predicted popularity and therefore increasing traffic) that subsequent improvements that may be needed will rank high in the County's priority and appropriation processes.

The recently completed Design Concept Report for the crossing calls for a 4-span concrete bridge designed for 2-lane traffic (2 twelve foot wide travel lanes). The proposed bridge is characterized by the various colors, shapes, textures, and forms found in the adjoining landscape to partially mitigate its presence in this location, such as exposed faces of the structure will be textured and colored to match the red rock of the area. In addition, the bridge as conceived includes numerous provisions for pedestrians (walkways on both sides), a bike path on the bridge, access to the creek, parking, etc., all further design features to reduce or eliminate concern for its presence.

An alternate route needs determination was completed by Yavapai County in January 1995. The conclusion was drawn that an alternate crossing/route is needed to address traffic flow, reduce public risk, particularly for movement of emergency vehicles and enhancing the viability of public transit. A subsequent corridor evaluation indicated four crossing locations that would best meet Yavapai County's objectives. Red Rock Crossing was one of the four locations and was chosen by the County as its preferred route. Its advantages included existing roads, existing easements, and the strongest potential for phased improvement. This analysis also predicted a potential use of 6000 vehicles per day once fully upgraded to a 2-lane, paved roadway, potentially reducing State Route 179 congestion by 38%.

As noted earlier, inherent in the phased improvement of the corridor are the impacts associated with potential realignment, surfacing, scenic viewpoints, mitigation of driveway safety issues, dust abatement, etc.

Yavapai County's Road Ordinance prioritizes road improvements within the county system based on number of residents, number of vehicles per day, right of way, road geometrics, accident history, maintenance cost, future growth, placement in the Regional Road system, and benefit to the public. The County Engineer would make recommendations to the Board of Supervisors on when additional improvements to the remainder of the roadway corridor leading to the crossing would be necessary based on the above criteria and how this corridor relates with other county roadway needs and the limited funding for these types of improvements.

This EIS will include analysis of the proposed improvements within the easement area granted to Yavapai County in 1983 and alternatives to those improvements.

DATES: Public scoping will begin in September 1996 and will continue over the life of the analysis. The Draft EIS is scheduled for publication in April 1997 and the Final EIS in September 1997. Written comments concerning this proposed action should be received on or before November 4, 1996.

ADDRESSES: Questions and written comments and suggestions concerning the analysis should be sent to Ken Anderson, District Ranger, Sedona Ranger District, P.O. Box 300, Sedona, AZ 86339, phone (520) 282-4119, FAX (520) 282-4119 (FAX is available during office hours Monday through Friday, 7:30 am to 4:30 pm, MST).

RESPONSIBLE OFFICIAL: The Forest Supervisor, Coconino National Forest, will be the responsible official and will make the decision on the Sedona Alternate Oak Creek Crossing.

FOR FURTHER INFORMATION CONTACT: Sedona District Ranger, Ken Anderson or Judy Adams, Sedona Lands Officer at (520) 282-4119.

SUPPLEMENTARY INFORMATION: A public scoping letter with information similar to this notice will be sent to all persons indicating or having previously indicated interest in the project by responding to the needs assessment, corridor analysis and correspondence to the Forest Service or Yavapai County or who otherwise notify the Sedona Ranger District that they are interested in the Sedona Alternate Crossing of Oak Creek. Public scoping meetings will be scheduled during September or October.

The EIS will evaluate Yavapai County's proposed improvements for the corridor. The EIS will also evaluate the no action alternative which would disapprove the proposed improvements and alternatives to those improvements

considered in response to significant issues.

Preliminary issues include: scenic quality of the area, recreation experience and facilities, traffic and transportation needs, hydrology of the stream, residential concerns about noise, light, air quality and property values and development, emergency vehicle and public transit issues, water quality, and land use along the corridor.

There is information on use of the crossing in this area and the road corridor in the record for many years under the management of Yavapai County. The last vehicular crossing was washed out in 1978. The record indicates substantial discussions during the subsequent 3-4 years relative to replacement, culminating in an easement issued by the USFS to Yavapai County across national forest lands where they occur between the Village of Oak Creek south of Sedona on Arizona Highway 179 and U.S. Highway 89A in West Sedona, just downstream from the old crossing location. Although the easement was issued by the Forest Service in 1983, detailed construction plans were not submitted at that time. The easement wording allows the Forest Service approval of the detailed construction plans once submitted. All indications in the records up until recently was that the crossing would be replaced by a low water crossing similar to what had been at the location prior to the 1978 flood. Yavapai County has submitted plans (submitted in March 1996) for a bridge in order to better meet their transportation needs at the current time and for the future.

There has been many changes in the transportation system and transportation planning that has occurred since 1983 through Arizona Department of Transportation, Yavapai County and the City of Sedona that relate to the concern about replacement of this crossing, as well as increased residential and recreation development and use in the immediate vicinity of the proposed crossing location. This location is in the foreground of Cathedral Rock, one of the most photographed spots in Arizona.

This project is very controversial with strong feelings both in favor of and against a replacement crossing in this location. The historical presence of a road and crossing are not challenged and there is no general disagreement that traffic management of some forms are needed in the area. Even the most staunch critics of the Red Rock Crossing proposal would add that they realize an alternate crossing of Oak Creek is probably appropriate. They further add, however, that it should not be at Red

Rock Crossing which has far greater value and purpose for the esthetic and amenity values.

Yavapai County will be required to obtain permits from the Army Corps of Engineers and Arizona Department of Environmental Quality (ADEQ) for working within Oak Creek. The Army Corps of Engineers has indicated that this proposal falls under their Nation-wide permit requirements and would not require further environmental analysis for permitting. Since Oak Creek is a unique waterway, ADEQ will require a 401 certification before working in the stream channel for construction. Yavapai County will be cooperating with the Forest Service in the development of the EIS and alternatives.

The Forest Service believes, at this early stage, it is important to give reviewers notice of several court rulings related to public participation in the environmental review process. First, reviewers of draft environmental impacts statements must structure their participation in the environmental review of the proposal so that it is meaningful and alerts the agency to the reviewer's positions and contentions. *Vermont Yankee Power Corp. v. NRDC*, 435 U.S. 519, 553 (1978). Also, environmental objections that could be raised at the draft environmental impact statement stage but that are not raised until after completion of the final environmental impacts statement may be waived or dismissed by the courts. *City of Angoon v. Hodel*, 803 F.2d 1016, 1022 (9th Cir. 1986) and *Wisconsin Heritages, Inc. v. Harris*, 490 F. Supp. 1334, 1338 (E.D. Wis, 1980). Because of these court rulings, it is very important that those interested in this proposed action participate by the close of the 45 day comment period so that substantive comments and objections are made available to the Forest Service at a time when it can meaningfully consider them and respond to them in the final environmental impact statement.

To assist the Forest Service in identifying and considering issues and concerns on the proposed action, comments on the draft environmental impact statement should be as specific as possible. It is also helpful if comments refer to specific pages or chapters of the draft statement. Comments may also address the adequacy of the draft environmental impact statement or the merits of the alternatives formulated and discussed in the statement. Reviewers may wish to refer to the Council on Environmental Quality Regulations for implementing the procedural provisions of the

National Environmental Policy Act at 40 CFR 1503.3 in addressing these points.

Dated: August 27, 1996.

Fred Trevey,

Forest Supervisor, Coconino National Forest.

[FR Doc. 96-24028 Filed 9-18-96; 8:45 am]

BILLING CODE 3410-11-M

Transfer of Administrative Jurisdiction; Applegate Lake Project

AGENCY: Forest Service, USDA.

ACTION: Notice of joint interchange of lands.

SUMMARY: On December 7, 1995, and May 6, 1996, the Secretary of the Army and the Secretary of Agriculture respectively signed a joint interchange order agreeing to the transfer of administrative jurisdiction from the Department of Agriculture to the Department of the Army of 66.28 acres, more or less, lying within the Rogue River National Forest in Jackson County, Oregon, and from the Department of the Army to the Department of Agriculture of 2,755.82 acres, more or less, lying within the exterior boundaries of the Rogue River National Forest in Jackson County, Oregon. As required by the Act of July 26, 1956, Congress has received 45 days advance notice of this action. A copy of the Joint Order, as signed, appears at the end of this notice.

DATES: The order is effective September 19, 1996.

ADDRESSES: The maps are on file and available for public inspection in the office of the Director, Lands Staff, 4 South, Auditors Building, Forest Service, USDA, 14th and Independence Avenue, S.W., Washington, D.C.

FOR FURTHER INFORMATION CONTACT: Requests for additional information should be directed to David M. Sherman, Lands Staff, Forest Service, USDA, Telephone: (202) 205-1362.

David G. Unger,
Associate Chief.

Enclosure

Department of the Army

Department of Agriculture

Office of the Secretaries, Applegate Lake Project, Oregon and California

Joint Order Interchanging Administrative Jurisdiction of Department of the Army Lands and National Forest System Lands.

By virtue of the authority vested in the Secretary of the Army and in the Secretary of Agriculture by Public Law 804 of the 84th Congress approved 26 July 1956 (70 Stat. 656; 16 U.S.C. 505a, 505b), it is ordered as follows:

(1) The lands under the jurisdiction of the Department of the Army described in Exhibit

"A" attached hereto and made a part hereof, which lands lie within or adjacent to the exterior boundaries of the Rogue River National Forest, Oregon, highlighted in gold on the land interchange map, are hereby transferred from the Secretary of the Army to the Secretary of Agriculture, subject to reservations described in Exhibit "B" attached hereto and made a part hereof, and to outstanding rights or interests of record and to such continued use by the Corps of Engineers of all of these lands which are necessary for the operation and maintenance of the Applegate Lake Project for its intended purposes. The Portland District, Corps of Engineers will retain administration of all outgrants as they are not assignable.

(2) The National Forest System Lands described in Exhibit "C", attached hereto and made a part hereof, which are a part of the Rogue River National Forest, Oregon, highlighted in red on the land interchange map, are hereby transferred from the jurisdiction of the Secretary of Agriculture to the jurisdiction of the Secretary of the Army, subject to outstanding rights or interests of record.

(3) Pursuant to Section 2 of the aforesaid Act of 26 July 1956, the National Forest lands transferred to the Secretary of the Army by this order are hereby subject only to the laws applicable to the Department of the Army lands comprising the Applegate Lake. The Department of the Army lands transferred to the Secretary of Agriculture by this order are hereby subject to the laws applicable to lands acquired under the Act of 1 March 1911 (36 Stat. 961), as amended.

This order will be effective as of date of publication in the Federal Register.

Dated: December 7, 1995.

Togo D. West, Jr.,
Secretary of the Army.

Dated: May 6, 1996.

Dan Glickman,
Secretary of Agriculture.

EXHIBIT "A" TO JOINT ORDER OF INTERCHANGE LEGAL DESCRIPTION FOR THE AREAS TO BE TRANSFERRED TO THE DEPARTMENT OF AGRICULTURE FOR THE APPLGATE LAKE PROJECT

[Department of the Army Fee Acquired Lands, Willamette Meridian, Jackson County, Oregon]

	Acreage
T. 40 S., R. 3 W., Section 30, NW¼NE¼NW¼, portions of NW¼NW¼ and SW¼NW¼	50.72
T. 40 S., R. 4 W., Section 25, portion of S½SE¼ SE¼	1.08
Section 35, SE¼SE¼	40.02
Section 36	1 656.66
T. 41 S., R. 3 W., Section 6, lots 1, 2, 3, 4, SE¼ NW¼, SW¼NE¼, NE¼ SW¼, NW¼SE¼, SE¼ SW¼, and S½SE¼	441.68

EXHIBIT "A" TO JOINT ORDER OF INTERCHANGE LEGAL DESCRIPTION FOR THE AREAS TO BE TRANSFERRED TO THE DEPARTMENT OF AGRICULTURE FOR THE APPLGATE LAKE PROJECT—Continued

[Department of the Army Fee Acquired Lands, Willamette Meridian, Jackson County, Oregon]

	Acreage
T. 41 S., R. 4 W., Section 1, NE¼NW¼, NE¼	200.00
Section 2, S½, S½NW¼, NE¼ NW¼, SW¼NE¼, and N½ NE¼	1 564.40
Section 3, S½SW¼	80.00
Section 4, E½SE¼	80.00
Section 10, E½, NW¼, N½ SW¼	1 561.26
Section 11, W½NW¼	80.00
Total acres	2,755.82

¹ Acres as deeded.

Exhibit "B" to Joint Order of Interchange Corps of Engineers Reservations for the Areas To Be Transferred to the Department of Agriculture for the Applegate Lake Project

a. Reserving a perpetual flowage easement for the purpose of inundation, saturation, percolation, and wave action which may result from a pool, including backwater effect therefrom created by operation of the Applegate Lake Project by the Corps at a water elevation of 1,987 feet above mean sea level, U.S.C. & G.S. datum at the dam, including temporary fluctuations above this elevation resulting from wave and surge action due to wind and other uncontrollable or unpredictable forces.

b. Reserving the rights to enter upon all National Forest lands lying within the Applegate Lake Project area, together with rights of ingress and egress for the purpose of constructing, operating and maintaining the project for its intended purposes, mainly flood control, irrigation, water supply, and water quality control. Also reserved is ingress and egress to piezometer and seismograph instruments and a water storage site located at and below the dam axis.

EXHIBIT "C" TO JOINT ORDER OF INTERCHANGE, LEGAL DESCRIPTION FOR THE AREAS TO BE TRANSFERRED TO THE DEPARTMENT OF AGRICULTURE FOR THE APPELLATE LAKE PROJECT

[Rogue River National Forest Lands, Willamette Meridian, Rogue River National Forest, Jackson County, Oregon]

	Acreage
T. 40 S., R. 3 W., Section 30, those portions of the NW¼ and SW¼ lying westerly of the existing Corps of Engineers fence line and eastern right-of-way of the Jackson County road	17.16

EXHIBIT "C" TO JOINT ORDER OF INTERCHANGE, LEGAL DESCRIPTION FOR THE AREAS TO BE TRANSFERRED TO THE DEPARTMENT OF AGRICULTURE FOR THE APPELLATE LAKE PROJECT—Continued

[Rogue River National Forest Lands, Willamette Meridian, Rogue River National Forest, Jackson County, Oregon]

	Acreage
T. 40 S., R. 4 W., Section 25, those portions of the SE¼SE¼NE¼ and SE¼ lying east of the easterly right-of-way of the relocated Jackson County road	49.12
Total acres	66.28

[FR Doc. 96-24021 Filed 9-18-96; 8:45 am]

BILLING CODE 3410-11-M

Rural Utilities Service

Municipal Interest Rates for the Fourth Quarter of 1996

AGENCY: Rural Utilities Service, USDA.

ACTION: Notice of municipal interest rates on advances from insured electric loans for the fourth quarter of 1996.

SUMMARY: The Rural Utilities Service hereby announces the interest rates for advances on municipal rate loans with interest rate terms beginning during the fourth calendar quarter of 1996.

DATES: These interest rates are effective for interest rate terms that commence during the period beginning October 1, 1996, and ending December 31, 1996.

FOR FURTHER INFORMATION CONTACT: Carolyn Dotson, Loan Funds Control Assistant, U.S. Department of Agriculture, Rural Utilities Service, room 2234-S, 1400 Independence Avenue, SW., Stop 1522, Washington, DC 20250-1522. Telephone: 202-720-1928. FAX: 202-720-4120. E-mail: CDotson@rus.usda.gov.

SUPPLEMENTARY INFORMATION: The Rural Utilities Service (RUS) hereby announces the interest rates on advances made during the fourth calendar quarter of 1996 for municipal rate electric loans. Pursuant to RUS regulations at 7 CFR 1714.4, each advance of funds on a municipal rate loan shall bear interest at a single rate for each interest rate term. Pursuant to 7 CFR 1714.5, the interest rates on these advances are based on indexes published in the "Bond Buyer" for the four weeks prior to the first Friday of the last month before the beginning of the quarter.

In accordance with 7 CFR 1714.5, the interest rates are established as shown in the following table for all interest rate terms that begin at any time during the fourth calendar quarter of 1996.

Interest rate term ends in (year)	RUS rate (0.000 percent)
2017 or later	5.750
2016	5.750
2015	5.750
2014	5.625
2013	5.625
2012	5.500
2011	5.500
2010	5.500
2009	5.375
2008	5.250
2007	5.125
2006	5.125
2005	5.000
2004	4.875
2003	4.750
2002	4.625
2001	4.625
2000	4.500
1999	4.375
1998	4.125
1997	3.875

Dated: September 13, 1996.
 Wally Beyer,
 Administrator, Rural Utilities Service.
 [FR Doc. 96-23972 Filed 9-18-96; 8:45 am]
 BILLING CODE 3410-15-P

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

[I.D. 050196A]

Taking and Importing of Marine Mammals; Offshore Seismic Activities in the Beaufort Sea

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

ACTION: Notice of modification of an incidental harassment authorization.

SUMMARY: In accordance with provisions of the Marine Mammal Protection Act (MMPA) as amended, notification is hereby given that an Incidental Harassment Authorization (IHA) issued on July 18, 1996, to BP Exploration (Alaska), 900 East Benson Boulevard, Anchorage, AK 99519 (BPXA) to take small numbers of bowhead whales and other marine mammals by harassment incidental to conducting seismic surveys in the Northstar Unit and nearby waters, in the Beaufort Sea in state and federal waters has been

modified. These modifications will: Increase the marine mammal safety zones around the seismic array by 100 meters (m) (328 ft); allow the activity to move to an area adjacent to the area requested in the application due to severe ice conditions; remove the requirement for use of Big-Eye binoculars because their use diverts observers from performing key observer tasks; require the final report be submitted on or before April 1, 1997, rather than 160 days after completion of the 1996 season; and note the correct scientific name for the bowhead whale.

EFFECTIVE DATE: The authorization is effective from July 18, 1996, until November 1, 1996.

ADDRESSES: The application, authorization, modifications, revised monitoring plan, and environmental assessment are available by writing to the Chief, Marine Mammal Division, Office of Protected Resources, National Marine Fisheries Service, 1315 East-West Highway, Silver Spring, MD 20910-3225, by telephoning one of the contacts listed below or by leaving a voice mail request at (301) 713-4070.

FOR FURTHER INFORMATION CONTACT: Kenneth R. Hollingshead, Office of Protected Resources, NMFS, (301) 713-2055, Ron Morris, Western Alaska Field Office, NMFS, (907) 271-5006.

SUPPLEMENTARY INFORMATION:

Background

Section 101(a)(5)(A) and (D) of the MMPA (16 U.S.C. 1361 *et seq.*) directs the Secretary of Commerce to allow, upon request, the incidental, but not intentional taking of marine mammals by U.S. citizens who engage in a specified activity (other than commercial fishing) within a specified geographical region if certain findings are made and either regulations are issued or, if the taking is limited to harassment, notice of a proposed authorization is provided to the public for review.

Permission may be granted if NMFS finds that the taking will have a negligible impact on the species or stock(s), will not have an unmitigable adverse impact on the availability of the species or stock(s) for subsistence uses, and the permissible methods of taking and requirements pertaining to the monitoring and reporting of such taking are set forth.

On April 10, 1996 (61 FR 15884), NMFS published an interim rule establishing, among other things, procedures for issuing authorizations under section 101(a)(5)(D) of the MMPA in Arctic waters. For additional

information on the procedures that were followed for this authorization, please refer to that document.

On March 18, 1996, NMFS received an application from BPXA requesting an authorization for the harassment of small numbers of several species of marine mammals incidental to conducting seismic surveys during the open water season in waters in the Northstar Unit and in nearby waters, located in the U.S. Beaufort Sea. The survey is expected to take place between approximately July 20 and October 20, 1996, but would continue longer if ice conditions permit. A detailed description of the work planned is contained in the application and is available upon request (see **ADDRESSES**). A notice of receipt of the application and proposed authorization was published on May 28, 1996 (61 FR 26501) and a 30-day public comment period was provided. An incidental harassment authorization was issued to BPXA on July 18, 1996, and a notice of issuance was published in the Federal Register on July 25, 1996 (61 FR 38715).

On July 23, 1996, NMFS received a letter from Dr. W. John Richardson, Executive Vice-President, LGL Limited. His letter, on behalf of BPXA, recommended three changes to the IHA. Dr. Richardson recommended that: (1) The IHA be amended to note the correct scientific name for bowhead whales; (2) the requirement for use of Big-Eye binoculars be eliminated because their use diverts observers from performing key tasks; and (3) the final report be required on or before April 1, 1997, rather than 160 days after completion of the 1996 season. NMFS has reviewed and concurs with these recommended modifications. Accordingly, conditions 3(b), 6(b)(5), and 7(b) of the IHA were modified on July 26, 1996.

In addition, on August 29 and 30, 1996, NMFS received two letters from BPXA. In the August 29, 1996 letter, NMFS was notified that BPXA wanted to conduct seismic operations in an area west of the original operating area due to ice conditions in and around the Northstar Unit. This letter requested NMFS to modify the IHA to cover this additional area for the incidental harassment of marine mammals during seismic operations. NMFS has reviewed the application and notes that the new area is within the Western Beaufort Sea adjacent to the area proposed for seismic exploration as delineated in figure 2 of the application. As this location removes seismic operations further away from the area used by the Alaska Eskimo Whaling Commission (AEWC) members for the fall bowhead hunt; the AEWC has indicated its

approval of this geographic extension; and this area is neither expected to increase the number of marine mammals taken by harassment, nor result in additional marine mammal species being taken, NMFS modified the IHA on September 9, 1996, to include the waters offshore from the Colville River Delta, Alaska.

The August 30, 1996, letter notified NMFS that, in accordance with the results of the transmission loss (TL) test required by condition 5(d) of the IHA, the safety ranges around the source for pinnipeds and cetaceans should be increased by 100 m (328 ft) to 250 and 750 m (820 and 2,460 ft), respectively. Further investigation determined that these increased safety ranges would be appropriate for the seismic array only, and would not apply to the use of single airguns, which had a 20 dB (re 1 μ Pa @ 1 m) lower amplitude. NMFS understands that these increased safety ranges were immediately implemented by BPXA. NMFS has reviewed the preliminary results of the TL test and concurs with this recommended modification. Accordingly, condition 5(b) of the IHA has been modified.

Dated: September 11, 1996.

Rennie S. Holt,

Acting Director, Office of Protected Resources,
National Marine Fisheries Service.

[FR Doc. 96-23982 Filed 9-18-96; 8:45 am]

BILLING CODE 3510-22-F

[I.D. 091196B]

Marine Mammals; Scientific Research Permit No. 1013 (P617)

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

ACTION: Issuance of permit.

SUMMARY: Notice is hereby given that Cynthia K. Riseling, California State Polytechnic University at Pomona, 12659 16th Street, Chino, California 91710, has been issued a permit to sample California sea lions for scientific purposes.

ADDRESSES: The permit and related documents are available for review upon written request or by appointment in the following office(s):

Permits Division, Office of Protected Resources, NMFS, 1315 East-West Highway, Room 13130, Silver Spring, MD 20910 (301/713-2289); and Director, Southwest Region, NMFS, 501 West Ocean Blvd., Long Beach, CA 90802-4213 (310/980-4001).

SUPPLEMENTARY INFORMATION: On July 9, 1996, notice was published in the

Federal Register (61 FR 36036) that a request for a scientific research permit to sample California sea lions (*Zalophus californianus*) currently held in rehabilitation centers had been submitted by the above-named individual. The requested permit has been issued under the authority of the Marine Mammal Protection Act of 1972, as amended (16 U.S.C. 1361 *et seq.*) and the Regulations Governing the Taking and Importing of Marine Mammals (50 CFR part 216).

Dated: September 12, 1996.

Ann D. Terbush,

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

[FR Doc. 96-23983 Filed 9-18-96; 8:45 am]

BILLING CODE 3510-22-F

Technology Administration

Technology Administration Performance Review Board Membership

September 1996.

The Technology Administration Performance Review Board reviews performance appraisals, agreements, and recommended actions pertaining to employees in the Senior Executive Service and performance-related pay increases for ST-3104 employees, and makes appropriate recommendations to the Appointing Authority concerning such matters in such a manner as will ensure the fair and equitable treatment of these individuals.

The following represents the full membership and expiration dates of the members' appointments to the Technology Administration Performance Review Board General and Limited Groups.

Gary Bachula (NC)

Deputy Under Secretary for Technology
Administration

Technology Administration

Washington, DC 20230

Appointment Expires: 12/31/98.

Karl Bell (C)

Deputy Director of Administration

Office of the Director of Administration

National Institute of Standards and

Technology

Gaithersburg, MD 20899

Appointment Expires: 12/31/96.

Andrew W. Fowell, Chief (C)

Chief, Fire Safety Engineering Division

Building and Fire Research Laboratory

National Institute of Standards and

Technology

Gaithersburg, MD 20899

Appointment Expires: 12/31/97.

William W. Fox

Director of Science and Technology
National Marine Fisheries Service
National Oceanic and Atmospheric
Washington, DC 20233
Appointment Expires: 12/31/96.

Kent Hughes

Associate Deputy Secretary of
Commerce

Department of Commerce

Washington, DC 20230

Appointment Expires: 12/31/98.

Frederick Johnson (C)

Associate Director for Computing

Computing and Applied Mathematics
Laboratory

National Institute of Standards and

Technology

Gaithersburg, MD 20899

Appointment Expires: 12/31/96.

Samuel Kramer (C)

Associate Director

Office of the Director

National Institute of Standards and

Technology

Gaithersburg, MD 20899

Appointment Expires: 12/31/96.

Ronald E. Lawson (C)

Assistant Secretary for Technology

Policy

National Technical Information Service

Technology Administration

Springfield, VA 22161

Appointment Expires: 12/31/96.

Harry I. McHenry (C)

Chief, Materials Reliability Division

Materials Science and Engineering

Laboratory

National Institute of Standards and

Technology

Boulder, CO 80303

Appointment Expires: 12/31/96.

Robert Scace (C)

Director, Office of Microelectronics

Programs

Electronics and Electrical Engineering

Laboratory

National Institute of Standards and

Technology

Gaithersburg, MD 20899

Appointment Expires: 12/31/96.

Stanley D. Raspberry (C)

Chief, Office of Measurement Services

Technology Services

National Institute of Standards and

Technology

Gaithersburg, MD 20899

Appointment Expires: 12/31/97.

Rance A. Velapoldi (C)

Chief, Surface and Microanalysis

Science Division

Chemical Science and Technology

Laboratory

National Institute of Standards and

Technology

Gaithersburg, MD 20899

Appointment Expires: 12/31/96.

Mary L. Good,

Under Secretary for Technology, Technology Administration, Department of Commerce.

[FR Doc. 96-24060 Filed 9-18-96; 8:45 am]

BILLING CODE 3510-18-M

COMMODITY FUTURES TRADING COMMISSION

Sunshine Act Meeting

AGENCY HOLDING THE MEETING:

Commodity Futures Trading Commission.

TIME AND DATE: 11:00 a.m., Friday, October 4, 1996.

PLACE: 1155 21st St., N.W., Washington, D.C. 9th Fl. Conference Room.

STATUS: Closed.

MATTERS TO BE CONSIDERED: Surveillance Matters.

CONTACT PERSON FOR MORE INFORMATION:

Jean A. Webb, 202-418-5100.

Jean A. Webb,

Secretary of the Commission.

[FR Doc. 96-24152 Filed 9-17-96; 12:37 pm]

BILLING CODE 6351-01-M

Sunshine Act Meeting

AGENCY HOLDING THE MEETING:

Commodity Futures Trading Commission.

TIME AND DATE: 11:00 a.m., Friday, October 11, 1996.

PLACE: 1155 21st St., N.W., Washington, D.C. 9th Fl. Conference Room.

STATUS: Closed.

MATTERS TO BE CONSIDERED: Surveillance Matters.

CONTACT PERSON FOR MORE INFORMATION:

Jean A. Webb, 202-418-5100.

Jean A. Webb,

Secretary of the Commission.

[FR Doc. 96-24153 Filed 9-17-96; 12:37 pm]

BILLING CODE 6351-01-M

Sunshine Act Meeting

AGENCY HOLDING THE MEETING:

Commodity Futures Trading Commission.

TIME AND DATE: 11:00 a.m., Friday, October 18, 1996.

PLACE: 1155 21st St., N.W., Washington, D.C. 9th Fl. Conference Room.

STATUS: Closed.

MATTERS TO BE CONSIDERED: Surveillance Matters.

CONTACT PERSON FOR MORE INFORMATION:

Jean A. Webb, 202-418-5100.

Jean A. Webb,

Secretary of the Commission.

[FR Doc. 96-24154 Filed 9-17-96; 12:37 pm]

BILLING CODE 6351-01-M

Sunshine Act Meeting

AGENCY HOLDING THE MEETING:

Commodity Futures Trading Commission.

TIME AND DATE: 11:00 a.m., Friday, October 25, 1996.

PLACE: 1155 21st St., N.W., Washington, D.C. 9th Fl. Conference Room.

STATUS: Closed.

MATTERS TO BE CONSIDERED: Surveillance Matters.

CONTACT PERSON FOR MORE INFORMATION:

Jean A. Webb, 202-418-5100.

Jean A. Webb,

Secretary of the Commission.

[FR Doc. 96-24155 Filed 9-17-96; 12:37 pm]

BILLING CODE 6351-01-M

DEPARTMENT OF DEFENSE

Office of the Secretary

[Transmittal No. 96-72]

36(b) Notification

AGENCY: Department of Defense, Defense Security Assistance Agency.

ACTION: Notice.

SUMMARY: The Department of Defense is publishing the unclassified text of a section 36(b) arms sales notification. This is published to fulfill the requirements of section 155 of Public Law 104-164 dated 21 July 1996.

FOR FURTHER INFORMATION CONTACT:

Mr. A. Urban, DSAA/COMPT/FPD (703) 604-6575.

The following is a copy of the letter to the Speaker of the House of Representatives, Transmittal 96-72, with attached transmittal, policy justification and sensitivity of technology pages.

Dated: September 13, 1996.

L.M. Bynum,

Alternate OSD Federal Register Liaison Officer, Department of Defense.

BILLING CODE 5000-04-M

**DEFENSE SECURITY ASSISTANCE AGENCY**

WASHINGTON, DC 20301-2800

23 AUG 1996In reply refer to:
I-02697/96ct

Honorable Newt Gingrich
Speaker of the House of
Representatives
Washington, D.C. 20515-6501

Dear Mr. Speaker:

Pursuant to the reporting requirements of Section 36(b)(1) of the Arms Export Control Act, we are forwarding herewith Transmittal No. 96-72, concerning the Department of the Army's proposed Letter(s) of Offer and Acceptance (LOA) to the Taipei Economic and Cultural Representative Office (TECRO) in the United States for defense articles and services estimated to cost \$420 million. Soon after this letter is delivered to your office, we plan to notify the news media.

Sincerely,

A handwritten signature in black ink that reads "Thomas G. Rhame".

Thomas G. Rhame
Lieutenant General, USA
Director

Attachments

Same ltr to: House Committee on International Relations
Senate Committee on Appropriations
Senate Committee on Foreign Relations
House Committee on National Security
Senate Committee on Armed Services
House Committee on Appropriations

Transmittal No. 96-72

Notice of Proposed Issuance of Letter of Offer
Pursuant to Section 36(b)(1)
of the Arms Export Control Act

- (i) Prospective Purchaser: Taipei Economic and Cultural Representative Office (TECRO) in the United States pursuant to P.L. 96-8
- (ii) Total Estimated Value:
- | | |
|--------------------------|----------------------|
| Major Defense Equipment* | \$230 million |
| Other | <u>\$190 million</u> |
| TOTAL | \$420 million |
- (iii) Description of Articles or Services Offered:
One thousand two hundred ninety nine STINGER-RMP missiles (less reprogrammable modules, gripstocks and battery coolant units), 74 standard vehicle mounted guided missile launchers, 96 High Mobility Multi-Purpose Wheeled Vehicles (HMMWV), 74 captive flight trainer STINGER-RMP Missiles (less reprogrammable modules, gripstocks and battery coolants), 164 SINGARS radios, 500 rounds of .50 caliber ammunition, support equipment, spare and repair parts, test facility hardware and software test programs, publications and technical data, personnel training and training equipment, U.S. Government and contractor engineering and logistics personnel services, U.S. Government Quality Assurance Teams (QAT) and Mobile Training Teams (MTT), integration of the STINGER missile system with existing air defense systems and other related elements of logistics support.
- (iv) Military Department: Army (YTW)
- (v) Sales Commission, Fee, etc., Paid, Offered, or Agreed to be Paid: None
- (vi) Sensitivity of Technology Contained in the Defense Article or Defense Services Proposed to be Sold:
See Annex attached.
- (vii) Date Report Delivered to Congress: 23 AUG 1996

* as defined in Section 47(6) of the Arms Export Control Act.

POLICY JUSTIFICATION

Taipei Economic and Cultural Representative Office (TECRO) in the United States - STINGER Missiles (AVENGER)

The Taipei Economic and Cultural Representative Office (TECRO) in the United States has requested the purchase of 1,299 STINGER-RMP missiles (less reprogrammable modules, gripstocks and battery coolant units), 74 standard vehicle mounted guided missile launchers, 96 High Mobility Multi-Purpose Wheeled Vehicles (HMMWV), 74 captive flight trainer STINGER-RMP Missiles (less reprogrammable modules, gripstocks and battery coolants), 164 SINCGARS radios, 500 rounds of .50 caliber ammunition, support equipment, spare and repair parts, test facility hardware and software test programs, publications and technical data, personnel training and training equipment, U.S. Government and contractor engineering and logistics personnel services, U.S. Government Quality Assurance Teams (QAT) and Mobile Training Teams (MTT), integration of the STINGER missile system with existing air defense systems and other related elements of logistics support. The estimated cost is \$420 million.

This sale is consistent with the United States law and policy as expressed in Public Law 96-8.

The recipient will use the STINGER missiles to upgrade its air defense capability and will have no difficulty absorbing this weapon system into its armed forces.

The sale of this equipment and support will not affect the basic military balance in the region.

The principal contractors who will participate in this program are the Hughes Missile Systems Company, Tucson, Arizona; Boeing Missile and Space Division, Huntsville, Alabama; and AM General, Mishicola, Indiana. There are no offset agreements proposed to be entered into in connection with this potential sale.

Implementation of this sale will not require the assignment of any additional U.S. Government personnel or contractor representatives in-country.

There will be no adverse impact on U.S. defense readiness as a result of this sale.

Transmittal No. 96-72

Notice of Proposed Issuance of Letter of Offer
Pursuant to Section 36(b)(1)
of the Arms Export Control ActAnnex
Item No. vi(vi) Sensitivity of Technology:

1. The AVENGER/STINGER missile system hardware (less reprogrammable microprocessor module, gripstock and battery coolant), the fire unit, software, documentation and operating instructions contain sensitive technology and are classified up through Secret. The guidance section of the missile and tracking head trainer contain highly sensitive technology and are classified Confidential.

2. Missile system hardware and fire unit components contain sensitive/critical technologies. This sensitive/critical technology is inherent in the hybrid microcircuit assemblies, printed circuit boards, laser range finder, dual detector assembly, detector filters, automatic test and associated computer software, optical coatings, ultraviolet sensors, semiconductor detectors, infrared band sensors, warhead components, seeker assembly and the Identification Friend or Foe (IFF) system with Mode 3 capabilities.

3. Information on vulnerability to electronic countermeasures and counter-countermeasures, system performance capabilities and effectiveness, and test data are classified up to Secret.

4. Loss of this hardware and/or data could permit development of information leading to the exploitation of countermeasures. Therefore, if a technologically capable adversary were to obtain these devices, the missile system could be compromised through reverse engineering techniques which could defeat the weapon systems effectiveness.

5. This sale is necessary in furtherance of the U.S. foreign policy and national security objectives outlined in the Policy Justification. Moreover, the benefits to be derived from this sale, as outlined in the Policy Justification, outweigh the potential damage that could result if the sensitive technology were revealed to unauthorized persons.

[Transmittal No. 96-63]

36(b) Notification

AGENCY: Department of Defense, Defense Security Assistance Agency.

ACTION: Notice.

SUMMARY: The Department of Defense is publishing the unclassified text of a

section 36(b) arms sales notification. This is published to fulfill the requirements of section 155 of Public Law 104-164 dated 21 July 1996.

FOR FURTHER INFORMATION CONTACT:

Mr. A. Urban, DSAA/COMPT/FPD, (703) 604-6575.

The following is a copy of the letter to the Speaker of the House of

Representatives, Transmittal 96-63, with attached transmittal, policy justification and sensitivity of technology pages.

Dated: September 13, 1996.

L.M. Bynum,

Alternate OSD Federal Register Liaison Officer, Department of Defense.

BILLING CODE 5000-04-M



DEFENSE SECURITY ASSISTANCE AGENCY

WASHINGTON, DC 20301-2800

10 SEP 1996

In reply refer to:
I-04229/96ct

Honorable Newt Gingrich
Speaker of the House of
Representatives
Washington, D.C. 20515-6501

Dear Mr. Speaker:

Pursuant to the reporting requirements of Section 36(b)(1) of the Arms Export Control Act, we are forwarding herewith Transmittal No. 96-63, concerning the Department of the Navy's proposed Letter(s) of Offer and Acceptance (LOA) to Brunei for defense articles and services estimated to cost \$52 million. Soon after this letter is delivered to your office, we plan to notify the news media.

Sincerely,

A handwritten signature in cursive script, appearing to read "H. Diehl McKalip".

H. Diehl McKalip
Acting Director

Attachments

Same ltr to: House Committee on International Relations
Senate Committee on Appropriations
Senate Committee on Foreign Relations
House Committee on National Security
Senate Committee on Armed Services
House Committee on Appropriations

Transmittal No. 96-63

Notice of Proposed Issuance of Letter of Offer
Pursuant to Section 36(b)(1)
of the Arms Export Control Act

- (i) Prospective Purchaser: Brunei
- (ii) Total Estimated Value:
- | | |
|--------------------------|---------------------|
| Major Defense Equipment* | \$38 million |
| Other | <u>\$14 million</u> |
| TOTAL | \$52 million |
- (iii) Description of Articles or Services Offered:
Ninety-six RIM-7M vertical launch SEASPARROW missiles (including training missiles), missile containers, 96 jet vane control units, U.S. Government and contractor technical and logistics personnel services, personnel training and training equipment, publications and technical documentation, spare and repair parts, support and test equipment and other related elements of logistics support.
- (iv) Military Department: Navy (LBA and BAB)
- (v) Sales Commission, Fee, etc., Paid, Offered, or Agreed to be Paid: None
- (vi) Sensitivity of Technology Contained in the Defense Article or Defense Services Proposed to be Sold:
See Annex attached
- (vii) Date Report Delivered to Congress: **10 SEP 1996**

* as defined in Section 47(6) of the Arms Export Control Act.

POLICY JUSTIFICATIONBrunei - SEASPARROW Missiles

The Government of Brunei has requested the purchase of 96 RIM-7M vertical launch SEASPARROW missiles (including training missiles), missile containers, 96 jet vane control units, U.S. Government and contractor technical and logistics personnel services, personnel training and training equipment, publications and technical documentation, spare and repair parts, support and test equipment and other related elements of logistics support. The estimated cost is \$52 million.

This sale is consistent with the stated U.S. policy of assisting friendly nations to provide for their own defense by allowing the transfer of reasonable amounts of defense articles and services.

This is the first procurement of the SEASPARROW missile by Brunei. Brunei will use the SEASPARROW as the primary surface-to-air armament on new off-shore patrol vessels being procured for the defense of its coastline and surrounding islands. The patrol vessels are being delivered with a MK-48 launching system which is compatible with the vertical launch SEASPARROW missile. Brunei will have no difficulty absorbing the missiles into its inventory.

The sale of these missiles and support will not affect the basic military balance in the region.

The principal contractors will be Raytheon Electronic Systems, Andover, Massachusetts, and Hughes Missile Systems Company, Tucson, Arizona. There are no offset agreements proposed in connection with this potential sale.

Implementation of this sale will not require the assignment of any additional U.S. Government personnel or contractor representatives to Brunei.

There will be no adverse impact on U.S. defense readiness as a result of this sale.

Transmittal No. 96-63

Notice of Proposed Issuance of Letter of Offer
Pursuant to Section 36(b)(1)
of the Arms Export Control ActAnnex
Item No. vi(vi) Sensitivity of Technology:

1. The external view of the RIM-7M SEASPARROW missile is unclassified and not sensitive. However, this weapon does have the following classified components, including applicable technical equipment, documentation, and manuals:

- a. Guidance and Control Section (C)
- b. Rocket Motor (C)
- c. Safety and Arming Device (C)
- d. Fuzing Hardware (C)
- e. Fuze frequency/characteristics (S)
- f. Exportable parametric threat data (S)
programmed into ECM/ECCM software
packet
- g. Documentation* (C)

* Manuals and technical documents are those necessary for Organizational and Intermediate level maintenance.

2. If a technologically advanced adversary were to obtain knowledge of the specific hardware and software elements, the information could be used to develop countermeasures or equivalent systems which could reduce weapon system effectiveness or be used in the development of a system with similar or advanced capabilities.

3. This sale is necessary in furtherance of the U.S. foreign policy and national security objectives outlined in the Policy Justification. Moreover, the benefits to be derived from this sale, as outlined in the Policy Justification, outweigh the potential damage that could result if the sensitive technology were revealed to unauthorized persons.

[Transmittal No. 96-64]**36(b) Notification**

AGENCY: Department of Defense, Defense Security Assistance Agency.

ACTION: Notice.

SUMMARY: The Department of Defense is publishing the unclassified text of a

section 36(b) arms sales notification. This is published to fulfill the requirements of section 155 of Public Law 104-164 dated 21 July 1996.

FOR FURTHER INFORMATION CONTACT: Mr. A. Urban, DSAA/COMPT/FPD, (703) 604-6575.

The following is a copy of the letter to the Speaker of the House of

Representatives, Transmittal 96-64, with attached transmittal, policy justification and Foreign Assistance Act Certification.

L.M. Bynum,

Alternate OSD Federal Register Liaison Officer, Department of Defense.

BILLING CODE 5000-04-M

**DEFENSE SECURITY ASSISTANCE AGENCY**

WASHINGTON, DC 20301-2800

23 AUG 1996In reply refer to:
I-02697/96ct

Honorable Newt Gingrich
Speaker of the House of
Representatives
Washington, D.C. 20515-6501

Dear Mr. Speaker:

Pursuant to the reporting requirements of Section 36(b)(1) of the Arms Export Control Act, we are forwarding herewith Transmittal No. 96-72, concerning the Department of the Army's proposed Letter(s) of Offer and Acceptance (LOA) to the Taipei Economic and Cultural Representative Office (TECRO) in the United States for defense articles and services estimated to cost \$420 million. Soon after this letter is delivered to your office, we plan to notify the news media.

Sincerely,

Thomas G. Rhame
Lieutenant General, USA
Director

Attachments

Same ltr to: House Committee on International Relations
Senate Committee on Appropriations
Senate Committee on Foreign Relations
House Committee on National Security
Senate Committee on Armed Services
House Committee on Appropriations

Transmittal No. 96-64

Notice of Proposed Issuance of Letter of Offer
Pursuant to Section 36(b)(1)
of the Arms Export Control Act

- (i) Prospective Purchaser: Turkey
- (ii) Total Estimated Value:
- | | |
|--------------------------|----------------------|
| Major Defense Equipment* | \$ 0 million |
| Other | <u>\$125 million</u> |
| TOTAL | \$125 million |
- (iii) Description of Articles or Services Offered:
Logistics support for the F-16 aircraft to include participation in the Technical Coordinating Group and International Engine Management Program, spare and repair parts, repair and overhaul of aircraft components and assemblies, maintenance of system software and related services, precision measurement equipment, publications/drawings/technical documentation, aircraft modification kits with installation documentation, special test sets and support equipment, U.S. Government and contractor technical and logistics services and other related elements of program support.
- (iv) Military Department: Air Force (QBU)
- (v) Sales Commission, Fee, etc., Paid, Offered, or Agreed to be Paid: None
- (vi) Sensitivity of Technology Contained in the Defense Article or Defense Services Proposed to be Sold:
None
- (vii) Date Report Delivered to Congress: 10 SEP 1996

* as defined in Section 47(6) of the Arms Export Control Act.

POLICY JUSTIFICATIONTurkey - Logistics Support for F-16 Aircraft

The Government of Turkey has requested the purchase of logistics support for the F-16 aircraft to include participation in the Technical Coordinating Group and International Engine Management Program, spare and repair parts, repair and overhaul of aircraft components and assemblies, maintenance of system software and related services, precision measurement equipment, publications/drawings/technical documentation, aircraft modification kits with installation documentation, special test sets and support equipment, U.S. Government and contractor technical and logistics services and other related elements of program support. The estimated cost is \$125 million.

This sale will contribute to the foreign policy and national security objectives of the United States by helping to maintain the military capabilities of Turkey while enhancing weapon system standardization and interoperability.

Turkey needs this logistics support to sustain the operational readiness of its F-16 aircraft previously purchased from the U.S. Government. This logistics program will be provided in accordance with and subject to the limitations on use and transfer of the Arms Export Control Act, as embodied in the terms of sale. This sale will not adversely affect either the military balance in the region or U.S. efforts to encourage a negotiated settlement of the Cyprus question. Turkey will have no difficulty absorbing this logistics support into its armed forces.

The principal contractors involved in this program will be Lockheed Martin Tactical Aircraft Systems, Fort Worth, Texas; General Electric Company Aircraft Engine Group, Evendale, Ohio; Litton Guidance and Control Systems Division, Salt Lake City, Utah and Westinghouse Electronics Systems Group, Baltimore, Maryland. There are no offset agreements proposed to be entered into in connection with this potential sale.

Implementation of this sale will not require the assignment of any U.S. Government personnel to Turkey; however, there may be up to 10 contractor technical services personnel supporting this program in-country for a period of up to one year.

There will be no adverse impact on U.S. defense readiness as a result of this sale.

Certification Under Section 620C(d) Of The Foreign Assistance Act of 1961, As Amended

Pursuant to Section 620C(d) of the Foreign Assistance Act of 1961, as amended (the Act), Executive Order 12163 (sec. 1-201(a)(11)) and State Department Delegation of Authority No. 145 (sec. 1(a)), I hereby certify that the furnishing to Turkey of technical and logistics support for the F-16 aircraft to include participation in the Technical Coordinating Group and the International Engine Management Program, spare and repair parts, repair and overhaul of aircraft components and assemblies, maintenance of system software and related services, precision measurement equipment, publications/drawings/technical documentation, aircraft modification kits with installation instructions, special test sets and support equipment, USG and contractor technical and logistics services and other related elements of program support, at an estimated cost of \$125 million, is consistent with the principles contained in Section 620C(b) of the Act.

This certification will be made part of the notification to the Congress under Section 36(b) of the Arms Export Control Act regarding the proposed sale of the above-named articles and services, and is based on the justification accompanying said notification, of which said justification constitutes a full explanation.

Lynn E. Davis

[FR Doc. 96-23955 Filed 9-18-96; 8:45 am]

BILLING CODE 5000-04-M

Department of Defense Wage Committee; Notice of Closed Meetings

Pursuant to the provisions of section 10 of Public Law 92-463, the Federal Advisory Committee Act, notice is hereby given that closed meetings of the Department of Defense Wage Committee will be held on October 1, 1996; October 8, 1996; October 15, 1996; October 22, 1996, and October 29, 1996, at 10:00 a.m. in Room A105, The Nash Building, 1400 Key Boulevard, Rosslyn, Virginia.

Under the provisions of section 10(d) of Public Law 92-463, the Department of Defense has determined that the meetings meet the criteria to close meetings to the public because the matters to be considered are related to internal rules and practices of the Department of Defense and the detailed wage data to be considered were obtained from officials of private establishments with a guarantee that the data will be held in confidence.

However, members of the public who may wish to do so are invited to submit material in writing to the chairman concerning matters believed to be deserving of the Committee's attention.

Additional information concerning the meetings may be obtained by writing to the Chairman, Department of Defense Wage Committee, 4000 Defense Pentagon, Washington, DC 20301-4000.

Dated: September 13, 1996.
L.M. Bynum,
Alternate OSD Federal Register Liaison Officer, Department of Defense.
[FR Doc. 96-23952 Filed 9-18-96; 8:45 am]
BILLING CODE 5000-04-M

Defense Information Systems Agency Membership of the Defense Information Systems Agency Senior Executive Service (SES) Performance Review Board (PRB)

AGENCY: Defense Information Systems Agency, DOD.

ACTION: Notice of membership of the Defense Information Systems Agency Senior Executive Service Performance Review Board.

SUMMARY: This notice announces the appointment of the members of the Performance Review Board of the Defense Information Systems Agency. The publication of membership is required by 5 U.S.C. 4314(C)(4). The Performance Review Board provides fair and impartial review of senior Executive Service performance appraisals and makes recommendations regarding performance ratings and performance awards to the Director, DISA.

EFFECTIVE DATE: August 27, 1996.

FOR FURTHER INFORMATION CONTACT: Ms. Carrie K. Bazemore, SES Program Manager, Civilian Personnel Division, Personnel and Manpower Directorate, Defense Information Systems Agency (703) 607-4411.

SUPPLEMENTARY INFORMATION: In accordance with 5 U.S.C. 4314(c)(4), the following are names and titles of the executives who have been appointed to serve as members of the SES Performance Review Board. They will serve a one-year renewable term, effective 27 August 1996.

David J. Kelley, Major General, USA, Vice Director, DISA.

John W. Meincke, Brig Gen, USAF, Commander, DISA WESTHEM.

Diann McCoy, Deputy Director for C4I Programs Directorate.

Robert Hutten, Deputy Director for Strategic Plans and Policy.

Jack Penkoske,

Chief, Civilian Personnel Division.

[FR Doc. 96-23999 Filed 9-18-96; 8:45 am]

BILLING CODE 3610-05-M

DEPARTMENT OF ENERGY

Morgantown Energy Technology Center; Notice of Intent To Grant Partially Exclusive Patent License

AGENCY: Department of Energy (DOE), Morgantown Energy Technology Center (METC).

ACTION: Notice.

SUMMARY: Notice is hereby given of an intent to grant to United Catalysts Incorporated of Louisville, Kentucky, a partially exclusive license to practice the invention described in U.S. Patent No. 5,494,880, titled "Durable Zinc Oxide-Containing Sorbents for Coal-Gas Desulfurization," and any follow-on patents issuing from continuation applications based on this patent. This license will be limited to the manufacture and sale of pelletized sorbents.

The Department may grant exclusive or partially exclusive licenses in Department-owned inventions, if it determines that the desired practical application of the invention has not been achieved, or is not likely expeditiously to be achieved, under a nonexclusive license.

DATES: Written comments or nonexclusive license applications are to be received at the address listed below no later than November 18, 1996.

ADDRESSES: Office of Institutional Development, U.S. Department of Energy, Morgantown Energy Technology Center, P.O. Box 880, Morgantown, WV 26505.

FOR FURTHER INFORMATION: Lisa A. Jarr, Office of Institutional Development, U.S. Department of Energy, Morgantown Energy Technology Center, P.O. Box 880, Morgantown, WV 26505; Telephone (304) 285-4555.

SUPPLEMENTARY INFORMATION: United Catalysts Incorporated of Louisville, Kentucky, has applied for a partially exclusive license to practice the invention embodied in U.S. Patent No. 5,494,880, and any follow-on patents issuing from continuation applications based on this patent, and has a plan for commercialization of the invention.

The invention is owned by the United States of America, as represented by the Department of Energy (DOE). The proposed license will be partially

exclusive, i.e., limited to pelletized sorbents, subject to a license and other rights retained by the U.S. Government, and subject to other terms and conditions to be negotiated. DOE intends to grant the license, upon a final determination in accordance with 35 U.S.C. § 209(c), unless within 60 days of this notice the Office of Institutional Development, Department of Energy, Morgantown Energy Technology Center receives in writing any of the following, together with the supporting documents:

(i) A statement from any person setting forth reasons why it would not be in the best interest of the United States to grant the proposed license; or

(ii) An application for a nonexclusive license to the invention, in which applicant states that it already has brought the invention to practical application or is likely to bring the invention to practical application expeditiously, for pelletized sorbents.

The Department will review all timely written responses to this notice, and will grant the license if, after expiration of the 60-day notice period, and after consideration of written responses to this notice, a determination is made, in accordance with 35 U.S.C. § 209(c), that the license grant is in the public interest.

Issued: September 9, 1996.

Thomas F. Bechtel,
Director, METC.

[FR Doc. 96-24023 Filed 9-18-96; 8:45 am]

BILLING CODE 6450-01-P

Federal Energy Regulatory Commission

[Docket No. RP93-100-000; Docket Nos. RP94-208-000, RP94-87-008, RP94-122-006, RP94-169-006, RP95-195-005, RP94-249-004, RP94-260-004, RP94-305-002, and RP94-364-001; Docket Nos. RP94-222-000, RP93-151-015, RP94-39-006, RP94-202-000, and RP94-309-003; Docket Nos. RP94-298-000, and TM94-29-000; and Docket Nos. RP94-347-000, RP94-150-000, RP94-266-000, and RP94-384-000]

Notice Establishing Format for Oral Argument

September 13, 1996.

In the Matter of: Dakota Gasification Company (successor-in-interest to the Department of Energy), Natural Gas Pipeline Company of America, Tennessee Gas Pipeline Company, Transcontinental Gas Pipe Line Corporation, and ANR Pipeline Company

This notice establishes the format for the oral argument which the Commission schedule in an order issued

July 17, 1996.¹ This notice does so based upon notifications from the parties of the number of representatives they wished to make presentations and the manner in which they desired to allocate their allotted time.

In addition to the notifications received from the parties, Senators Kent Conrad and Byron Dorgan, and Congressman Earl Pomeroy, in letters to Chair Moler, indicate that they wish to have an opportunity to speak concerning the Great Plains project.

In its notification filing, the Dakota Ratepayers/State Commission Group pointed out that the Commission's order announcing the oral argument provided the three principal parties opposing the Initial Decision with a total of 1 and 1/2 hours of argument, while providing Ratepayers Group, the one party supporting the Initial Decision, only 30 minutes. The Ratepayers Group also urged that they should not be "bookended", i.e., preceded and succeeded by one or more of their adversaries in this proceeding. To remedy this situation, the Ratepayers Group requests that (1) none of the three parties opposing the Initial Decision should be permitted to relinquish time to the other; (2) the Ratepayers Group should be schedule last for both the presentation of initial arguments and rebuttal; and (3) the Ratepayers Group should be allocated 30 minutes to present its arguments and 15 minutes for rebuttal.

The proposals of the Ratepayers Group have been considered and they are reasonable. In addition, both Senators from North Dakota and Congressman Pomeroy will be provided an opportunity to address the issues that the Commission has set for oral argument in this proceeding. Accordingly, consistent with the notifications concerning the oral argument filed by the parties in this proceeding, the time for the oral argument will be allocated follows:

Hon. Kent Conrad, United States Senate—10 minutes
Hon. Byron L. Dorgan, United States Senate—10 minutes
Hon. Earl Pomeroy, United States House of Representatives—10 minutes
Dakota Gasification Represented by MaryJane Reynolds, Mark D. Foss—20 minutes
The Department of Energy, Represented by Hon. Robert R. Nordhaus, James K. White, Lot Cooke—20 minutes
The Pipelines, Represented by James F. Bendernagel, Jr., Daniel F. Collins, Michael J. Fremuth—20 minutes

The Ratepayers Group, Represented by Bruce Kiely, Robert G. Hardy—30 minutes

Rebuttal

Dakota Gasification—10 minutes
The Department of Energy—10 minutes
The Pipelines—10 minutes
The Ratepayers Group—15 minutes

The oral argument will be held on Wednesday, September 25, 1996, at 1:00 p.m. in Hearing Room 1 at 888 First Street, NE., Washington, DC 20426.

Linwood A. Watson, Jr.,

Acting Secretary.

[FR Doc. 96-24033 Filed 9-18-96; 8:45 am]

BILLING CODE 6717-01-M

[Docket No. RP96-333-000]

National Fuel Gas Supply Corporation; Notice of Technical Conference

September 13, 1996.

In the Commission's order issued on September 5, 1996, in the above-captioned proceeding, the Commission held that the filing raises issues for which a technical conference is to be convened.

The conference to address the issues is being scheduled for Friday, September 27, 1996, at 10:30 a.m., in a room to be designated at the offices of the Federal Energy Regulatory Commission, 888 First Street, NE., Washington, D.C. 20426.

All interested persons and Staff are permitted to attend.

Linwood A. Watson, Jr.,

Acting Secretary.

[FR Doc. 96-23997 Filed 9-18-96; 8:45 am]

BILLING CODE 6717-01-M

[Docket No. OR96-15-000]

Ultramar Inc., Complainant v. SFPP, L.P., Respondent; Notice of Complaint

September 13, 1996.

Take notice that on August 30, 1996, pursuant to sections 9, 13(1), and 15(1) of the Interstate Commerce Act of 1887 (49 U.S.C. §§ 9, 13(1), 15(1)), Rule 206 of the Commission's Rules of Practice and Procedure (18 CFR 385.206), the Commission's Procedural Rules Applicable to Oil Pipeline Proceedings (18 CFR § 343.1(c)), Ultramar Inc. (Ultramar) tendered for filing a complaint against charges collected by SFPP, L.P. (SFPP) for the pipeline transportation of petroleum products. Ultramar complains against the charge collected for SFPP's drain dry system at Watson Station in California (Drain Dry).

¹76 FERC ¶ 61,036 (1996).

Ultramar complains that the Drain Dry charge (1) has not been covered by tariffs filed with the Commission, (2) has not been justified by the cost of service, (3) has discriminated against shippers that use the Drain Dry System, and (4) has resulted in overcharges in excess of filed tariff rates. Ultramar seeks the refund of all unlawful Drain Dry charges collected by SFPP and the establishment of a rate which is just, reasonable, and non-discriminatory.

Ultramar respectfully requests that the Commission (1) investigate the charge collected by SFPP for transportation through the Drain Dry system, (2) order refunds to Ultramar to the extent that the Commission finds that the rate was unlawful, (3) determine and prescribe a just, reasonable, and non-discriminatory rate for the Drain Dry system, and (4) award Ultramar reasonable attorney's fees and costs.

Any person desiring to be heard or protest said complaint should file a motion to intervene or protest with the Federal Energy Regulatory Commission, 888 First Street, N.E., Washington, D.C. 20426, in accordance with Sections 385.211 and 385.214 of the Commission's Rules of Practice and Procedure. All such motions or protests must be filed on or before October 15, 1996. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a motion to intervene. Copies of this filing are on file with the Commission and are available for public inspection in the Public Reference Room. Answers to the complaint must be filed on or before October 15, 1996.

Linwood A. Watson, Jr.,
Acting Secretary.

[FR Doc. 96-23994 Filed 9-18-96; 8:45 am]

BILLING CODE 6717-01-M

[Project No. 11556 Alaska]

Lake Dorothy Hydro, Inc.; Notice of Scoping Pursuant to the National Environmental Policy Act of 1969, Notice To File Additional Studies

September 13, 1996.

The Energy Policy Act of 1992, allows applicants to prepare their own draft environmental assessment (EA) for hydropower projects and file it with the Federal Energy Regulatory Commission (Commission) along with their license application as part of the "applicant-prepared EA" process. Lake Dorothy Hydro, Inc. (LDHI) intends to prepare an EA to file with the Commission for the

Lake Dorothy Hydroelectric Project No. 11556. LDHI will hold two public scoping meetings, pursuant to the National Environmental Policy Act of 1969, to identify the scope of environmental issues that should be analyzed in the EA.

Scoping Meetings

The times and locations of the two scoping meetings are:

Agency Meeting

Date: Wednesday, October 9, 1996.

Place: CBJ Juneau Public Library, 292 Marine Way, Juneau, AK.

Time: 2:00 pm.

Public Meeting

Date: Wednesday, October 9, 1996.

Place: CBJ Juneau Public Library, 292 Marine Way, Juneau, AK.

Time: 6:30 pm.

At the scoping meetings, LDHI will (1) summarize the environmental issues tentatively identified for analysis in the EA; (2) solicit from the meeting participants all available information, especially quantified data, on the resources at issue; and (3) encourage statements from experts and the public on issues that should be analyzed in the EA.

Although LDHI's intent is to prepare an EA, there is the possibility that an Environmental Impact Statement (EIS) may be required. Nevertheless, these meetings will satisfy the NEPA scoping requirements, irrespective of whether an EA or EIS is issued by the Commission.

All interested individuals, organizations, and agencies are invited and encouraged to attend either or both meetings to assist in identifying and clarifying the scope of environmental issues that should be analyzed in the EA.

To help focus discussions at the meetings, LDHI prepared and distributed Scoping Document 1 for this project. Copies of this scoping document can be obtained by calling Sue Tinney, Licensing Coordinator, of Tinney Associates at (907) 364-2233, or can be obtained directly at either meeting.

Site Visit

LDHI will also conduct a site visit for this project on Tuesday, October 8, 1996. Site visit participants will meet at Temsco Helicopters, Maplesden Way (near the Juneau International Airport) at 10:00 am. Those planning to attend the site visit must contact Ms. Helen Davies of LDHI at (907) 463-6315 before October 1, 1996.

Meeting Procedures

The meetings will be conducted according to the procedures used at Commission scoping meetings. Because this meeting will be a NEPA scoping meeting, the Commission will not conduct another NEPA scoping meeting when the application and draft EA are filed with the Commission.

Both meetings will be recorded by a stenographer, and thus will become a part of the formal record of the proceedings for this project.

Those who choose not to speak may instead submit written comments on the project. These comments should be mailed to Mr. Corry Hildenbrand, Lake Dorothy Hydro, Inc., 889 South Franklin, Juneau, AK 99801. All correspondence should clearly show the following caption on the first page: Scoping Comments, Lake Dorothy Project, FERC No. 11556, Alaska.

Additional Studies

Under section 4.32(b)(7) of the Commission's Regulations, if any agency, Indian Tribe, special interest group, or individual thinks that the applicant should conduct an additional scientific study to form an adequate factual basis for a complete analysis of the project's merits, they must request that study within 60 days of the filing of the license application.

For the Lake Dorothy Project, however, LDHI requested waiver of section 4.32(b)(7) of the regulations to accommodate their preparation of the Preliminary Draft EA. The waiver has been granted, so the additional studies request opportunity will be afforded now. Therefore, all requests for studies must be filed by November 8, 1996, which would be 30 days after the scoping meetings.

The study requests, which must conform to section 4.32(b)(7) of the regulations, should clearly identify the following on the first page:

Lake Dorothy Hydroelectric Project
(FERC No. 11556).

The requests should then be served on the following two parties:

Mr. Corry V. Hildenbrand, President,
Lake Dorothy Hydro, Inc., 889 South
Franklin, Juneau, Alaska 99801.

Lois D. Cashell, Secretary, Federal
Energy Regulatory Commission, 888
First Street, N.E., Washington, DC
20426.

For further information, please contact Mr. Corry Hildenbrand at (907)

463-6315, or Mike Henry of the Commission at (503) 326-5858 ext. 224. Linwood A. Watson, Jr.,
Acting Secretary.
 [FR Doc. 96-23996 Filed 9-18-96; 8:45 am]
 BILLING CODE 6717-01-M

[Project No. 3663-004-MN]

**Minnesota Power and Light Company;
 Notice of Site Visit and Scoping
 Meeting Pursuant to the National
 Environmental Policy Act of 1969**

September 13, 1996.

On October 2, 1995, the Federal Energy Regulatory Commission (Commission) issued a letter accepting the Minnesota Power and Light Company's application for new license for the Pillager Hydro Project, located on the Crow Wing River in Cass and Morrison Counties, near Pillager, Minnesota.

The purpose of this notice is to: (1) Advise all parties as to the proposed scope of the staff's environmental analysis, including cumulative effects, and to seek additional information pertinent to this analysis; and (2) advise all parties of their opportunity for comment.

Scoping Process

The Commission's scoping objectives are to:

- Identify significant environmental issues;
- Determine the depth of analysis appropriate to each issue;
- Identify the resource issues not requiring detailed analysis; and
- Identify reasonable project alternatives.

The purpose of the scoping process is to identify significant issues related to the proposed action and to determine what issues should be addressed in the environmental document to be prepared pursuant to the National Environmental Policy Act of 1969 (NEPA). The document entitled "Scoping Document I" (SDI) will be circulated shortly to enable appropriate federal, state, and local resource agencies, developers, Indian tribes, nongovernmental organizations (NGO's), and other interested parties to effectively participate in and contribute to the scoping process. SDI provides a brief description of the proposed action, project alternatives, the geographic and temporal scope of a cumulative effects analysis, and a list of preliminary issues identified by staff.

Project Site Visit

The applicant and the Commission staff will conduct a site visit of the

Pillager Hydro Project on October 3, 1996, at 10:00 a.m. They will meet at the project powerhouse, located one mile southwest of the City of Pillager, on Pillager Dam Road. All interested individuals, NGO's and agencies are invited to attend. All participants are responsible for their own transportation and should bring a hard hat. For more details, interested parties should contact Christopher D. Anderson, the applicant contact, at (218) 723-3961, prior to the site visit date.

Scoping Meetings

The Commission staff will conduct two scoping meetings. All interested individuals, organizations, and agencies are invited to attend and assist the staff in identifying the scope of environmental issues that should be analyzed in the NEPA document.

The public scoping meeting will be held on October 3, 1996, from 5:00 p.m. to 9:00 p.m. at the Pillager High School, corner of East Second Street and Daisy Avenue, Pillager, Minnesota 56473.

The agency scoping meeting will be held on October 2, 1996, from 9:30 a.m. to 1:00 p.m., at the Minnesota Valley National Wildlife Refuge, 3815 East 80th Street, Bloomington, Minnesota 55425. For more details, interested parties should contact Lynn Lewis, US Fish and Wildlife Service, at (612) 725-3548, prior to the meeting date.

The Commission will decide, based on the application, and agency and public comments at the scoping session, whether licensing the Pillager Project constitutes a major federal action significantly affecting the quality of the human environment. Irrespective of the Commission's determination to prepare an environmental assessment or an environmental impact statement for the Pillager Project, the Commission staff will not hold additional scoping meetings other than those scheduled, as listed above.

Objectives

At the scoping meetings, the Commission staff will: (1) Summarize the environmental issues tentatively identified for analysis in the NEPA document; (2) solicit from the meeting participants all available information, especially quantified data, on the resources at issue, and (3) encourage statements from experts and the public on issues that should be analyzed in the NEPA document. Individuals, organizations, and agencies with environmental expertise and concerns are encouraged to attend the meetings and to assist the staff in defining and clarifying the issues to be addressed.

Meeting Procedures

The meetings will be recorded by a stenographer and become a part of the formal records of the Commission proceeding on the Pillager Project. Individuals presenting statements at the meetings will be asked to identify themselves for the record.

Concerned parties are encouraged to offer us verbal guidance during public meetings. Speaking time allowed for individuals will be determined before each 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 5 minutes to present their views.

All those attending the meeting are urged to refrain from making any communications concerning the merits of the application to any member of the Commission staff outside of the established process for developing the record as stated in the record of the proceeding.

Persons choosing not to speak but wishing to express an opinion, as well as speakers unable to summarize their positions within their allotted time, may submit written statements for inclusion in the public record no later than October 11, 1996.

All filings 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). In addition, commenters *may* submit a copy of their comments on a 3 1/2-inch diskette formatted for MS-DOS based computers. In light of our ability to translate MS-DOS based materials, the text need only be submitted in the format and version that it was generated (i.e., MS Word, WordPerfect 5.1/5.2, ASCII, etc.). It is not necessary to reformat word processor generated text to ASCII. For Macintosh users, it would be helpful to save the documents in Macintosh word processor format and then write them to files on a diskette formatted for MS-DOS machines. All comments should be submitted to the Office of the Secretary, Federal Energy Regulatory Commission, 888 First Street, N.E., Washington, D.C. 20426, and should clearly show the following captions on the first page: Pillager Hydro Project, FERC No. 2663.

Further, interested persons are reminded of the Commission's Rules of Practice and Procedures, requiring parties or interceders (as defined in 18 CFR 385.2010) to file documents on each person whose name is on the official service list for this proceeding. See 18 CFR 4.34(b).

The Commission staff will consider all written comments and may issue a Scoping Document II (SDII). SDII will include a revised list of issues, based on the scoping sessions.

For further information regarding the scoping process, please contact Rich Takacs, Federal Energy Regulatory Commission, Office of Hydropower Licensing, 888 First Street, NE, Washington, DC, 20426 at (202) 219-2840, or Ed Lee at (202) 219-2809.

Linwood A. Watson, Jr.,
Acting Secretary.

[FR Doc. 96-23995 Filed 9-18-96; 8:45 am]

BILLING CODE 6717-01-M

[Project No. 8864-012]

Weyerhaeuser Company and Calligan Hydro, Inc.; Errata Notice to Notice of Application Filed With the Commission

September 13, 1996.

In the Commission's Notice of Joint Application for Transfer of License for FERC Project No. 9025-008, issued August 12, 1996, (61 FR 43354, August 22, 1996), the Comment Date should be changed from "September 27, 1996" to October 14, 1996.

Lois D. Cashell,
Secretary.

[FR Doc. 96-24034 Filed 9-18-96; 8:45 am]

BILLING CODE 6717-01-M

[Project No. 9025-008]

Weyerhaeuser Company and Hancock Hydro, Inc.; Errata to Notice of Application Filed With the Commission

September 13, 1996.

In the Commission's Notice of Joint Application for Transfer of License for FERC Project No. 9025-008, issued August 12, 1996, (61 FR 43355, August 22, 1996), the Comment Date should be changed from "September 27, 1996" to October 14, 1996.

Lois D. Cashell,
Secretary.

[FR Doc. 96-24035 Filed 9-18-96; 8:45 am]

BILLING CODE 6717-01-M

Office of Hearings and Appeals

Notice of Issuance of Decisions and Orders From the Week of June 24 Through June 28, 1996

During the week of June 24 through June 28, 1996, the decisions and orders summarized below were issued with respect to appeals, applications, petitions, or other requests filed with the Office of Hearings and Appeals of

the Department of Energy. The following summary also contains a list of submissions that were dismissed by the Office of Hearings and Appeals.

Copies of the full text of these decisions and orders are available in the Public Reference Room of the Office of Hearings and Appeals, Room 1E-234, Forrestal Building, 1000 Independence Avenue, S.W., Washington, D.C. 20585-0107, Monday through Friday, between the hours of 1:00 p.m. and 5:00 p.m., except federal holidays. They are also available in *Energy Management: Federal Energy Guidelines*, a commercially published loose leaf reporter system. Some decisions and orders are available on the Office of Hearings and Appeals World Wide Web site at <http://www.oha.doe.gov>.

Dated: September 5, 1996.

George B. Breznay,

Director, Office of Hearings and Appeals.

Appeals

Anibal L. Taboas, 6/26/96, VFA-0171

The OHA remanded on appeal a request to the Chicago Operations Office (COO) for information concerning complaints, investigations, or other information concerning the appellant. COO had withheld responsive documents in their entirety pursuant to Exemptions 5, 6, and 7A of the Freedom of Information Act. The OHA found that COO had failed to consider whether the withheld documents contained releasable material that could be reasonably segregated, and had failed to apply a foreseeable harm test to withheld material.

Bradley S. Tice, 6/26/96, VFA-0172

Bradley S. Tice filed an Appeal from a determination issued to him on May 8, 1996 by the Department of Energy's Albuquerque Operations Office (AO) which denied a request for information he filed under the Freedom of Information Act (FOIA). The request sought information regarding "aspects of nuclear propulsion for aircraft as well as Richard Feynman's patented design for a nuclear reactor to heat air for a jet engine." AO stated that it conducted a search of its records as the Los Alamos National Laboratory and found no responsive documents. The Appeal challenged the adequacy of the search conducted by AO. In considering the Appeal, the DOE found that AO conducted an adequate search which was reasonably calculated to discover documents responsive to Mr. Tice's Request. Accordingly, the Appeal was denied.

David W. Smith, 6/27/96 VFA-0173

David W. Smith filed an Appeal from a determination by the Department of Energy's Albuquerque Operations Office (AO). Mr. Smith's mother had filed a request for records relating to her late husband's exposure to radiation while he worked for the Atomic Energy Commission from 1948 to 1956. AO stated that it had conducted a search of its records at AO's Occupational Safety and Health Division (OSHD) and at the Los Alamos National Laboratory (LANL), and provided Mrs. Smith with a copy of the radiation dosimetry records it discovered at LANL. In his Appeal, Mr. Smith implicitly argued that AO conducted an inadequate search for records relating to his father. In considering the Appeal, the DOE found that AO conducted an adequate search which was reasonably calculated to discover documents responsive to Mrs. Smith's Request. Accordingly, the Appeal was denied.

Keith E. Loomis, 6/28/96 VFA-0166

Keith E. Loomis filed an Appeal from a denial by the Office of Naval Reactors of a request for information that he filed under the Freedom of Information Act (FOIA). In considering one report that was withheld but was not addressed in either of the previous Decisions and Orders regarding this Appeal, the Director of Naval Reactors reviewed the report and identified it as Naval Nuclear Propulsion Information (NNPI) material. The DOE therefore determined that the report should be withheld under Exemption 3 of the FOIA. Accordingly, the Appeal was denied.

The Cincinnati Enquirer, 6/25/96 VFA-0169

The Cincinnati Enquirer filed an Appeal from a determination issued to it by the Ohio Field Office of the Department of Energy (DOE) in response to a Request for Information submitted under the Freedom of Information Act (FOIA). In considering the Appeal, the DOE found that the Ohio Field Office improperly withheld names of DOE evaluators of a contractor "rebaseline" preliminary proposal under Exemption 6 of the FOIA. In particular, the DOE found that, except in unusual cases, federal employees have no privacy interest either in being identified as federal employees or in their work for the federal government. The DOE also found that where as here a branch of the agency acts in the spirit of the FOIA and releases the substance of internal, predecisional, deliberative documents, it may be permissible to withhold the names of DOE reviewers/evaluators under the "deliberative process" privilege incorporated into Exemption 5

of the FOIA when necessary to vindicate the policies protected by that Exemption. Accordingly, the Appeal was denied in part, granted in part, and remanded to the Ohio Field Office to determine whether withholding the names in this case would protect a valid FOIA exemption policy under Exemption 5.

Refund Applications

Eason Oil Co./Propane Sales, et al., 6/24/96, RF352-4; RF352-5

The DOE issued a Decision and Order concerning refund applications that Propane Sales and Mangum Oil & Gas submitted in the Eason Oil Company (Eason) special refund proceeding. The DOE found that Propane Sales was a retailer of Eason products who qualified for a refund under the 60% mid-range presumption of injury, and that Mangum Oil & Gas was a retailer of Eason products who qualified for a refund under the small claim presumption of injury. The DOE granted Propane Sales and Mangum Oil & Gas a total refund of \$59,701.

Tennessee Valley Authority, 6/28/96, RF272-23944

The DOE issued a Decision and Order granting an Application for Refund filed by the Tennessee Valley Authority, a utility and corporate agency of the Federal Government, in the Subpart V crude oil refund proceeding. A group of States and Territories (States) objected to the application on the grounds that the TVA passed through crude oil overcharges to its customers and that to the pass through the refund to its customers would constitute indirect restitution, a function that is reserved for the "second-stage" refunds distributed to the States. Both the States and Philip P. Kalodner, Counsel for Utilities, Transporters and Manufacturers (Kalodner) objected on the grounds that the DOE, by signing the Stripper Well Settlement Agreement, waived the rights of all Federal agencies to receive a crude oil refund. The DOE rejected the contention that public utility refund applicants should not be permitted to act as conduits for the distribution of refund benefits to their injured customers, and found that because the State and Federal governments are designated conduits for indirect restitution under the Settlement Agreement, neither waived its right to

direct restitution with respect to its own purchases of refined petroleum products. The refund granted to the applicant in this Decision was \$1,551,749.

Texaco Inc./Buster's Texaco, 6/24/96, RF321-21087

The Department of Energy (DOE) issued a Decision and Order rescinding a refund that was granted to Buster's Texaco and its owner, Ida Williams. The refund was rescinded because the check was returned to the U.S. Treasury as undeliverable by the Postal Service. Despite the DOE's best efforts, it was unable to obtain an accurate address for Ms. Williams. The DOE therefore ordered the check to be redeposited into the Texaco escrow account.

Refund Applications

The Office of Hearings and Appeals issued the following Decisions and Orders concerning refund applications, which are not summarized. Copies of the full texts of the Decisions and Orders are available in the Public Reference Room of the Office of Hearings and Appeals.

ATLANTIC RICHFIELD COMPANY/M&A PETROLEUM	RF304-15339	06/26/96
CAMPBELL SOUP COMPANY	RF272-92544	06/27/96
CRUDE OIL SUPPLE. REF., ET AL	RB272-00078	06/26/96
DIRECT TRANSIT LINE, INC. ET AL	RF272-78488	06/26/96
ESTELINE COMMUNITY OIL CO. ET AL	RF272-94700	06/26/96
GALASSO TRUCKING INC	RC272-343	06/26/96
GULF OIL CORPORATION/JOHN'S GULF	RF300-20087	06/24/96
GULF OIL CORPORATION/PIONEER OIL CO. OF MISSOURI, INC.	RF300-8134	06/26/96
JANICE MUELLER, ET AL	RK272-01331	06/28/96
MARV'S TOWING SERVICE, INC	RK272-03497	06/26/96
OLGA STARR, ET AL	RK272-682	06/26/96
SIEMENS ALLIS, INC., ET AL	RF272-91918	06/28/96
SILEX R.I. SCHOOL DISTRICT	RF272-95950	06/27/96
BROOKFIELD LOCAL SCHOOL DISTRICT	RF272-95992

Dismissals

The following submissions were dismissed:

Name	Case No.
A.M. VOGEL, INC	RF272-99113
ASSUMPTION-CALVARY CEMETERIES	RF272-98991
AVALON PETROLEUM CO.	RF342-0001
BARTLETT-COLLINS	RF272-97797
BARTLETT-COLLINS	RF272-97900
CATTARAUGUS-ALLEGANY-ERIE-WYOMING BOCES	RF272-97714
DIOCESE OF ST. CLOUD	RF272-98990
FARMERS COOPERATIVE ELEVATOR COMPANY	RG272-323
LAKES GAS COMPANY	VER-0001
RYAN AVIATION CORPORATION	RF272-97958
ST. VINCENT DE PAUL SCHOOL	RF272-97839
STU-BROCK SERVICE, INC	RF304-15065
YELLOW CAB OF MARTINSVILLE	RK272-2322

[FR Doc. 96-24024 Filed 9-18-96; 8:45 am]
BILLING CODE 6450-01-P

Notice of Issuance of Decisions and Orders; Week of January 15 Through January 19, 1996

During the week of January 15 through January 19, 1996, the decisions and orders summarized below were issued with respect to appeals, applications, petitions, or other requests filed with the Office of Hearings and Appeals of the Department of Energy. The following summary also contains a list of submissions that were dismissed by the Office of Hearings and Appeals.

Copies of the full text of these decisions and orders are available in the Public Reference Room of the Office of Hearings and Appeals, Room 1E-234, Forrestal Building, 1000 Independence Avenue, SW., Washington, DC 20585-0107, Monday through Friday, between the hours of 1:00 p.m. and 5:00 p.m., except federal holidays. They are also available in Energy Management: Federal Energy Guidelines, a commercially published loose leaf reporter system. Some decisions and orders are available on the Office of Hearings and Appeals World Wide Web site at http://www.o.ha.doe.gov.

Dated: September 9, 1996.

George B. Breznay, Director, Office of Hearings and Appeals.

Appeals

Dennis McQuade, 1/16/96, VFA-0092

Dennis McQuade filed an Appeal from determinations issued by several DOE Offices concerning personnel problems at the Oak Ridge Operations office. In considering the Appeal, the DOE found that (1) documents created as a result of a personnel inquiry were not properly withheld under FOIA Exemption 7(C) & (D) because they were not law enforcement records; (2)

documents may not be withheld under Exemption 6 unless the privacy interest in the withheld information outweighs the public interest in the release of the information; and (3) names and negative information about individuals were properly withheld under FOIA Exemption 6.

Jeffrey R. Leist, 1/18/96, VFA-0107

Jeffrey R. Leist filed an Appeal from a determination issued to him on November 15, 1995 by the Manager of the Ohio Field Office of the Department of Energy (DOE). In that determination, the Manager partially denied a request for information filed by Mr. Leist pursuant to a Freedom of Information Act request. Specifically, the Manager provided Mr. Leist with a copy of an employee list responsive to a part of Mr. Leist's request, but he redacted all names in accordance with Exemption 6 of the FOIA. Furthermore, the Manager was unable to locate any documents responsive to another part of Mr. Leist's request. In considering the Appeal, the DOE determined that the Manager properly withheld the names of employees from disclosure. With regard to the inability of the Manager to locate additional responsive documents, the DOE determined that the Manager is in the process of reviewing an amended request provided by Mr. Leist. Accordingly, the DOE directed the Manager of the Ohio Field Office to complete his review of Mr. Leist's amended request and send to Mr. Leist any responsive documents he may find or state the reasons why any responsive documents are exempt from mandatory disclosure. Since the DOE determined that Exemption 6 was otherwise properly applied to the names of employees, the Appeal was denied in all other respects.

Vectra Government Services, Inc., 1/18/96 VFA-0097

VECTRA Government Services filed an Appeal from a determination issued by the Rocky Flats Field Office concerning a procurement. In considering the Appeal, the DOE found that Rocky Flats properly withheld the evaluative portion of the Source Evaluation Board Report (SEB) under FOIA Exemption 5. DOE also held that the search conducted by Rocky Flats for documents concerning whether the SEB selection was overridden was adequate.

William Kuntz III, 1/16/96, VFA-0105

William Kuntz III filed an Appeal from a determination issued to him on November 3, 1995 by the Department of Energy's Albuquerque Field Office (DOE/AL). In that determination, the DOE/AL denied a request for information filed by Mr. Kuntz on October 12, 1995, under the Freedom of Information Act (FOIA). The DOE/AL stated the records sought by Mr. Kuntz are "agency records," and thus are not subject to the FOIA. In his Appeal, Mr. Kuntz challenged DOE/AL denial of the requested information and asked the OHA to direct DOE/AL to release the requested information. In considering the Appeal, the Office of Hearings and Appeals found that the records sought by Mr. Kuntz are neither "agency records" within the meaning of the FOIA, nor subject to the FOIA under the DOE regulations. Therefore, the Department of Energy denied Mr. Kuntz's Appeal.

Refund Applications

The Office of Hearings and Appeals issued the following Decisions and Orders concerning refund applications, which are not summarized. Copies of the full texts of the Decisions and Orders are available in the Public Reference Room of the Office of Hearings and Appeals.

Table with 3 columns: Case Name, Case Number, and Date. Includes entries like ABBOTT TRUCKING, INC (RF272-78473, 01/16/96), ALDEN ASSOCIATES (RK272-242, 01/16/96), AMERICAN ENKA COMPANY, ET AL (RF272-77453, 01/16/96), etc.

Dismissals

The following submissions were dismissed:

Name	Case No.
AUTOMATIC GAS COMPANY, INC	RF304-14250
DISCOUNT FUEL	LEE-0090
DIXIE ELECTRIC MEMBERSHIP CORP	RF272-78389
FRANK THOMPSON TRANSPORT	RF272-78153
IDAHO OPERATIONS OFFICE	VSO-0070
MCDONALD & DONOVAN HEATING	RF304-15001
NATIONAL FRUIT PRODUCT COMPANY	RF272-78120

[FR Doc. 96-24025 Filed 9-18-96; 8:45 am]
BILLING CODE 6450-01-P

Notice of Issuance of Decisions and Orders; Week of April 29 Through May 3, 1996

During the week of April 29 through May 3, 1996, the decisions and orders summarized below were issued with respect to appeals, applications, petitions, or other requests filed with the Office of Hearings and Appeals of the Department of Energy. The following summary also contains a list of submissions that were dismissed by the Office of Hearings and Appeals.

Copies of the full text of these decisions and orders are available in the Public Reference Room of the Office of Hearings and Appeals, Room 1E-234, Forrestal Building, 1000 Independence Avenue, S.W., Washington, D.C. 20585-0107, Monday through Friday, between the hours of 1:00 p.m. and 5:00 p.m., except federal holidays. They are also available in *Energy Management: Federal Energy Guidelines*, a commercially published loose leaf reporter system. Some decisions and orders are available on the Office of Hearings and Appeals World Wide Web site at <http://www.oha.doe.gov>.

Dated: September 10, 1996.

George B. Breznay,
Director, Office of Hearings and Appeals.

Appeal

Stoel, Rives LLP, 4/29/96, VFA-0145

A Freedom of Information Act (FOIA) Appeal from a determination issued by the DOE's Office of Inspector General (OIG) with respect to a request for information concerning the OIG's audit of the Bonneville Power Authority's (BPA) Energy Resource programs was considered by the Office of Hearings and Appeals. The Office of Hearings and Appeals issued a decision on April 29, 1996 remanding part of the Appeal to OIG and denying the Appeal in all other aspects. In reaching its determination, the Office of Hearings and Appeals found that: (1) the identities of audit information sources were properly withheld under Exemptions 6 and 7(C); and (2) the DOE is not required to

produce a *Vaughn* index at the administrative appeal level.

Personnel Security Hearing

Albuquerque Operations Office, 5/1/96, VSO-0079

An Office of Hearings and Appeals Hearing Officer issued an opinion under 10 C.F.R. Part 710 concerning eligibility of an individual for access authorization. After considering the testimony at the hearing convened at the request of the individual and all other information in the record, the Hearing Officer found that the individual has been a user of alcohol habitually to excess, which is derogatory information under 10 C.F.R. § 710.8(j), and has an illness or mental condition, Substance Dependence, Alcohol, which, in the opinion of a board-certified psychiatrist, causes or may cause a significant in judgment or reliability and is thus derogatory information under 10 C.F.R. § 710.8(h). The Hearing Officer further found that the individual failed to present sufficient evidence of rehabilitation, reformation or other factors to mitigate the derogatory information. Specifically, the Hearing Officer found that the individual's abstention from alcohol for five months and participation in alcohol abuse counseling for two and a half months were not of sufficient duration to significantly reduce the risk that the Individual might resume drinking. Accordingly, the Hearing Officer recommended that the individual's access authorization, which had been suspended, should not be restored.

Oak Ridge Operations Office, 5/2/96 VSO-0068

A Hearing Officer from the Office of Hearings and Appeals issued an Opinion regarding the eligibility of an individual to maintain an access authorization under the provisions of 10 C.F.R. Part 710. The individual was alleged to be alcohol dependent, based upon the diagnosis of a board-certified psychiatrist. The Hearing Officer found that the term "alcohol dependence" as used in DOE regulations meant alcohol dependence as it is commonly understood in the mental health community. However, the psychiatrist

did not apply generally accepted standards in making his diagnosis of alcohol dependence. The Hearing Officer, consequently, could not find that the individual was alcohol dependent. However, the Hearing Officer did find that the individual was a user of alcohol habitually to excess. Accordingly, the Hearing Officer found that the individual's access authorization should not be restored.

Pittsburgh Naval Reactors Office, 5/3/96, VSO-0081

An OHA Hearing Officer issued an opinion concerning an individual whose access authorization was suspended because of doubts concerning his financial situation and his reliability and trustworthiness. The Hearing Officer found that the individual had failed to mitigate the DOE's concerns arising from the individual's unpaid debts of approximately \$32,000. She found that although the individual's financial crisis appeared to have been caused by the loss of employment, the individual had failed to take any steps to reduce or eliminate the debt once he was reemployed. Accordingly, the Hearings Officer found that the individual had done nothing to mitigate the DOE's concerns regarding his reliability and trustworthiness, and that his access authorization should not be restored.

Request for Exception

Lakes Gas Company, 4/30/96, VEE-0018

Lakes Gas Company (Lakes) filed an Application for Exception from the Energy Information Administration (EIA) requirement that it file Form EIA-782B, the "Resellers—Retailers' Monthly Petroleum Product Sales Report." In considering this request, the DOE found that the firm was not suffering gross inequity or serious hardship. Therefore, the DOE denied Lake's Application for Exception.

Visa Petroleum, Inc., 4/30/96, VEE-0017

Visa Petroleum, Inc., filed an Application for extension of the exception relief previously granted the firm from the requirement that it file Form EIA-782B, the "Reseller/Retailer's Monthly Petroleum Product Sales Report." In view of the firm's precarious

financial condition resulting from continuing losses and the poor health of the owner's wife, who prepares the report, the DOE found that submitting the report would cause the firm unusually severe problems. Accordingly, exception relief was extended through May 1998.

Supplemental Order

Akin Energy, 4/30/96, VFX-0007

The DOE issued a Supplemental Order regarding Akin Energy (Akin), a

private filing service. In the Supplemental Order, the DOE announces that Akin, its officers and employees are barred from receiving future refund checks in any proceedings conducted by OHA under 10 C.F.R. Part 205, Subpart V. DOE's action was prompted by two instances where Akin failed to repay money erroneously paid to it and are of its clients by DOE. Because Akin failed to repay the amount it owes to DOE, the DOE found that

Akin should be barred from receiving refund checks on behalf of its clients.

Refund Applications

The Office of Hearings and Appeals issued the following Decisions and Orders concerning refund applications, which are not summarized. Copies of the full texts of the Decisions and Orders are available in the Public Reference Room of the Office of Hearings and Appeals.

CAPITAL TRANSPORT CO., INC.	RR272-0198	04/30/96
CIMARRON VALLEY COOPERATIVE	RF272-97138	05/03/96
AGRI-URBAN, INC.	RF272-97158	
CRUDE OIL SUPPLEMENTAL REFUND	RB272-00074	04/29/96
CRUDE OIL SUPPLEMENTAL REFUNDS	RB272-00075	04/29/96
DALLAS CARRIERS CORPORATION ET AL	RK272-02251	05/03/96
DAVID VOLKERDING ET AL	RK272-02400	05/02/96
EDWARD HUCKMAN ESTATE ET AL	RK272-2920	04/29/96
GEORGIA WILLOUGHBY ET AL	RK272-02640	05/02/96
GULF OIL CORPORATION/FRENCH & CURTIS, INC./WEBBER ENERGY FUELS	RF300-20417	04/30/96
LONDON & OVERSEAS FREIGHTERS ET AL	RK272-2956	04/29/96
LYONDELL PETROCHEMICAL COMPANY	RG272-00532	05/03/96
POWER PRO EQUIPMENT CO./E.V. MARTIN CORPORATION	RK272-03432	05/03/96
PROVIDENCE HOSPITAL	RC272-338	05/02/96
RENNER MOTOR LINES, INC	RF272-97081	04/29/96
ROGERS DYE-FINISHING	RF272-69198	04/30/96
ROGERS DYE-FINISHING	RD272-69198	

Dismissals

The following submissions were dismissed:

Name	Case No.
CAMERON IRON WORKS	RF272-98747
COKER AVIATION, INC.	RF272-98731
KITTY HAWK AIR CARGO, INC	RF272-98730
RENTON-ISSAQUAH AUTO TRANSPORT	RF272-99069
WILDER CONSTRUCTION CO., INC	RF272-77984

[FR Doc. 96-24026 Filed 9-18-96; 8:45 am]
BILLING CODE 6450-01-P

Notice of Issuance of Decisions and Orders; Week of May 27 Through May 31, 1996

During the week of May 27 through May 31, 1996, the decisions and orders summarized below were issued with respect to appeals, applications, petitions, or other requests filed with the Office of Hearings and Appeals of the Department of Energy. The following summary also contains a list of the submissions that were dismissed by the Office of Hearings and Appeals.

Copies of the full text of these decisions and orders are available in the Public Reference Room of the Office of Hearings and Appeals, Room 1E-234, Forrestal Building, 1000 Independence Avenue, SW, Washington, D.C. 20585-0107, Monday through Friday, between the hours of 1:00 p.m. and 5:00 p.m., except federal holidays. They are also

available in *Energy Management: Federal Energy Guidelines*, a commercially published loose leaf reporter system. Some decisions and orders are available on the Office of Hearings and Appeals World Wide Web site at <http://www.oha.doe.gov>.

Dated: September 9, 1996.
George B. Breznay
Director, Office of Hearings and Appeals.

Decision List No. 974

Appeals

Ball, Janik & Novack, 5/29/96, VFA-0159

The DOE's Office of Hearings and Appeals (OHA) issued a determination denying a Freedom of Information Act (FOIA) Appeal filed by Ball, Janik & Novack (Ball). Ball appealed the Bonneville Power Administration's (BPA) withholding of information created as a result of its marketing research. OHA found that the information was properly withheld

under Exemption 5's confidential commercial information privilege.

Gilberte R. Brashear, 5/30/96, VFA-0161

Gilberte R. Brashear filed an Appeal from a determination issued to her on April 8, 1996 by the Department of Energy's Albuquerque Operations Office (AO) which denied a request for information she had filed under the Freedom of Information Act (FOIA). The request sought information regarding the possible exposure to radiation of Mrs. Brashear's late husband while he was in the U.S. Army at Los Alamos, New Mexico. AO stated that it conducted a search of its records at AO's Occupational Safety and Health Division and that it found no responsive documents. The Appeal challenged the adequacy of the search conducted by AO. In considering the Appeal, the DOE found that AO conducted an adequate search which was reasonably calculated to discover documents responsive to

Mrs. Brashear's request. Accordingly, the Appeal was denied.

Howard T. Uhal, 5/31/96, VFA-0160

The OHA denied an appeal of a request to the Sandia National Laboratory for information concerning equipment used to detect chemical or biological agents. The OHA found that the search performed by Sandia National Laboratory was adequate, and referred the requester to the Department of the Army for other possible documents.

Implementation of Special Refund Procedures

Macmillan Oil Company, Kenny Larson Oil Company, 5/29/96, LEF-0046; VEF-0002

The DOE issued a Decision and Order implementing procedures for the distribution of funds obtained from Macmillan Oil Company and Kenny Larson Oil Company. These funds were remitted by each firm to the DOE to settle possible pricing violations with respect to sales of refined petroleum products. For both firms, the audit records indicated the amount that each customer had been overcharged. The DOE determined that these monies will be distributed to the overcharged customers in proportion to the overcharges reflected in the audit records.

Refund Applications

Four Circle Cooperative, 5/30/96, RK272-3483

Frenchman Valley Farmers sought a supplemental refund on behalf of Four Circle Cooperative. After the previous refund was disbursed, Four Circle was dissolved and its physical assets sold to Frenchman. The DOE noted that refund applications filed by cooperatives are deemed to have been filed on behalf of the members to whom they sold petroleum products. Since approximately one-half of Four Circle's members joined Frenchman when Four Circle was liquidated, DOE granted Frenchman one-half of the supplemental refund.

Gulf Oil Corporation/The Celotex Corporation, 5/31/96, RF300-16329; RF300-16720

The DOE issued a Decision and Order granting a refund based on two applications submitted by the Celotex Corporation (Celotex) in the Gulf Oil Corporation overcharge refund proceeding conducted under 10 CFR Part 205, Subpart V. The DOE determined that the Gulf customer number Celotex submitted with one application included the gallonage claimed under a different customer number in Celotex's other application. Celotex was granted a refund of \$59,475 based on 47,579,661 gallons of petroleum purchases.

Peel Bros. Truck Leasing; Texaco Inc./Peel Bros. Truck Leasing, 5/30/96, RC272-340; RF321-21086

The Department of Energy (DOE) issued a Decision and Order rescinding

refunds that were granted to Peel Bros. Truck Leasing (Peel) in the Texaco and crude oil refund proceedings. In the Decision, the DOE found that Peel was a corporation, and the stock of that corporation had been sold to Ryder Systems Inc., which had previously been granted a refund for Peel's purchases. The DOE further found that the right to a refund had been transferred with the stock, and that the former owner of Peel was not entitled to a refund in either proceeding.

The 341 Tract Unit of the Citronelle Field/Consumers Power Company, 5/31/96, RF345-68

The DOE issued a Supplemental Order reducing a \$68,650 refund granted to Consumers Power Company in *The 341 Tract Unit of the Citronelle Field/Consumers Power Company*, Case No. RF345-2 (May 23, 1996). In the Supplemental Order, the DOE corrected two calculation errors and determined that the proper refund amount was \$61,467. Accordingly, the Consumers Power refund was reduced by \$7,183.

Refund Applications

The Office of Hearings and Appeals issued the following Decisions and Orders concerning refund applications, which are not summarized. Copies of the full texts of the Decisions and Orders are available in the Public Reference Room of the Office of Hearings and Appeals.

ATLANTIC RICHFIELD COMPANY/GROVES OIL CO. ET AL	RF304-02369	
	05/30/96	
CRUDE OIL SUPPLE REFUND DIST	RB272-00077	05/31/96
CRUDE OIL SUPPLE REFUND	RB272-00080	05/30/96
GLENDALE MEMORIAL HOSPITAL ET AL	RF272-89208	05/28/96
INEEDA UNITOG RENTALS, INC	RF272-85971	05/30/96
PEPSI-COLA METROPOLITAN BOTTLING CO. ET AL	RK272-00035	05/31/96
POZZI BROTHERS TRANSFER ET AL	RR272-171	05/28/96
TEXACO INC./COASTAL CORP. ET AL	RF321-9722	05/29/96
TEXACO INC./LEO LONGTIN'S TEXACO	RR321-196	05/30/96

Dismissals

The following submissions were dismissed:

Name	Case No.
GARRETT PAVING CONTRACTORS, INC	RF272-98609
HOLLAND FUELS, INC	RF304-4871

[FR Doc. 96-24027 Filed 9-18-96; 8:45 am]
BILLING CODE 6450-01-P

FEDERAL COMMUNICATIONS COMMISSION

Notice of Public Information Collections Being Reviewed by the Federal Communications Commission

September 13, 1996.

SUMMARY: The Federal Communications Commission, as part of its continuing

effort to reduce paperwork burden invites the general public and other Federal agencies to take this opportunity to comment on the following information collection, as required by the Paperwork Reduction Act of 1995, Public Law 104-13. An agency may not conduct or sponsor a collection of information unless it

displays a currently valid control number. No person shall be subject to any penalty for failing to comply with a collection of information subject to the Paperwork Reduction Act (PRA) that does not display a valid control number. Comments are requested concerning (a) whether the proposed collection of information is necessary for the proper performance of the functions of the Commission, including whether the information shall have practical utility; (b) the accuracy of the Commission's burden estimate; (c) ways to enhance the quality, utility, and clarity of the information collected; and (d) ways to minimize the burden of the collection of information on the respondents, including the use of automated collection techniques or other forms of information technology.

DATES: Persons wishing to comment on this information collection should submit comments November 18, 1996.

ADDRESSES: Direct all comments to Dorothy Conway, Federal Communications Commission, Room 234, 1919 M St., N.W., Washington, DC 20554 or via internet to dconway@fcc.gov.

FOR FURTHER INFORMATION CONTACT: For additional information or copies of the information collections contact Dorothy Conway at 202-418-0217 or via internet at dconway@fcc.gov.

SUPPLEMENTARY INFORMATION:

OMB Approval Number: New.
Title: Aeronautical Services Transition Plan.
Form No.: N/A.
Type of Review: New collection.
Respondents: Business or other for-profit.
Number of Respondents: 6.
Estimated time per response: 4 hours.
Total Annual Burden: 24 hours.
Estimated cost per respondent: Based on the assumption that applicants will hire outside counsel at an approximate cost of \$150 per hour, it is estimated that the cost per submission will be \$900.00.

Needs and Uses: On April 9, 1996, the Commission adopted *Order or Reconsideration and Further Notice of Proposed Rulemaking*, 61 FR 30579 (June 17, 1996). When AMSS becomes available on the domestic satellite, current AMSS users will be transitioning from Inmarsat to the domestic provider. To ensure continuity of service during the transition from Inmarsat to the U.S. domestic AMSS licensee, the Commission adopted a requirement that operators providing interim domestic aeronautical mobile satellite services (AMSS) via Inmarsat

file a transition plan as operations are moved to the U.S. domestic licensee. The information collection will be used by the Commission and the domestic licensee to ensure technical feasibility of the transition and continuity of service as the U.S. domestic licensee begins to provide domestic AMSS.

Federal Communications Commission

William F. Caton,

Acting Secretary.

[FR Doc. 96-24008 Filed 9-18-96; 8:45 am]

BILLING CODE 6712-01-P

FEDERAL ELECTION COMMISSION

Sunshine Act Meeting

AGENCY: Federal Election Commission.

"FEDERAL REGISTER" NUMBER: 96-23555.

PREVIOUSLY ANNOUNCED DATE AND TIME: Thursday, September 19, 1996 at 10:00 a.m. Meeting open to the public.

This meeting has been cancelled.

DATE AND TIME: Wednesday, September 25, 1996 at 10:00 a.m.

PLACE: 999 E Street, N.W., Washington, D.C.

STATUS: This Meeting Will Be Closed to the Public.

ITEMS TO BE DISCUSSED:

Compliance matters pursuant to 2 U.S.C. § 437g.

Audits conducted pursuant to 2 U.S.C.

§ 437g, § 438(b), and Title 26 U.S.C.

Matters concerning participation in civil actions or proceedings or arbitration.

Internal personnel rules and procedures or matters affecting a particular employee.

DATE AND TIME: Thursday, September 26, 1996 at 10:00 a.m.

PLACE: 999 E Street, N.W. Washington, D.C. (Ninth Floor.)

STATUS: This Meeting Will Be Open to the Public.

ITEMS TO BE DISCUSSED:

Correction and Approval of Minutes.

Advisory Opinion 1996-36: Robert F. Bauer on behalf of The Honorable Martin Frost, Sheila Jackson Lee, Ken Bentsen, Gene Green, and Eddie Bernice Jackson (tentative).

Advisory Opinion 1996-37: Kindra L. Hefner, Director, Brady for Congress Committee (tentative)

Advisory Opinion 1996-40: Representative Mel Hancock
FY 1998 Budget Request
Administrative Matters

PERSON TO CONTACT FOR INFORMATION:

Mr. Ron Harris, Press Officer,
Telephone: (202) 219-4155.

Delores Hardy,

Administrative Assistant.

[FR Doc. 96-24230 Filed 9-17-96; 3:33 pm]

BILLING CODE 6715-01-M

FEDERAL HOUSING FINANCE BOARD

Sunshine Act Meeting; Announcing an Open Meeting of the Board

TIME AND DATE: 9:00 a.m. Thursday, September 26, 1996.

PLACE: Board Room, Second Floor, Federal Housing Finance Board, 1777 F Street, N.W., Washington, D.C. 20006.

STATUS: The entire meeting will be open to the public.

MATTERS TO BE CONSIDERED DURING PORTIONS OPEN TO THE PUBLIC:

- Federal Home Loan Bank Dividends—Third Quarter 1996.
- Proposed Rule—Amendment of Affordable Housing Program Regulation.

CONTACT PERSON FOR MORE INFORMATION: Elaine L. Baker, Secretary to the Board, (202) 408-2837.

Rita I. Fair,

Managing Director.

[FR Doc. 96-24244 Filed 9-17-96; 3:33 pm]

BILLING CODE 6725-01-P

GENERAL ACCOUNTING OFFICE

Federal Accounting Standards Advisory Board

AGENCY: General Accounting Office.

ACTION: Notice of meeting.

SUMMARY: Pursuant to section 10(a)(2) of the Federal Advisory Committee Act (Pub. L. No. 92-463), as amended, notice is hereby given that the Federal Accounting Standards Advisory Board will meet on Thursday, September 26, 1996, from 9:00 a.m. to 3:00 p.m. in room 4N30 of the General Accounting Office building, 441 G St., N.W., Washington, D.C.

The purpose of the meeting is to discuss and review the following projects (1) Management Discussion & Analysis (MD&A), (2) Trust Funds, (3) Codification of FASAB Accounting Standards, and (4) Natural Resources.

Any interested person may attend the meeting as an observer. Board discussions and reviews are open to the public.

FOR FURTHER INFORMATION CONTACT:

Ronald S. Young, Executive Staff Director, 750 First St., N.E., Room 1001,

Washington, D.C. 20002, or call (202) 512-7350.

Authority: Federal Advisory Committee Act, Pub. L. No. 92-463, Section 10(a)(2), 86 Stat. 770, 774 (1972) (current version at 5 U.S.C. app. section 10(a)(2) (1988)); 41 CFR 101-6.1015 (1990).

Dated: September 10, 1996.

Ronald S. Young,

Executive Director.

[FR Doc. 96-24070 Filed 9-18-96; 8:45 am]

BILLING CODE 1610-01-M

GENERAL SERVICES ADMINISTRATION

Public Buildings Service; Notice of Availability of Final Supplemental Environmental Impact Statement; Proposed Pacific Highway Port of Entry Expansion, Blaine, Whatcom County, WA

Pursuant to section 102(2)(C) of the National Environmental Policy Act (NEPA) of 1969, as amended, as implemented by the Council on Environmental Quality (40 CFR Parts 1500-1508), the General Services Administration (GSA) has filed with the Environmental Protection Agency, and made available to other government and interested private parties, the Final Supplemental Environmental Impact Statement (FSEIS) for the proposed expansion at the Pacific Highway Port of Entry in Blaine, Washington.

The FSEIS is on file and a copy may be obtained from U.S. General Services Administration, Region 10, Attention: Donna M. Meyer, 400 15th Street, SW., Auburn, Washington 98001, (206) 931-7675. A limited number of copies of the FSEIS are available to fill single copy requests. Loan copies are available for public review at the Blaine City Library, 610 Third Street, Blaine, Washington.

Written comments regarding the Final Supplemental Environmental Impacted Statement may be submitted until October 14, 1996 and should be addressed to General Services Administration in care of GSA's EIS subconsultant, Berger/ABAM Engineers, Inc., 33301 Ninth Avenue South, Federal Way, Washington, 98003-6395.

Dated: September 6, 1996.

L. Jay Pearson,

Regional Administrator (10A).

[FR Doc. 96-24020 Filed 9-18-96; 8:45 am]

BILLING CODE 6820-23-M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

Ceftiofur Sodium for Sheep; Availability of Data

AGENCY: Food and Drug Administration, HHS.

ACTION: Notice.

SUMMARY: The Food and Drug Administration (FDA) is announcing the availability of target animal safety and effectiveness, and human food safety data to be used in support of a new animal drug application (NADA) or supplemental NADA for the use of ceftiofur sodium sterile powder, reconstituted with sterile water, as an injectable for treating certain respiratory diseases of sheep. The data, contained in Public Master File (PMF) 5544, were compiled under National Research Support Project-7 (NRSP-7), a national agricultural research program for obtaining clearances for use of new drugs in minor animal species and for special uses.

ADDRESSES: Submit NADA's or supplemental NADA's to the Document Control Section (HFV-199), Center for Veterinary Medicine, Food and Drug Administration, 7500 Standish Pl., Rockville, MD 20855.

FOR FURTHER INFORMATION CONTACT: Naba K. Das, Center for Veterinary Medicine (HFV-133), Food and Drug Administration, 7500 Standish Pl., Rockville, MD 20855, 301-594-1659.

SUPPLEMENTARY INFORMATION: The use of ceftiofur sodium sterile powder, reconstituted as a sterile aqueous injection, to treat sheep for respiratory disease is a new animal drug use under section 201(v) of the Federal Food, Drug, and Cosmetic Act (the act) (21 U.S.C. 321(v)). As a new animal drug, ceftiofur is subject to section 512 of the act (21 U.S.C. 360b), which requires that its uses in sheep be the subject of an approved NADA or supplemental NADA. Sheep are a minor species under § 514.1(d)(1)(ii) (21 CFR 514.1(d)(1)(ii)).

The NRSP-7 Project, Western Region, University of California, Davis, CA 95616, has provided data and information that demonstrate safety and effectiveness to the target animal and human food safety for ceftiofur sterile powder, reconstituted as a sterile aqueous injectable solution for intramuscular use in sheep, to treat sheep respiratory disease (pneumonia) associated with *Pasteurella haemolytica* and/or *P. multocida*. NRSP-7 did not provide information concerning potential environmental impacts of the

manufacturing process. Such information is required upon submission of an application relying on this file to support approval.

The data and information on safety and effectiveness are contained in PMF 5544. Sponsors of NADA's or supplemental NADA's may, without further authorization, reference the PMF to support approval of an application filed under § 514.1(d). An NADA or supplemental NADA must include, in addition to a reference to the PMF, animal drug labeling and other information needed for approval, such as data supporting extrapolation from a major species in which the drug is currently approved, or authorized reference to such data, and data concerning manufacturing methods, facilities and controls, and information addressing potential environmental impacts of the manufacturing process.

In accordance with the freedom of information provisions of part 20 (21 CFR part 20) and 21 CFR 514.11(e)(2)(ii), a summary of safety and effectiveness data and information in this PMF submitted to support approval of an application may be seen in the Dockets Management Branch (HFA-305), Food and Drug Administration, 12420 Parklawn Dr., rm. 1-23, Rockville, MD 20857, between 9 a.m. and 4 p.m., Monday through Friday.

Dated: September 4, 1996.

Stephen F. Sundlof,

Director, Center for Veterinary Medicine.

[FR Doc. 96-24074 Filed 9-18-96; 8:45 am]

BILLING CODE 4160-01-F

[Docket No. 96N-0074]

Sperti Drug Products, Inc., et al.; Withdrawal of Approval of 40 New Drug Applications

AGENCY: Food and Drug Administration, HHS.

ACTION: Notice.

SUMMARY: The Food and Drug Administration (FDA) is withdrawing 40 new drug applications (NDA's). The basis for the withdrawals is that the holders of the applications have repeatedly failed to file required annual reports on these NDA's.

EFFECTIVE DATE: September 19, 1996.

FOR FURTHER INFORMATION CONTACT: Olivia A. Vieira, Center for Drug Evaluation and Research (HFD-7), Food and Drug Administration, 7500 Standish Pl., Rockville, MD 20855, 301-594-1046.

SUPPLEMENTARY INFORMATION: The holders of approved applications to

market new drugs or antibiotics for human use are required to submit annual reports to FDA concerning each of their approved applications in accordance with § 314.81 (21 CFR 314.81).

In the Federal Register of March 12, 1996 (61 FR 9999), FDA offered an opportunity for a hearing on a proposal to withdraw approval of 41 NDA's because the firms had failed to submit the required annual reports for these NDA's.

The agency received one request for a hearing from ConvaTec, P.O. Box 147, St. Louis, MO 63166-0147, the firm that bought Calgon Vestal Laboratories. ConvaTec has filed an annual report for 17-424, Septisol Foam. Therefore, approval of this NDA is not being withdrawn.

The holders of the other 40 applications did not respond to the notice of opportunity for hearing. Failure to file a written notice of participation and request for a hearing

as required by 21 CFR 314.200 constitutes an election by the applicant not to make use of the opportunity for a hearing concerning the proposal to withdraw approval of the applications and a waiver of any contentions concerning the legal status of the drug products. Therefore, the Director, Center for Drug Evaluation and Research, is withdrawing approval of the NDA's listed in the table in this document.

NDA no.	Drug	Applicant
NDA 4-749	Bio-Dyne Ointment	Sperti Drug Products, Inc.
NDA 8-532	Nicodrin Tablets	Gold Leaf Division, Ormont Drug and Chemical Co., Inc.
NDA 8-685	Puran Tablets	Pure Laboratories, Inc.
NDA 8-891	Buffered Parasal-INH and INH 20 Tablets	Panray Division, Ormont Drug and Chemical Co., Inc.
NDA 10-353	Parasal-Potassium Tablets	Do.
NDA 11-902	Hematainer	Courtland Laboratories.
NDA 12-432	Meprobamate Tablets	Gyma Labs.
NDA 12-435	Nitrofurantoin Tablets	Do.
NDA 12-513	Petranquil (Meprobamate) Tablets	Pharmaceutical Philadelphia and Cosmetic Co.
NDA 12-866	Meprobamate Tablets	Riverton Laboratories.
NDA 12-984	Secret Cream Deodorant	The Procter and Gamble Co.
NDA 14-344	Meprobamate Tablets	Bryant Pharmaceutical, Corp.
NDA 14-364	Meprobamate Tablets	Bates Laboratories, Inc.
NDA 14-365	Meprobamate Tablets	Philadelphia Laboratories, Inc.
NDA 14-367	Meprobamate Tablets	American Pharmaceutical Co., Inc.
NDA 14-368	Meprobamate Tablets	MK Laboratories, Inc.
NDA 14-509	Meprobamate Tablets	Chase Chemical Co.
NDA 14-511	Meprobamate Tablets	Davis-Edwards Pharmacal Corp.
NDA 14-600	Meprobamate Tablets	Vitamix Pharmaceuticals, Division of Philadelphia Pharmaceutical and Cosmetic Co.
NDA 14-769	Meprobamate Tablets	USV Pharmaceuticals.
NDA 14-862	Meprobamate Tablets	Gold Leaf Pharmacal Co., Inc.
NDA 15-081	Meprobamate Tablets	Kirkman Laboratories, Inc.
NDA 15-170	Meprobamate Tablets	Schlicksup Drug (FAS-CILE 400 and FAC-CILE 200) Co., Inc.
NDA 15-437	Meprobamate Tablets	Phoenix Laboratories, Inc.
NDA 16-051	Meprobamate Tablets	Lit Drug Co.
NDA 16-068	Meprobamate Tablets	Leeds-Dixon Laboratories, Inc.
NDA 16-107	Protran *COM001*(Meprobamate)Tablets	Rand Laboratories, Inc.
NDA 16-254	Meprobamate Tablets	Modern Drugs, Inc.
NDA 16-731	Cuticura Medicated Soap	Purex.
NDA 17-240	Bio/Dopa (Levodopa) Capsules	Steri-Med.
NDA 17-343	Actin-N NitrofurazoneTopical Dressing	Sherwood Medical Co.
NDA 17-417	Westasept Topical Solution	West Chemical Products, Inc.
NDA 17-418	Wescohex Emulsion	Do.
NDA 17-419	Wescohex Topical Emulsion	The Vitarine Co., Inc.
NDA 17-423	Septisol Solution	Calgon Vestal Laboratories.
NDA 17-460	Septi-Soft Solution	Do.
NDA 17-540	Heparin Sodium Injection	Dell Laboratories.
NDA 17-544	Dancon Antidandruff Shampoo	The Wella Corp.
NDA 17-580	Dancon Antidandruff Shampoo	Do.
NDA 18-363	Hexascrub Sponge	Professional Disposables, Inc., Division of Nice-Pak Products, Inc.

The Director, Center for Drug Evaluation and Research, under section 505(e) of the Federal Food, Drug, and Cosmetic Act (21 U.S.C. 355(e)), and under authority of 21 CFR 5.82, finds that the holders of the applications

listed above have repeatedly failed to submit reports required by § 314.81. Therefore, under this finding, approval of the NDA's listed above, and all amendments and supplements thereto,

is hereby withdrawn, effective September 19, 1996.

Dated: August 28, 1996.

Janet Woodcock,

Director, Center for Drug Evaluation and Research.

[FR Doc. 96-24075 Filed 9-18-96; 8:45 am]

BILLING CODE 4160-01-F

DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT

[Docket No. FR-4086-N-39]

Office of the Assistant Secretary for Housing-Federal Housing Commissioner; Notice of Proposed Information Collection for Public Comment

AGENCY: Office of the Assistant Secretary for Housing-Federal Housing Commissioner, HUD.

ACTION: Notice.

SUMMARY: The proposed information collection requirement described below will be submitted to the Office of Management and Budget (OMB) for review, as required by the Paperwork Reduction Act. The Department is soliciting public comments on the subject proposal.

DATES: Comments due: November 18, 1996.

ADDRESSES: Interested persons are invited to submit comments regarding this proposal. Comments should refer to the proposal by name and/or OMB Control Number and should be sent to: Oliver Walker, Housing, Department of Housing and Urban Development, 451-7th Street SW., Room 9116, Washington, DC 20410.

FOR FURTHER INFORMATION CONTACT: Natalie Yee, Single Family Insurance Operations Division (SFIOD), Telephone number (202) 708-0614 ext. 3500 for information on the Single Family Premium Collection Subsystem Upfront (formerly form HUD-27001, Transmittal of Upfront Mortgage Insurance Premium) (this is not a toll-free number).

SUPPLEMENTARY INFORMATION: The Department will submit the proposed information collection to OMB for review, as required by the Paperwork Reduction Act of 1995 (44 U.S.C. Chapter 35, as amended).

The Notice is soliciting comments from members of the public and affecting agencies concerning the proposed collection of information to: (1) Evaluate whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information will have practical utility; (2) Evaluate the

accuracy of the agency's estimate of the burden of the proposed collection of information; (3) Enhance the quality, utility, and clarity of the information to be collected; and (4) Minimize the burden of the collection of information on those who are to respond; including through the use of appropriate automated collection techniques or other forms of information technology, e.g., permitting electronic submission of responses.

This Notice also lists the following information:

Title of Proposal: Single Family Premium Collection Subsystem Upfront.
OMB Control Number: 2502-0423.

Description of the need for the information and the proposed use: The new Single Family Premium Collection Subsystem (SFPCS) replaces the A83 One-Time Mortgage Insurance Premium System. The form HUD-27001, Transmittal of Upfront Mortgage Insurance Premium is now obsolete. However, the information collection is still in effect. SFPCS will strengthen HUD's ability to manage and process single family mortgage insurance premium collections and corrections for the majority of insured single family mortgages. It also will improve data integrity for the Single Family Insurance Program. FHA approved lenders will use the new versions of Melon's Telecash and HUD Mortgage Premium Connection (HUD-MPC) software for all transmissions with SFPCS. SFPCS replaces the old A83 system and the form HUD-27001 which lenders used to remit Upfront Mortgage Insurance Premiums using funds obtained from the mortgagor during the closing of the mortgage transaction at settlement. The authority for this collection of information is specified in 24 CFR 203.284. The collection of information is used to update HUD's Single Family Insurance System. Without this information the premium collection/monitoring process would be severely impeded and program data would be unreliable. In general lenders use the new software remit the upfront premium through SFPCS to obtain mortgage insurance for the homeowner.

Agency form numbers: Not applicable.

Members of affected public: Business or other for-profit.

Public reporting burden for this collection of information is estimated to average 0.5 hours per response, including the time for reviewing instructions, searching existing data sources, gathering and maintaining the data needed, and completing and reviewing the collection of information. The burden of completing the form will be eliminated. Lenders will be able to

key the information online or have their computer transmit the information. The number of respondents is 3,378 and the frequency of response is on occasion, that is a specific event, a mortgage closing. Since remittance is made through the Automatic Clearinghouse, the upfront remittance is submitted electronically and there is no paperwork to complete and mail in. Status of the proposed information collection: Extension of a currently approved collection.

Authority: Section 3506 of the Paperwork Reduction Act of 1995, 44 U.S.C. Chapter 35, as amended.

Dated: September 12, 1996.

Nicolas P. Retsinas,

Assistant Secretary for Housing-Federal Housing Commissioner.

[FR Doc. 96-23961 Filed 9-18-96; 8:45 am]

BILLING CODE 4210-27-M

[Docket No. FR-4086-N-47]

Office of the Assistant Secretary for Housing; Notice of Proposed Information Collection for Public Comment

AGENCY: Office of the Assistant Secretary for Housing, HUD.

ACTION: Notice.

SUMMARY: The proposed information collection requirement described below will be submitted to the Office of Management and Budget (OMB) for review, as required by the Paperwork Reduction Act. The Department is soliciting public comments on the subject proposal.

DATES: November 18, 1996.

ADDRESSES: Interested persons are invited to submit comments regarding this proposal. Comments should refer to the proposal by name and/or OMB Control Number and should be sent to: Oliver Walker, Housing, Department of Housing & Urban Development, 451-7th Street, SW., Room 9116, Washington, DC 20410.

FOR FURTHER INFORMATION CONTACT: Barbara D. Hunter, Telephone number (202) 708-3944 (this is not a toll-free number) for copies of the proposed forms and other available documents.

SUPPLEMENTARY INFORMATION: The Department will submit the proposed information collection to OMB for review, as required by the Paperwork Reduction Act of 1995 (44 U.S.C. Chapter 35, as amended).

The Notice is soliciting comments from members of the public and affecting agencies concerning the proposed collection of information to:

(1) Evaluate whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information will have practical utility; (2) Evaluate the accuracy of the agency's estimate of the burden of the proposed collection of information; (3) Enhance the quality, utility, and clarity of the information to be collected; and (4) Minimize the burden of the collection of information on those who are to respond; including through the use of appropriate automated collection techniques or other forms of information technology, e.g., permitting electronic submission of responses.

This Notice also lists the following information:

Title of Proposal: Report on Section 8 Program Utilization.

OMB Control Number: 2502-0439.

Description of the need for the information and proposed use: "Housing Assistance Payments" Data collected will be used by the Housing Information and Statistics Division to determine the rate programs are leased, minimize vacancy losses, determine vacancy rates, document cases where a reduction in the number of contracted units are leased to elderly, handicapped or disabled tenants, and answer questions.

Agency form numbers: HUD 52684.

Members of affected public: State or local governments, businesses or other for-profit, non-profit institutions, and small businesses or organizations.

Status of the proposed information collection: Extension without change.

Authority: Section 3506 of the Paperwork Reduction Act of 1995, 44 U.S.C. Chapter 35, as amended.

Dated: September 12, 1996.

James E. Schoenberger,

Associate General Deputy, A/S Secretary for Housing—Federal Housing Commissioner.

[FR Doc. 96-23969 Filed 9-18-96; 8:45 am]

BILLING CODE 4210-27-M

[Docket No. FR-4108-N-02]

Office of the Assistant Secretary for Community Planning and Development; Notice of Submission of Proposed Information Collection to OMB

AGENCY: Office of the Assistant Secretary for Community Planning and Development, HUD.

ACTION: Notice of submission of proposed information collection to OMB.

SUMMARY: The proposed information collection requirement described below

has been submitted to the Office of Management and Budget (OMB) for emergency review and approval, as required by the Paperwork Reduction Act. The Department is soliciting public comments on the subject proposal.

DATES: The due date for comments is: September 26, 1996.

ADDRESSES: Interested persons are invited to submit comments regarding this proposal. Comments must be received within seven (7) days from the date of this notice. Comments should refer to the proposal by name and should be sent to: Joseph F. Lackey, Jr., HUD Desk Officer, Office of Management and Budget, New Executive Office Building, Washington, DC 20503.

FOR FURTHER INFORMATION CONTACT: Kay F. Weaver, Reports Management Officer, Department of Housing and Urban Development, 451 Seventh Street, SW, Washington, DC 20410, telephone (202) 708-0050. Hearing- or speech-impaired individuals may access this number via TTY by calling the Federal Information Relay Service at 1-800-877-8399. (Other than the "800" number, these telephone numbers are not toll-free.) Copies of available documents submitted to OMB may be obtained from Ms. Weaver.

SUPPLEMENTARY INFORMATION: This notice informs the public that HUD has submitted to OMB, for emergency processing, an information collection package with respect to a final rule, entitled "Loan Guarantee Recovery Fund", published on September 6, 1996 (61 FR 47404). HUD seeks to implement this initiative on the final day of the rule (October 7, 1996), unless prior to that date Congress authorizes an earlier effective date for this rule.

The final rule implements section 4 of the "Church Arson Prevention Act of 1996" (Pub. L. 104-155, approved July 3, 1996) (the Act) by establishing a new 24 CFR part 573. Section 4 of the Act authorizes the Secretary of HUD to guarantee loans made by financial institutions to assist certain nonprofit organizations (organizations described in section 501(c)(3) of the Internal Revenue Code of 1996) that have had property damaged as a result of acts of arson or terrorism. Part 573 describes the procedures, terms, and conditions by which HUD will guarantee loans to assist eligible nonprofit organizations. Under 24 CFR part 573, eligible borrowers may use guaranteed loan funds for a wide range of activities, including: (1) The acquisition of real or personal property; (2) the rehabilitation of real property; (3) the construction, reconstruction, or replacement of real

property improvement; (4) site preparation; (5) architectural, engineering, and security expenses; and (6) refinancing existing indebtedness.

Certain provisions of 24 CFR part 573 establish information collection requirements. Specifically, § 573.6 sets forth the information which a financial institution seeking a section 4 guaranteed loan must submit to HUD. Section 573.7 establishes the information which must be contained in the loan guarantee agreement between the financial institution and the Secretary. Section 573.8 lists the environmental review information which a borrower must collect and provide to HUD. Further, § 573.11 describes the recordkeeping requirements which must be followed by a financial institution receiving section 4 loan guarantee assistance.

HUD has submitted the proposal for the collection of information, as described below, to OMB for review, as required by the Paperwork Reduction Act (44 U.S.C. Chapter 35):

(1) Title of the information collection proposal: Final Rule—Loan Guarantee Recovery Fund

(2) Summary of the collection of information:

A financial institution seeking a section 4 guaranteed loan must submit to HUD the following documentation:

1. A statement that the institution is a financial institution as defined at § 573.2.

2. The borrower's original request for a loan from the financial institution that includes:

(a) A statement that the Borrower is eligible as defined at § 573.2;

(b) A description of each eligible activity for which the loan is requested;

(c) A certification by the borrower that the activities to be assisted resulted from an act of arson or terrorism which is the subject of the certification described in paragraph § 573.6(b)(5);

(d) A narrative of the institution's underwriting standards used in reviewing the loan request;

(e) A certification by a Certification Official (CO) that the damage or destruction to be remedied by the use of the guaranteed loan funds resulted from an act of arson or terrorism. The CO shall execute an Official Incident Report or an equivalent report;

(f) Documentation for environmental threshold review; and

(g) Any previously issued environmental reviews prepared by local, State, or other Federal agencies for the proposed property.

(3) Rights and responsibilities with respect to the guaranteed loan shall be substantially described in an agreement

entered into between the financial institution, as the lender, and the Secretary, as the guarantor, which agreement shall provide that:

(a) The lender has submitted or will submit a request for loan guarantee assistance that is accompanied by the borrower's request for a loan to carry out eligible activities described in § 573.3;

(b) The lender will require the borrower to execute a promissory note promising to repay the guaranteed loan in accordance with the terms thereof;

(c) The lender will require the borrower to provide collateral security, to an extent and in a form, acceptable to HUD;

(d) HUD in its discretion may decline any financial institution's participation if underwriting criteria are insufficient to make the guarantee an acceptable financial risk or the interest rates or fees are unacceptable. HUD expects the interests rates being requested will take into the account the value of the Federal guarantee;

(e) HUD reserves the right to limit loan guarantees to loans financing the replacement of damaged properties with comparable new properties;

(f) The lender will follow certain claim procedures to be specified by HUD in connection with any defaults, including appropriate notification of default as required by HUD;

(g) The lender will follow procedures for payment under the guarantee whereby the lender will be paid (up to the amount of guarantee) the amount owed to the lender less any amount recovered from the underlying collateral security for the loan;

(h) The lender reserves the right to approve the general contractor, the contract with the general contractor, bonding or a letter of credit from the general contractor equal to at least 25 percent of the construction costs, and architectural insurance coverage; and

(i) Other requirements, terms, and conditions required by HUD.

Records pertaining to the loans made by the financial institution shall be held for the life of the loan. A lender with a section 4 guaranteed loan shall allow HUD, the Comptroller General of the United States, and their authorized representatives access from time to time to any documents, papers or files which are pertinent to the guaranteed loan, and to inspect and make copies of such records which relate to any section 4 loan. Any inspection will be made during the lender's regular business hours or any other mutually convenient time.

(4) Description of the need for the information and its proposed use:

To appropriately determine which financial institutions should be provided with section 4 loan guarantee assistance, certain information is required. Among other necessary criteria, HUD must determine whether: (1) the lender is an eligible section 501(c)(3) nonprofit organization; (2) the loan will assist in the rehabilitation of property damaged or destroyed by acts of arson or terrorism; (3) the activities which will be assisted by the loan are eligible activities under § 573.3; (4) the financial institution utilizes sufficient underwriting standards; (5) the assisted activities will comply with all applicable environmental laws and requirements.

(4) Description of the likely respondents, including the estimated number of likely respondents, and proposed frequency of response to the collection of information:

Participants will be financial institutions such as banks, trust companies, savings and loan associations, credit unions, mortgage companies, or other issuers regulated by the Federal Deposit Insurance Corporation, the Office of Thrift Supervision, the Credit Union Administration, or the U.S. Comptroller of the Currency.

The estimated number of respondents is 300. The proposed frequency of the response to the collection of information is one-time. The application for section 4 loan guarantee assistance need only be submitted once per loan.

(5) Estimate of the total reporting and recordkeeping burden that will result from the collection of information:

Reporting Burden:

Number of respondents: 300

(@ ___ hour per response):

Total Estimated Burden Hours: 12,240

Authority: Section 3507 of the Paperwork Reduction Act of 1995, 44 U.S.C. Chapter 35, as amended.

Dated: September 12, 1996.

David S. Cristy,

Director, IRM Policy and Management Division.

[FR Doc. 96-23960 Filed 9-18-96; 8:45 am]

BILLING CODE 4210-29-M

[Docket No. FR-4086-N-40]

Office of Administration; Submission for OMB Review: Comment Request

AGENCY: Office of Administration, HUD.

ACTION: Notice.

SUMMARY: The proposed information collection requirement described below

has been submitted to the Office of Management and Budget (OMB) for review, as required by the Paperwork Reduction Act. The Department is soliciting public comments on the subject proposal.

DATES: Comments due date: October 21, 1996.

ADDRESSES: Interested persons are invited to submit comments regarding this proposal. Comments must be received within thirty (30) days from the date of this Notice. Comments should refer to the proposal by name and/or OMB approval number should be sent to: Joseph F. Lackey, Jr., OMB Desk Officer, Office of Management and Budget, Room 10235, New Executive Office Building, Washington, DC 20503.

FOR FURTHER INFORMATION CONTACT:

Kay F. Weaver, Reports Management Officer, Department of Housing and Urban Development, 451 7th Street, Southwest, Washington, DC 20410, telephone (202) 708-0050. This is not a toll-free number. Copies of the proposed forms and other available documents submitted to OMB may be obtained from Ms. Weaver.

SUPPLEMENTARY INFORMATION: The Department has submitted the proposal for the collection of information, as described below, to OMB for review, as required by the Paperwork Reduction Act (44 U.S.C. Chapter 35).

The Notice lists the following information: (1) The title of the information collection proposal; (2) the office of the agency to collect the information; (3) the OMB approval number, if applicable; (4) the description of the need for the information and its proposed use; (5) the agency form number, if applicable; (6) what members of the public will be affected by the proposal; (7) how frequently information submissions will be required; (8) an estimate of the total number of hours needed to prepare the information submission including number of respondents; frequency of response, and hours of response; (9) whether the proposal is new, an extension, reinstatement, or revision of an information collection requirement; and (10) the names and telephone numbers of an agency official familiar with the proposal and of the OMB Desk Officer for the Department.

Authority: Section 3507 of the Paperwork Reduction Act of 1995, 44 U.S.C. 35, as amended.

Dated: August 26, 1996.
David S. Cristy,
*Acting Director, Information Resources,
Management Policy and Management
Division.*

**Notice of Submission of Proposed
Information Collection to OMB**

Title of Proposal: Mortgage Insurance
Termination—Application for Premium
Refund or Distributive Share Payment.

Office: Housing.
OMB Approval Number: 2502-0414.

*Description of the Need for the
Information and its Proposed Use:* The
Mortgage Insurance Termination form is
used by FHA-approved lenders to
terminate FHA insurance to comply
with HUD requirements. The
Application for Premium Refunds is
used by homeowners to apply for the

unearned portion of the mortgage
insurance premium.

Form Number: HUD-27050-A and
HUD-27050-B.

Respondents: Individuals or
Households and Business or Other For-
Profit.

Frequency of Submission: On
Occasion.

Reporting Burden:

	Number of respondents	×	Frequency of response	×	Hours per response	=	Burden hours
HUD-27050-A	9,500		45		.08		34,200
HUD-27050-B	382,000		1		.25		95,500

Total Estimated Burden Hours:
129,700.

Status: Extension, without changes.
Contact: Silas C. Vaughn, HUD, (202)
708-4765, Joseph F. Lackey, Jr., OMB,
(202) 395-7316.

Dated: August 26, 1996.
[FR Doc. 96-23962 Filed 9-18-96; 8:45 am]
BILLING CODE 4210-01-M

[Docket No. FR-4086-N-41]

**Office of Administration; Submission
for OMB Review: Comment Request**

AGENCY: Office of Administration, HUD.
ACTION: Notice.

SUMMARY: The proposed information
collection requirement described below
has been submitted to the Office of
Management and Budget (OMB) for
review, as required by the Paperwork
Reduction Act. The Department is
soliciting public comments on the
subject proposal.

DATES: *Comments due date:* October 21,
1996.

ADDRESSES: Interested persons are
invited to submit comments regarding
this proposal. Comments must be
received within thirty (30) days from the
date of this Notice. Comments should
refer to the proposal by name and/or
OMB approval number should be sent
to: Joseph F. Lackey, Jr., OMB Desk

Officer, Office of Management and
Budget, Room 10235, New Executive
Office Building, Washington, DC 20503.

FOR FURTHER INFORMATION CONTACT:
Kay F. Weaver, Reports Management
Officer, Department of Housing and
Urban Development, 451 7th Street,
Southwest, Washington, DC 20410,
telephone (202) 708-0050. This is not a
tool-free number. Copies of the
proposed forms and other available
documents submitted to OMB may be
obtained from Ms. Weaver.

SUPPLEMENTARY INFORMATION: The
Department has submitted the proposal
for the collection of information, as
described below, to OMB for review, as
required by the Paperwork Reduction
Act (44 U.S.C. Chapter 35).

The Notice lists the following
information: (1) The title of the
information collection proposal; (2) the
office of the agency to collect the
information; (3) the OMB approval
number, if applicable; (4) the
description of the need for the
information and its proposed use; (5)
the agency form number, if applicable;
(6) what members of the public will be
affected by the proposal; (7) how
frequently information submissions will
be required; (8) an estimate of the total
number of hours needed to prepare the
information submission including
number of respondents, frequency of
response, and hours of response; (9)
whether the proposal is new, an

extension, reinstatement, or revision of
an information collection requirement;
and (10) the names and telephone
numbers of an agency official familiar
with the proposal and of the OMB Desk
Officer for the Department.

Authority: Section 3507 of the Paperwork
Reduction Act of 1995, 44 U.S.C. 35, as
amended.

Dated: August 26, 1996.
David S. Cristy,
*Acting Director, Information Resources,
Management Policy and Management
Division.*

**Notice of Submission of Proposed
Information Collection to OMB**

Title of Proposal: Prospectus.
Office: Government National
Mortgage Association.
OMB Approval Number: 2503-0018.

*Description of the Need for the
Information and its Proposed Use:*
These forms will be used to provide a
standard format for the description of
securities for each type of mortgage
eligible for inclusion in a mortgage-
backed securities pool.

Form Number: HUD-11712, 11712-II,
11717, 11717-II, 1724, 11728, 11728-II,
1731, 1734, 11747, 11747-II, and
11772-II.

Respondents: Business or Other For-
Profit.

Frequency of Submission: On
occasion.

Reporting Burden:

	Number of respondents	×	Frequency of response	×	Hours per response	=	Burden hours
Information Collections	650		18		.25		2,925

Total Estimated Burden Hours: 2,925.
Status: Extension, without changes.
Contact: Sonya K. Suarez, HUD, (202)
708-2884, Joseph F. Lackey, Jr., OMB,
(202) 395-7316.

Dated: August 26, 1996.
[FR Doc. 96-23963 Filed 9-18-96; 8:45 am]
BILLING CODE 4210-01-M

[Docket No. FR-4086-N-42]

**Office of Administration; Submission
for OMB Review: Comment Request**

AGENCY: Office of Administration, HUD.

ACTION: Notice.

SUMMARY: The proposed information collection requirement described below has been submitted to the Office of Management and Budget (OMB) for review, as required by the Paperwork Reduction Act. The Department is soliciting public comments on the subject proposal.

DATES: *Comments due date:* October 21, 1996.

ADDRESSES: Interested persons are invited to submit comments regarding this proposal. Comments must be received within thirty (30) days from the date of this Notice. Comments should refer to the proposal by name and/or OMB approval number should be sent to: Joseph F. Lackey, Jr., OMB Desk Officer, Office of Management and Budget, Room 10235, New Executive Office Building, Washington, DC 20503.

FOR FURTHER INFORMATION CONTACT: Kay F. Weaver, Reports Management Officer, Department of Housing and Urban Development, 451 7th Street, Southeast, Washington, DC 20410, telephone (202) 708-0050. This is not a toll-free number. Copies of the proposed forms and other available documents submitted to OMB may be obtained from Ms. Weaver.

SUPPLEMENTARY INFORMATION: The Department has submitted the proposal for the collection of information, as described below, to OMB for review, as required by the Paperwork Reduction Act (44 U.S.C. Chapter 35).

The Notice lists the following information: (1) The title of the information collection proposal; (2) the office of the agency to collect the information; (3) the OMB approval number, if applicable; (4) the description of the need for the information and its proposed use; (5) the agency form number, if applicable; (6) what members of the public will be affected by the proposal; (7) how frequently information submissions will be required; (8) an estimate of the total number of hours needed to prepare the information submission including number of respondents, frequency of response, and hours of response; (9) whether the proposal is new, an extension, reinstatement, or revision of an information collection requirement; and (10) the names and telephone numbers of an agency official familiar with the proposal and of the OMB Desk Officer for the Department.

Authority: Section 3507 of the Paperwork Reduction Act of 1995, 44 U.S.C. 35, as amended.

Dated: August 26, 1996.
David S. Cristy,
Acting Director, Information Resources Management Policy and Management Division.

Notice of Submission of Proposed Information Collection to OMB

Title of Proposal: Notice of Funding Availability for the Federally Assisted Low-Income Housing Drug Elimination Grant Program—FY 1996 (FR-3235).

Office: Housing.

OMB Approval Number: 2502-0476.

Description of the Need for the Information and its Proposed Use: Drug Elimination Grant Housing owners must apply for grants to use in eliminating drug-related crime in Federally assisted low-income housing. The application process includes developing a plan, seeking tenant comments, certifying compliance with HUD requirements and outlining a comprehensive drug prevention program.

Form Number: SF-424, 424A, LLL, HUD-2880, and 50080-DF2B.

Respondents: Business or Other For-Profit.

Frequency of Submission: Annually.

Reporting Burden:

	Number of respondents	×	Frequency of response	×	Hours per response	=	Burden hours
Information Collection	1,000		1		40		40,000

Total Estimated Burden Hours: 40,000.

Status: Reinstatement, without changes.

Contact: Barbara D. Hunter, HUD, (202) 708-3944, Joseph F. Lackey, Jr., OMB, (202) 395-7316.

Dated: August 26, 1996.

[FR Doc. 96-23964 Filed 9-18-96; 8:45 am]

BILLING CODE 4210-01-M

[Docket No. FR-4086-N-43]

Office of Administration; Submission for OMB Review: Comment Request

AGENCY: Office of Administration, HUD.

ACTION: Notice.

SUMMARY: The proposed information collection requirement described below has been submitted to the Office of Management and Budget (OMB) for review, as required by the Paperwork Reduction Act. The Department is soliciting public comments on the subject proposal.

DATES: *Comments due date:* October 21, 1996.

ADDRESSES: Interested persons are invited to submit comments regarding this proposal. Comments must be received within thirty (30) days from the date of this Notice. Comments should refer to the proposal by name and/or OMB approval number should be sent to: Joseph F. Lackey, Jr., OMB Desk Officer, Office of Management and Budget, Room 10235, New Executive Office Building, Washington, DC 20503.

FOR FURTHER INFORMATION CONTACT: Kay F. Weaver, Reports Management Officer, Department of Housing and Urban Development, 451 7th Street, Southwest, Washington, DC 20410, telephone (202) 708-0050. This is not a toll-free number. Copies of the proposed forms and other available documents submitted to OMB may be obtained from Ms. Weaver.

SUPPLEMENTARY INFORMATION: The Department has submitted the proposal for the collection of information, as described below, to OMB for review, as

required by the Paperwork Reduction Act (44 U.S.C. Chapter 35).

The Notice lists the following information: (1) The title of the information collection proposal; (2) the office of the agency to collect the information; (3) the OMB approval number, if applicable; (4) the description of the need for the information and its proposed use; (5) the agency form number, if applicable; (6) what members of the public will be affected by the proposal; (7) how frequently information submissions will be required; (8) an estimate of the total number or hours needed to prepare the information submission including number of respondents, frequency of response, and hours of response; (9) whether the proposal is new, an extension, reinstatement, or revision of an information collection requirement; and (10) the names and telephone numbers of an agency official familiar with the proposal and of the OMB Desk Officer for the Department.

Authority: Section 3507 of the Paperwork Reduction Act of 1995, 44 U.S.C. 35, as amended.

Dated: August 27, 1996.

David S. Cristy,
Acting Director, Information Resources Management Policy and Management Division.

Notice of Submission of Proposed Information Collection to OMB

Title of Proposal: Multifamily Coinsurance Claims Package 223(f).

Office: Housing.

OMB Approval Number: 2502-0420.

Description of the Need for the Information and its Proposed Use: The mortgagee prepares and submits to HUD the 223(f) Coinsurance Package whenever a coinsured mortgage is defaulted. HUD computes the claim settlement that is due the mortgagee based on the information submitted by the mortgagee.

Form Number: HUD-27008, 27009-B, 27009-D, and 27009-F.

Respondents: Business of Other For-Profit and State, Local, or Tribal Government.

Frequency of Submission: On occasion.

Reporting Burden:

	Number of respondents	×	Frequency of response	×	Hours per response	=	Burden hours
Information Collection	5		1		6		30

Total Estimated Burden Hours: 30.
Status: Reinstatement, without changes.

Contact: Betty Belin, HUD, (202) 401-2168 x2807, Joseph F. Lackey, Jr., OMB, (202) 395-7316.

Dated: August 27, 1996.

[FR Doc. 96-23965 Filed 9-18-96; 8:45 am]

BILLING CODE 4210-01-M

[Docket No. FR-4086-N-44]

Office of Administration; Submission for OMB Review: Comment Request

AGENCY: Office of Administration, HUD.

ACTION: Notice.

SUMMARY: The proposed information collection requirement described below has been submitted to the Office of Management and Budget (OMB) for review, as required by the Paperwork Reduction Act. The Department is soliciting public comments on the subject proposal.

DATES: Comments due date: October 21, 1996.

ADDRESSES: Interested person are invited to submit comments regarding this proposal. Comments must be received within thirty (30) days from the date of this Notice. Comments should refer to the proposal by name and/or OMB approval number should be sent to: Joseph F. Lackey, Jr., OMB Desk Officer, Office of Management and

Budget, Room 10235, New Executive Office Building, Washington, DC 20503.

FOR FURTHER INFORMATION CONTACT: Kay F. Weaver, Reports Management Officer, Department of Housing and Urban Development, 451 7th Street, Southwest, Washington, DC 20410, telephone (202) 708-0050. This is not a toll-free number. Copies of the proposed forms and other available documents submitted to OMB may be obtained from Ms. Weaver.

SUPPLEMENTARY INFORMATION: The Department has submitted the proposal for the collection of information, as described below, to OMB for review, as required by the Paperwork Reduction Act (44 U.S.C. Chapter 35).

The Notice lists the following information: (1) The title of the information collection proposal; (2) the office of the agency to collect the information; (3) the OMB approval number, if applicable; (4) the description of the need for the information and its proposed use; (5) the agency form number, if applicable; (6) what members of the public will be affected by the proposal; (7) how frequently information submissions will be required; (8) an estimate of the total number of hours needed to prepare the information submission including number of respondents, frequency of response, and hours of response; (9) whether the proposal is new, an extension, reinstatement, or revision of

an information collection requirement; and (10) the names and telephone numbers of an agency official familiar with the proposal and of the OMB Desk Officer for the Department.

Authority: Section 3507 of the Paperwork Reduction Act of 1995, 44 U.S.C. 35, as amended.

Dated: August 27, 1996.

David S. Cristy,
Acting Director, Information Resources, Management Policy and Management Division.

Notice of Submission of Proposed Information Collection to OMB

Title of Proposal: Public Housing—Contracting with Resident-Owned Businesses.

Office: Public and Indian Housing.

OMB Approval Number: 2577-0161.

Description of the Need for the Information and Its Proposed Use: The information is necessary so that the applicants (resident-owned businesses) seeking to qualify for non-competitive contracting with the Public Housing Agency (PHA) will be eligible to be solicited by the PHA as a contractor for a proposed contract.

Form Number: None.

Respondents: Individuals or households and State, Local, or Tribal Government.

Frequency of Submission: On Occasion and Recordkeeping.

Reporting Burden:

	Number of respondents	×	Frequency of response	×	Hours per response	=	Burden hours
Information Collection	500		1		16		8,000
Recordkeeping	500		1		1		500

Total Estimated Burden Hours: 8,500.

Status: Reinstatement, without changes.

Contact: Landry Williams, Jr., HUD, (202) 708-4212 x4259, Joseph F. Lackey, Jr., OMB, (202) 395-7316.

Dated: August 27, 1996.

[FR Doc. 96-23966 Filed 9-18-96; 8:45 am]

BILLING CODE 4210-01-M

[Docket No. FR-4086-N-45]

Office of Administration; Submission for OMB Review: Comment Request

AGENCY: Office of Administration, HUD.
ACTION: Notice.

SUMMARY: The proposed information collection requirement described below has been submitted to the Office of Management and Budget (OMB) for review, as required by the Paperwork Reduction Act. The Department is soliciting public comments on the subject proposal.

DATES: *Comments due date:* October 21, 1996.

ADDRESSES: Interested persons are invited to submit comments regarding this proposal. Comments must be received within thirty (30) days from the date of this Notice. Comments should refer to the proposal by name and/or OMB approval number should be sent to: Joseph F. Lackey, Jr., OMB Desk Officer, Office of Management and Budget, Room 10235, New Executive Office Building, Washington, DC 20503.

FOR FURTHER INFORMATION CONTACT: Kay F. Weaver, Reports Management Officer, Department of Housing and Urban Development, 451 7th Street, Southwest, Washington, DC 20410, telephone (202) 708-0050. This is not a

toll-free number. Copies of the proposed forms and other available documents submitted to OMB may be obtained from Ms. Weaver.

SUPPLEMENTARY INFORMATION: The Department has submitted the proposal for the collection of information, as described below, to OMB for review, as required by the Paperwork Reduction Act (44 U.S.C. Chapter 35).

The Notice lists the following information: (1) The title of the information collection proposal; (2) the office of the agency to collect the information; (3) the OMB approval number, if applicable; (4) the description of the need for the information and its proposed use; (5) the agency form number, if applicable; (6) what members of the public will be affected by the proposal; (7) how frequently information submissions will be required; (8) an estimate of the total number of hours needed to prepare the information submission including number of respondents, frequency of response, and hours of response; (9) whether the proposal is new, an extension, reinstatement, or revision of an information collection requirement; and (10) the names and telephone numbers of an agency official familiar with the proposal and of the OMB Desk Officer for the Department.

Authority: Section 3507 of the Paperwork Reduction Act of 1995, 44 U.S.C. 35, as amended.

Dated: August 27, 1996.

David S. Cristy,
Acting Director, Information Resources, Management Policy and Management Division.

Notice of Submission of Proposed Information Collection to OMB

Title of Proposal: Flexible Subsidy Programs.

Office: Housing.

OMB Approval Number: 2502-0492.

Description of the Need for the Information and its Proposed Use: Section 201 of the Housing and Community Development Amendments of 1978 (Public Law 95-557) authorizes the provision of assistance to some HUD assisted projects. These include projects assisted under Section 236, Section 221(b)(3), and some Section 202 and Section 8 projects. Form HUD 9826 is used by owners when applying for Flexible Subsidy assistance under this program.

Form Number: HUD-9826.

Respondents: Business or other for-profit and not-for-profit institutions.

Frequency of Submission: Annually.

Reporting Burden:

	Number of respondents	×	Frequency of response	×	Hours per response	=	Burden hours
HUD-9826	150		1		.5		75

Total Estimated Burden Hours: 75.
Status: Reinstatement, without changes.

Contact: Barbara D. Hunter, HUD, (202) 708-3944, Joseph F. Lackey, Jr., OMB, (202) 395-7316.

Dated: August 27, 1996.

[FR Doc. 96-23967 Filed 9-18-96; 8:45 am]

BILLING CODE 4210-01-M

[Docket No. FR-4086-N-46]

Office of Administration; Submission for OMB Review: Comment Request

AGENCY: Office of Administration, HUD.
ACTION: Notice.

SUMMARY: The proposed information collection requirement described below has been submitted to the Office of Management and Budget (OMB) for review, as required by the Paperwork Reduction Act. The Department is soliciting public comments on the subject proposal.

DATES: *Comments due date:* October 21, 1996.

ADDRESSES: Interested persons are invited to submit comments regarding this proposal. Comments must be received within thirty (30) days from the date of this Notice. Comments should refer to the proposal by name and/or OMB approval number should be sent to: Joseph F. Lackey, Jr., OMB Desk Officer, Office of Management and Budget, Room 10235, New Executive Office Building, Washington, DC 20503.

FOR FURTHER INFORMATION CONTACT: Kay F. Weaver, Reports Management Officer, Department of Housing and Urban Development, 451 7th Street, Southwest, Washington, DC 20410, telephone (202) 708-0050. This is not a toll-free number. Copies of the proposed forms and other available documents submitted to OMB may be obtained from Ms. Weaver.

SUPPLEMENTARY INFORMATION: The Department has submitted the proposal for the collection of information, as described below, to OMB for review, as required by the Paperwork Reduction Act (44 U.S.C. Chapter 35).

The Notice lists the following information: (1) The title of the information collection proposal; (2) the office of the agency to collect the information; (3) the OMB approval number, if applicable; (4) the description of the need for the information and its proposed use; (5) the agency form number, if applicable; (6) what members of the public will be affected by the proposal; (7) how frequently information submissions will be required; (8) an estimate of the total number of hours needed to prepare the information submission including number of respondents, frequency of response, and hours of response; (9) whether the proposal is new, an extension, reinstatement, or revision of an information collection requirement; and (10) the names and telephone numbers of an agency official familiar with the proposal and of the OMB Desk Officer for the Department.

Authority: Section 3507 of the Paperwork Reduction Act of 1995, 44 U.S.C. 35, as amended.

Dated: August 27, 1996.
David S. Cristy,
Acting Director, Information Resources,
Management Policy and Management
Division.

Notice of Submission of Proposed
Information Collection to OMB

Title of Proposal: Monthly Report of
Excess Income.

Office: Housing.
OMB Approval Number: 2502-0086.

Description of the Need for the
Information and its Proposed Use:
Owners of Section 236 insured and
uninsured projects are required by law
to pay to HUD the total rental charges
collected that are in excess of the basic
rents approved for all occupied units.

Owners use the HUD-93104 to compute
any required payment due HUD.

Form Number: HUD-93104.
Respondents: Not-For-Profit
Institutions.

Frequency of Submission: Monthly
and Recordkeeping.

Reporting Burden:

	Number of re- spondents	×	Frequency of response	×	Hours per response	=	Burden hours
HUD-93104	3,819		12		.08		2,291
Recordkeeping	3,819		12		.08		2,291

Total Estimated Burden Hours: 4,582.
Status: Reinstatement, with changes.
Contact: Barbara D. Hunter, HUD,
(202) 708-3944, Joseph F. Lackey, Jr.,
OMB, (202) 395-7316.

Dated: August 27, 1996.
[FR Doc. 96-23968 Filed 9-18-96; 8:45 am]
BILLING CODE 4210-01-M

DEPARTMENT OF THE INTERIOR

Fish and Wildlife Service

Notice of Availability of the Puerto Rican Broad-Winged Hawk and the Puerto Rican Sharp-Shinned Hawk Technical/Agency Draft Recovery Plan for Review and Comments

AGENCY: Fish and Wildlife Service, Interior.
ACTION: Notice of document availability.

SUMMARY: The U.S. Fish and Wildlife Service announces availability for public review of a technical/agency draft recovery plan for the Puerto Rican broad-winged hawk (*Buteo platypterus brunnescens*) and the Puerto Rican sharp-shinned hawk (*Accipiter striatus venator*). Both species are restricted to montane forests along the Cordillera Central, Sierra de Cayey, and Sierra de Luquillo. Both species are currently threatened by: Destruction and modification of forested habitat, timber harvest and management practices in public forests; road construction; increase in numbers of recreational facilities and the disturbance associated with public use; mortality and habitat destruction from hurricanes; the lack of comprehensive management plans for the public forests; possible loss of genetic variation due to low population levels; and the potential for illegal shooting. The Puerto Rican sharp-shinned hawk is also affected by warble fly parasitism. The Service solicits

review and comments from the public on this draft plan.

DATES: Comments on the draft recovery plan must be received on or before November 18, 1996 to receive consideration by the Service.

ADDRESSES: Persons wishing to review the draft recovery plan may obtain a copy by contacting Ms. Marelisa Rivera, Boquerón Field Office, P.O. Box 491, Boquerón, Puerto Rico 00622. Comments and materials received are available on request for public inspection, by appointment, during normal business hours at the above address.

FOR FURTHER INFORMATION CONTACT: Ms. Marelisa Rivera, Boquerón Field Office, P.O. Box 491, Boquerón, P.R. 00622. Tel. 809-851-7297.

SUPPLEMENTARY INFORMATION:

Background

Restoring an endangered or threatened animal or plant to the point where it is again a secure, self-sustaining member of its ecosystem is a primary goal of the U.S. Fish and Wildlife Service's endangered species program. To help guide the recovery effort, the Service is working to prepare recovery plans for most of the listed species native to the United States. Recovery plans describe actions considered necessary for conservation of the species, establish them, and estimate time and cost for implementing the recovery measures needed.

The Endangered Species Act of 1973 (Act), as amended (16 U.S.C. 1531 *et seq.*) requires the development of recovery plans for listed species unless such a plan would not promote the conservation of a particular species. Section 4(f) of the Act, as amended in 1988, requires that public notice and an opportunity for public review and comment be provided during recovery plan development. The Service and other Federal agencies will also take

these comments into account in the course of implementing approved recovery plans.

This Technical/Agency Draft is for the Puerto Rican broad-winged hawk and the Puerto Rican sharp-shinned hawk, which are endemic to mountain forests in Puerto Rico. Present distribution of the Puerto Rican broad-winged hawk includes montane habitat of three forests: Rio Abajo Commonwealth Forest, Carite Commonwealth Forest, and the Caribbean National Forest. Extant breeding populations of the Puerto Rican sharp-shinned hawk are known from montane habitat of the Maricao Commonwealth Forest, Toro Negro Commonwealth Forest, Guilarte Commonwealth Forest, Carite Commonwealth Forest, and the Caribbean National Forest. Overall populations of 124 broad-winged hawks and 129 sharp-shinned hawks have been estimated. The Puerto Rican broad-winged hawk is found in the subtropical moist forest, the subtropical wet forest, and the subtropical rain forest life zones. The Puerto Rican sharp-shinned hawk is found in the subtropical low montane wet forest and the subtropical wet forest life zones. Both species are currently threatened by: Destruction and modification of forested habitat, timber harvest and management practices in public forests; road construction; increase in numbers of recreational facilities and the disturbance associated with public use; mortality and habitat destruction from hurricanes; the lack of comprehensive management plans for the public forests; possible loss of genetic variation due to low population levels; and the potential for illegal shooting. The Puerto Rico sharp-shinned hawk is also affected by warble fly parasitism.

Public Comments Solicited

The Service solicits written comments on the recovery plan described. All comments received by the date specified

above will be considered prior to approval of the plan.

Authority: The authority for this action is Section 4(f) of the Endangered Species Act, 16 U.S.C. 1533(f).

Dated: September 13, 1996.

Susan Silander,

Acting Field Supervisor.

[FR Doc. 96-24036 Filed 9-18-96; 8:45 am]

BILLING CODE 4310-55-M

Notice of Availability of a Technical/ Agency Draft Recovery Plan for *Calypttranthes Thomasiana* for Review and Comment

AGENCY: Fish and Wildlife Service, Interior.

ACTION: Notice of document availability.

SUMMARY: The U.S. Fish and Wildlife Service announces availability for public review of a technical/agency draft recovery plan for *Calypttranthes thomasiana*. (no common name). *Calypttranthes thomasiana* is an evergreen shrub or small tree that may reach 9 meters in height. The species is currently known from three locations: The Island of Vieques in Puerto Rico, the island of St. John, U.S. Virgin Islands, and Virgin Gorda, British Virgin Islands. The species is extremely rare and may be affected by management practices within the known areas as well as by the expansion of facilities in Vieques. The Service solicits review and comments from the public on this draft plan.

DATES: Comments on the draft recovery plan must be received on or before November 18, 1996 to receive consideration by the Service.

ADDRESSES: Persons wishing to review the draft recovery plan may obtain a copy by contacting Ms. Susan Silander, Boquerón, Puerto Rico 00622. Comments and materials received are available upon request for public inspection, by appointment, during normal business hours at the above address.

FOR FURTHER INFORMATION CONTACT: Ms. Susan Silander, Boquerón Field Office, P.O. Box 491, Boquerón, Puerto Rico 00622, Telephone: 809/851-7297.

SUPPLEMENTARY INFORMATION:

Background

Restoring an endangered or threatened species or plant to the point where it is again a secure, self-sustaining member of its ecosystem is a primary goal of the U.S. Fish and Wildlife Service's endangered species program. To help guide the recovery effort, the Service is working to prepare

recovery plans for most of the listed species native to the United States. Recovery plans describe actions considered necessary for conservation of the species, establish them, and estimate time and cost for implementing the recovery measures needed.

The Endangered Species Act of 1973 (Act), as amended (16 U.S.C. 1531 *et seq.*) requires the development of recovery plans for listed species unless such a plan would not promote the conservation of a particular species. Section 4(f) of the Act, as amended in 1988, requires that public notice and an opportunity for public review and comment be provided during recovery plan development. The Service and other Federal agencies will also take these comments into account in the course of implementing approved recovery plans.

This Technical/Agency Draft is for *Calypttranthes thomasiana*, an evergreen shrub or small tree that may reach 9 meters in height and 13 centimeters in diameter. Leaves are opposite obovate to oblong, 2 to 4 centimeters long, coriaceous and with gland dots. Flowers and fruit have not been described. This tree was described in 1855 from specimens collected in St. Thomas, U.S. Virgin Islands. Although collected from this island, it has not been reported from there in recent years. It is currently known from 10 to 12 individuals on the island of Vieques in Puerto Rico, about 100 mature individuals within the Virgin Islands National Park on St. John, U.S. Virgin Islands, and from the island of Virgin Gorda, British Virgin Islands. While found within a conservation zone on U.S. Navy property in Vieques, the species would be effected if facilities were to be expanded. Within the Virgin Islands National Park on St. John, the species may be affected by park management practices and the presence of feral pigs and donkeys. This plan will describe measures necessary to recover the species, including studies of its reproductive biology and propagation.

Public Comments Solicited

The Service solicits written comments on the recovery plan described. All comments received by the date specified above will be considered prior to approval of the plan.

Authority: The authority for this action is Section 4(f) of the Endangered Species Act, 16 U.S.C. 1531.

Dated: September 12, 1996.

Susan R. Silander,

Acting Field Supervisor.

[FR Doc. 96-24037 Filed 9-18-96; 8:45 am]

BILLING CODE 4310-55-M

Notice of Availability of a Technical/ Agency Draft Recovery Plan for *Aurodendron Pauciflorum* and *Myrcia Paganii* for Review and Comment

AGENCY: Fish and Wildlife Service, Interior.

ACTION: Notice of document availability.

SUMMARY: The U.S. Fish and Wildlife Service announces availability for public review of a technical/agency draft recovery plan for *Aurodendron pauciflorum* and *Myrcia paganii* (no common names). *Aurodendron pauciflorum* is an evergreen shrub or small tree known from the semi-evergreen forests of the limestone hills of Isabela in northwestern Puerto Rico. Only 10 individual plants are known from the edges of these cliffs. *Myrcia paganii* is an evergreen tree which may reach 9 meters in height, known from only 8 individuals at three locations in the limestone hills of northwestern Puerto Rico. Both species are threatened by rural, urban and tourist development. The Service solicits review and comments from the public on this draft plan.

DATES: Comments on the draft recovery plan must be received on or before November 18, 1996 to receive consideration by the Service.

ADDRESSES: Persons wishing to review the draft recovery plan may obtain a copy by contacting Ms. Susan Silander, Boquerón Field Office, P.O. Box 491, Boquerón, Puerto Rico 00622. Comments and materials received are available upon request for public inspection, by appointment, during normal business hours at the above address.

FOR FURTHER INFORMATION CONTACT: Ms. Susan Silander, Boquerón Field Office, P.O. Box 491, Boquerón, Puerto Rico 00622, Telephone: 809/851-7297.

SUPPLEMENTARY INFORMATION:

Background

Restoring an endangered or threatened species or plant to the point where it is again a secure, self-sustaining member of its ecosystem is a primary goal of the U.S. Fish and Wildlife Service's endangered species program. To help guide the recovery effort, the Service is working to prepare recovery plans for most of the listed species native to the United States. Recovery plans describe actions considered necessary for conservation of the species, establish them, and estimate time and cost for implementing the recovery measures needed.

The Endangered Species Act of 1973 (Act), as amended (16 U.S.C. 1531 *et*

seq.) requires the development of recovery plans for listed species unless such a plan would not promote the conservation of a particular species. Section 4(f) of the Act, as amended in 1988, requires that public notice and an opportunity for public review and comment be provided during recovery plan development. The Service and other Federal agencies will also take these comments into account in the course of implementing approved recovery plans.

This Technical/Agency Draft is for *Aurodendron pauciflorum* and *Myrcia paganii*. *Aurodendron pauciflorum* is an evergreen shrub or small tree which may reach up to 5 meters in height. Leaves are opposite or subopposite, ovate-elliptic, 6 to 15 centimeters long and 3.5 to 6 centimeters wide, with minute black glandular dots. The fruit is unknown at the present time. The species known from the semi-evergreen forests of the limestone hills of Isabela in northwestern Puerto Rico. Only 10 individual plants are known from the edges of these cliffs. *Myrcia paganii* is an evergreen tree which may reach 9 meters in height and 13 centimeters in diameter. The bark is mottled and flaky and the inner bark is orange-brown. Leaves are opposite, simple, coriaceous, aromatic and glandular punctate below. *M. paganii* is known from only 8 individuals at three locations in the limestone hills of northwestern Puerto Rico. Both species are threatened by rural, urban and tourist development in this limestone hill region of Puerto Rico. This plan will describe measures necessary to recover the species, including studies of its reproductive biology and propagation.

Public Comments Solicited

The Service solicits written comments on the recovery plan described. All comments received by the date specified above will be considered prior to approval of the plan.

Authority: The authority for this action is Section 4(f) of the Endangered Species Act, 16 U.S.C. 1531.

Dated: September 12, 1996.

Susan R. Silander,

Acting Field Supervisor.

[FR Doc. 96-24038 Filed 9-18-96; 8:45 am]

BILLING CODE 4310-55-M

Notice of Receipt of an Application, and Availability of an Environmental Assessment and Finding of No Significant Impact for an Incidental Take Permit by Collins-Miller Development, Inc., for Construction of a Residential Project on the Fort Morgan Peninsula, AL

AGENCY: Fish and Wildlife Service, Interior.

ACTION: Notice.

SUMMARY: Collins-Miller Development, Inc., (Applicant), seeks an incidental take permit (ITP) from the Fish and Wildlife Service (Service), pursuant to Section 10(a)(1)(B) of the Endangered Species Act of 1973 (16 U.S.C. 1531 *et seq.*), (Act) as amended. The ITP would authorize for a period of 30 years the incidental take of an endangered species, the Alabama beach mouse (*Peromyscus polionotus ammobates*), known to occupy a 11.2-acre tract of land owned by the Applicant on the Fort Morgan Peninsula, Baldwin County, Alabama. The project would be called Bay-to-Breakers, which will include a 28-dwelling-unit residential development, their associated landscaped grounds and parking areas, recreational amenities, and a dune walkover structure.

The Service also announces the availability of an Environmental Assessment (EA) and Habitat Conservation Plan (HCP) for this incidental take application. Copies of the EA and/or HCP may be obtained by making a request in writing to the Regional Office (see ADDRESSES). This notice also advises the public that the Service has made a preliminary determination that issuing an ITP to the Applicant is not a major Federal action significantly affecting the quality of the human environment within the meaning of Section 102(2)(C) of the National Environmental Policy Act of 1969, (NEPA) as amended. The Findings of No Significant Impact (FONSI) is based on information contained in the EA and HCP. The final determination will be made no sooner than 30 days from the date of this notice. This notice is provided pursuant to Section 10 of the Act and National Environmental Policy Act Regulations (40 CFR 1506.6).

DATES: Written comments on the application, EA and HCP should be sent to the Service's Regional Office (see ADDRESSES) and should be received on or before October 21, 1996.

ADDRESSES: Persons wishing to review the application, HCP, and EA 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, 1875 Century Boulevard, Suite 200, Atlanta, Georgia 30345 (Attn: Endangered Species Permits), or at the Daphne, Alabama, Field Office, 2001 Highway 98, Daphne East Office Plaza, Suite A, Daphne, Alabama 36526. Written data or comments concerning the application, EA, or HCP should be submitted to the Regional Office. Comments must be submitted in writing to be processed. Please reference permit(s) under PRT-81819363 in such comments, or in requests for the documents discussed herein. Requests for the documents must be in writing to be adequately processed.

FOR FURTHER INFORMATION CONTACT: Mr. Rick G. Gooch, Regional Permit Coordinator, Atlanta, Georgia (see ADDRESSES above), telephone: 404/679-7110; or Ms. Celeste South at the Daphne, Alabama, Field Office (see ADDRESSES above), telephone: 334/441-5181.

SUPPLEMENTARY INFORMATION: The Alabama beach mouse (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. 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 ABM habitat is currently considered 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 Applicants' properties reveal habitat occupied by ABM. The Applicants' properties contain designated critical habitat for the ABM. Construction of the project may result in the death of, or injury to, ABM. Habitat alterations due to condominium placement and subsequent human habitation of the project may reduce

available habitat for food, shelter, and reproduction.

The EA consider the environmental consequences of several alternatives for each project. One action proposed for each project is the issuance of the ITP based upon submittal of the HCP as proposed. This alternative provides for restrictions that include placing no habitable structures seaward of the designated ABM critical habitat, establishment of walkover structures across designated critical habitat, a prohibition against housing or keeping pet cats, ABM competitor control and monitoring measures, scavenger-proof garbage containers, creation of educational and information brochures on ABM conservation, and the minimization and control of outdoor lighting. The HCP provides funding sources for these mitigation measures. Another alternative is consideration of different project designs that further minimize permanent loss of ABM habitat. A third alternative is no-action, or the request for authorization to incidentally take the ABM.

As stated above, the Service has made a preliminary determination that the issuance of this ITP is not a major Federal action significantly affecting the quality of the human environment within the meaning of Section 102(2)(C) of NEPA and will result in a FONSI. This preliminary information may be revised due to public comment received in response to this notice and is based on information contained in the EA and HCP. An appropriate excerpt from the FONSI reflecting the Service's finding on the application is provided below:

Based on the analysis conducted by the Service, it has been determined that:

1. Issuance of an ITP would not have significant effects on the human environment in the project area.
2. The proposed take is incidental to an otherwise lawful activity.
3. The Applicants have ensured that adequate funding will be provided to implement the measures proposed in the submitted HCP.
4. Other than impacts to endangered and threatened species as outlined in the documentation of this decision, the indirect impacts which may result from issuance of the ITPs are addressed by other regulations and statutes under the jurisdiction of other government entities. The validity of the Service's ITPs are contingent upon the Applicants' compliance with the terms of their permits and all other laws and regulations under the control of State, local, and other Federal governmental entities.

The Service will also evaluate whether the issuance of either Section

10(a)(1)(B) ITP complies with Section 7 of the Act by conducting an intra-Service Section 7 consultation. The results of the biological opinion, in combination with the above findings, will be used in the final analysis to determine whether or not to issue either ITP.

Dated: September 10, 1996.
Jerome M. Butler,
Acting Regional Director.
[FR Doc. 96-23987 Filed 9-18-96; 8:45 am]
BILLING CODE 4310-55-P

Geological Survey

Request for Public Comments on Proposed Information Collection To Be Submitted to the Office of Management and Budget for Review Under the Paperwork Reduction Act

The proposed information collection described below will be submitted to the Office of Management and Budget for approval under the provisions of the Paperwork Reduction Act of 1995 (44 U.S.C. Chapter 35). Copies of the proposed collection instrument may be obtained by contacting the Bureau's clearance officer at the phone number listed below. Comments and suggestions on the proposal should be made within 60 days directly to the Bureau Clearance Officer, U.S. Geological Survey, 208 National Center, 12201 Sunrise Valley Drive, Reston, Virginia 20192. Telephone (703) 648-7313.

Title: On-Demand System for Printing USGS Maps.

OMB approval number: New Collection.

Abstract: Customers for USGS maps will be invited to indicate their satisfaction with an experimental, on-demand version of a USGS topographic map as compared to the standard printed edition of the same map. Potential respondents will be mailed an evaluation package consisting of sample maps and a short questionnaire. Those electing to respond will then use the postage-paid questionnaire to answer specific questions about the experimental map and to submit additional comments they may wish to offer. Information from respondents will be used to evaluate a point-of-sale map printing system the USGS intends to develop under a cooperative research and development agreement with private industry. The proposed collection is limited in scope to the on-demand printing system and its output products, and to the suitability of these experimental products to meet respondent applications for USGS maps.
Bureau form number: None.

Frequency: An estimated 2-3 surveys per year as indicated by technical milestones reached during the course of the on-demand development project and by customer reaction to initial map products generated from the on-demand system.

Description of respondents: General public USGS map purchasers; dealers of USGS maps.

Estimated completion time: 0.1 hours per response.

Annual responses: 1,000.

Annual burden hours: 100 hours.

Bureau clearance officer: John Cordyack, 703-648-7313.

Dated: September 10, 1996.
Richard E. Witmer,
Acting Chief, National Mapping Division.
[FR Doc. 96-24029 Filed 9-18-96; 8:45 am]
BILLING CODE 4310-31-M

Bureau of Land Management

[NM-070-1430-01; NMNM96382]

Notice of Realty Action—Recreation and Public Purpose (R&PP) Act Classification, New Mexico

AGENCY: Bureau of Land Management, Interior.

ACTION: Notice of R&PP lease/patent of public land in San Juan County; New Mexico.

SUMMARY: The following described public land is determined suitable for classification for leasing or conveyance to the Blanco Canyon Word of Faith Church Inc., Bloomfield, New Mexico under the provisions of the Recreation and Public Purposes (R&PP) Act, as amended (43 U.S.C. 869 et seq.). The Blanco Canyon Word of Faith, Inc., proposes to use the land for a church with related buildings and recreational facilities.

New Mexico Principal Meridian
T. 28 N., R. 9 W.,

Sec. 24, a portion of E $\frac{1}{2}$ SW $\frac{1}{4}$ NE $\frac{1}{4}$ SE $\frac{1}{4}$
and W $\frac{1}{2}$ SE $\frac{1}{4}$ NE $\frac{1}{4}$ SE $\frac{1}{4}$.

Containing 5 acres, more or less.

COMMENT DATES: On or before November 4, 1996 interested parties may submit comments regarding the proposed leasing/conveyance or classification of the lands to the Bureau of Land Management at the following address. Any adverse comments will be reviewed by the Bureau of Land Management, Farmington District Manager, 1235 LaPlata Highway, Farmington, NM 87401, who may sustain, vacate, or modify this realty action. In the absence of any adverse comments, this realty action becomes the final determination

of the Department of the Interior and effective November 20, 1996.

FOR FURTHER INFORMATION CONTACT: Information related to this action, including the environmental assessment, is available for review at the Bureau of Land Management, Farmington District Office, 1235 LaPlata Highway, Farmington, NM 87401.

SUPPLEMENTARY INFORMATION: Publication of this notice segregates the public land described above from all other forms of appropriation under the public land laws, including the general mining laws, except for leasing and conveyance under the Recreation and Public Purposes Act and leasing under the mineral leasing laws for a period of two (2) years from date of this publication in the Federal Register. The segregative affect will terminate upon issuance of the lease and patent to the Blanco Canyon Word of Faith, Inc., or two (2) years from the date of this publication, whichever occurs first.

The lease, when issued, will be subject to the following terms:

1. Provisions of the Recreation and Public Purposes Act and to all applicable regulations of the Secretary of the Interior.

2. Provisions of the Resource Conservation and Recovery Act of 1976 (RCRA) as amended, 42 U.S.C. 6901-6987 and the Comprehensive Environmental Response, Compensation and Liability Act of 1980 (CERCLA) as amended, 42 U.S.C. 9601 and all applicable regulations.

3. Provisions of Title VI of the Civil Rights Act of 1964.

4. Provisions that the lease be operated in compliance with the approved Development Plan.

The patent, when issued, will be subject to the following terms:

1. Reservation to the United States of a right-of-way for ditches and canals in accordance with 43 U.S.C. 945.

2. Reservation to the United States of coal.

3. All valid existing rights, e.g. rights-of-way and leases of record.

4. Provisions that if the patentee or its successor attempts to transfer title to or control over the land to another or the land is devoted to a use other than that for which the land was conveyed, without the consent of the Secretary of the Interior or his delegate, or prohibits or restricts, directly or indirectly, or permits it agents, employees, contractors, or subcontractors, including without limitation, lessees, sublessees and permittees, to prohibit or restrict, directly or indirectly, the use of any part of the patented lands or any of the facilities whereon by any person

because of such person's race, creed, color, or national origin, title shall revert to the United States.

The lands are not needed for Federal purposes. Leasing and later patenting is consistent with current Bureau of Land Management policies and land use planning. The estimated time of lease issuance is December 31, 1996, with the patent being issued upon substantial development taking place. The proposal serves the public interest since it would provide a church and recreation facilities that would meet the needs of the surrounding Navajo Indian population.

Dated: September 13, 1996.

Ilyse K. Auringer,
Acting Assistant District Manager for Lands and Renewable Resources.

[FR Doc. 96-24004 Filed 9-18-96; 8:45 am]

BILLING CODE 4310-FB-P

[ID-930-1920-00-4373; IDI-31741]

Notice of Addition of Lands to Proposed Withdrawal; Idaho

AGENCY: Bureau of Land Management, Interior.

ACTION: Notice.

SUMMARY: The Department of Air Force has filed a request to add 10,766.60 acres to their withdrawal application for the Enhanced Training in Idaho (ETI) site. The original Notice of Proposed Withdrawal was published in the Federal Register, 61 FR 68, April 8, 1996.

DATE: Comments and requests for a meeting should be received on or before December 18, 1996.

ADDRESSES: Comments and meeting requests should be sent to the Idaho State Director, BLM, 3380 Americana Terrace, Boise, Idaho 83706-2500.

FOR FURTHER INFORMATION CONTACT: Jon Foster, BLM Idaho State Office, 208-384-3195.

SUPPLEMENTARY INFORMATION: On August 22, 1996, the Department of Air Force filed a request to add certain lands to their existing withdrawal application. These lands are in addition to those published in the Federal Register, 61 FR 68, April 8, 1996. The following described public lands are withdrawn from settlement, sale, location, or entry under the general land laws, including the mining and mineral leasing laws, subject to valid existing rights:

Boise Idaho

T. 12 S., R. 9 E.,

Sec. 35, E $\frac{1}{2}$ SW $\frac{1}{4}$ and SE $\frac{1}{4}$.

T. 12 S., R. 10 E.,

Sec. 31, lots 3 and 4, E $\frac{1}{2}$ SW $\frac{1}{4}$ and SE $\frac{1}{4}$;

Sec. 32, S $\frac{1}{2}$.

T. 13 S., R. 9 E.,

Sec. 1;

Sec. 2, lot 1, SE $\frac{1}{4}$ NE $\frac{1}{4}$ and E $\frac{1}{2}$ SE $\frac{1}{4}$;

Sec. 11, E $\frac{1}{2}$ E $\frac{1}{2}$;

Sec. 12;

Sec. 13;

Sec. 14, E $\frac{1}{2}$ E $\frac{1}{2}$ E $\frac{1}{2}$;

Sec. 23, E $\frac{1}{2}$ E $\frac{1}{2}$ E $\frac{1}{2}$;

Sec. 24.

T. 13 S., R. 10 E.,

Sec. 4, lots 3 and 4, S $\frac{1}{2}$ NW $\frac{1}{4}$ and S $\frac{1}{2}$;

Secs. 5 to 9 inclusive;

Secs. 17 to 21 inclusive.

The areas described aggregate 10,766.60 acres in Owyhee County.

The additional lands are being added as an alternative to the Enhanced Training in Idaho (ETI) proposal based on the results of public scoping.

This withdrawal will be authorized under the Act of February 28, 1958, 43 U.S.C. 155-158, and requires legislative action by Congress.

For a period of 90 days from the date of publication of this notice, all persons who wish to submit comments, suggestions, or objections in connection with the addition of lands to the proposed withdrawal may present their views in writing to the Idaho State Director at the address shown above.

If a public meeting is required a notice of time and place will be published in the Federal Register and newspapers in the general vicinity at least 30 days before the scheduled date of a meeting.

Nine public meetings were held in June and July 1996 for the purpose of scoping the environmental documentation to meet National Environmental Policy Act requirements for the proposed withdrawal. The draft environmental impact statement currently under preparation includes the addition of the 10,766.60 acres described in this notice.

This application will be processed in accordance with the regulations set forth in 43 CFR 2300.

For a period of 2 years from the date of publication of this notice in the Federal Register, the additional described lands will be segregated, as specified above unless the application is denied or canceled or the withdrawal is approved prior to that date. The temporary uses that will be permitted during this segregative period are rights-of-way, leases, permits, licenses or discretionary land use authorizations that do not significantly disturb the surface of the land or impair values of the resources, but will be coordinated with the Installation Commander, Mountain Home Air Force Base, Idaho.

The temporary segregation of the additional land in connection with the withdrawal application shall not affect

administrative jurisdiction over the land, and segregation shall not have the effect of authorizing any use of the land by the Department of the Air Force.

Dated: September 9, 1996.

J. David Brunner,

Deputy State Director for Resource Services.

[FR Doc. 96-24001 Filed 9-18-96; 8:45 am]

BILLING CODE 4310-GG-M

INTERNATIONAL TRADE COMMISSION

[Investigation No. 337-TA-378]

Certain Asian-Style Kamaboko Fish Cakes; Notice of Issuance of Limited Exclusion Order and Cease and Desist Orders and Termination of Investigation

AGENCY: U.S. International Trade Commission.

ACTION: Notice.

SUMMARY: Notice is hereby given that the U.S. International Trade Commission has issued a limited exclusion order and cease and desist orders to domestic respondents New Japan Food Corporation and Rhee Brothers, Inc. in the above-captioned investigation and terminated the investigation.

FOR FURTHER INFORMATION CONTACT: Jay H. Reiziss, Esq., Office of the General Counsel, U.S. International Trade Commission, 500 E Street, S.W., Washington, D.C. 20436, telephone 202-205-3116.

SUPPLEMENTARY INFORMATION:

Complainant Yamasa Enterprises filed a complaint with the Commission on August 15, 1995, and a supplementary complaint on September 6, 1995, alleging that certain respondents were importing, selling for importation, and selling in the United States after importation certain Asian-style kamaboko fish cakes bearing marks or logos that were infringing trademarks owned by Yamasa Enterprises. The complaint named six entities as respondents: Yamasa Kamaboko Co., Ltd. ("YKCL"), Alpha Oriental Foods, Inc. ("Alpha"), N.A. Sales, Inc., New Japan Food Corporation ("New Japan"), Rhee Brothers, Inc. ("Rhee Brothers"), and Rokko Trading Co., Inc. N.A. Sales, Inc. and Rokko Trading Co., Inc. were terminated from the investigation on the basis of a settlement agreement. Alpha was never served and is believed to be out of business.

The Commission voted to institute an investigation of Yamasa Enterprise's complaint on September 12, 1995. 60 FR 48722 (September 20, 1995). On December 6, 1995, the complaint was

amended to reflect the issuance to complainant by the U.S. Patent and Trademark Office on September 12, 1995, of a registered trademark for the word "Yamasa."

On May 21, 1996, the ALJ issued Order No. 15 comprising, inter alia, two initial determinations (IDs) in which he granted (1) complainant's motion for summary determination that its investments in the United States satisfy the domestic industry requirement of section 337, and (2) complainant's motion for summary determination on all issues (including domestic industry) necessary to establish a violation of section 337. Order No. 15 also granted complainant's motion that respondents Rhee Brothers and New Japan be found in default, and granted in part complainant's motion for evidentiary sanctions against respondent YKCL for its failure to provide discovery.

On June 21, 1996, the Commission determined not to review the IDs, thereby finding a violation of section 337, and issued a notice seeking submissions from the parties on the issues of remedy, the public interest, and bonding. Complainants and the IA filed briefs on the issues of remedy, the public interest, and bonding. None of the respondents filed any written submissions on these issues. No reply briefs were filed.

Having reviewed the record in this investigation, including the written submissions of the parties, the Commission made its determinations on the issues of remedy, the public interest, and bonding. The Commission determined that a limited exclusion order prohibiting the unlicensed importation for consumption of infringing Asian-style Kamaboko fish cakes produced and/or imported by YKCL is an appropriate remedy. In addition, the Commission issued cease and desist orders to domestic respondents New Japan and Rhee Brothers requiring them to cease and desist from the following activities in the United States: importing, selling, marketing, advertising, distributing, soliciting agents or distributors for, offering for sale, or otherwise transferring (except for exportation) in the United States infringing imported Asian-style kamaboko fish cakes.

The Commission also determined that the public interest factors enumerated in 19 U.S.C. §§ 1337 (d) and (f) do not preclude the issuance of the limited exclusion order and the cease and desist orders, and that the bond during the Presidential review period shall be in the amount of one hundred (100) percent of the entered value of the imported fish cakes.

This action is taken under the authority of section 337 of the Tariff Act of 1930, as amended (19 U.S.C. § 1337), and section 210.50 of the Commission's Rules of Practice and Procedure (19 CFR 210.50).

Copies of the Commission's remedial orders, the Commission opinion in support thereof, and all other nonconfidential documents filed in connection with this investigation are or will be available for inspection during official business hours (8:45 a.m. to 5:15 p.m.) in the Office of the Secretary, U.S. International Trade Commission, 500 E Street, S.W., Washington, D.C. 20436, telephone 202-205-2000. Hearing-impaired persons are advised that information on this matter can be obtained by contacting the Commission's TDD terminal on 202-205-1810.

Issued: September 13, 1996.

By order of the Commission.

Donna R. Koehnke,

Secretary.

[FR Doc. 96-24032 Filed 9-18-96; 8:45 am]

BILLING CODE 7020-02-P

[Investigation No. 731-TA-746 (Final)]

Beryllium Metal and High-Beryllium Alloys From Kazakstan

AGENCY: United States International Trade Commission.

ACTION: Scheduling of the final phase of an antidumping investigation.

SUMMARY: The Commission hereby gives notice of the scheduling of the final phase of antidumping investigation No. 731-TA-746 (Final) under section 735(b) of the Tariff Act of 1930 (19 U.S.C. 1673d(b)) (the Act) to determine whether an industry in the United States is materially injured or threatened with material injury, or the establishment of an industry in the United States is materially retarded, by reason of less-than-fair-value imports from Kazakstan of beryllium metal and high-beryllium alloys.¹

¹ The imported products covered by this investigation consist of beryllium metal and high-beryllium alloys with a beryllium content equal to or greater than 30 percent by weight, whether in ingot, billet, powder, block, lump, chunk, blank, or other semifinished form. These are intermediate or semifinished products that require further machining, casting and/or fabricating into sheet, extrusions, forgings or other shapes in order to meet the specifications of the end user. Beryllium metal and alloys in which beryllium predominates by weight are provided for in subheadings 8112.11.30 and 8112.11.60 of the Harmonized Tariff Schedule of the United States (HTS). Other alloys containing beryllium are provided for elsewhere in the HTS—

Continued

For further information concerning the conduct of this phase of the investigation, hearing procedures, and rules of general application, consult the Commission's Rules of Practice and Procedure, part 201, subparts A through E (19 CFR part 201), and part 207, subparts A and C (19 CFR part 207), as amended by 61 FR 37818, July 22, 1996. **EFFECTIVE DATE:** August 26, 1996.

FOR FURTHER INFORMATION CONTACT: Bonnie Noreen (202-205-3167), Office of Investigations, U.S. International Trade Commission, 500 E Street SW, Washington, DC 20436. Hearing-impaired persons can obtain information on this matter by contacting the Commission's TDD terminal on 202-205-1810. Persons with mobility impairments who will need special assistance in gaining access to the Commission should contact the Office of the Secretary at 202-205-2000. General information concerning the Commission may also be obtained by accessing its internet server (<http://www.usitc.gov> or <ftp://ftp.usitc.gov>).

SUPPLEMENTARY INFORMATION:

Background.—The final phase of this investigation is being scheduled as a result of an affirmative preliminary determination by the Department of Commerce that imports of beryllium metal and high-beryllium alloys from Kazakstan are being, or are likely to be, sold in the United States at less than fair value within the meaning of section 733 of the Act (19 U.S.C. 1673b). The investigation was requested in a petition filed on March 14, 1996, by Brush Wellman Inc., Cleveland, OH.

Participation in the investigations and public service list.—Persons, including industrial users of the subject merchandise and, if the merchandise is sold at the retail level, representative consumer organizations, wishing to participate in the final phase of this investigation as parties must file an entry of appearance with the Secretary to the Commission, as provided in section 201.11 of the Commission's rules, no later than 21 days prior to the hearing date specified in this notice. A party that filed a notice of appearance during the preliminary phase of the investigation need not file an additional notice of appearance during this final phase. The Secretary will maintain a public service list containing the names and addresses of all persons, or their

e.g., aluminum-beryllium alloys are provided for in HTS subheading 7601.20.90. In its notice, Commerce stated "[a]lthough the HTS subheading is provided for convenience and customs purposes, our written description of the scope of this investigation is dispositive."

representatives, who are parties to the investigation.

Limited disclosure of business proprietary information (BPI) under an administrative protective order (APO) and BPI service list.—Pursuant to section 207.7(a) of the Commission's rules, the Secretary will make BPI gathered in the final phase of this investigation available to authorized applicants under the APO issued in the investigation, provided that the application is made no later than 21 days prior to the hearing date specified in this notice. Authorized applicants must represent interested parties, as defined by 19 U.S.C. 1677(9), who are parties to the investigations. A party granted access to BPI in the preliminary phase of the investigation need not reapply for such access. A separate service list will be maintained by the Secretary for those parties authorized to receive BPI under the APO.

Staff report.—The prehearing staff report in the final phase of this investigation will be placed in the nonpublic record on January 6, 1997, and a public version will be issued thereafter, pursuant to section 207.22 of the Commission's rules.

Hearing.—The Commission will hold a hearing in connection with the final phase of this investigation beginning at 9:30 a.m. on January 22, 1997, at the U.S. International Trade Commission Building. Requests to appear at the hearing should be filed in writing with the Secretary to the Commission on or before January 13, 1997. A nonparty who has testimony that may aid the Commission's deliberations may request permission to present a short statement at the hearing. All parties and nonparties desiring to appear at the hearing and make oral presentations should attend a prehearing conference to be held at 9:30 a.m. on January 16, 1997, at the U.S. International Trade Commission Building. Oral testimony and written materials to be submitted at the public hearing are governed by sections 201.6(b)(2), 201.13(f), and 207.24 of the Commission's rules. Parties must submit any request to present a portion of their hearing testimony *in camera* no later than 7 days prior to the date of the hearing.

Written submissions.—Each party who is an interested party shall submit a prehearing brief to the Commission. Prehearing briefs must conform with the provisions of section 207.23 of the Commission's rules; the deadline for filing is January 14, 1997. Parties may also file written testimony in connection with their presentation at the hearing, as provided in section 207.24 of the Commission's rules, and posthearing

briefs, which must conform with the provisions of section 207.25 of the Commission's rules. The deadline for filing posthearing briefs is January 28, 1997; witness testimony must be filed no later than three days before the hearing. In addition, any person who has not entered an appearance as a party to the investigation may submit a written statement of information pertinent to the subject of the investigations on or before January 28, 1997. On February 7, 1997, the Commission will make available to parties all information on which they have not had an opportunity to comment. Parties may submit final comments on this information on or before February 11, 1997, but such final comments must not contain new factual information and must otherwise comply with section 207.30 of the Commission's rules. All written submissions must conform with the provisions of section 201.8 of the Commission's rules; any submissions that contain BPI must also conform with the requirements of sections 201.6, 207.3, and 207.7 of the Commission's rules.

In accordance with sections 201.16(c) and 207.3 of the Commission's rules, each document filed by a party to the investigation must be served on all other parties to the investigation (as identified by either the public or BPI service list), and a certificate of service must be timely filed. The Secretary will not accept a document for filing without a certificate of service.

Authority: This investigation is being conducted under authority of title VII of the Tariff Act of 1930; this notice is published pursuant to section 207.21 of the Commission's rules.

Issued: September 13, 1996.

By order of the Commission.

Donna R. Koehnke,

Secretary.

[FR Doc. 96-24022 Filed 9-18-96; 8:45 am]

BILLING CODE 7020-02-P

DEPARTMENT OF JUSTICE

Notice of Lodging of Two Consent Decrees Pursuant to the Comprehensive Environmental Response Compensation and Liability Act of 1980 as Amended

In accordance with Department of Justice policy, 28 CFR 50.7, notice is hereby given that two proposed partial consent decrees in *United States v. International Paper Company, et al.*, Civil No. 94-4681 (BDP), were lodged on August 18, 1996 with the United States District Court for the Southern District of New York. The decrees

resolve claims of the United States against defendants International Paper Company and Nepera, Inc. in the above-referenced action under the Comprehensive Environmental Response, Compensation, and Liability Act ("CERCLA") for contamination at the Warwick Superfund Site in the Town of Warwick, Orange County, New York (the "Site"). In the first proposed consent decree, defendant International Paper Company agrees to pay the United States \$135,000 in settlement of the United States' claims for past response costs incurred by the Environmental Protection Agency at the Site through November 7, 1994. In the second proposed consent decree, defendant Nepera, Inc. agrees to pay the United States \$98,500 in settlement of the United States' claims for past response costs incurred by the Environmental Protection Agency at the Site through November 7, 1994.

The Department of Justice will receive, for a period of thirty (30) days from the date of this publication, comments relating to both proposed consent decrees. Comments should be addressed to the Assistant Attorney General for the Environment and Natural Resources Division, Department of Justice, Washington, D.C. 20530, and should refer to *United States v. International Paper Company, et al.*, DOJ Ref. Number 90-11-3-812.

The proposed consent decrees may be examined at the Office of the United States Attorney, 100 Church Street, New York, NY, 10007; the Region II Office of the Environmental Protection Agency, 290 Broadway, New York, NY 10278; and the Consent Decree Library, 1120 G Street, N.W., 4th Floor, Washington, D.C. 20005, (202) 624-0892. A copy of the proposed consent decrees may be obtained in person or by mail from the Consent Decree Library, 1120 G Street, N.W. 4th Floor, Washington, D.C. 20005. In requesting a copy, please specify either the consent decree with International Paper Company or the consent decree with Nepera, Inc., and please also refer to the referenced case and enclose a check in the amount of \$5.25 for the consent decree with International Paper Company (25 cents per page reproduction costs) and \$5.50 for the consent decree with Nepera, Inc., payable to the Consent Decree Library. Joel M. Gross,

Chief, Environmental Enforcement Section,
Environment and Natural Resources Division.
[FR Doc. 96-24031 Filed 9-18-96; 8:45 am]

BILLING CODE 4410-01-M

Antitrust Division

United States v. Oldcastle Northeast et al.; Proposed Final Judgment and Competitive Impact Statement

Notice is hereby given pursuant to the Antitrust Procedures and Penalties Act, 15 U.S.C. 16 (b)-(h), that a proposed Final Judgment, Stipulation and Order, and Competitive Impact Statement have been filed with the United States District Court in Connecticut, Civil No. 396CVO1749.

On September 3, 1996, the United States filed a Complaint alleging that the proposed acquisition by Oldcastle Northeast, Inc. of the stock of Tilcon, Inc. would violate Section 7 of the Clayton Act, 15 U.S.C. 18. The proposed Final Judgment, filed the same time as the Complaint, requires Oldcastle Northeast to divest its East Granby, Connecticut quarry and two three-ton asphalt plants located at the quarry.

Public comment is invited within the statutory 60-day comment period. Such comments and responses thereto will be published in the Federal Register and filed with the Court. Comments should be directed to J. Robert Kramer, Chief, Litigation II Section, Antitrust Division, United States Department of Justice, 1401 H Street, NW., Suite 3000, Washington, DC 20530 (telephone: 202/307-0924).

Copies of the Complaint, Stipulation and Order, Proposed Final Judgment, and Competitive Impact Statement are available for inspection in Room 215 of the U.S. Department of Justice, Antitrust Division, 325 7th Street, NW., Washington, DC 20530, (202) 514-2841. Copies of these materials may be obtained upon request and payment of a copying fee.

Constance K. Robinson,
Director of Operations, Antitrust Division.

Stipulation and Order

Civil No.: 396-CV01749
Judge Alfred Covello

It is stipulated by and between the undersigned parties, by their respective attorneys, that:

1. The Court has jurisdiction over the subject matter of this action and over each of the parties hereto, and venue of this action is proper in the District of Connecticut.

2. The parties consent that a Final Judgment in the form hereto attached may be filed and entered by the Court, upon the motion of any party or upon the Court's own motion, at any time

after compliance with the requirements of the Antitrust Procedures and Penalties Act (15 U.S.C. 16 (b)-(h)), and without further notice to any party or other proceedings, provided that the United States has not withdrawn its consent, which it may do at any time before the entry of the proposed Final Judgment by serving notice thereof on defendants and by filing that notice with the Court.

3. The parties shall abide by and comply with the provisions of the proposed Final Judgment pending entry of the Final Judgment, and from the date of the filing of this Stipulation, shall comply with all the terms and provisions of the Final Judgment as though they were in full force and effect as an order of the Court.

4. In the event plaintiff withdraws its consent, or if the proposed Final Judgment is not entered pursuant to this Stipulation, this Stipulation shall be of no effect whatever and the making of this Stipulation shall be without prejudice to any party in this or any other proceeding.

Dated:

For Plaintiff, United States:
Anne K. Bingaman,
Assistant Attorney General.
Lawrence R. Fullerton
Charles E. Biggio
Constance K. Robinson

For Defendants, Oldcastle Northeast, Inc. and CRH plc:
John A. Herfort,
Gibson, Dunn & Crutcher LLP, 200 Park Avenue, New York, New York 10166, (212) 351-3832.

Malcolm R. Pfunder,
Gibson, Dunn & Crutcher LLP, 1050 Connecticut Avenue, NW., Washington, DC 20036, (202) 955-8227.

J. Robert Kramer,
Willie L. Hudgins,
Frederick H. Parmenter,
Stephen F. Sonnett,
Arthur A. Feiveson,
Antitrust Division, U.S. Department of Justice, 1401 H Street, NW, Suite 3000, Washington, DC 20530, (202) 307-5780.
Christopher F. Droney,
United States Attorney.

By _____
 Carl J. Schuman,
*Assistant United States Attorney, Federal Bar
 No. CT05439.*

For Defendants Tilcon, Inc. and BTR plc.
 Jack Fornaciari,
 Ross & Hardies,
*888 16th Street, NW, Suite 400, Washington,
 DC 20006-4103, (202) 835-7433.*

Richard Blumenthal,
Attorney General of Connecticut.

By _____
 Steven M. Rutstein,
*Assistant Attorney General, Attorney
 General's Office of the State of Connecticut,
 Federal Bar No. CT09086.*

Order

It is so ordered, this ____rd day of
 September, 1996.

United States District Judge

Final Judgment

Civil No.: 396-CV-01749
 Judge Alfred Covello

Whereas, plaintiffs, United States of America and the State of Connecticut, having filed their Complaint herein on September 3, 1996, and plaintiffs and defendants, by their respective attorneys, having consented to the entry of this Final Judgment without trial or adjudication of any issue of fact or law herein, and without this Final Judgment constituting any evidence against or an admission by any party with respect to any issue of law or fact herein;

And whereas, defendants have agreed to be bound by the provisions of this Final Judgment pending its approval by the Court;

And whereas, the essence of this Final Judgment is prompt and certain divestiture of assets to assure that competition is not substantially lessened;

And whereas, plaintiffs require defendants to make certain divestitures for the purpose of establishing a viable competitor in the manufacture and sale of asphalt concrete in the greater Hartford, Connecticut area;

And whereas, defendants have represented to plaintiffs that the divestitures ordered herein can and will be made and that defendants will later raise no claims of hardship or difficulty

as grounds for asking the Court to modify any of the divestiture provisions contained below;

Now, therefore, before the taking of any testimony, and without trial or adjudication of any issue of fact or law herein, and upon consent of the parties hereto, it is hereby ordered, adjudged, and decreed as follows:

I

Jurisdiction

This Court has jurisdiction over each of the parties hereto and the subject matter of this action. The Complaint states a claim upon which relief may be granted against defendants under Section 7 of the Clayton Act, as amended (15 U.S.C. 18).

II

Definitions

As used in this Final Judgment:

A. "Oldcastle" means defendant Oldcastle Northeast, Inc., a Delaware corporation headquartered in Washington, D.C., and includes its successors and assigns, and its subsidiaries, directors, officers, managers, agents, and employees acting for or on behalf of any of them.

B. "CRH" means defendant CRH plc, a company formed under the laws of the Republic of Ireland headquartered in Dublin (of which Oldcastle is a subsidiary), and includes its successors and assigns, and its subsidiaries, directors, officers, managers, agents, and employees acting for or on behalf of any of them.

C. "Tilcon" means defendant Tilcon, Inc., a Delaware corporation headquartered in New Britain, Connecticut, and includes its successors and assigns, and its subsidiaries, directors, officers, managers, agents, and employees acting for or on behalf of any of them.

D. "BTR" means defendant BTR plc, a company formed under the laws of the United Kingdom and headquartered in London (of which Tilcon is a subsidiary), and includes its successors and assigns, and its subsidiaries, directors, officers, managers, agents, and employees acting for or on behalf of any of them.

E. "Aggregate" means sand, gravel, and crushed stone produced at quarries or sand and gravel pits. "Stone products" refer to any products produced at a quarry.

F. "Asphalt Concrete" means material that is used principally for paving and is produced by combining and heating asphalt cement (also referred to in the industry as "liquid asphalt" or "asphalt oil") with aggregate.

G. "Hot-mix plant" means a plant that produces asphalt concrete.

H. "Greater Hartford Area" refers to the following cities and towns in Connecticut: Hartford, New Britain, Newington, Wethersfield, Farmington, West Hartford, Bloomfield, Windsor, South Windsor, East Hartford, Manchester, Glastonbury, Windsor Locks, East Granby, Plainville, Rocky Hill, Enfield, Avon, Ellington, and East Windsor.

I. "Assets to be Divested" means:

(1) all rights, titles, and interests, including all fee and all leasehold and renewal rights, in Tilcon's East Granby, Connecticut quarry located at 60 Main St., East Granby, Connecticut 06026 and the related maintenance facilities and administration buildings (the "East Granby Quarry") including, but not limited to, all real property, capital equipment, fixtures, inventories, trucks and other vehicles, stone crushing equipment, scales, interests, permits, assets or improvement related to the production, distribution, and sale of aggregate and stone products at the East Granby Quarry;

(2) all rights, title, and interests, in the two, three-ton, hot-mix plants located at the East Granby Quarry (the "Two, Three-Ton, Hot-Mix Plants"), including, but not limited to, all real property, capital equipment, fixtures, inventories, trucks and other vehicles, storage tanks, power supply equipment, scales, interests, permits, assets or improvements related to the production, distribution, and sale of asphalt concrete by the two, three-ton, hot-mix plants; and

(3) all intangible assets associated with the East Granby Quarry and the Two, Three-Ton, Hot-Mix Plants; provided, however, that CRH will be permitted to retain the name "Roncari."

III

Applicability

A. The provisions of this Final Judgment apply to the defendants, their successors and assigns, subsidiaries, directors, officers, managers, agents, and employees, and all other persons in active concert or participation with any of them who shall have received actual notice of this Final Judgment by personal service or otherwise.

B. Defendants shall require, as a condition of the sale or other disposition of all Assets to be Divested, that the purchaser agree to be bound by the provisions of this Final Judgment.

IV

Divestitures

A. CRH is hereby ordered and directed in accordance with the terms of this Final Judgment, within one hundred and eighty (180) calendar days after the filing of this Final Judgment, to divest the Assets to be Divested to a purchaser.

B. CRH shall use its best efforts to accomplish the divestitures as expeditiously and timely as possible. The United States in its sole determination after consultation with Connecticut, may extend the time period for any divestiture an additional period of time not to exceed sixty (60) calendar days.

C. In accomplishing the divestitures ordered by this Final Judgment, CRH promptly shall make known, by usual and customary means, the availability of the Assets to be Divested described in this Final Judgment. CRH shall inform any person making an inquiry regarding a possible purchase that the sale is being made pursuant to this Final Judgment and provide such person with a copy of this Final Judgment. CRH shall also offer to furnish to all bona fide prospective purchasers, subject to customary confidentiality assurances, all information regarding the Assets to be Divested customarily provided in a due diligence process except such information subject to attorney-client privilege or attorney work-product privilege. CRH shall make available such information to plaintiffs at the same time that such information is made available to any other person.

D. CRH shall not interfere with any negotiations by any purchaser to employ any CRH (or former Tilcon) employee who works at, or whose principal responsibility is the manufacture, sale or marketing of aggregate, stone products or asphalt concrete produced by the Assets to be Divested.

E. CRH shall permit prospective purchasers of the Assets to be Divested

to have access to personnel and to make such inspection of the Assets to be Divested; access to any and all environmental, zoning, and other permit documents and information; and access to any and all financial, operational, or other documents and information customarily provided as part of a due diligence process.

F. CRH shall warrant to the purchaser of the Assets to be Divested that the Assets to be Divested will be operational on the date of sale.

G. CRH shall warrant to the purchaser of the Assets to be Divested that there are no known defects in the environmental, zoning, or other permits pertaining to the operation of the Assets to be Divested and that the defendants will not undertake following the divestiture of the Assets to be Divested any challenges to the environmental, zoning, or other permits pertaining to the operation of the Assets to be Divested.

H. CRH, at its option, may retain ownership of the six-ton, hot-mix plant and the portland concrete cement plant located at the East Granby Quarry. The six-ton, hot-mix plant and the portland concrete cement plant ("Retained Plants") must be operated independent of the purchaser's operation of the Assets to be Divested. For the purpose of siting and operating the plants, CRH may negotiate separate easements and licenses for the Retained Plants, including the land underlying and at reasonable distance surrounding the Retained Plants. If CRH or a subsequent purchaser removes or discontinues the operations of either of the Retained Plants for more than two years, the easement and license associated with the plant will be voided. The easements and licenses that are retained for the siting and operation of the six-ton, hot-mix plant and the portland cement plant must not hinder the purchaser's operation of the Assets to be Divested.

I. CRH, at its option, may negotiate a supply agreement with the purchaser of the Assets to be Divested for the purpose of supplying CRH with aggregate and stone products produced at the East Granby Quarry. The sale of the Assets to be Divested shall not be conditioned on CRH's ability to obtain a supply agreement with the purchaser.

J. Unless the United States, after consultation with the State of Connecticut, otherwise consents in writing, the divestiture pursuant to Section IV, or by trustee appointed pursuant to Section V of this Final Judgment, shall include the Assets to be Divested and be accomplished by selling or otherwise conveying the Assets to be Divested to a purchaser in

such a way as to satisfy the plaintiffs, in their sole discretion, that the Assets to be Divested can and will be used by the purchaser as part of a viable, ongoing business or businesses engaged in the manufacture and sale of asphalt concrete, aggregate, and stone products. The divestiture, whether pursuant to Section IV of Section V of this Final Judgment, shall be made to a purchaser or purchasers for whom it is demonstrated to plaintiffs' sole satisfaction that: (1) The purchaser has the capability and intent of competing effectively in the manufacture and sale of asphalt concrete in the greater Hartford Area; (2) the purchaser has or soon will have the managerial, operation, and financial capability to compete effectively in the manufacture and sale of asphalt concrete in the greater Hartford Area; and (3) none of the terms of any agreement between the purchaser and CRH give CRH the ability unreasonably to raise the purchaser's costs, to lower the purchaser's efficiency, or otherwise to interfere in the ability of the purchaser to compete effectively in the greater Hartford Area.

V

Appointment of Trustee

A. In the event that CRH has not divested the Assets to be Divested within the time specified in Section IV (A) and (B) of this Final Judgment, the Court shall appoint, on application of the United States, a trustee selected by the United States to effect the divestiture of the Assets to be Divested.

B. After the appointment of a trustee becomes effective, only the trustee shall have the right to sell the Assets to be Divested described in Section II of this Final Judgment. The trustee shall have the power and authority to accomplish the divestiture at the best price then obtainable upon a reasonable effort by the trustee, subject to the provisions of Sections V and VI of this Final Judgment, and shall have such other powers as the Court shall deem appropriate. Subject to Section V(C) of this Final Judgment, the trustee shall have the power and authority to hire at the cost and expense of Olkdcastle any investment bankers, attorneys, or other agents reasonably necessary in the judgment of the trustee to assist in the divestiture, and such professionals and agents shall be accountable solely to the trustee. The trustee shall have the power and authority to accomplish the divestiture at the earliest possible time to a purchaser acceptable to plaintiffs, and shall have such other powers at this Court shall deem appropriate. CRH shall not object to a sale by the trustee on any

grounds other than the trustee's malfeasance. Any such objections by CRH must be conveyed in writing to the plaintiffs and the trustee within ten (10) calendar days after the trustee has provided the notice required under Section VI of this Final Judgment.

C. The trustee shall serve at the cost and expense of CRH, on such terms and conditions as the Court may prescribe, and shall account for all monies derived from the sale of the assets sold by the trustee and all costs and expenses so incurred. After approval by the Court of the trustee's accounting, including fees for its services and those of any professionals and agents retained by the trustee, all remaining money shall be paid to CRH and the trust shall then be terminated. The compensation of such trustee and of any professionals and agents retained by the trustee shall be reasonable in light of the value of the Assets to be Divested and based on a fee arrangement providing the trustee with an incentive based on the price and terms of the divestiture and the speed with which it is accomplished.

D. CRH shall use its best efforts to assist the trustee in accomplishing the required divestiture. The trustee and any consultants, accountants, attorneys, and other persons retained by the trustee shall have full and complete access to the personnel, books, records, and facilities of CRH and CRH shall develop financial or other information relevant to the Assets to be Divested as the trustee may reasonably request, subject to reasonable protection for trade secrets or other confidential research, development, or commercial information. CRH shall take no action to interfere with or to impede the trustee's accomplishment of the divestiture.

E. After its appointment, the trustee shall file monthly reports with the parties and the Court setting forth the trustee's efforts to accomplish the divestiture ordered under this Final Judgment. If the trustee has not accomplished such divestiture within six (6) months after its appointment, the trustee thereupon shall file promptly with the Court a report setting forth (1) the trustee's efforts to accomplish the required divestiture, (2) the reasons, in the trustee's judgment, why the required divestiture has not been accomplished, and (3) the trustee's recommendations; provided, however, that to no extent such report contains information that the trustee deems confidential, such reports shall not be filed in the public docket in the Court. The trustee shall at the same time furnish such reports to the parties, who shall each have right to be heard and to make additional recommendations consistent with the

purpose of the trust. The Court shall enter thereafter such orders as it shall deem appropriate in order to carry out the purpose of the trust, which may, if necessary, include extending the trust and the term of the trustee's appointment by a period requested by the United States.

VI

Notification

Within two (2) business days following execution of a definitive agreement, contingent upon compliance with the terms of this Final Judgment, to effect, in whole or in part, any proposed divestiture pursuant to Sections IV or V of this Final Judgment, CRH or the trustee, whichever is then responsible for effecting the divestiture, shall notify plaintiffs of the proposed divestiture. If the trustee is responsible, it shall, similarly notify CRH. The notice shall set forth the details of the proposed transaction and list the name, address, and telephone number of each person not previously identified who offered to, or expressed an interest in or a desire to, acquire any ownership interest in the assets that are the subject of the binding contract, together with full details of same. Within fifteen (15) calendar days of receipt by plaintiff of such notice, plaintiffs may request from CRH, the proposed purchaser, or any other third party additional information concerning the proposed divestiture and the proposed purchaser. CRH and the trustee shall furnish any additional information requested within fifteen (15) calendar days of the receipt of the request, unless the parties shall otherwise agree. Within thirty (30) calendar days after receipt of the notice or within twenty (20) calendar days after plaintiffs have been provided the additional information requested from CRH, the proposed purchaser, and any third party, whichever is later, plaintiffs shall provide written notice to CRH and the trustee, if there is one, stating whether or not it objects to the proposed divestiture. If plaintiffs provide written notice to CRH and the trustee that it does not object, then the divestiture may be consummated, subject to CRH's limited right to object to the sale under Section V(B) of this Final Judgment. Absent written notice that plaintiffs do not object to the proposed purchaser or upon objection by plaintiffs, a divestiture proposed under Section IV shall not be consummated. Upon objection by plaintiffs, or by CRH under the proviso in Section V(B), a divestiture proposed under Section V shall not be consummated unless approved by the Court.

VII

Affidavits

A. Within twenty (20) calendar days of the filing of this Final Judgment and every thirty (30) calendar days thereafter until the divestitures have been completed whether pursuant to Section IV or Section V of this Final Judgment, CRH shall deliver to plaintiffs an affidavit as to the fact and manner of compliance with Sections IV or V of this Final Judgment. Each such affidavit shall include, inter alia, the name, address, and telephone number of each person who, at any time after the period covered by the last such report, made an offer to acquire, expressed an interest in acquiring, entered into negotiations to acquire, or was contacted or made an inquiry about acquiring, any interest in the Assets to be Divested, and shall describe in detail each contract with any such person during that period. Each such affidavit shall further describe in detail any negotiations regarding a supply agreement to supply CRH with aggregate and stone products from the East Granby Quarry and terms regarding CRH's operation and siting of the Retained Plants at the East Granby Quarry as described in Section IV(H) of this Final Judgment.

B. Within twenty (20) calendar days of the filing of this Final Judgment, CRH shall deliver to plaintiffs an affidavit which describes in detail all actions CRH has taken and all steps CRH has implemented on an on-going basis to preserve the Assets to be Divested pursuant to Section VIII of this Final Judgment and describes the functions, duties and actions taken by or undertaken at the supervision of the individual(s) described at Section VIII(F) of the Final Judgment with respect to CRH's efforts to preserve the Assets to be Divested. The affidavit also shall describe, but not be limited to, CRH's efforts to maintain and operate the Assets to be Divested as an active competitor, maintain the management, sales, marketing and pricing of the Assets to be Divested, and maintain the Assets to be Divested in operable condition at current capacity configurations. CRH shall deliver to plaintiff an affidavit describing any changes to the efforts and actions outlined in CRH's earlier affidavit(s) filed pursuant to this Section within fifteen (15) calendar days after the change is implemented.

C. CRH shall preserve all records of all efforts made to preserve and divest the Assets to be Divested.

VIII

Preservation of Assets

Until the divestitures required by the Final Judgment have been accomplished:

A. CRH shall take all steps necessary to ensure that the Assets to be Divested will be maintained and operated as an independent, ongoing, economically viable and active competitor in the production and sale of asphalt concrete, aggregate, and stone products in the greater Hartford Area.

B. CRH shall use all reasonable efforts to maintain sales at the Assets to be Divested and shall maintain at 1995 or previously approved levels, whichever are higher, promotional, advertising, sales, marketing and merchandising support for asphalt concrete, aggregate, and stone products sold from the Assets to be Divested. CRH's sales and marketing employees responsible for sales from the Assets to be Divested shall not be transferred or reassigned to other quarries or hot-mix plants of CRH.

C. CRH shall take all steps necessary to ensure that the Assets to be Divested are fully maintained in operable condition at no lower than their current rated capacity configurations, and shall maintain and adhere to normal maintenance schedules for the Assets to be Divested.

D. CRH shall not, except as part of a divestiture approved by plaintiffs, remove, sell or transfer any of the Assets to be Divested, including all permits that relate to the operation of the Assets to be Divested, other than asphalt concrete, aggregate, and stone products sold in the ordinary course of business.

E. CRH shall not encumber the Assets to be Divested.

F. CRH shall appoint a person or persons to oversee the Assets to be Divested who will be responsible for CRH's compliance with Section VIII of this Final Judgment.

IX

Future Acquisitions

A. CRH is ordered to give forty-five (45) days notice for any transactions not reportable under the Hart Scott Rodino Antitrust Improvements Act, 15 U.S.C. 18a, to the U.S. Department of Justice, Antitrust Division and the Connecticut Attorney General's Office concerning any intent to acquire ownership or control of the stock or assets of any manufacturer of asphalt concrete or quarry operator within a twenty-five (25) mile radius of Hartford, Connecticut. For all transactions concerning any intent to acquire ownership or control of the stock or

assets of any manufacturer of asphalt concrete or quarry operator within a twenty-five (25) mile radius of Hartford, Connecticut, that are reportable under 15 U.S.C. 18a, CRH is ordered to supply duplicate filings to the Connecticut Attorney General's Office.

X

Compliance Inspection

Only for the purposes of determining or securing compliance with the Final Judgment and subject to any legally recognized privilege, from time to time:

A. Duly authorized representatives of the United States Department of Justice, upon written request of the Attorney General or of the Assistant Attorney General in charge of the Antitrust Division, or duly authorized representatives of the Attorney General's Office of the State of Connecticut, and on reasonable notice to CRH made to its principal offices (which includes Oldcastle's offices), shall be permitted:

(1) Access during office hours of CRH to inspect and copy all books, ledgers, accounts, correspondence, memoranda, and other records and documents in the possession or under the control of CRH, who may have counsel present, relating to enforcement of this Final Judgment; and

(2) Subject to the reasonable convenience of CRH and without restraint or interference from it, to interview its officers, employees, and agents, who may have counsel present, regarding any such matters.

B. Upon the written request of the Attorney General or of the Assistant Attorney General in charge of the Antitrust Division or duly authorized individuals of the Attorney General's Office of the State of Connecticut, made to CRH's principal offices (which includes Oldcastle's principal offices), CRH shall submit such written reports, under oath if requested, with respect to enforcement of this Final Judgment.

C. No information or documents obtained by the means provided in Section X of this Final Judgment shall be divulged by a representative of plaintiffs to any person other than a duly authorized representative of the Executive Branch of the United States or an authorized representative of the Attorney General's Office of the State of Connecticut, except in the course of legal proceedings to which the United States or the State of Connecticut is a party (including grand jury proceedings), or for the purpose of securing compliance with this Final Judgment, or as otherwise required by law.

D. If at the time information or documents are furnished by CRH to plaintiffs, the CRH represents and identifies in writing the material in any such information or documents to which a claim of protection may be asserted under Rule 26(c)(7) of the Federal Rules of Civil Procedure, and CRH marks each pertinent page of such material, "Subject to claim of protection under Rule 26(c)(7) of the Federal Rules of Civil Procedure," then ten (10) calendar days notice shall be given by plaintiffs to CRH prior to divulging such material in any legal proceeding (other than a grand jury proceeding).

XI

Retention of Jurisdiction

Jurisdiction is retained by this Court for the purpose of enabling any of the parties to this Final Judgment to apply to this Court at any time for such further orders and directions as may be necessary or appropriate for the construction or carrying out of this Final Judgment, for the modification of any of the provisions hereof, for the enforcement of compliance herewith, and for the punishment of any violations hereof.

XII

Termination

Unless this Court grants an extension, this Final Judgment will expire on the tenth anniversary of the date of its entry.

XIII

Public Interest

Entry of this Final Judgment is in the public interest.

Dated: _____

United States District Judge

Competitive Impact Statement

Civil Action No.: 396CV01749 AWT
Filed: September 3, 1996.

The United States, pursuant to Section 2(b) of the Antitrust Procedures and Penalties Act ("APPA"), 15 U.S.C. 16 (b)-(h), files this Competitive Impact Statement relating to the proposed Final Judgment submitted for entry in this civil antitrust proceeding.

I

Nature and Purpose of the Proceeding

On September 3, 1996, the United States filed a civil antitrust Complaint, which alleges that the proposed acquisition by CRH plc ("CRH") through Oldcastle Northeast, Inc. ("Oldcastle"), of Tilcon, Inc. from BTR plc would violate Section 7 of the Clayton Act, 15 U.S.C. 18. The Complaint alleges that

the combination of the two most significant competitors in the asphalt concrete market in the greater Hartford, Connecticut area would lessen competition substantially in the production and sale of asphalt concrete in the greater Hartford area. As defined in the Complaint, the greater Hartford area includes the following cities and towns in Connecticut: Hartford, New Britain, Newington, Wethersfield, Farmington, West Hartford, Bloomfield, Windsor, South Windsor, East Hartford, Manchester, Glastonbury, Windsor Locks, East Granby, Plainville, Rocky Hill, Enfield, Avon, Ellington, and East Windsor. The prayer for relief in the Complaint seeks: (1) A judgment that the proposed acquisition would violate Section 7 of the Clayton Act; and (2) a permanent injunction preventing CRH from acquiring control of Tilcon's asphalt concrete business, or otherwise combining such business with Oldcastle's own business in the United States.

When the Complaint was filed, the United States also filed a proposed settlement that would permit CRH to complete its acquisition of Tilcon's asphalt concrete business, but require certain divestitures that will preserve competition in the greater Hartford area. This settlement consists of a Stipulation and Order and a proposed Final Judgment.

The proposed Final Judgment orders CRH to divest Tilcon's East Granby, Connecticut quarry and two of the three, hot-mix asphalt plants located at the East Granby quarry and certain related tangible and intangible assets. CRH must complete the divestiture of these plants and related assets within one hundred and eighty (180) calendar days after the date on which the proposed Final Judgment was filed (i.e., September 3, 1996), in accordance with the procedures specified therein.

The Stipulation and Order and proposed Final Judgment require CRH to ensure that, until the divestitures mandated by the proposed Final Judgment have been accomplished, the East Granby quarry and the two hot-mix asphalt plants and related assets to be divested will be maintained and operated as an independent, ongoing, economically viable and active competitor. CRH must preserve and maintain the quarry and the two hot-mix asphalt concrete plants to be divested as saleable and economically viable, ongoing concerns, with competitively sensitive business information and decision-making divorced from that of Oldcastle's asphalt concrete business. CRH will appoint a person or persons to monitor and ensure

its compliance with these requirements of the proposed Final Judgment.

The United States and defendants have stipulated that the proposed Final Judgment may be entered after compliance with the APPA. Entry of the proposed Final Judgment would terminate this action, except that the Court would retain jurisdiction to construe, modify, or enforce the provisions of the proposed Final Judgment and to punish violations thereof.

II

Description of the Events Giving Rise to the Alleged Violation

A. Oldcastle, Tilcon and the Proposed Transaction

Through its wholly owned subsidiary, Oldcastle, CRH is engaged in the business of manufacturing and selling asphalt concrete and extracting and processing aggregate in the state of Connecticut. In the greater Hartford area, Oldcastle operates three hot-mix plants that produce asphalt concrete and a quarry that produces aggregate which is used for, among other things, manufacturing asphalt concrete at the three hot-mix plants. In 1995, Oldcastle had sales of \$314 million.

Through its wholly owned subsidiary, Tilcon, BTR is engaged in the business of manufacturing and selling asphalt concrete and extracting and processing aggregate in the state of Connecticut. In the greater Hartford area, Tilcon operates six hot-mix plants that produce asphalt concrete and two quarries that produce aggregate which is used for, among other things, manufacturing asphalt concrete at the six hot-mix plants. In 1995, Tilcon had sales of \$349 million.

On June 19, 1996, CRH, through Oldcastle, agreed to acquire all of the outstanding voting securities of Tilcon from BTR for a purchase price of \$270 million. This transaction, which would take place in the highly concentrated greater Hartford area asphalt concrete manufacturing industry, precipitated the government's suit.

B. The Transaction's Effects in the Greater Hartford Area

The Complaint alleges that the manufacture and sale of asphalt concrete constitutes a line of commerce, or relevant product market, for antitrust purposes, and that the greater Hartford area constitutes a section of the country, or relevant geographic market. The Complaint alleges the effect of Oldcastle's acquisition may be to lessen competition substantially in the

manufacture and sale of asphalt concrete in the greater Hartford area.

Asphalt concrete is material that is used principally for paving and is produced by combining and heating asphalt cement (also referred to in the industry as "liquid asphalt" or "asphalt oil") with aggregate. A plant that produces asphalt concrete is commonly referred to as a "hot-mix plant." No good economic functional substitutes exist for asphalt concrete.

Manufacturers and buyers of asphalt concrete and other paving materials recognize asphalt as a distinct product.

Manufacturers of asphalt located in the greater Hartford area sell and compete with each other for sales of asphalt concrete within the greater Hartford area. Due to high transportation costs and long delivery time, manufacturers of asphalt concrete located outside the greater Hartford area do not sell a significant amount of asphalt concrete for use within the greater Hartford area.

The Complaint alleges that Oldcastle's acquisition of Tilcon would substantially lessen competition for the manufacture and sale of asphalt concrete in the greater Hartford area. Actual and potential competition between Oldcastle and Tilcon for the manufacture and sale of asphalt concrete in the greater Hartford area will be eliminated.

Oldcastle and Tilcon are the largest producers of asphalt concrete in the greater Hartford area and are the only producers of asphalt concrete in the greater Hartford area that own their own sources of aggregate for manufacturing asphalt concrete for highway projects. They are also the only manufacturers of asphalt concrete located in the greater Hartford area that supply asphalt concrete for highway construction projects built by the Connecticut Department of Transportation in the greater Hartford area. The Connecticut Department of Transportation is the largest purchaser of asphalt concrete in the greater Hartford area.

The acquisition would create a dominant asphalt concrete company in the greater Hartford area. It would reduce the number of competitors operating hot-mix plants in the greater Hartford area from three to two and reduce the number of competitors located in the greater Hartford area supplying asphalt concrete construction projects built by the Connecticut Department of Transportation in the greater Hartford area from two to one.

As a result of the acquisition, prices for asphalt concrete in the greater Hartford area are likely to increase. Oldcastle would control the asphalt

concrete market in the greater Hartford area, and it would have market power to increase the price of asphalt concrete in the greater Hartford area. In response to an increase, purchasers could not switch to another producer of asphalt concrete. The only alternative manufacturer of asphalt concrete in the greater Hartford area (Sales Construction) would have its only source of aggregate in the greater Hartford area controlled by Oldcastle.

New entry in the greater Hartford area is unlikely to restore the competition lost through Oldcastle's removal of Tilcon from the marketplace. De novo entry into the manufacture and sale of asphalt concrete requires a significant capital investment and likely would take over two years before any new hot-mix asphalt plant could begin production. Connecticut zoning provisions make it very difficult to open a quarry in the greater Hartford area, and none have been opened in fifty years.

C. Harm to Competition as a Consequence of the Acquisition

The Complaint alleges that the transaction would have the following effects, among others: Competition for the manufacture and sale of asphalt concrete in the greater Hartford area will be substantially lessened; actual and potential competition between Oldcastle and Tilcon in the manufacture and sale of asphalt concrete in the greater Hartford area will be eliminated; and prices for asphalt concrete in the greater Hartford area are likely to increase above competitive levels.

III

Explanation of the Proposed Final Judgment

The proposed Final Judgment would preserve competition in the production and sale of asphalt concrete in the greater Hartford area by placing in independent hands the East Granby quarry and two of the three hot-mix asphalt plants used by Tilcon to serve the greater Hartford area, thus maintaining the existing level of suppliers in the market place. The two asphalt plants required to be divested by CRH have a combined capacity of six tons and account for half of the asphalt capacity at East Granby. Oldcastle would be permitted to retain a separate six ton asphalt plant at the East Granby location. In response to a price increase from Oldcastle, purchasers would be able to turn to one or more producers with (1) significant capacity to produce asphalt concrete in the greater Hartford area and (2) an independent source for

aggregate in the greater Hartford area for use in manufacturing asphalt concrete in the greater Hartford area.

Within one hundred and eighty (180) calendar days after filing the proposed Final Judgment, CRH must divest its East Granby quarry and the two hot-mix asphalt plants, all located in the East Granby, Connecticut, and related assets. CRH, at its option, may negotiate a supply agreement for the purpose of supplying CRH with aggregate and stone products produced at the East Granby quarry, but such a supply agreement cannot be a condition for divestiture. The East Granby quarry and two hot-mix asphalt plants and related assets will be sold to one or more purchasers who demonstrate to the sole satisfaction of the United States that they will be an economically viable and effective competitor, capable of competing effectively in the manufacture and sale of asphalt concrete in the greater Hartford area.

Until the ordered divestitures take place, CRH must take all reasonable steps necessary to accomplish the divestitures, and cooperate with any prospective purchaser. If CRH does not accomplish the ordered divestitures within the specified one hundred and eighty (180) calendar days which may be extended by up to sixty (60) calendar days by the United States in its sole discretion, the proposed Final Judgment provides for procedures by which the Court shall appoint a trustee to complete the divestitures. CRH must cooperate fully with the trustee.

If a trustee is appointed, the proposed Final Judgment provides that CRH will pay all costs and expenses of the trustee. The trustee's compensation will be structured so as to provide an incentive for the trustee to obtain the highest price for the assets to be divested, and to accomplish the divestiture as quickly as possible. After the effective date of his or her appointment, the trustee shall serve under such other conditions as the Court may prescribe. After his or her appointment becomes effective, the trustee will file monthly reports with the parties and the Court, setting forth the trustee's efforts to accomplish the divestiture. At the end of six (6) months, if the divestiture has not been accomplished, the trustee shall file promptly with the Court a report that sets forth the trustee's efforts to accomplish the divestiture, explains why the divestiture has not been accomplished, and makes any recommendations. The trustee's report will be furnished to the parties and shall be filed in the public docket, except to the extent the report contains information the trustee deems

confidential. The parties each will have the right to make additional recommendations to the Court. The Court shall enter such orders as it deems appropriate to carry out the purpose of the trust.

IV

Remedies Available to Potential Private Litigants

Section 4 of the Clayton Act (15 U.S.C. 15) provides that any person who has been injured as a result of conduct prohibited by the antitrust laws may bring suit in federal court to recover three times the damages the person has suffered, as well as costs and reasonable attorney's fees. Entry of the proposed Final Judgment neither will impair nor assist the bringing of any private antitrust damage action. Under the provisions of Section 5(a) of the Clayton Act (15 U.S.C. 16(a)), the proposed Final Judgment as a no prima facie effect in any subsequent private lawsuit that may be brought against CRH, Oldcastle, BTR or Trilcon.

V

Procedures Available for Modification of the Proposed Final Judgment

The United States and the defendants have stipulated that the proposed Final Judgment may be entered by the Court after compliance with the provisions of the APPA, provided that the United States has not withdrawn its consent. The APPA conditions entry upon the Court's determination that the proposed Final Judgment is in the public interest.

The APPA provides a period of at least sixty (60) days preceding the effective date of the proposed Final Judgment within which any person may submit to the United States written comments regarding the proposed Final Judgment. Any person should comment within sixty (60) days of the date of publication of this Competitive Impact Statement in the Federal Register. The United States will evaluate and respond to the comments. All comments will be given due consideration by the Department of Justice, which remains free to withdraw its consent to the proposed Final Judgment at any time prior to entry. The comments and the response of the United States will be filed with the Court and published in the Federal Register.

Written comments should be submitted to: J. Robert Kramer, Chief, Litigation II Section, Antitrust Division, United States Department of Justice, 1401 H Street, N.W., Suite 3000 Washington, DC., 20530.

The proposed Final Judgment provides that the Court retains

jurisdiction over this action, and the parties may apply to the Court for any order necessary or appropriate for the modification, interpretation, or enforcement of the Final Judgment.

VI

Alternatives to the Proposed Final Judgment

The United States considered, as an alternative to the proposed Final Judgment, a full trial on the merits of its Complaint against the defendants. The United States is satisfied, however, that the divestiture of the assets and other relief contained in the proposed Final Judgment will preserve viable competition in the manufacture and sale of asphalt concrete in the greater Hartford areas that otherwise would be affected adversely by the acquisition. Thus, the proposed Final Judgment would achieve the relief the government would have obtained through litigation, but avoid the time, expense and uncertainty of a full trial on the merits of the government's Complaint.

VII

Standard of Review Under the APPA for Proposed Final Judgment

The APPA requires that proposed consent judgments in antitrust cases brought by the United States be subject to a sixty (60) day comment period, after which the court shall determine whether entry of the proposed Final Judgment "is in the public interest." In making that determination, the court may consider—

(1) The competitive impact of such judgment, including termination of alleged violations, provisions for enforcement and modification, duration or relief sought, anticipated effects of alternative remedies actually considered, and any other considerations bearing upon the adequacy of such judgment;

(2) The impact of entry of such judgment upon the public generally and individuals alleging specific injury from the violations set forth in the complaint including consideration of the public benefit, if any, to be derived from a determination of the issues at trial.

15 U.S.C. 16(e) (emphasis added). As the Court of Appeals for the District of Columbia Circuit recently held, the APPA permits a court to consider, among other things, the relationship between the remedy secured and the specific allegations set forth in the government's complaint, whether the decree is sufficiently clear, whether enforcement mechanisms are sufficient, and whether the decree may positively harm third parties. See *United States v. Microsoft*, 56 F.3d 1448 (D.C. Cir. 1995).

In conducting this inquiry, "the Court is nowhere compelled to go to trial or to engage in extended proceedings which might have the effect of vitiating the benefits of prompt and less costly settlement through the consent decree process." 119 Cong. Rec. 24598 (1973). Rather,

absent a showing of corrupt failure of the government to discharge its duty, the Court, in making its public interest finding, should * * * carefully consider the explanations of the government in the competitive impact statement and its responses to comments in order to determine whether those explanations are reasonable under the circumstances.

United States v. Mid-America Dairymen, Inc., 1977-1 Trade Cas. (CCH) ¶ 61,508, at 71,980 (W.D. Mo. 1977).

Accordingly, with respect to the adequacy of the relief secured by the decree, a court may not "engage in an unrestricted evaluation of what relief would best serve the public." *United States v. BNS, Inc.*, 858 F.2d 456, 462 (9th Cir. 1988), quoting *United States v. Bechtel Corp.*, 648 F.2d 660, 666 (9th Cir.), cert. denied, 454 U.S. 1083 (1981); see also *Microsoft*, 56 F.3d 1448 (D.C. Cir. 1995). Precedent requires that:

the balancing of competing social and political interests affected by a proposed antitrust consent decree must be left, in the first instance, to the discretion of the Attorney General. The court's role in protecting the public interest is one of insuring that the government has not breached its duty to the public in consenting to the decree. The court is required to determine not whether a particular decree is the one that will best serve society, but whether the settlement is "within the reaches of the public interest." More elaborate requirements might undermine the effectiveness of antitrust enforcement by consent decree.

United States v. Bechtel, 648 F.2d 660, 666 (9th Cir. 1981) (emphasis added).

The proposed Final Judgment, therefore, should not be reviewed under a standard of whether it is certain to eliminate every anticompetitive effect of a particular practice or whether it mandates certainty of free competition in the future. Court approval of a final judgment requires a standard more flexible and less strict than the standard required for a finding of liability. "[A] proposed decree must be approved even if it falls short of the remedy the court would impose on its own, as long as it falls within the range of acceptability or is 'within the reaches of public interest.'" (citations omitted). *United States v. American Tel. and Tel. Co.*, 552 F. Supp. 131, 150 (D.D.C. 1982), *aff'd sub nom., Maryland v. United States*, 460 U.S. 1001 (1983).

VIII

Determinative Documents

There are no determinative materials or documents within the meaning of the APPA that were considered by the United States in formulating the proposed Final Judgment.

Executed on: September 5, 1996.

Respectfully submitted,

Frederick H. Parmenter,

Attorney, Department of Justice, Antitrust Division, Suite 3000, 1401 H Street, NW, Washington, DC 20530, (202) 307-0620.

Carl J. Schuman,

Assistant United States Attorney, Federal Bar No. CT 05439.

[FR Doc. 96-24002 Filed 9-18-96; 8:45 am]

BILLING CODE 4410-01-M

Notice Pursuant to the National Cooperative Research and Production Act of 1993—the Ohio Aerospace Institute Propulsion Instrumentation Working Group

Notice is hereby given that, on September 4, 1996, 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 Ohio Aerospace Institute Propulsion Instrumentation Working Group ("PIWG") has filed written notifications simultaneously with the Attorney General and the Federal Trade Commission disclosing (1) the identities of the parties and (2) the nature and objectives of the venture. The notifications were filed for the purpose of invoking the Act's provisions limiting the recovery of antitrust plaintiffs to actual damages under specified circumstances. Pursuant to Section 6(b) of the Act, the identities of the parties are: Ohio Aerospace Institute, Brook Park, OH; Allied Signal, Phoenix, AZ; Allison, Indianapolis, IN; GE Aircraft Engines, Cincinnati, OH; Pratt & Whitney, West Palm Beach, FL; and NASA Lewis Research Center, Cleveland, OH. The nature and objectives of the venture is to extend the capability of the current Non-Intrusive Stress Measurement System ("NSMS") to support High Cycle Fatigue analysis and models to improve life prediction for advanced engine components.

Membership in this venture remains open, and PIWG intends to file additional written notification disclosing all changes in membership. Information regarding participation in PIWG may be obtained from Eileen

Pickett, Ohio Aerospace Institute,
Cleveland, OH.

Constance K. Robinson,

Director of Operations, Antitrust Division.

[FR Doc. 96-24030 Filed 9-18-96; 8:45 am]

BILLING CODE 4410-01-M

Drug Enforcement Administration

Manufacturer of Controlled Substances; Notice of Application

Pursuant to Section 1301.43(a) of Title 21 of the Code of Federal Regulations (CFR), this is notice that on July 24, 1996, Eli Lilly Industries, Inc., Chemical Plant, Kilometer 146.7, State Road 2, Mayaguez, Puerto Rico 00680, made application to the Drug Enforcement Administration (DEA) for registration as a bulk manufacturer of dextropropoxyphene, bulk (non-dosage forms) (9273) a basic class of controlled substance listed in Schedule II.

The firm plans to manufacture bulk product for distribution to its customers.

Any other such applicant and any person who is presently registered with DEA to manufacture such substances may file comments or objections to the issuance of the above application.

Any such comments or objections may be addressed, in quintuplicate, to the Deputy Assistant Administrator, Office of Diversion Control, Drug Enforcement Administration, United States Department of Justice, Washington, D.C. 20537, Attention: DEA Federal Register Representative (CCR), and must be filed no later than November 18, 1996.

Dated: September 4, 1996.

Gene R. Haislip,

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

[FR Doc. 96-23949 Filed 9-18-96; 8:45 am]

BILLING CODE 4410-09-M

Immigration and Naturalization Service

Agency Information Collection Activities: Extension of Existing Collection; Comment Request

ACTION: Notice of information collection under review; petition by entrepreneur to remove conditions.

The proposed information collection is published to obtain comments from the public and affected agencies. Comments are encouraged and will be accepted for 60 days until November 18, 1996.

Request written comments and suggestions from the public and affected agencies concerning the proposed

collection of information. Your comments should address one or more of the following four points:

(1) Evaluate whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information will have practical utility;

(2) Evaluate the accuracy of the agencies estimate of the burden of the proposed collection of information, including the validity of the methodology and assumptions used;

(3) Enhance the quality, utility, and clarity of the information to be collected; and

(4) Minimize the burden of the collection of information on those who are to respond, including through the use of appropriate automated, electronic, mechanical, or other technological collection techniques or other forms of information technology, e.g., permitting electronic submission of responses.

If you have additional comments, suggestions, or need a copy of the proposed information collection instrument with instructions, or additional information, please contact Richard A. Sloan 202-616-7600, Director, Policy Directives and Instructions Branch, Immigration and Naturalization Service, U.S. Department of Justice, Room 5307, 425 I Street, NW., Washington, DC 20536. Additionally, comments and/or suggestions regarding the item(s) contained in this notice, especially regarding the estimated public burden and associated response time may also be directed to Mr. Richard A. Sloan.

Overview of this information collection:

(1) Type of Information Collection: *Extension of a currently approved collection.*

(2) Title of the Form/Collection: *Petition by Entrepreneur to Remove Conditions.*

(3) Agency form number, if any, and the applicable component of the Department of Justice sponsoring the collection: *Form I-829, Adjudications Division, Immigration and Naturalization Service.*

(4) Affected public who will be asked or required to respond, as well as a brief abstract: *Primary: Individuals or Households. This form is used by a conditional resident alien entrepreneur who obtained such status through a qualifying investment, to apply to remove the conditions on his or her conditional resident status.*

(5) An estimate of the total number of respondents and the amount of time estimated for an average respondent to

respond: 200 respondents at 65 minutes (1.08) per response.

(6) An estimate of the total public burden (in hours) associated with the collection: 216 annual burden hours.

If additional information is required contact: Mr. Robert B. Briggs, Clearance Officer, United States Department of Justice, Information Management and Security Staff, Justice Management Division, Suite 850, Washington Center, 1001 G Street, NW., Washington, DC 20530.

Dated: September 13, 1996.

Robert B. Briggs,

Department Clearance Officer, United States Department of Justice.

[FR Doc. 96-23984 Filed 9-18-96; 8:45 am]

BILLING CODE 4410-18-M

OFFICE OF MANAGEMENT AND BUDGET

Office of Federal Procurement Policy

Cost Accounting Standards Board; Allocation of Selling and Marketing Costs

ACTION: Notice.

SUMMARY: The Office of Federal Procurement Policy, Cost Accounting Standards Board (CASB), invites public comments concerning a Staff Discussion Paper on the allocation of selling and marketing costs to government contracts.

DATES: Comments must be in writing and must be received by November 18, 1996.

ADDRESSES: All comments should be addressed to Dr. Rein Abel, Director of Research, Cost Accounting Standards Board, Office of Federal Procurement Policy, 725 17th Street, NW., Room 9001, Washington, DC 20503. Attn: CASB Docket No. 96-03.

FOR FURTHER INFORMATION CONTACT: Rein Abel, Director of Research or Richard C. Loeb, Executive Secretary, Cost Accounting Standards Board (telephone: 202-395-3254).

SUPPLEMENTARY INFORMATION:

A. Regulatory Process

The Cost Accounting Standards Board's rules, regulations and Standards are codified at 48 CFR Chapter 99. Section 26(g)(1) of the Office of Federal Procurement Policy Act, 41 U.S.C. 422(g), requires that the Board, prior to the establishment of any new or revised Cost Accounting Standard, complete a prescribed rulemaking process. The process generally consists of the following four steps:

1. Consult with interested persons concerning the advantages, disadvantages and improvements anticipated in the pricing and administration of Government contracts as a result of the adoption of a proposed Standard.

2. Promulgate an Advance Notice of Proposed Rulemaking.

3. Promulgate a Notice of Proposed Rulemaking.

4. Promulgate a Final Rule.

This proposal is step one of the four-step process.

B. Background and Summary

In response to the Cost Accounting Standards Board's (CASB's) continuing research, a number of commenters have identified selling and marketing costs as an issue requiring consideration. The primary concern raised is the causal/beneficial relationship of selling costs to final cost objectives and their subsequent cost allocations. More specifically, issues have arisen in which the allocation of selling and marketing costs as a direct or as an indirect cost, and/or the appropriate pooled cost composition or allocation base selection, have caused substantial controversies.

This Staff Discussion Paper represents the results of research performed by the staff of the Cost Accounting Standards Board, and is issued by the Board in accordance with the requirements of 41 U.S.C. 422(g)(1)(A). The statements contained herein do not necessarily represent the position of the Cost Accounting Standards Board.

C. Public Comments

Interested persons are invited to participate by submitting data, views or arguments with respect to this Staff Discussion Paper. All comments must be in writing and submitted to the address indicated in the **ADDRESSES** section.

Richard C. Loeb,

Executive Secretary, Cost Accounting Standards Board.

Allocation of Selling and Marketing Costs

Outline

Introduction

Scope of Project

Preliminary Research

Part I—Terminology and Definition

A. Discussion

B. Issues

Part II—Homogeneity of Pools

A. Discussion

B. Issues

Part III—Selection of Allocation Bases

A. Discussion

B. Issues

Part IV—Composition of Allocation Bases

A. Discussion

B. Issues

Part V—Current Expensing vs. Deferral

A. Discussion

B. Issues

Allocation of Selling and Marketing Costs

Introduction

In response to the Cost Accounting Standards Board's (CASB's) research, a number of commenters have identified selling and marketing costs as an issue requiring consideration. The primary concern raised is the causal/beneficial relationship of selling costs to final cost objectives and their subsequent cost allocations. The prior CASB also identified selling and marketing costs as an area requiring research. When the prior CASB promulgated Cost Accounting Standard (CAS) 9904.410 "Allocation of Business Unit General and Administrative Expenses to Final Cost Objectives", a separate research project dealing with selling and marketing costs was established. In its prefatory comments on CAS 9904.410, the CASB stated: "* * * the Board is currently working on projects involving IR&D, B&P and selling costs. The Board at this time does not require changing the accounting for these costs."

CAS 9904.420, "Accounting for Independent Research and Development and Bid and Proposal Costs" was promulgated in September 1979. However, no Standard was ever promulgated to deal with the unique issues relating to selling and marketing costs. The CAS Board has asked the staff to begin the necessary research to resolve these matters.

Scope of Project

In its *Statement of Objectives, Policies and Concepts*, July 1992, the CASB states: "* * * the Board believes in the desirability of direct identification of costs with final cost objectives where the following allocation characteristics exist:

1. The beneficial or causal relationship between the incurrence of cost and cost objectives is clear and exclusive.

2. The amount of resource used is readily and economically measurable."

The aforementioned document further states:

"Where units of resources used are not directly identified with final cost objectives, the cost of such resources should be grouped into logical and homogeneous pools for allocation to cost objectives in accordance with a hierarchy of preferable techniques."

Under certain circumstances in government contracting, selling and marketing costs may be properly susceptible to direct identification with final cost objectives. In most cases, however, selling and marketing costs are indirectly allocated.

Several Armed Services Board of Contract Appeals (ASBCA) cases have concluded that selling costs identified with a final cost objective (e.g., sales commissions) could be treated as an indirect cost. *Daedalus Enterprises, Inc.*, 93-1 BCA 25499 and *Aydin Corp. (West)*, 94-2 BCA 26899, *aff'd in part, rev'd in part, Aydin Corp. (West) v. Widnall*, 61 F.3d 1571 (Fed. Cir. 1995). Accordingly, the scope of this project includes selling and marketing costs identified with final cost objectives and those not identified with final cost objectives.

Preliminary Research

The staff's preliminary research to date includes:

- Review of literature;
- Analysis of ASBCA decisions; and
- Review of the prior CASB's research relating to selling and marketing costs.

This research disclosed a number of cost accounting issues which we believe must be considered by the Board in developing a potential CAS. These issues, presented in more detail in the ensuing parts of this SDP, deal with the following matters:

- Terminology and Definition
- Homogeneity of Pools
- Selection of Allocation Bases
- Composition of Allocation Bases
- Current Expensing vs. Deferral

Part I

Terminology and Definition

A. Discussion

The problem of terminology and definition is closely related to—in fact, it is sometimes difficult to separate it from—the question concerning the number of cost pools, or the degree of homogeneity of such pools (see Part II). It seems that any CAS evolving from this project must use terms that are adequately defined so as to ensure understanding by all parties concerned of the types of costs, functions and activities being covered.

Kohler, defines "selling expense (cost)" and "marketing cost" as follows:

"Selling Expense (Cost)—Any expense or class of expense incurred in selling or marketing. Examples: salesmen's salaries, commissions, and traveling; selling department salaries and expenses; samples; credit and

collection costs. Shipping costs are often so classified."

"Marketing Costs—The cost of locating customers, persuading them to buy, delivering goods, and collecting sales proceeds; selling cost."

The Institute of Management Accountants (IMA) classifies "marketing costs" into two general categories: "1. Costs of getting orders—i.e. advertising, sales promotion, direct selling, sales administration and sales research. 2. Costs of filling orders—warehousing, shipping, clerical operations connected with filling orders and collecting the money." Most authors of accounting literature (for example, Anthony and Shillinglaw) define the term "marketing costs" (or "distribution costs") generally in the same fashion as the IMA; that is, the term is broken down into two major categories of costs: "order-getting costs" and "order-filling costs."

In government contracting, however, the terms are often defined in a narrower sense; that is, most government contractors limit the terms to include only "order-getting" costs. "Order-filling costs" are often classified as general and administrative expenses, e.g., collection, and as manufacturing overhead costs or as other indirect costs, e.g., warehousing. For example, the Federal Acquisition Regulation (FAR) 31.205-38 states: "Selling is a generic term encompassing all efforts to market the contractor's products or services, some of which are covered specifically in other subsections of 31.205. Selling activity includes the following broad categories:

- (1) Advertising
- (2) Corporate image enhancement including broadly-targeted sales efforts, other than advertising
- (3) Bid and proposal costs
- (4) Market planning
- (5) Direct selling"

Some contractors, however, make a distinction between selling and marketing activities. Marketing is defined as being long-range in its objectives and includes market research and development and advertising. Selling is short-range in its objectives and includes direct selling efforts, sales promotion and demonstration, and customer liaison.

Discussions with contractor and government representatives indicate that terminology and definition in this area are not without problems. There is a considerable amount of diversity in the specific meaning being attached to the term "selling and marketing costs." Furthermore, problems are being encountered in distinguishing between selling and marketing costs and certain other costs, such as IR&D and B&P costs.

In addition to the costs of such activities as market research and development, direct selling effort, selling administration and sales promotion and demonstration, many government contractors consider the costs of some or all of the following activities as part of selling and marketing costs:

- a. Business planning
- b. Bid and proposal
- c. Contract administration including negotiation and pricing
- d. Technical marketing (or work performed by "marketing representatives")
- e. Program management
- f. Subcontract administration
- g. Spares administration or logistical support

Other contractors, however, treat the costs of these activities differently; some contractors treat the costs of some of the activities as part of general and administrative expenses ("G&A"); others treat them either as part of manufacturing, engineering or comparable overhead pools; and still others treat them as direct costs. Likewise, some contractors treat the costs of selling efforts performed by salaried employees differently than the costs of similar selling efforts performed by outside sales agents.

Of the cost of those activities listed above, preliminary research has indicated that costs of contract administration are often as significant as selling and marketing costs and that opinions appear to be divided as to whether or not such costs should be part of selling and marketing costs. In this regard, one recognized expert has stated: "Selling costs normally include bidding and proposal costs not directly assignable to contracts obtained from such effort * * * as well as costs of contract administration and sales and service." A number of companies, however, treat contract administration costs as part of G&A.

Those companies which treat the costs of contract administration as part of selling and marketing costs cite several reasons in support of such treatment. Among the reasons cited are: (i) The same people perform both contract administration and selling and marketing activities, (ii) the two activities are often difficult to distinguish or they overlap; and (iii) people who are assigned contract administration responsibility perform selling or negotiation work on potential follow-on contracts. An additional reason cited by those contractors with a mix of government and commercial business—although this is more closely

related to the question of allocation—is that because selling and marketing costs tend to be higher on commercial than on government business, whereas contract administration costs tend to be higher on Government than on commercial business, combining the two types of costs produces results similar to those of separate cost allocations.

B. Issues

1. What activities should be encompassed by the term "selling and marketing"? In responding to this issue, please address your comments to whether each of the activities listed above should be part of selling and marketing. Please state your reasons for including, or excluding, the activities and provide a brief description of the activities.

2. Should "selling" and "marketing" be separately defined and how should they be defined?

3. What are the distinctive characteristics of selling and marketing activities that can be used to assure that such activities are properly segregated from other activities?

Part II

Homogeneity of Pools

A. Discussion

As mentioned previously, the CASB has emphasized the need for and the importance of grouping indirect costs into logical and homogeneous pools. The literature also indicates the general weight of opinion that homogeneity of indirect cost pools should be achieved by establishing separate pools, rather than a single pool for a "blanket" allocation.

CAS 9904.410 defines G&A as "Any management, financial and other expense which is incurred for the general management and administration of the business unit as a whole. G&A expense does not include those management expenses whose beneficial or causal relationship to cost objectives can be more directly measured by a base other than a cost input base representing the total activity of a business unit during a cost accounting period."

In a recent decision, the ASBCA concluded that selling costs are different from G&A expenses. The ASBCA stated: CAS 410.30(6) defines "General and Administrative (G&A) expense" as an expense incurred for the general management and administration of the business as a whole. Aydin acknowledges that its sales commission costs were essentially selling costs. In this case, the Solar II commission incurred was not incurred for the management and administration of

Aydin as a whole * * * We conclude, therefore, that Aydin's sales commission costs in general, and the Solar II sales commission in particular, were not G&A expenses for purposes of CAS 410. See *Aydin Corp. (West)*, 94-2 BCA 26899.

The idea that selling and marketing costs are different from G&A can be found in accounting literature. Kholer, for example, expresses this idea by defining "administrative expense" as "A classification of expense incurred in the general direction of an enterprise as a whole, as *contrasted with expense of a more specific function*, such as manufacturing or selling * * *" (underscoring added). In a similar vein, the IMA distinguishes selling and marketing costs from G&A by defining G&A as costs of " * * * president's office, treasurer's office [and] controller's office."

The idea of establishing homogeneous indirect cost pools is expressed in CAS 9904.418-40(b) and 50(b)(1). CAS 9904.418-40(b) states:

Indirect costs shall be accumulated in indirect pools which are homogenous.

CAS 9904.418-50(b)(1) states:

An indirect cost pool is homogenous if each significant activity whose costs are included therein has the same or a similar beneficial or causal relationship to cost objectives as the other activities whose costs are included in the cost pool. It is also homogenous if the allocation of the costs of the activities included in the cost pool result in an allocation to cost objectives which is not materially different from the allocation that would result if the costs of the activities were allocated separately.

The concept of homogenous indirect cost pools is also discussed in FAR 31.203(b) as "Indirect costs shall be accumulated by logical cost groupings with due consideration of the reasons for incurring such costs * * * Commonly, manufacturing overhead, selling expenses and general and administrative expenses are separately grouped." In practice, however, only some contractors have established a separate pool of selling and marketing costs. Discussions with some contractors disclosed that selling and marketing costs are significant, particularly when they are compared with G&A.

As discussed above, accounting opinion generally supports the need for increased homogeneity. However, there is no agreement as to how to achieve a degree of homogeneity of indirect costs that assures their accurate allocation. Although the literature deals with the subject of selling and marketing costs, most of the discussion is presented from the perspectives of internal cost controls

and managerial decisions. Such accounting literature suggests a number of different ways to accumulate selling and marketing costs which could be adopted for purposes of allocation to contracts. Among the various methods cited are: (i) By activities (direct selling efforts, sales administration, market research, etc.), (ii) by product lines, (iii) by customers, and (iv) by geographical locations.

The concept of segregating selling costs on a beneficial or causal relationship was addressed in CAS Working Group Item 78-21, Implementation of CAS 410, Allocation of Business Unit General and Administrative Expenses to Final Cost Objectives. The Working Group responded to a question raised concerning whether selling costs could be included in the G&A pool if an inequitable distribution resulted. The Working Group concluded that selling costs could not remain in the G&A pool when an inequitable distribution resulted. Working Group Item 78-21 states in part:

Although the prefatory remarks are permissive in this regard, the standard's fundamental requirement paragraph 410.40(d)(1) requires a separate allocation of costs which can be allocated to business unit cost objectives on a beneficial or causal relationship which is best measured by a base other than a cost input base * * * Therefore, if a significant disparity exists in marketing activity for elements of the business, selling expenses should be the subject of a separate distribution in reasonable proportion to the benefits received. For example, it may be appropriate to separately allocate selling costs of foreign and domestic markets.

In light of Working Group Item 78-21, questions have arisen as to the allocability of foreign selling costs on domestic government contracts. The government regulations addressing foreign selling costs have changed over the past decade. DAR 15.205-37 stipulated that the allocability of selling costs were to be determined in light of reasonable benefit to the U.S. government. However, the current FAR 31.205-38 states:

The costs * * * to promote export sales of products normally sold to the U.S. Government, including the costs of exhibiting and demonstrating such products, are allowable on contracts with the U.S. Government provided—

- (i) The costs are allocable, reasonable, and otherwise allowable under this Subpart 31.2;
- (ii) That, with respect to a business segment which allocates to U.S. Government contracts, \$2,500,000 or more of such costs in a given year of such business segment, a ceiling on the allowable costs shall apply.

At corporate and group home offices, accumulating selling and marketing costs in separate pools is not an uncommon practice. A number of such offices accumulate the costs in terms of commercial versus government business—some group home offices perform only selling and marketing functions and some have separate group home offices for commercial marketing and for government marketing.

A number of corporate and group home offices also accumulate selling and marketing costs in terms of foreign versus domestic, and some have separate marketing organizations for foreign marketing and for domestic marketing. This kind of accumulation of selling and marketing costs presumably reflects the need occasioned by significant amounts of exports of U.S. products. In this regard, it is probably important to note the various recurring changes in policy regarding the allowability of marketing costs associated with Foreign Military Sales (FMS) contracts.

A government representative suggests that selling costs be segregated from marketing costs. According to this logic, marketing costs which are long-range in objective should be segregated from selling costs which are short-range in objective. The former should be allocated on a broad base to all business of a contractor, whereas the latter should be allocated only to those products or product lines benefiting from the incurrence of selling costs.

Based on the foregoing discussion, the argument can be made that, at one extreme, the accuracy of most contractors' allocations of selling and marketing costs could be improved by creating several pools. This would mean establishing pools by class of customers (such as commercial versus government), by various activities (such as field selling costs, sales demonstration, sales administration and marketing research), by geographical locations (such as foreign versus domestic) and by product lines.

At the other extreme, selling and marketing costs could be combined with G&A, or a single pool of selling and marketing costs could be used, on the theory that little additional accuracy will be provided by increased homogeneity, and that any additional accuracy achieved would be too costly or would not make much difference in the ultimate amounts of selling and marketing costs to be allocated.

The central question, then, seems to be: How can the homogeneity of selling and marketing costs be further improved in a way which will have both theoretical validity and practical

applicability? A related question is: To what extent can greater comparability among contractors be achieved in this area?

B. Issues

1. Under what circumstances should selling and marketing costs be accumulated in a pool separate and apart from G&A? Under what circumstances should they be accumulated by: a. class of customers (e.g., commercial versus government), b. geographical location (e.g., foreign versus domestic), c. type of activity (e.g., marketing versus selling), d. product line, or e. some other methods?

2. Please describe the guidelines and criteria governing the accumulation of selling and marketing costs which you believe should be included in a potential standard. Is a new standard required or can this issue be addressed within existing standard(s)?

3. Should a potential standard establish criteria and guidance on when it would be inappropriate to establish a pool, i.e., when selling or marketing expenses should be allocated directly to particular final cost objectives?

Part III

Selection of Allocation Bases

A. Discussion

Theoretically, there are two ways to go about selecting an allocation base; one way is to use judgmental criteria and the other is to use a statistical analysis approach. Practical experience suggests that the statistical analysis approach is seldom, if ever, used by government contractors.

Government contractors use a variety of allocation bases for selling and marketing costs. Among the bases being used are: sales, three-factor formula, direct labor costs or hours and level of effort.

For the purpose of this Discussion Paper, the term "level of effort" is used to refer to the time and effort incurred or to be incurred by those personnel engaged in selling and marketing functions. In practice, a variety of methods are used to express the "level of effort". Some companies use "projected time to be spent" on selling of certain products or product lines or selling to certain customers during certain time intervals, such as every six months; others use the actual time spent and recorded.

Output Bases

The Armed Services Pricing Manual (ASPM No. 1) states that "Common bases for distribution or estimation of selling expenses are total cost of sales

and total selling price." However, the document does not describe the reasons or the circumstances for the use of such allocation bases. On the other hand, the Defense Contract Audit Agency's Contract Audit Manual states:

"Manufacturing expenses are usually apportioned without regard to the specific end item being manufactured or the customer to whom the item may ultimately be sold. These latter factors, however, are important considerations in apportioning selling expenses which may indicate that an overall allocation of selling expenses on the basis of cost of sales or costs of goods manufactured may not be equitable."

Ustry and Hammer advocate the use of "gross sales value of products sold" for allocating what they term as "functional costs of selling." Horngren, on the other hand, criticizes the sales allocation base: "A commonly, but wrongly, used basis for allocation is dollar sales. The costs of effort are independent of the results actually obtained, in the sense that the costs are programmed by management, not determined by sales."

Level of Effort

Ustry and Hammer advocate (in addition to sales) the use of "number of salespersons' calls on customers (based on salespersons' time reports)." The Defense Contract Audit Agency's Contract Audit Manual appears to be advocating the same theory. As mentioned previously, after cautioning auditors that the costs of sales or costs of goods manufactured base may not be equitable for selling and marketing costs, it goes on to state: "The auditor should perform a careful analysis of the time, effort and expense incurred for selling activities in relation to the company's products, product lines, or other objectives to determine the most suitable base * * *"

B. Issues

1. Under what circumstances should the output base(s) (sales, cost of sales), the input base(s) (total cost input, direct labor cost, value added, etc.) and other methods such as level of effort be used in allocating selling and marketing costs at the business unit level?

2. Under what circumstances should these bases and methods be used at the corporate home office level and/or the group home office level?

3. What criteria should be provided for selection among alternative bases?

Part IV

Composition of Allocation Bases

A. Discussion

The problem of allocating selling and marketing costs is complicated by the question concerning the composition of allocation bases. Research of the available literature failed to disclose any discussions of this question.

Discussions with selected contractor and government representatives revealed, however, that practices and opinions vary as to whether certain kinds of sales or costs ought to be reflected in an allocation base for selling and marketing costs. These sales or costs pertain to:

1. Intracompany transfers.
2. Subcontract costs and purchased materials including accommodation purchases and drop shipments.
3. Capitalized projects.
4. Certain kinds of contacts such as those for field services.

Those contractors which exclude some or all of these sales or costs from an allocation base, or those which believe such sales or costs should be excluded, advance various arguments. For example, they contend that selling and marketing costs are incurred to sell products and services to outside customers; accordingly, such costs should not be allocated to intracompany transfers. Others exclude subcontract costs and purchased materials from an allocation base on the theory that the subcontractors' and vendors' selling and marketing costs are already included in the prices of subcontracts and purchase orders. Those contractors which exclude certain contracts, such as field service contracts, express the view that selling and marketing costs had been incurred on the "parent contract" under which the products being serviced had been produced and sold and that few such costs are incurred on the field service contracts. Capitalized projects are also excluded from the allocation base on the theory that selling and marketing costs are incurred to sell to outside customers. Conversely, there are a number of contractors that include all or some of these sales or costs or those which believe that such sales or costs should be included.

Practices and opinions also vary as to whether the selling and marketing costs incurred at corporate and group home offices should be allocated to all segments under such offices or to just some segments. Those contractors which exclude certain segments contend that the excluded segments have their own selling and marketing organizations or that the product lines

of such segments are significantly different from those of the rest of the segments.

The question of whether or not all of the above-mentioned sales or costs, or all segments under a corporate or group home office, should be included in an allocation base is presumably influenced by the following factors among others:

1. How a contractor views the beneficial or causal relationship between the selling and marketing costs and the sales, costs or segments; that is, whether a contractor considers the relationship to be close or remote (benefit to overall business).

2. How a contractor interprets the longstanding FAR 31.203(c) policy regarding "non-fragmentation of allocation bases".

3. Whether a contractor considers the added refinement of its allocation practices to be worthy of the efforts involved or to be conducive to producing different allocation results.

A related question on the output bases concerns the use of different methods of recognition of sales; that is, the completed-contract method and the unit-of-delivery method as contrasted with the percentage-of-completion method (or the "cost-incurred" method for cost-type contracts). A number of contracts use different methods of recognizing the sales of the same cost accounting period for the different types of contracts performed. Obviously this practice creates additional allocation problems.

B. Issues

1. Should an allocation base for selling and marketing costs include the following?

- a. Intracompany transfers.
 - b. Subcontract costs and purchased materials.
 - c. Capitalized projects.
 - d. Contracts such as for field services.
- Please state the reasons for your answer.

2. Do you perceive any other output or input similar to the above which may be included in an allocation base? Conversely, do you perceive other similar output or input which may be excluded from an allocation base? Please describe them.

3. Under what circumstances should a segment be excluded from the allocation base of corporate home office or group home office selling and marketing costs, and what criteria should be established regarding allocation to segments?

4. Under what circumstances would it be appropriate to use different methods of sales recognition to determine an

output allocation base for selling and marketing costs? If you believe that the use of different methods is inappropriate, which method should be used to determine the base?

Part V

Current Expensing vs. Deferral

A. Discussion

Previous parts of this Discussion paper discussed the problems associated with terminology and definition and with allocation bases for selling and marketing costs. Allocation of selling and marketing costs is further complicated by the fact that such costs usually include significant amounts of costs that are incurred in a current cost accounting period but are for the benefit of future periods.

Accounting Principles Board Statement (APBS) No. 4 addresses expense recognition and specifies three primary principles for recognizing expenses. They are associating cause and effect, systematic and rational allocation, and immediate recognition.

Under associating cause and effect, costs are recognized as expenses on the basis of a presumed direct association with specific revenue. APBS No. 4 states:

Some costs are recognized as expenses on the basis of a presumed direct association with specific revenue. Although direct cause and effect relationships can seldom be conclusively demonstrated, many costs appear to be related to particular revenue and recognizing them as expenses accompanies recognition of the revenue. Examples of expenses that are recognized by associating cause and effect are sales commissions and costs of products sold or services provided. The term matching is often applied to this process.

Using the above language, sales commissions earned on a multi-year contract would be recognized over the life of the contract rather than expenses in the year of contract award.

Under immediate recognition, APBS No. 4 states:

Some costs are associated with the current accounting period as expenses because (1) Cost incurred during the period provide no discernible future benefits, (2) costs recorded as assets in prior periods no longer provide discernible benefits or (3) allocating costs either on the basis of association with revenue or among several accounting periods is considered to serve no useful purpose.

APBS No. 4 states that examples of costs recognized in the current period include such costs as most selling costs and general and administrative type expenses.

Making the determination of whether selling and marketing costs can be

associated with revenue on the basis of cause and effect may be difficult. Accounting literature has recognized these difficulties. Usry and Hammer state: "Cause and effect, generally obvious in the factory, are not so readily discernible in the marketing processes. For example, many promotional costs are incurred for future results, creating a time lag between cause and effect. Conversely, the effects of manufacturing changes are usually felt quickly; and matching between effort and result usually can be determined. Furthermore, manufacturing results are more readily quantified than are marketing costs. For marketing costs, it is often not so easy to identify quantities or units of activity with the cost incurred and results achieved."

Lawrence (Cost Accounting, revised by Ruswinckel) states: "A very large number of manufacturing companies make their products to order, and a great amount of expense is undertaken in order to sell products that are not in existence at the time of sale. It is not considered improper to defer an expense that will result in future benefit."

In government contracting, the time lag between cause and effect, referred to by Usry and Hammer, could be as much as 3 to 5 years. However, government contractors rarely defer selling and marketing costs. Presumably, this is because of the difficulties involved in distinguishing between those costs that should be currently expensed and those that should be deferred, and because of the high degree of uncertainty as to future benefits. In a few instances, however, contractors are known to have deferred those selling and marketing costs incurred to secure substantial new programs.

B. Issues

1. Should selling and marketing costs incurred for the benefit of future periods be deferred? If they should: a. under what circumstances should selling and marketing costs be deferred; b. what criteria should be established to distinguish between those costs that should be currently expensed and those that should be deferred, and c. how should the deferred costs be amortized?

2. If you do not believe that selling and marketing cost should be deferred, which allocation base(s) should be used in order to minimize the possible distorted allocations of costs incurred for future periods?

[FR Doc. 96-24072 Filed 9-18-96; 8:45 am]

BILLING CODE 3110-01-P

NUCLEAR REGULATORY COMMISSION

Development of Implementing Procedures for the Final Policy Statement on the Adequacy and Compatibility of Agreement State Radiation Control Programs: Joint NRC-Agreement State Working Group Report

AGENCY: Nuclear Regulatory Commission.

ACTION: Notice of the availability of the Report of Joint NRC-Agreement State Working Group on Adequacy and Compatibility Implementing Procedures.

SUMMARY: The Nuclear Regulatory Commission (NRC) is announcing the completion and availability of the Report of the Joint NRC-Agreement State Working Group for Development of Implementing Procedures for the Final Policy Statement on the Adequacy and Compatibility of Agreement State Programs.

ADDRESSES: Copies of the report may be obtained by calling Kathaleen Kerr at (301) 415-3340 or by writing to U.S. Nuclear Regulatory Commission, Document Control Desk, P1-37, Washington, D.C. 20555, Attn: Kathaleen Kerr, Office of State Programs. These documents are available for inspection in the NRC Public Document Room, 2120 L Street, N.W., Washington, D. C., (Lower Level), between the hours of 7:45 a.m. and 4:15 p.m.

FOR FURTHER INFORMATION CONTACT: Ms. Cardelia H. Maupin, Office of State Programs, U.S. Nuclear Regulatory Commission, Washington, D.C. 20555, Telephone: 301-415-2312.

SUPPLEMENTARY INFORMATION: On December 1, 1995 (60 FR 61716), the Commission published in the Federal Register the formation of a working group consisting of representatives from Agreement States and from the Nuclear Regulatory Commission to respond to Commission direction in Staff Requirements Memorandum dated June 29, 1995, which instructed staff to develop implementing procedures for the Final Policy Statement Policy Statement on Adequacy and Compatibility of Agreement State Programs. The purpose of this notice is to inform the public that the Report of the Joint NRC-Agreement State Working Group for Development of Implementing Procedures for the Final Policy Statement on the Adequacy and Compatibility of Agreement State Programs was completed and filed in letter dated August 21, 1996 to Richard

L. Bangart, Director, Office of State Programs. This report is being made available to interested members of the public.

Dated at Rockville, Maryland this 12th day of September, 1996.

For the Nuclear Regulatory Commission,
Richard L. Bangart,
Director, Office of State Programs.
[FR Doc. 96-24018 Filed 9-18-96; 8:45 am]
BILLING CODE 7590-01-P

[Docket No. 030-32908; License No. 29-28784-01; EA 96-152]

Shashi K. Agarwal, M.D., Orange, New Jersey; Order Suspending License (Effective Immediately) and Demand for Information

I

Shashi K. Agarwal, M.D., (Licensee) is the holder of Byproduct Nuclear Material License No. 29-28784-01 issued by the Nuclear Regulatory Commission (NRC or Commission) pursuant to 10 CFR Part 30. License No. 29-28784-01 authorizes possession and use of any byproduct material identified in 10 CFR 35.200 for any imaging and localization procedure approved in 10 CFR 35.200. The license was issued on November 27, 1992 and is due to expire on December 31, 1997.

II

On April 18, and April 30, 1996, the NRC conducted an inspection at the Licensee's facility in Orange, New Jersey. During the inspection, numerous apparent violations of NRC requirements were identified. One of the violations involved the continued use of radioactive material by a contractor of Dr. Agarwal despite the fact that the only authorized user listed on the license (who was also the Radiation Safety Officer (RSO)) had left the employ of the company on April 3, 1996, and has not been replaced. Specifically, in a letter dated April 3, 1996, to Dr. Agarwal, the only authorized user/RSO listed on the license resigned and informed Dr. Agarwal that if Dr. Agarwal wished to remain active with the license, he would have to replace the RSO. The authorized user/RSO was not replaced. This violation of the license was willful in that, at a minimum, it demonstrated careless disregard for NRC requirements.

Furthermore, the authorized user/RSO listed on Dr. Agarwal's license made an inaccurate statement to NRC during a telephone inquiry conducted on May 20, 1993, when he stated that the licensee had not acquired any licensed

material. This statement was inaccurate in that the inspector later determined that the licensee received 33 doses of technetium-99m labeled radiopharmaceuticals in April 1993. This inaccurate statement was material in that this information was relied on by the NRC in reaching its decision to postpone its initial on-site inspection of Dr. Agarwal's facility until October 1993. In a letter to Dr. Agarwal dated June 22, 1993, the NRC reported the results of the May 20, 1993 telephone inquiry. The letter states that the inspector contacted the authorized user/RSO on May 20, 1993, and the letter further states: "From this discussion, we understand that you have never possessed material authorized by this license, but you plan to acquire such material in the near future." The letter also states: "If our understanding is incorrect, please inform us in writing." There is no record of the licensee correcting this inaccuracy.

In addition, the inspection revealed numerous violations of NRC requirements, several of which were repetitive of violations identified during the previous NRC inspection conducted at the facility in October 1993, for which a Notice of Violation was issued to the licensee on November 17, 1993 (Inspection Report No. 030-32908/93-002). The repetitive violations included: the RSO's failure to review and sign records of dose calibrator linearity and accuracy tests; sealed source leak tests of dose calibrator sources were not performed every six months; dose calibrator linearity test was not performed quarterly; and survey meter calibrations were performed without dedicated check source measurements. These violations are listed in the Appendix to this Order.

Furthermore, on numerous occasions, Dr. Agarwal resisted attempts by inspectors and NRC management to advise him of the findings of the inspection, as described below:

- On April 19, 1996, and at least daily during the week beginning April 22, 1996, the NRC inspector and his supervisor attempted to contact Dr. Agarwal, and were told by Dr. Agarwal's staff that Dr. Agarwal was unavailable at that time but would return the telephone call as soon as he was available. Dr. Agarwal did not return the telephone calls from the NRC officials.

- On April 30, 1996, the NRC inspector spoke briefly with Dr. Agarwal at the licensee's facility and informed Dr. Agarwal that he, the inspector, was onsite to complete the inspection begun on April 18, 1996. Dr. Agarwal immediately left the facility without affording the inspector any opportunity

to conduct needed discussions with Dr. Agarwal, or to brief him on the preliminary findings of the inspection. Dr. Agarwal provided a member of his staff to assist with the inspection. The inspector inquired as to what time the office closed at the end of the day. The staff member commented that the office would close at 5:00 p.m. The inspector informed Dr. Agarwal's assistant that he would complete his inspection by 4:30 p.m. and that it would be necessary to exit with Dr. Agarwal in order to debrief him on the results of the inspection. The inspector was left alone in the nuclear medicine area. When the inspector attempted to exit with Dr. Agarwal at 4:30 p.m., he discovered that Dr. Agarwal and his office staff had closed and left the facility. The inspector located one individual, a physical therapist, who was not aware that an inspection was being conducted. The inspector left a business card with this individual with instructions that it was very important that Dr. Agarwal call the inspector the next day so that the results of the inspection could be discussed. Dr. Agarwal did not contact the inspector.

- On May 1, 2, and 3, 1996, the NRC inspector and the inspector's supervisor attempted to contact Dr. Agarwal by telephone, but again were told that Dr. Agarwal was not available to speak at that time but that he would return the telephone calls as soon as possible. Dr. Agarwal did not return these telephone calls.

- The NRC was able to make contact with Dr. Agarwal by telephone on June 13, 1996, at which time the NRC findings were presented. During a subsequent telephone conversation on July 12, 1996 with Dr. Agarwal, a transcribed predecisional enforcement conference was scheduled for August 8, 1996. Dr. Agarwal failed to appear for the predecisional enforcement conference. On August 8, 1996, the NRC contacted Dr. Agarwal's office to inquire as to his whereabouts and was told that they didn't know where he was. On September 4, 1996, the NRC was able to make contact with Dr. Agarwal by telephone, at which time the NRC inquired why Dr. Agarwal failed to appear for the August 8, 1996, predecisional enforcement conference and why Dr. Agarwal did not contact the NRC when he returned to his office. The response given by Dr. Agarwal was that personal problems precluded him from attending the predecisional enforcement conference. Dr. Agarwal did not provide an explanation as to why he did not contact the NRC regarding his inability to attend the conference.

III

The NRC must be able to rely on the Licensee and its employees to comply with NRC requirements. It is important that licensed material be used by, or under the supervision of, an authorized user. It is also essential that all communications between the Licensee and the NRC are complete and accurate in all material respects and that licensees are forthright with the NRC. It appears that the Licensee has provided inaccurate information to the NRC, has failed to comply with numerous additional Commission requirements described above, and has demonstrated an unwillingness to cooperate with the NRC, as indicated herein. These actions by the Licensee have raised serious doubt as to whether the Licensee can be relied upon in the future to comply with NRC requirements and to provide complete and accurate information to the NRC.

Consequently, I lack the requisite reasonable assurance that the Licensee's current operations can be conducted under License No. 29-28784-01 in compliance with the Commission's requirements, and that the health and safety of the public, including the Licensee's employees, will be protected, given these findings, as well as the fact that the Licensee currently does not have an authorized user or RSO. Therefore, the public, health, safety and interest require that License No. 29-28784-01 be suspended. Furthermore, pursuant to 10 CFR 2.202, I find that, given the willfulness of the Licensee's conduct, as described above, as well as the safety significance of conducting licensed activities without an authorized user, the public health, safety, and interest require that this Order be immediately effective.

IV

Accordingly, pursuant to sections 81, 161b, 161i, 161o, 182 and 186 of the Atomic Energy Act of 1954, as amended, and the Commission's regulations in 10 CFR 2.202 and 10 CFR Part 30, it is hereby ordered, effective immediately, that license no. 29-28784-01 is suspended as follows, *pending* further Order.

A. All NRC-licensed material in the Licensee's possession shall be placed in secured storage.

B. All activities under License No. 29-28784-01 to use licensed material shall be suspended. All other requirements of the license remain in effect.

C. No material authorized by the license shall be ordered, purchased, received, or transferred by the Licensee while this Order is in effect.

D. All records related to licensed activities shall be maintained in their original form and must not be removed or altered in any way.

The Regional Administrator, Region I, may, in writing, relax or rescind this order upon demonstration by the Licensee of good cause.

V

In accordance with 10 CFR 2.202, the Licensee must, and any other person adversely affected by this Order may, submit an answer to this Order, and may request a hearing on this Order, within 20 days of the date of this Order. Where good cause is shown, consideration will be given to extending the time to request a hearing. A request for an extension of time must be made in writing to the Director, Office of Enforcement, U.S. Nuclear Regulatory Commission, Washington, D.C., 20555, and include a statement of good cause for the extension. The answer may consent to this Order. Unless the answer consents to this Order, the answer shall, in writing and under oath or affirmation, specifically admit or deny each allegation or charge made in this order and set forth the matters of fact and law on which the Licensee or other person adversely affected relies and the reasons as to why the Order should not have been issued. Any answer or request for a hearing shall be submitted to the Secretary, U.S. Nuclear Regulatory Commission, ATTN: Chief, Docketing and Services Section, Washington, D.C. 20555. Copies of the hearing request also should be sent to the Director, Office of Enforcement, U.S. Nuclear Regulatory Commission, Washington, D.C. 20555, to the Assistant General Counsel for Hearings and Enforcement at the same address, to the Regional Administrator, NRC Region I, 475 Allendale Road, King of Prussia, Pennsylvania, 19406, and to the Licensee if the hearing request is by a person other than the Licensee. If a person other than the Licensee requests a hearing, that person shall set forth with particularity the manner in which the individual's interest is adversely affected by this Order and shall address the criteria set forth in 10 CFR 2.714(d).

If a hearing is requested by the Licensee or a person whose interest is adversely affected, the Commission will issue an Order designating the time and place of any hearing. If a hearing is held, the issue to be considered at such hearing shall be whether this Order should be sustained.

Pursuant to 10 CFR 2.202(c)(2)(i), the Licensee, or any other person adversely affected by this Order, may, in addition to demanding a hearing, at the time the

answer is filed or sooner, move the presiding officer to set aside the immediate effectiveness of the Order on the ground that the Order, including the need for immediate effectiveness, is not based on adequate evidence but on mere suspicion, unfounded allegations, or error.

In the absence of any request for hearing, or a written approval of an extension of time in which to request a hearing, the provisions specified in Section IV above shall be final 20 days from the date of this Order without further order or proceedings. If an extension of time for requesting a hearing has been approved, the provisions specified in Section IV shall be final when the extension expires if a hearing request has not been received.

AN ANSWER OR A REQUEST FOR HEARING SHALL NOT STAY THE IMMEDIATE EFFECTIVENESS OF THIS ORDER.

VI

In addition to issuance of this Order suspending License No. 29-28784-01, the Commission requires further information from the Licensee in order to determine whether the Commission can have reasonable assurance that in the future the Licensee will conduct its activities in accordance with the Commission's requirements.

Accordingly, pursuant to sections 161c, 161o, 182 and 186 of the Atomic Energy Act of 1954, as amended, and the Commission's requirements in 10 CFR 2.204 and 10 CFR 30.32(b), in order for the Commission to determine whether your license should be further modified, suspended or revoked, or other enforcement action taken to ensure compliance with NRC regulatory requirements, the Licensee is required to submit to the Director, Office of Enforcement, U.S. Nuclear Regulatory Commission, Washington, D.C. 20555, within 20 days of the date of this Order and Demand for Information, a response in writing and under oath or affirmation, describing why its License should not be revoked in light of the NRC findings described herein.

Copies also shall be sent to the Assistant General Counsel for Hearings and Enforcement at the same address, and to the Regional Administrator, NRC Region I, 475 Allendale Road, King of Prussia, Pennsylvania 19406.

After reviewing your response, the NRC will determine whether further action is necessary to ensure compliance with regulatory requirements.

Dated at Rockville, Maryland this 12th day of September 1996.

For the Nuclear Regulatory Commission.
Hugh L. Thompson, Jr.,
Deputy Executive Director for Nuclear Materials Safety, Safeguards, and Operations Support.

Appendix—List of Violations

[Docket No. 030-32908; License No. 29-28784-01 EA 96-152]

Shashi K. Agarwal, M.D., Orange, New Jersey

During an NRC inspection conducted on April 18 and 30, 1996, the following violations of NRC requirements were identified.

I. Violation Involving the Submittal of Inaccurate Information

10 CFR 30.9(a) requires, in part, that information provided to the Commission by a licensee be complete and accurate in all material respects.

Contrary to the above, the licensee did not provide to the Commission information that was complete and accurate in all material respects. Specifically, on May 20, 1993, the licensee's authorized user/Radiation Safety Officer (RSO) stated that the licensee had not yet acquired any licensed material. This was an inaccurate statement, because the licensee had received 33 doses of technetium-99m labelled radiopharmaceuticals in April 1993. This information was material because it resulted in a decision by the NRC to postpone its initial inspection of the licensee's program until the fourth quarter of 1993.

II. Additional Violations of NRC Requirements

A. 10 CFR 35.25(a)(3) requires, in part, that a licensee that permits the receipt, possession, use, or transfer of byproduct material by an individual under the supervision of an authorized user, periodically review the supervised individual's use of byproduct material and the records kept to reflect this use.

Contrary to the above, from April 25, 1993 until April 3, 1996, the licensee permitted the receipt, possession, use, and transfer of byproduct material by an individual under the supervision of an authorized user, and the licensee failed to periodically review the supervised individual's use of byproduct material and the records kept to reflect this use.

B. Condition 12 of License No. 29-28784-01 names a specific individual as authorized to use material under the license.

Contrary to the above:

1. on April 4 and 16, 1996, an individual not named as authorized to use material under the license performed cardiac studies using unit dose Tc-99m material; and
2. on April 9, 1996, an individual not named as authorized to use material under the license performed cardiac studies using unit dose Tc-99m material.

C. 10 CFR 35.21(a) requires, in part, that the licensee, through the Radiation Safety Officer, ensure that radiation safety activities are being performed in accordance with approved procedures and regulatory requirements.

License Condition 14 of Amendment No. 0-1 of License 29-28784-01 provides in part

that the licensee shall conduct its program in accordance with procedures contained in its application dated August 19, 1992.

1. The application dated August 19, 1992, states in Item No. 9.3 that, for dose calibrator calibration, the licensee will establish and implement the model procedure published in Appendix C to Regulatory Guide 10.8, Revision 2.

Appendix C of Regulatory Guide 10.8, Revision 2 requires, in part, that the Radiation Safety Officer review and sign records of accuracy and linearity tests.

Contrary to the above, as of April 30, 1996, the Radiation Safety Officer failed to review and sign records of accuracy tests performed on May 5, 1994, and December 5, 1995; and failed to sign records of linearity tests performed in March, July, and October 1994, January and November 1995, and February 1996.

This is a repeat violation.

2. The application dated August 19, 1992 states in Item No. 9.4 that, for personnel monitoring, the licensee will establish and implement the model procedure published in Appendix D to Regulatory Guide 10.8, Revision 2.

Appendix D of Regulatory Guide 10.8, Revision 2 requires, in part, that all individuals who are occupationally exposed to ionizing photon radiation on a regular basis be issued a film or thermoluminescent (TLD) whole body monitor that will be processed on a monthly basis and that all individuals who, on a regular basis, handle radioactive material that emits ionizing photons be issued a film or TLD finger monitor that will be processed on a monthly basis.

Contrary to the above, (1) between October 27, 1995 and April 16, 1996, the licensee did not issue whole body monitors to individuals (the mobile service staff) who were occupationally exposed to ionizing photon radiation on a regular basis or issue finger monitors to these same individuals who, on a regular basis, handled radioactive material that emitted ionizing photons; and (2) between April 1993 and April 1996 the licensee issued TLD whole body monitors and TLD finger monitors to its staff which were processed quarterly rather than monthly.

3. The application dated August 19, 1992, states, in Item No. 10.2, that the licensee will establish and implement the model ALARA program published in Appendix G of Regulatory Guide 10.8, Revision 2.

Appendix G of Regulatory Guide 10.8, Revision 2 requires, in part, that the Radiation Safety Officer will review at least quarterly the external radiation doses of authorized users and workers to determine that their doses are ALARA.

Contrary to the above, as of April 30, 1996, the licensee's Radiation Safety Officer had not performed a quarterly review of external radiation doses of authorized users and workers to determine that their doses were ALARA.

D. 10 CFR 20.2103(b)(1) requires, in part, that each licensee maintain certain records, including the record of the results of surveys to determine the dose from external sources in the assessment of individual dose

equivalents, until the Commission terminates each pertinent license requiring the record.

Contrary to the above, as of April 30, 1996, the licensee had not maintained records of the results of surveys to determine the dose from external sources performed during three-month periods beginning: April 15, 1993; July 15, 1993; April 15, 1994; July 15, 1994; October 15, 1995; and January 15, 1996.

E. 10 CFR 35.50(b)(3) requires, in part, that a licensee test each dose calibrator for linearity at least quarterly.

Contrary to the above, the licensee did not test its dose calibrator for linearity at least quarterly. Specifically, the licensee utilized the dose calibrator for patient studies from January 1 through June 21, 1995, and from October 27 through the end of 1995, but performed dose calibrator linearity tests only in January and November, 1995.

This is a repeat violation.

F. 10 CFR 35.59(b)(2) requires, in part, that a licensee in possession of a sealed source test the source for leakage at intervals not to exceed six months or at other intervals approved by the Commission or an Agreement State.

Contrary to the above, the licensee did not test a sealed source containing 200 microcuries of cesium-137 for leakage between January 13, 1995, and December 5, 1995, an interval in excess of six months, and no other interval was approved by the Commission or an Agreement State.

This is a repeat violation.

G. 10 CFR 35.59(d) requires in part, that a licensee retain records of leakage test results for five years; and that the records contain the signature of the Radiation Safety Officer.

Contrary to the above, as of April 30, 1996, the licensee's records of leakage test results did not contain the signature of the Radiation Safety Officer.

H. 10 CFR 35.59(g) requires, in part, that a licensee in possession of a sealed source or brachytherapy source conduct a quarterly physical inventory of all such sources in its possession.

Contrary to the above, the licensee did not conduct a physical inventory of its sealed sources during the fourth quarter of 1994 (in that an inventory was not done between July 7, 1994 and January 13, 1995), and during the second quarter of 1995 (an inventory was not done between January 13, 1995 and November 28, 1995).

I. 10 CFR 35.59(g) requires, in part, that a licensee retain for five years records of quarterly physical inventories of sealed sources and brachytherapy sources in its possession, and that the records contain the signature of the Radiation Safety Officer.

Contrary to the above, as of April 30, 1996, the licensee's records of physical inventories of its sealed sources did not contain the signature of the Radiation Safety Officer.

J. 10 CFR 35.51(a)(3) requires that a licensee conspicuously note the apparent exposure rate from a dedicated check source, as determined at the time of calibration, and the date of calibration on any survey instrument used to show compliance with 10 CFR Part 35.

Contrary to the above, as of April 30, 1996, the licensee did not conspicuously note the

apparent exposure rate from a dedicated check source as determined at the time of calibration noted on its Ludlum Model 14C survey instrument, and the licensee was using this survey instrument to show compliance with 10 CFR Part 35. Specifically, the apparent exposure rate from a dedicated check source noted on the licensee's survey meter was not determined on December 15, 1995, when the survey meter was calibrated, but was determined on January 29, 1996, after it was returned to the licensee's facility.

This is a repeat violation.

[FR Doc. 96-24017 Filed 9-18-96; 8:45 am]

BILLING CODE 7590-01-P

[Docket Nos. 50-280 and 50-281]

Virginia Electric and Power Company; Notice of Withdrawal of Application for Amendment to Facility Operating License

The United States Nuclear Regulatory Commission (the Commission) has granted the request of Virginia Electric and Power Company (the licensee) to withdraw its January 26, 1993, application for proposed amendment to Facility Operating License Nos. DPR-32 and DPR-37 for the Surry Power Station, Unit Nos. 1 and 2, located in Surry County, Virginia.

The proposed amendments would have relocated the fire protection Technical Specifications to the Updated Final Safety Analysis Report consistent with Generic Letter 86-10.

The Commission had previously issued a Notice of Consideration of Issuance of Amendment published in the Federal Register on April 14, 1993 (58 FR 19492). However, by letter dated April 23, 1996, the licensee withdrew the proposed change.

For further details with respect to this action, see the application for amendment dated January 26, 1993, and the licensee's letter dated April 23, 1996, which withdrew the application for license amendment. The above documents are available for public inspection at the Commission's Public Document Room, 2120 L Street NW., Washington, DC, and the Swem Library, College of William and Mary, Williamsburg, VA 23185.

Dated at Rockville, MD this 11th day of September, 1996.

For the Nuclear Regulatory Commission.
Gordon E. Edison, Sr.

*Project Manager, Project Directorate II-1,
Division of Reactor Projects—I/II, Office of
Nuclear Reactor Regulation.*

[FR Doc. 96-24016 Filed 9-18-96; 8:45 am]

BILLING CODE 7590-01-P

[Docket Nos. 70-7001; 70-7002]

Notice of Certification Decision for U.S. Enrichment Corporation To Operate Gaseous Diffusion Plants and Finding of No Significant Impact

AGENCY: U.S. Nuclear Regulatory Commission.

ACTION: Certification of gaseous diffusion plants.

SUMMARY: The U.S. Nuclear Regulatory Commission is issuing a certification decision for the U.S. Enrichment Corporation (USEC) to operate the two gaseous diffusion plants (GDPs) located at Paducah, Kentucky, and at Piketon, Ohio. NRC is also issuing a Finding of No Significant Impact (FONSI) concerning NRC's approval of the compliance plan prepared by the U.S. Department of Energy (DOE) and submitted by USEC.

FOR FURTHER INFORMATION CONTACT: Ms. M.L. Horn, Office of Nuclear Material Safety and Safeguards, U.S. Nuclear Regulatory Commission, Washington, DC 20555, telephone (301) 415-8126; Mr. C. B. Sawyer, Office of Nuclear Material Safety and Safeguards, U.S. Nuclear Regulatory Commission, Washington, DC 20555, telephone (301) 415-8174.

SUPPLEMENTARY INFORMATION:

Background

The President signed H.R. 776, the Energy Policy Act of 1992 (the Act), into law on October 24, 1992. The Act amended the Atomic Energy Act of 1954, to establish a new government corporation, the U.S. Enrichment Corporation (USEC), for the purpose of operating the uranium enrichment enterprise owned and previously operated by the DOE. The Act provided that within two years after enactment of the legislation, NRC would promulgate standards that apply to USEC's operation of its GDPs at Paducah, KY, and Piketon, OH, to protect public health and safety from radiological hazards, and to provide for the common defense and security. The Act directed the NRC to establish and implement an annual certification process under which the GDPs would be certified by the NRC for compliance with these standards. For areas where plant operations are not yet in compliance, the Act provided for a compliance plan prepared by the DOE. The Act also required NRC to report annually to the Congress on the status of the GDPs.

On February 11, 1994 (59 FR 6792), the Commission published for comment a proposed new Part 76 to Chapter I of Title 10 of the *Code of Federal*

Regulations (CFR), establishing requirements and procedures for the certification process. After NRC review and consideration of public comments, the final rule was published on September 23, 1994 (59 FR 48944). Part 76, "Certification of Gaseous Diffusion Plants," includes procedural requirements, generally applicable NRC health and safety standards, technical safety requirements, and safeguards and security requirements specific to the GDPs.

DOE currently continues nuclear safety, safeguards, and security oversight of the GDPs. DOE retains ownership of the facilities and will be responsible for eventual decommissioning of the sites.

USEC submitted its initial certification application on April 18, 1995. NRC's preliminary review of the initial application determined that it did not adequately address the standards NRC had established for the GDPs and did not contain enough information for NRC to determine compliance with 10 CFR Part 76. Therefore, by letter dated May 5, 1995, NRC formally rejected the initial application and notified USEC that it had to submit a revised application. NRC's decision to reject the application was not a determination that the operation of these plants was unsafe or in noncompliance.

USEC submitted a revised certification application on September 15, 1995, and a revised, DOE-prepared compliance plan on November 6, 1995. The application package includes: a safety analysis report; a quality assurance program; technical safety requirements; an emergency plan; an environmental compliance status report; a nuclear material control plan; a transportation protection plan; a physical protection plan; a security plan for protection of classified matter; a waste management program; a decommissioning funding program; environmental information; and a DOE-prepared compliance plan. The NRC staff requested additional information and revisions to the certification application and the compliance plan, and USEC responded during the period from October 1995 through August 1996.

The application and all related non-proprietary, unclassified supporting information and correspondence are available for public inspection and copying at the Commission Public Document Room (PDR), 2120 L Street, NW, Washington, DC 20555, and at the Local Public Document Rooms (LPDRs), under Docket No. 70-7001, at the Paducah Public Library, 555 Washington Street, Paducah, Kentucky,

42003; and under Docket No. 70-7002, at the Portsmouth Public Library, 1220 Gallia Street, Portsmouth, Ohio, 45662.

Notice of receipt of the application appeared in the Federal Register (60 FR 49026) on September 21, 1995, allowing for a 45-day public comment period on the application and noticing public meetings to solicit public input on the certification. A second notice appeared in the Federal Register (60 FR 57253) on November 14, 1995, providing for a 45-day public comment period on the compliance plan. Public meetings were held on November 28, 1995, at the Vern Riffe Joint Vocational School in Portsmouth, Ohio, and on December 5, 1995, at the Paducah Information Age Park Resource Center in Paducah, Kentucky. Eleven comment letters were received. Comments received during the comment period, together with transcripts of the public meetings, are available in the PDR and the LPDRs, and were reviewed and considered by the staff during the certification evaluation. The staff responses to the public comments are also available in the PDR and the LPDRs.

As required by the Energy Policy Act, NRC consulted with the U.S. Environmental Protection Agency (EPA) about certification. EPA did not identify any significant compliance issues.

The USEC Privatization Act, contained in Public Law 104-134, was signed into law on April 26, 1996. Among other provisions, it amended the Atomic Energy Act requirement for an annual application for certification to require instead a periodic application, as determined by the Commission, but not less than every five years. Also, as required by the USEC Privatization Act, NRC and the Occupational Safety and Health Administration developed a Memorandum of Understanding (MOU) describing coordination of their regulatory activities at the GDPs to ensure worker safety. This MOU was published in the Federal Register on August 1, 1996 (61 FR 40249).

Certification Decision of the Director, Office of Nuclear Material Safety and Safeguards

The NRC staff has reviewed the certification application and the DOE-prepared compliance plan submitted by USEC, and concluded that, in combination with certificate conditions, they provide reasonable assurance of adequate safety, safeguards, and security, and compliance with NRC requirements. Therefore, the Director, Office of Nuclear Material Safety and Safeguards (Director) is prepared to issue a Compliance Certificate and a compliance plan approval for each

plant. The staff has prepared a Compliance Evaluation Report, for each plant, which provides details of the staff's evaluations, bases for certificate approval, and responses to public comments. The proposed Compliance Certificates and Compliance Evaluation Reports are available in the PDR and the LPDRs.

The initial certificates will be issued for an effective period of approximately 2 years, with expiration dates of December 31, 1998. This is consistent with the new provision in Public Law 104-134, the USEC Privatization Act, which amended Section 1701(c)(2) of the Atomic Energy Act replacing the requirement for an annual application for a certificate of compliance with a requirement for an application to be filed "periodically, as determined by the Commission, but not less than every five years."

The staff believes that two years is a reasonable period for the first certificates of compliance; in two years significant progress will be made in implementing plant improvements specified in the compliance plan. Therefore, USEC will receive an exemption from the requirements in §§ 76.31 and 76.36 to submit an annual application for certificate renewal in 1997. USEC will be required to file an application for renewal of the certificates of compliance by April 15, 1998.

The requirements in §§ 76.31 and 76.36 for an annual application were based on the previous statutory requirement for an annual application, which has been superseded. Therefore the exemptions from these requirements are justified under § 76.23, which specifically allows the NRC to grant such exemptions from the requirements of Part 76 as it determines are authorized by law and will not endanger life, property, or the common defense, and are otherwise in the public interest. The exemptions meet these criteria.

Transition of Regulatory Authority

The certificates of compliance will become effective and the NRC will assume regulatory authority over the GDPs on March 3, 1997, following a transition period. This transition period will give USEC time to revise procedures and train employees on the approved application. DOE will continue regulatory oversight during the transition period until NRC assumes jurisdiction.

Opportunity To Petition for Review

USEC or any person whose interest may be affected, and who submitted written comments in response to the

Federal Register Notice on the application or compliance plan, under § 76.37, or provided oral comments at any meeting held on the application or compliance plan conducted under § 76.39, may file a petition, not exceeding 30 pages, requesting review of the Director's certification decision. The petition must be filed with the Commission not later than 15 days after publication of this Federal Register Notice. Any person described in this paragraph may file a response to any petition for review, not to exceed 30 pages, within 10 days after the filing of the petition. Unless the Commission grants the petition for review or otherwise acts within 60 days after the publication of this Federal Register Notice, the initial decision on the certificate application or compliance plan will become final. If no petition is received within the designated 15-day period, the Director will issue final Compliance Certificates.

Finding of No Significant Impact

As specified in 10 CFR § 51.22(c)(19), an environmental assessment is not required for the certificates of compliance, themselves. However, the associated compliance plan describes how and when the plants will be brought into compliance with NRC requirements in instances where compliance is lacking at the time of certification. The staff has prepared the following environmental assessment on the compliance plan:

Environmental Assessment

Identification of Proposed Action

The proposed action is the approval of the compliance plan associated with certification of the GDPs. Approving the compliance plan would authorize the GDPs to operate for a limited period before achieving full compliance with NRC's requirements.

The Need for Action

Section 1701(d) of the Atomic Energy Act of 1954, as amended by the Energy Policy Act of 1992, states that the GDPs may not be operated by the Corporation unless the NRC " * * * makes a determination of compliance * * * or approves a plan...for achieving compliance." Thus, NRC approval of the compliance plan is necessary to meet the requirement specified by the statute.

Environmental Impacts of the Action

The staff has evaluated all the compliance plan issues with regard to their environmental impacts. Individual issues or areas of noncompliance were evaluated to determine whether they could produce any changes to routine

air and water emissions, or any uncontrolled releases, or otherwise adversely affect the environment.

The majority of the issues or areas of noncompliance identified in the compliance plan involve activities by USEC to upgrade plant programs, procedures, and equipment to conform to applicable NRC requirements. Continued operation under existing plant programs and procedures, by itself, will not have a negative impact on the level of effluents from plant operations or otherwise adversely affect the environment.

The only issue identified with regard to plant programs and procedures that may relate to the quality of the environment is "Environmental Trending Procedures" for the Paducah plant. This compliance plan issue will ensure that all environmental data will be evaluated for trends to identify long-term changes in the environment that may result from plant operations. The staff has examined the current practices at the plant for reviewing environmental data for any unusual results that might indicate an increase in radiological releases from the Paducah Plant or in the dose to members of the public. The staff finds the current practices to be acceptable until new procedures are established, in accordance with the plant procedure upgrade program, to evaluate all environmental data for trends.

Plant equipment upgrades should better ensure confinement of UF⁶ and other effluents during normal and accidental conditions, and, therefore, will maintain or reduce the levels of effluents from plant operations. The staff has examined the two specific items of noncompliance that relate to effluents: "HEPA Filter System Testing" for both the Portsmouth and Paducah plants, and "High-Volume Ambient Air Samplers" for the Paducah plant.

Not all High Efficiency Particulate Air (HEPA) filters have in-place efficiency performance testing in accordance with American National Standards Institute Standard N510. Although the failure of the HEPA filters to perform properly could affect airborne radionuclide emissions, no significant environmental releases to the ambient air have been detected, in over ten years, that were attributed to HEPA filter failure. As reported in the USEC Environmental Compliance Status Report, the maximum dose to a member of the public from radionuclide air emissions for the Portsmouth plant in 1994 was 0.006 mSv (0.06 mrem) and for the Paducah plant in 1994 was 0.0016 mSv (0.016 mrem), both well within the EPA 1 mSv (10 mrem) limit in 40 CFR Part

61. The staff concludes that the "HEPA Filter System Testing" noncompliance will not significantly affect the quality of the human environment.

Although the new high-volume air sampling system has been in operation at the Paducah plant since August 1995, sufficient data to establish the capabilities of the system and to establish baseline radionuclide concentrations at the station have not been completed. Data from the new high-volume air sampling system will help confirm the accuracy of data on annual radionuclide air emissions. However, since maximum doses from Paducah annual radionuclide air releases have been in the range of 0.0016 mSv (0.016 mrem), well within the EPA regulatory limit, the staff concludes that the unavailability of data from the new high-volume air sampling system will not significantly affect the quality of the human environment.

More detailed information on the staff's evaluation is contained in the Compliance Evaluation Reports, which have been placed in NRC's PDR and in the LPDRs located in Paducah, Kentucky, and Portsmouth, Ohio.

Alternatives to the Proposed Action

The proposed action to approve the compliance plan, along with the approval of the certification application, would authorize USEC to continue operations of the GDPs under NRC regulatory oversight.

The "No Action" alternative would be to withhold approval of the compliance plan. Under this alternative, the GDPs would be shut down, or would continue to operate under DOE regulatory oversight until compliance is achieved.

Agencies and Persons Consulted

In reviewing the certification application and compliance plan, and in accordance with the Energy Policy Act of 1992, the staff consulted with EPA. EPA did not identify any major concerns associated with the certification action or approval of the compliance plan.

Conclusion

Based on the foregoing assessment, the NRC staff concludes that the environmental effects of approving the compliance plan will be insignificant. The staff believes that the compliance plan is sufficient to ensure that, during the interim period of noncompliance, plant operation related to areas of noncompliance will not significantly affect the quality of the human environment.

Finding of no Significant Impact

On the basis of this assessment, the staff has concluded that environmental impacts that would be created by this action would not be significant and do not warrant the preparation of an Environmental Impact Statement. Accordingly, it has been determined that a Finding of No Significant Impact is appropriate.

The Environmental Assessment and the documents related to this proposed action are available for public inspection and copying at the Commission's PDR and LPDRs.

Dated at Rockville, Maryland, this 16th day of September, 1996.

For the Nuclear Regulatory Commission.

Carl J. Paperiello,

Director, Office of Nuclear Material Safety and Safeguards.

[FR Doc. 96-24019 Filed 9-18-96; 8:45 am]

BILLING CODE 7590-01-P

Regulatory Guide; Issuance, Availability

The Nuclear Regulatory Commission has issued a new guide in its Regulatory Guide Series. This series has been developed to describe and make available to the public such information as methods acceptable to the NRC staff for implementing specific parts of the Commission's regulations, techniques used by the staff in evaluating specific problems or postulated accidents, and data needed by the staff in its review of applications for permits and licenses.

Regulatory Guide 3.69, "Topical Guidelines for the Licensing Support System," provides guidance on the documentary material that should be included in the Licensing Support System, which is an electronic information management system for the geologic repository for high-level waste.

Comments and suggestions in connection with items for inclusion in guides currently being developed or improvements in all published guides are encouraged at any time. Written comments may be submitted to the Publications Branch, Division of Freedom of Information and Publications Services, Office of Administration, U.S. Nuclear Regulatory Commission, Washington, DC 20555.

Regulatory guides are available for inspection at the Commission's Public Document Room, 2120 L Street NW., Washington, DC. Single copies of regulatory guides, both active and draft guides, may be obtained free of charge by writing the Office of Administration, Attn: Distribution and Services Section, USNRC, Washington, DC 20555-0001,

or by fax at (301)415-2260. Issued guides may also be purchased from the National Technical Information Service on a standing order basis. Details on this service may be obtained by writing NTIS, 5285 Port Royal Road, Springfield, VA 22161. Regulatory guides are not copyrighted, and Commission approval is not required to reproduce them. (5 U.S.C. 552(a))

Dated at Rockville, Maryland, this 9th day of September 1996.

For the Nuclear Regulatory Commission.

David L. Morrison,

Director, Office of Nuclear Regulatory Research.

[FR Doc. 96-24015 Filed 9-18-96; 8:45 am]

BILLING CODE 7590-01-P

SECURITIES AND EXCHANGE COMMISSION

Submission for OMB Review; Comment Request

Upon Written Request, Copies Available From: Securities and Exchange Commission, Office of Filings and Information Services, Washington, DC 20549.

Extension:

Rule 12d2-1, SEC File No. 270-98,

OMB Control No. 3235-0081

Rule 12d2-2 and Form 25, SEC File No. 270-86, OMB Control No. 3235-0080

Rule 15Ba2-5, SEC File No. 270-91, OMB Control No. 3235-0088

Rule 15c3-1, SEC File No. 270-197, OMB Control No. 3235-0200

Rule 17a-10, SEC File No. 270-154, OMB Control No. 3235-0122

Notice is hereby given that pursuant to the Paperwork Reduction Act of 1995 (44 U.S.C. 3501 et seq.), the Securities and Exchange Commission ("Commission") has submitted to the Office of Management and Budget requests for approval of extension on the following:

Rule 12d2-1 was adopted in 1935 pursuant to Sections 12 and 23 of the Securities Exchange Act of 1934 (the "Act"). The Rule provides the procedures by which a national securities exchange may suspend from trading a security that is listed and registered on the exchange. Under Rule 12d2-1, an exchange is permitted to suspend from trading a listed security in accordance with its rules, and must promptly notify the Commission of any such suspension, along with the effective date and the reasons for the suspension.

Any such suspension may be continued until such time as the

Commission may determine that the suspension is designed to evade the provisions of Section 12(d) of the Act and Rule 12d2-1 thereunder.¹ During the continuance of such suspension under Rule 12d2-1, the exchange is required to notify the Commission promptly of any change in the reasons for the suspension. Upon the restoration to trading of any security suspended under the Rule, the exchange must notify the Commission promptly of the effective date of such restoration.

The trading suspension notices serve a number of purposes. First, they inform the Commission that an exchange has suspended from trading a listed security or reintroduced trading in a previously suspended security. They also provide the Commission with information necessary for it to determine that the suspension has been accomplished in accordance with the rules of the exchange, and to verify that the exchange has not evaded the requirements of Section 12(d) of the Act and Rule 12d2-2 thereunder by improperly employing a trading suspension. Without the Rule, the Commission would be unable to fully implement these statutory responsibilities.

There are nine national securities exchanges which are subject to Rule 12d2-1. The burden of complying with the rule is not evenly distributed among the exchanges, since there are many more securities listed on the New York and American Stock Exchanges than on the other exchanges.² However, for purposes of this filing, it is assumed that the number of responses is evenly divided among the exchanges. This results in a total annual burden of 54 hours based on nine respondents with 12 responses per year for a total of 108 responses requiring an average of .5 hour per response.

Based on information acquired in an informal survey of the exchanges and the staff's experience in administering related rules, the Commission staff estimates that the respondents' cost of compliance with Rule 12d2-1 may range from less than \$10 to \$100 per response. The staff has computed the average cost per response to be approximately \$15, representing one-half reporting hour. The estimated total annual cost for complying with Rule 12d2-1 is about \$1620, i.e., nine exchanges filing 12 responses at \$15.00 each.

¹ Rule 12d2-2 prescribes the circumstances under which a security may be delisted, and provides the procedures for taking such action.

² In fact, some exchanges do not file any trading suspension reports in a given year.

Rule 12d2-2 and Form 25 were adopted in 1935 and 1952, respectively, pursuant to Sections 12 and 23 of the Act. Rule 12d2-2 sets forth the conditions and procedures under which a security may be delisted. Rule 12d2-2 also requires, under certain circumstances, that the Exchange file with the Commission a Form 25 to delist the security. Form 25 provides the Commission with the name of the security, the effective date of the delisting, and the date and type of event causing the delisting.

Delisting notices and applications for delisting serve a number of purposes. First, the reports and notices required under paragraphs (a) and (b) of Rule 12d2-2 (which do not require Commission action) inform the Commission that a security previously traded on an exchange is no longer traded. In addition, the applications for delisting required under paragraphs (c) and (d) of the Rule (which require Commission approval) provide the Commission with the information necessary for it to determine that the delisting has been accomplished in accordance with the rules of the exchange, and to verify that the delisting is subject to any terms and conditions necessary for the protection of investors. Further, delisting applications are available to members of the public who may wish to comment or submit information to the Commission regarding the applications. Without the Rule, the Commission lacks the information necessary for it to fully meet these statutory responsibilities.

There are nine national securities exchanges which are subject to Rule 12d2-2 and Form 25. The burden of complying with the Rule and Form is not evenly distributed among the exchanges, since there are many more securities listed on the New York and American Stock Exchanges than on the other exchanges. However, for purposes of this filing, the staff has assumed that the number of responses is evenly divided among the exchanges. This results in a total annual burden of 450 hours based on nine respondents with 50 responses per year for a total of 450 responses requiring an average of one hour per response.

Based on information acquired in an informal survey of the exchanges and the staff's experience in administering related rules, the Commission staff estimates that the cost of compliance with Rule 12d2-2 and Form 25 may range from less than \$10 to \$200 per response. The staff has computed the average cost per response to be approximately \$30, representing one reporting hour per response. The

estimated total annual cost for complying with Rule 12d2-2 is about \$13,500, i.e., nine exchanges filing 50 responses at \$30.00 each.

On July 14, 1976, the Commission adopted Rule 15Ba2-5 under the Act to permit a duly-appointed fiduciary to assume immediate responsibility for the operation of a municipal securities dealer's business. Without the rule, the fiduciary would not be able to assume operation until it registered as a municipal securities dealer. Under the rule, the registration of a municipal securities dealer is deemed to be the registration of any executor, guardian, conservator, assignee for the benefit of creditors, receiver, trustee in insolvency or bankruptcy, or other fiduciary appointed or qualified by order, judgment, or decree of a court of competent jurisdiction to continue the business of such municipal securities dealer, provided that the fiduciary files with the Commission, within 30 days after entering upon the performance of its duties, a statement setting forth substantially the same information required by Form MSD or Form BD. That statement is necessary to ensure that the Commission and the public have adequate information about the fiduciary.

There is approximately 1 respondent per year that requires an aggregate total of 4 hours to comply with this rule. This respondent makes an estimated 1 annual response. Each response takes approximately 4 hours to complete. Thus, the total compliance burden per year is 4 burden hours. The approximate cost per hour is \$20, resulting in a total cost of compliance for the respondent of \$80 (4 hours @ \$20).

Rule 15c3-1 requires broker-dealers to, in essence, maintain minimum levels of net capital computed in accordance with the rule's provisions. Various provisions of Rule 15c3-1 require brokers and dealers to notify the Commission and/or its Designated Examining Authority ("DEA") in certain situations. For example, a broker-dealer carrying the account of an options market-maker must file a notice with the Commission and the DEA of both the carrying firm and the market-maker. In addition, the carrying firm must notify the Commission and the appropriate DEA if a market-maker fails to deposit any required equity with the carrying broker or dealer relating to his market-maker account within the prescribed time period or if certain deductions and other amounts relating to the carrying firm's market-maker accounts computed in accordance with the rule's provisions exceeds 1000% of the carrying broker's or dealer's net capital.

Moreover, Appendix C to the rule requires brokers and dealers, under certain circumstances, to submit to their DEA an opinion of counsel stating, in essence, that the broker or dealer may cause that portion of the net assets of a subsidiary or affiliate related to its ownership interest in the entity to be distributed to the broker or dealer within 30 calendar days.

It is anticipated that approximately 1,150 broker-dealers will each spend 1 hour per year complying with Rule 15c3-1. The total cost is estimated to be approximately 1,150 hours. With respect to those broker-dealers that must give notice under the rule, the cost is approximately \$20 per response for a total annual expense for all broker-dealers of \$23,000.

All brokers and dealers are required, pursuant to Rule 17a-10, to file with the Commission an annual report of revenue and expenses. The primary purpose of the rule is to obtain the economic and statistical data necessary for an ongoing analysis of the securities industry.

Rule 17a-10 required brokers and dealers to provide their revenue and expense data on a special form. The rule was amended in 1987 to eliminate the form and reduce the amount of paperwork required of brokers and dealers. The data previously reported on the form is now obtained by the Commission staff from the quarterly balance sheet and Statement of Income (Loss) which are filed with Form X-17A-5 (SEC File No. 270-155; OMB No. 3235-0123), and from the three supplementary schedules to Form X-17A-5, which are filed at the close of each calendar year.

It is anticipated that approximately 7,000 broker-dealers will each spend 1 hour per year complying with Rule 17a-10. The total cost is estimated to be approximately 7,000 hours. Each broker-dealer will spend approximately \$10 per response for a total annual expense for all broker-dealers of \$70,000.

General comments regarding the estimated burden hours should be directed to the Desk Officer for the Securities and Exchange Commission at the address below. Any comments concerning the accuracy of the estimated average burden hours for compliance with Commission rules and forms should be directed to Michael E. Bartell, Associate Executive Director, Office of Information Technology, Securities and Exchange Commission, 450 Fifth Street, N.W., Washington, D.C. 20549 and Desk Officer for the Securities and Exchange Commission, Office of Information and Regulatory Affairs, Office of Management and

Budget, Room 3208, New Executive Office Building, Washington, D.C. 20503.

Dated: September 10, 1996.

Jonathan G. Katz,
Secretary.

[FR Doc. 96-23979 Filed 9-17-96; 8:45 am]
BILLING CODE 8010-01-M

[Rel. No. IC-22219; 811-7640]

Common Trust Fund R of the Commercial Bank Combined Capital Trust; Notice of Application

September 12, 1996.

AGENCY: Securities and Exchange Commission ("SEC").

ACTION: Notice of application for deregistration under the Investment Company Act of 1940 (the "Act").

APPLICANT: Common Trust Fund R of the Commercial Bank Combined Capital Trust.

RELEVANT ACT SECTIONS: Order requested under section 8(f).

FILING DATES: The application was filed on September 28, 1995. Applicants have agreed to file an amendment, the substance of which is incorporated herein, during the notice period.

SUMMARY OF APPLICATION: Applicant requests an order declaring that it has ceased to be an investment company.

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 October 7, 1996, and should be accompanied by proof of service on applicants, in the form of an affidavit or, for lawyers, a certificate of service. Hearing requests should state the nature of the writer's interest, the reason for the request, and the issues contested. Persons may request notification of a hearing by writing to the SEC's Secretary.

ADDRESSES: Secretary, SEC, 450 5th Street, N.W., Washington, D.C. 20549. Applicant, 550 Center Street, N.E., Second Floor, P.O. Box 1012, Salem, OR 97308.

FOR FURTHER INFORMATION CONTACT: David W. Grim, Staff Attorney, at (202) 942-0571, or Elizabeth G. Osterman, Assistant Director, at (202) 942-0564 (Division of Investment Management, Office of Investment Company Regulation).

SUPPLEMENTARY INFORMATION: The following is a summary of the application. The complete application may be obtained for a fee at the SEC's Public Reference Branch.

Applicant's Representations

1. Applicant is a registered open-end management investment company organized as a common law trust under the laws of the state of Oregon. On December 7, 1987, applicants submitted to the SEC a no-action request to sell units without registration under the Securities Act of 1933 ("Securities Act") and the Act. The SEC did not issue the requested no-action assurance. Nevertheless, applicant sold units without registration to the public from 1988 until October 1993. On April 6, 1993, applicant filed a Notification of Registration on Form N-8A pursuant to section 8(a) of the Act and a registration statement on Form N-1A under section 8(b) of the Act and a registration statement on Form N-1A under section 8(b) of the Act and under the Securities Act. The registration statement never became effective.

2. On December 6, 1994, the SEC issues an order instituting public proceedings against The Commercial Bank, the principal underwriter of the Fund, and Marvin Abeene, the manager of Commercial Bank's trust department.¹ The order imposed remedial sanctions and ordered The Commercial Bank and Mr. Abeene to cease and desist violating certain sections of the Securities Act and the Act. The order also required applicant to hire a consultant to conduct a comprehensive review of the policies and procedures of applicant. On April 25, 1995, upon conclusion of the consultant's review, the board of directors of applicant determined to refrain from registering applicant's units and adopted a resolution approving the liquidation of applicant.

3. On May 18, 1995, applicant terminated operations and liquidated its assets. On the liquidation date, applicant had a total of 50,008 units outstanding. Applicant redeemed all outstanding units by distributing an aggregate amount of \$12,045,281.55 to its unitholders. Each unitholder received a distribution at least equal to the net asset value of its investment in applicant. All unitholders who held rescission rights as a result of their purchase of unregistered units had the option of receiving cash in excess of the

¹ *In the Matter of The Commercial Bank and Marvin C. Abeene*, Administrative Proceeding File No. 3-8567, Investment Company Act Release No. 20757 (Dec. 6, 1994).

net asset value of their investment from The Commercial Bank as compensation for such rescission rights. To preserve the tax benefits associated with individual retirement accounts, applicant offered to facilitate the investment of each unitholder's cash distribution in a range of investment alternatives.

4. Applicant paid a total of \$49,332.94 for expenses incurred in connection with the liquidation. These expenses, which included brokerage commissions as well as fees for legal, financial, and accounting advice provided to applicant, were paid as follows: \$26,999.00 to KPMG Peat Marwick LLP, \$1,500.00 to Arthur Anderson LLP, \$12,106.76 to Davis Wright Tremaine, and \$8,727.18 in brokerage commissions.

5. As of the date of application, applicant had no unitholders, assets, or liabilities. Applicant is not a party to any litigation or administrative proceeding other than the proceeding discussed above. Applicant is neither engaged nor proposes to engage in any business activities other than those necessary for the winding-up of its affairs.

6. The trust document governing applicant authorized the liquidation of applicant upon the direction of the board of directors of The Commercial Bank, trustee of applicant. Because of its status as a common law trust, applicant was not required to make any filings relating to the liquidation with the State of Oregon.

For the Commission, by the Division of Investment Management, pursuant to delegated authority.

Jonathan G. Katz,
Secretary.

[FR Doc. 96-23977 Filed 9-18-96; 8:45 am]
BILLING CODE 8010-01-M

[Rel. No. IC-22220; File No. 812-10078]

Equitable Life Insurance Company of Iowa, et al.

September 12, 1996.

AGENCY: U.S. Securities and Exchange Commission ("SEC" or "Commission").

ACTION: Notice of application for exemption under the Investment Company Act of 1940 (the "1940 Act").

APPLICANT: Equitable Life Insurance Company of Iowa ("Equitable") and Equitable Life Insurance Company of Iowa Separate Account A ("Separate Account A").

RELEVANT 1940 ACT SECTIONS: Order requested pursuant to Section 26(b) of the 1940 Act approving the substitution of portfolio shares.

SUMMARY OF APPLICATION: Applicants seek an order approving the substitution of shares of the International Equity Portfolio ("IE Portfolio") of the Warburg Pincus Trust ("WP Trust") for shares of the International Stock Portfolio ("IS Portfolio") of the Equi-Select Series Trust ("ES Trust"). Each portfolio is an investment option underlying Separate Account A.

FILING DATE: The application was filed on April 4, 1996, and amended and restated on August 9, 1996.

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 Secretary of the SEC 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 October 7, 1996, and should be accompanied by proof of service on Applicants in the form of an affidavit or, for lawyers, a certificate of service. Hearing requests should state the nature of the writer's interest, the reason for the request, and the issues contested. Persons who wish to be notified of a hearing may request notification by writing to the Secretary of the SEC.

ADDRESSES: SEC, Secretary, 450 Fifth Street, N.W., Washington, D.C. 20549. Applicant, c/o Mr. John A. Merriman, General Counsel & Secretary, Equitable Life Insurance Company of Iowa, 604 Locust Street, Des Moines, IA 50309. Copies to: Raymond A. O'Hara III, Blazzard, Grodd & Hasenauer, P.C., P.O. Box 5108, Westport, CT 06881; and Mr. G. Thomas Sullivan, Nyemaster, Goode, McLaughlin, Voigts, West, Hansell & O'Brien, P.C., 1900 Hub Tower, Des Moines, IA 50309.

FOR FURTHER INFORMATION CONTACT: Edward P. Macdonald, Staff Attorney, or Patrice M. Pitts, Special Counsel, Office of Insurance Products, Division of Investment Management, at (202) 942-0670.

SUPPLEMENTARY INFORMATION: The following is a summary of the application. The complete application may be obtained for a fee from the Public Reference Branch of the SEC.

Applicants' Representations

1. Equitable, a stock life insurance company and wholly-owned subsidiary of Equitable of Iowa Companies, is engaged primarily in the writing of traditional, universal, and term life and fixed insurance policies, and variable annuity contracts on an individual and group basis.

2. Separate Account A, a segregated asset account registered under the 1940

Act as a unit investment trust, funds certain individual flexible purchase payment deferred variable annuity and fixed annuity contracts ("Contracts") issued by Equitable. Separate Account A currently is divided into sixteen sub-accounts ("Sub-Accounts") which reflect the investment performance of a specific series of the WP Trust, ES Trust, or another underlying mutual fund available under the Contracts.

3. The IS Portfolio, an investment option under the Contracts, has as its primary investment objective capital growth. The IS Portfolio invests at least 65% of its total assets in equity securities of issuers located outside the United States. On February 29, 1996, the IS Portfolio had approximately \$12 million in net assets (of which approximately \$4 million in net assets consisted of Equitable's seed money and working capital contributions). The total expenses of the IS Portfolio for the year ended December 31, 1995, were 2.88% of its average net assets, without regard to waiver or reimbursement of expenses.

4. Equitable Investment Services, Inc. ("EISI"), a registered investment adviser and wholly-owned subsidiary of Equitable of Iowa Companies and an affiliate of Equitable, provides overall management of the investment strategies and policies of the IS Portfolio. EISI receives an annual investment advisory fee, accrued daily and payable monthly, based on .80% of the first \$300 million and .55% over and above \$300 million of the IS Portfolio's average daily net assets.

5. Pursuant to a subadvisory agreement between EISI and Strong Capital Management, Inc. ("Strong"), EISI pays to Strong for subadvisory services .40% of the first \$300 million and .25% over and above \$300 million of the IS Portfolio's average daily net assets. This fee is accrued daily and payable monthly. The subadvisory agreement between EISI and Strong will be terminated when the IS Portfolio has no assets.

6. The IE Portfolio of the WP Trust has as its primary investment objective long-term capital appreciation. The IE Portfolio invests primarily in equity securities of non-U.S. issuers. On December 31, 1995, the IE Portfolio had approximately \$66 million in net assets and total expenses of 2.21% of its average net assets, without regard to waiver or reimbursement of expenses.

7. Warburg Pincus Counsellors, Inc. ("Warburg") is the investment adviser of the IE Portfolio. Warburg receives an annual investment advisory fee of 1.00% of the IE Portfolio's average daily net assets. The fee is accrued daily and payable monthly.

8. Equitable and Separate Account A propose to effect a substitution of shares of the IE Portfolio for all shares of the IS Portfolio attributable to the Contracts ("Substitution"). Equitable will pay all expenses and transaction costs of the Substitution, including any applicable brokerage commissions. On April 12, 1996, Equitable supplemented the prospectus for Separate Account A to reflect the proposed Substitution.

9. Equitable will schedule the Substitution to occur as soon as practicable following the issuance of an order by the Commission so that Contract owners can maximize benefits of the Substitution.

10. For those Contract owners who continue to have any of their Contract values invested in shares of the IS Portfolio on the effective date of the Substitution, Equitable will substitute shares of that portfolio for shares of the IE Portfolio in the following manner: as of the effective date of the Substitution the shares of the IS Portfolio representing Contract values would be redeemed by Equitable, and on the same day, Equitable will use the proceeds to purchase the appropriate number of shares of the IE Portfolio. The Substitution will take place at relative net asset values of the Portfolios, with no change in the amount of any Contract owner's Contract value.

11. Within five (5) days after the completion of the Substitution (pursuant to the order of the SEC approving the Substitution), Equitable will send to the Contract owners written notice of the Substitution ("Notice") stating that shares of the IS Portfolio have been eliminated and that shares of the IE Portfolio have been substituted. Applicants state that Equitable will include in this mailing the prospectus supplement (the "Supplement") for Separate Account A describing the Substitution.

12. Contract owners will be advised in the Notice that for a period of thirty (30) days from the mailing of the Notice, they may transfer all assets, as substituted, to any other available Sub-Account, without limitation and without charge. The period from the date of the Supplement to thirty (30) days from the mailing of the Notice is the "Free Transfer Period."

13. Following the Substitution, Contract owners will be afforded the same contractual rights as they currently have—including surrender and other transfer rights—with regard to amounts invested under the Contracts. Currently, there are no applicable surrender fees or redemption charges under the Contracts; applicable deferred sales charges, however, will be imposed.

Applicants' Legal Analysis and Conditions

1. Section 26(b) of the 1940 Act provides, in pertinent part, that "[i]t shall be unlawful for any depositor or trustee of a registered unit investment trust holding the security of a single issuer to substitute another security for such security unless the Commission shall have approved such substitution." The purpose of Section 26(b) is to protect the expectation of investors in a unit investment trust that the unit investment trust will accumulate the shares of a particular issuer, and to prevent unscrutinized substitutions which might, in effect, force shareholders dissatisfied with the substituted security to redeem their shares, thereby possibly incurring either a loss of the sales load deducted from initial purchase payments, an additional sales load upon reinvestment of the redemption proceeds, or both. Section 26(b) affords protection to investors by preventing a depositor or trustee of a unit investment trust holding the shares of one issuer from substituting for those shares the shares of another issuer, unless the Commission approves that substitution.

2. Applicants assert that the purposes, terms and conditions of the Substitution are consistent with the principles and purposes of Section 26(b) and do not entail any of the abuses that Section 26(b) is designed to prevent. Applicants further assert that the Substitution is an appropriate solution to the limited Contract owner interest or investment in the IS Portfolio which currently is, and in the future may be expected to be, of insufficient size to promote consistent investment performance or to reduce operating expenses.

3. Applicants assert that the Substitution will not result in the type of costly forced redemption that Section 26(b) was intended to guard against and is consistent with the protection of investors and the purposes fairly intended by the 1940 Act because: (a) The Substitution is of shares of the IE Portfolio whose objective, policies and restrictions are substantially similar to the objective, policies and restrictions of the IS Portfolio so as to continue fulfilling Contract owners' objectives and risk expectations; (b) while the advisory fees incurred by the IE Portfolio are higher than those applicable to the IS Portfolio, the total expenses of the IE Portfolio—as a percentage of the net assets—are lower than those of the IS Portfolio; (c) the Substitution will, in all cases, be at net asset value of the respective shares, without the imposition of any transfer

or similar charge; (d) Equitable has undertaken to assume the expenses and transaction costs, including, among others, legal and accounting fees and any brokerage commissions relating to the Substitution; (e) within five (5) days after the completion of the Substitution, the Company will send to the Contract Owners written notice of the Substitution and the Supplement stating that shares of the IS Portfolio have been eliminated and that the shares of the IE Portfolio have been substituted; (f) if a Contract owner so requests, during the Free Transfer Period, assets will be reallocated for investment in a Contract owner-selected sub-account; (g) the Substitution will not alter the insurance benefits to Contract owners or the contractual obligations of Equitable; (h) the Substitution will not alter the tax benefits to Contract owners; (i) Contract owners may choose to withdraw amounts credited to them following the Substitution under the conditions that currently exist, subject to any applicable deferred sales charge; and, (j) the Substitution is expected to confer certain economic benefits to Contract owners by virtue of the enhanced asset size.

Conclusion

For the reasons set forth above, Applicants represent that the order requested approving the proposed Substitution, meets the standards set forth in Section 26(b) of the 1940 Act and should be granted.

For the Commission, by the Division of Investment Management, pursuant to delegated authority.

Jonathan G. Katz,
Secretary.

[FR Doc. 96-23978 Filed 9-18-96; 8:45 am]

BILLING CODE 8010-01-M

[Release No. 34-37678; File No. SR-GSCC-96-9]

Self-Regulatory Organizations; Government Securities Clearing Corporation; Notice of Filing of a Proposal Rule Change Relating to the Establishment of a Mechanism for Returning Certain Excess Clearing Fund Collateral to Members on a Daily Basis

September 13, 1996.

Pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 (the "Act"),¹ notice is hereby given that on August 11, 1996, the Government Securities Clearing Corporation ("GSCC") filed with the Securities

Exchange Commission ("Commission") the proposed rule change (File No. SR-GSCC-96-9) as described in Items I, II, and III below, which items have been prepared primarily by GSCC. 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

GSCC is filing a proposed rule change that establishes a mechanism for returning certain excess clearing fund collateral to members on a daily basis rather than on the current monthly basis.

II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In filing with the Commission, GSCC included statements concerning the purpose of and basis for the proposed rule change and discussed any comments that it received on the proposed rule change. The text of these statements may be examined at the places specified in Item IV below. GSCC has prepared summaries, set forth in sections (A), (B), and (C) below, of the most significant aspects of such statements.²

(A) Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

GSCC proposes to amend its rules to establish a mechanism for returning certain excess clearing fund collateral to members on a daily basis rather than on the current monthly basis. GSCC's clearing fund is designed to protect GSCC from the exposure presented by fluctuations in the value of a defaulting member's net settlement position from the most recent marking-to-market until liquidation of that position. The daily mark-to-market mechanism, which is applicable to forward net settlement positions, is designed to bring net settlement positions from contract value to current market value.

The clearing fund collateral pool in fact serves a number of purposes. It allows GSCC to have on deposit from each netting member assets sufficient to satisfy any losses that may otherwise be incurred by GSCC and ultimately its members as the result of the member's default and the resultant close out of that member's net settlement position. It permits GSCC to maintain a total asset

¹ 15 U.S.C. § 78s(b)(1) (1988).

² The Commission has modified the text of the statements GSCC submitted.

amount sufficient to satisfy potential losses to it and its members resulting from the default of more than one member or the failure of a defaulting member's counterparties to pay their pro rata allocation of loss. It also allows GSCC to ensure that it has sufficient liquidity at all times to meet its payment and delivery obligations. Thus, the maintenance of an appropriate overall level of clearing fund collateral is vital to GSCC's risk-management mechanism.

As GSCC cannot know with any certainty what liquidation exposure it might incur or what its overall liquidity requirements might be, the calculation of clearing fund deposit requirements involves an estimate of such exposure that is based on historical price volatility and on member's historical activity. In fact, on any particular business day, a member's trading activity and the general market price volatility related to the member's activity may be significantly higher than normal. Given this uncertainty and the importance of the purposes served by the clearing fund, members are encouraged to maintain excess clearing fund collateral. GSCC takes significant comfort from the cushion represented by member's excess clearing fund collateral.

Member's clearing fund deposit requirements are calculated daily based on the level of members' historical and current day's net activity. However, the maintenance of an appropriate level of overall clearing fund collateral is not designed to be a daily collection and return process. In part, this is due to the administrative burden and cost that this would entail. The process for collection of clearing fund deposit involves not just cash but also securities and letters of credit making it more complex than GSCC's daily morning funds-only collection process. More significantly, the disfavor of daily collection and return of clearing fund collateral recognizes the above stated desirability of maintaining a cushion of excess clearing fund collateral.

Because of these concerns, GSCC's rules currently provide for the return of excess clearing fund collateral to members only once a calendar month on the second business day of each month. This methodology applies regardless of the level of a member's excess clearing fund collateral. Upon review of this process, it is GSCC's view that the importance of maintaining a level of excess collateral adequate to protect GSCC and its members and of avoiding a cumbersome clearing fund deposit collection process should be balanced against the cost and drain on liquidity posed to members that build up an

unusually large amount of excess clearing fund collateral over the course of a month. GSCC therefore proposes as a means of balancing these interests that members may request the return of excess collateral on any business day under the following circumstances: (1) The amount of the member's excess clearing fund collateral is at least \$5 million; (2) the member is not on class 2 or class 3 surveillance status; and (3) the collateral will be returned only to the extent that GSCC retains a cushion of excess collateral of no less than the greater of (a) 110 percent of the member's clearing fund deposit requirement (*i.e.*, GSCC must retain 110% of the member's clearing fund deposit requirement) or (b) \$1 million more than the amount of collateral needed to cover the member's current clearing fund deposit requirement.

GSCC believes the proposed rule changes are consistent with the requirements of Section 17A of the Act and the rules and regulations thereunder because it promotes efficiencies in the prompt and accurate clearance and settlement of securities transactions.³ Members will experience less liquidity pressure from not having to maintain large amounts of excess clearing fund collateral with GSCC and will be better able to manage their cash management needs. However, at the same time GSCC will maintain sufficient excess clearing fund collateral to protect itself and its members in an instance of member default.

(B) Self-Regulatory Organization's Statement on Burden on Competition

GSCC perceives no impact on competition by reason of the proposed rule change.

(C) Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received from Members, Participants or Others

GSCC has not solicited or received comment on the proposed rule change.

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

Within thirty-five days of the date of publication of this notice in the Federal Register or within such longer period (i) as the Commission may designate up to ninety days of such date if it finds such longer period to be appropriate and publishes its reasons for so finding or (ii) as to which GSCC consents, the Commission will:

(A) By order approve such proposed rule change or

(B) Institute proceedings to determine whether the proposed rule change should be disapproved.

IV. Solicitation of Comments

Interested persons are invited to submit written data, views, and arguments concerning the foregoing. Persons making written submissions should file six copies thereof with the Secretary, Securities and Exchange Commission, 450 Fifth Street, N.W., Washington, D.C. 20549. Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. § 552, will be available for inspection and copying in the Commission's Public Reference Room, 450 Fifth Street, N.W., Washington, D.C. 20549. Copies of such filing will also be available for inspection and copying at the principal office of GSCC. All submissions should refer to the file number (SR-GSCC-96-9) and should be submitted by October 10, 1996.

For the Commission by the Division of Market Regulation, pursuant to delegated authority.⁴

Jonathan G. Katz,
Secretary.

[FR Doc. 96-24058 Filed 9-18-96; 8:45 am]

BILLING CODE 8010-01-M

[Release No. 34-37675; File No. SR-MSRB-96-7]

Self-Regulatory Organizations; Notice of Filing of Proposed Rule Change by the Municipal Securities Rulemaking Board Relating to Political Contributions and Prohibitions on Municipal Securities Business

September 12, 1996.

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 August 6, 1996,¹ the Municipal Securities Rulemaking Board ("Board" or "MSRB") filed with the Securities and Exchange Commission ("Commission" or "SEC")

⁴ 17 CFR 200.30-3(a)(12) (1996).

¹ On September 9, 1996, the MSRB filed Amendment No. 1 with the Commission. Amendment No. 1 amends proposed language to rule G-37(g) (vii). See Letter from Ronald W. Smith, Legal Associate, MSRB, to Katherine England, Assistant Director, Division of Market Regulation, SEC (September 9, 1996).

³ 15 U.S.C. § 78q-1 (1988).

the proposed rule change as 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

Board proposes a rule change to amend rule G-37, on political contributions and prohibitions on municipal securities business, and rule G-8, on books and records.

The text of the proposed rule change is available at the offices of the MSRB.

II. Self-Regulatory Organization's Statement of the Terms of Substance of 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 texts 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 Board is filing the proposed rule change to: (i) Amend the definition of "municipal finance professional;" (ii) amend the definition of "executive officer;" (iii) clarify the definition of "official of an issuer;" (iv) clarify the definition of "municipal securities business;" and (v) require the retention of Forms G-37/G-38 and of records itemizing mailing of the same.

Definition of "Municipal Finance Professional"

Rule G-37(g)(iv) defines the term "municipal finance professional" as:

(A) Any associated person primarily engaged in municipal securities representative activities, as defined in rule G-3(a)(i);

(B) Any associated person who solicits municipal securities business, as defined in paragraph (vii);

(C) Any associated person who is both (i) a municipal securities principal or a municipal securities sales principal and (ii) a supervisor of any person described in subparagraphs (A) or (B);

(D) any associated person who is a supervisor of any person described in subparagraph (C) up through and including, in the case of a broker, dealer

or municipal securities dealer other than a bank dealer, the Chief Executive Officer or similarly situated official and, in the case of a bank dealer, the officer or officers designated by the board of directors of the bank as responsible for the day-to-day conduct of the bank's municipal securities dealer activities, as required pursuant to rule G-1(a); or

(E) Any associated person who is a member of the broker, dealer or municipal securities dealer (or in the case of a bank dealer, the separately identifiable department or division of the bank, as defined in rule G-1) executive or management committee or similarly situated officials, if any.

The activities described in subparagraphs (A) and (B) which would cause someone to become a municipal finance professional are directly the result of the individual's actions (e.g., primarily engaged in underwriting, trading or sales of municipal securities, or soliciting municipal securities business). The activities described in subparagraph (C) relate to the supervision of anyone described in subparagraphs (A) and (B), and the activities described in subparagraph (D) relate to the supervision of anyone described in subparagraph (C). Thus, for someone to meet the definition of municipal finance professional pursuant to subparagraphs (A) through (D), individuals would have to be directly involved in municipal securities activities or supervisors of such persons.

Subparagraph (E) states that an associated person who is a member of the dealer executive or management committee or similarly situated official is a municipal finance professional. This provision is the only part of the definition of municipal finance professional that is not dependent upon the municipal securities activities of the person or the supervision of persons engaging in municipal securities activities. This provision was added to the rule because of the belief that issuer officials may seek out dealers' senior executives for contributions if municipal finance professionals ceased making contributions. The Statement of Initiative by Dealers regarding Political Contributions also included executive or management committee members within its voluntary prohibition on political contributions.²

The Board understands that there are certain dealers that occasionally engage in municipal securities sales

²In October 1993, at the urging of SEC Chairman Levitt, a number of dealers agreed to a Statement of Initiative to support the principle that political contributions which are intended to influence the awarding of municipal securities business should be prohibited.

transactions but do not engage in municipal securities business as defined in rule G-37(g)(vii). As a result, the only individuals who meet the definition of municipal finance professional are executive or management committee members. Because such dealers do not engage in municipal securities business, the ban on business based on political contributions is irrelevant to them.

However, such dealers also are required to record and report the contributions and payments of these municipal finance professionals. The Board believes that there is no useful purpose served in requiring dealers to record and report the political contributions of executive or management committee members if they are the only individuals in a firm meeting the definition of municipal finance professional. The proposed rule change amends the definition of municipal finance professional in rule G-37(g)(iv)(E) to exempt executive or management committee members from the definition of municipal finance professional (and thus the applicable recording and reporting requirements) if these are the only individuals within a firm who would meet the definition as described in subparagraphs (A) through (E).³

Definition of "Executive Officer"

Rule G-37(g)(v) defines "executive officer" as: An associated person in charge of a principal business unit, division or function or any other person who performs similar policy making functions for the broker, dealer or municipal securities dealer (or, in the case of a bank dealer, the separately identifiable department or division of the bank, as defined in rule G-1), but does not include any municipal finance professional, as defined in paragraph (iv) of this section (g).

Contributions and payments by executive officers are subject to the recordkeeping and reporting provisions of rule G-37. Contributions by executive officers do not result in a ban on business; however, paragraph (d) of rule G-37 prohibits dealers from using executive officers (as well as any other person or entity) as conduits for making contributions to officials of issuers. The Board determined to apply the recordkeeping and reporting

³Rule G-37(g)(iv) states that each person designated by the dealer as a municipal finance professional is deemed to be a municipal finance professional and that each person so designated will retain this designation for two years after the last activity or position which gave rise to the designation. Upon approval of the proposed rule change by the SEC, dealers may remove individuals subject to the new rule language from their lists of designated municipal finance professionals and do not have to record and report their contributions.

requirements to contributions by executive officers to ensure that these individuals are not being used to circumvent the rule.

As in the situation described above involving executive or management committee members, rule G-37 currently requires a dealer to record and report the contributions of executive officers even if that dealer has no one meeting the definition of municipal finance professional. The Board believes that this serves no useful purpose because the dealer currently is not engaging in municipal securities business. The proposed rule change would amend the definition of executive officer in rule G-37(g)(v) to provide that, if no associated person of the dealer meets the definition of municipal finance professional, the dealer shall be deemed to have no executive officers (and thus the recording and reporting requirements for executive officers are not applicable).⁴

In both situations involving municipal finance professionals and executive officers described above, if the dealer later engages in municipal securities business, then the dealer will have to record the contributions and payments made by any municipal finance professionals, as well as executive officers, for the previous two calendar years to determine whether it is banned from any municipal securities business.⁵

Definition of "Official of an Issuer"

When the Board adopted rule G-37, the term "official of such issuer" or "official of an issuer" was initially defined as any incumbent, candidate or successful candidate for elective office of the issuer, which office is directly or indirectly responsible for, or can influence the outcome of, the hiring of a dealer for municipal securities business. The definition was intended to include any state or local official or candidate (or successful candidate) who has influence over the awarding of municipal securities business, including certain state-wide executive or legislative officials.

After adoption of the rule, the Board became concerned that, because the definition focused on "an elective office

⁴ Upon approval of the proposed rule change by the SEC, dealers may remove individuals subject to the new rule language from their lists of executive officers and do not have to record and report their contributions.

⁵ Of course, any dealer who has municipal finance professionals, even if the dealer currently is not engaging in municipal securities business, must record and report the contributions and payments of municipal finance professionals and executive officers.

of the issuer," it did not clearly include certain other officials. For example, a state may have certain issuing authorities whose boards of directors are appointed by the governor. Although the governor is an official with influence over the awarding of municipal securities business, the governor, in this illustration, is not an incumbent or candidate for "elective office of the issuer" (*i.e.*, the state authority). Thus, a contribution to the governor would not prohibit a dealer from engaging in business with the state authority. The Board intended to include the governor as an official of the issuer in such circumstances and, therefore, determined to amend the definition to clarify its intent.⁶

Accordingly, rule G-37(g)(vi) currently defines the term "official of such issuer" or "official of an issuer" as: any person (including any election committee for such person) who was, at the time of the contribution, an incumbent, candidate or successful candidate: (A) For elective office of the issuer which office is directly or indirectly responsible for, or can influence the outcome of, the hiring of a broker, dealer or municipal securities dealer for municipal securities business by the issuer; or (B) for any elective office of a state or of any political subdivision, which office has authority to appoint any official(s) of an issuer, as defined in subparagraph (A), above. [emphasis added]

Recently, it came to the Board's attention that the revised definition does not clearly address situations in which an elected official may appoint someone to an issuer position. Subparagraph (B) in rule G-37(g)(vi) refers to the definition of official of an issuer as defined in subparagraph (A), but, subparagraph (A) refers only to an elective office and not an appointed office. The proposed rule change amends the definition of "official of such issuer" and "official of an issuer" to clarify that the definition includes "any elective office of a state or of any political subdivision, which office has authority to appoint any person who is directly or indirectly responsible for, or can influence the outcome of, the hiring of a broker, dealer or municipal securities dealer for municipal securities business by an issuer." Such amendment removes the incorrect reference to an elective office for those who are appointed by an elected official.

Definition of "Municipal Securities Business"

Rule G-37(g)(vii) defines the term "municipal securities business" as:

⁶ See Securities Exchange Act Release No. 34160 (June 3, 1994), 59 FR 30376 (June 13, 1994).

(A) The purchase of a primary offering (as defined in rule A-13(d)) of municipal securities from the issuer on other than a competitive bid basis (*i.e.*, negotiated underwriting); or

(B) The offer or sale of a primary offering of municipal securities on behalf of any issuer (*i.e.*, private placement); or

(C) The provision of financial advisory or consultant services to or on behalf of an issuer with respect to a primary offering of municipal securities on other than a competitive bid basis; or

(D) The provision of remarketing agent services to or on behalf of an issuer with respect to a primary offering of municipal securities on other than a competitive bid basis.

Under rule G-37, dealers could be subject to a ban on business with an issuer if certain contributions are made to officials of that issuer. The ban on business provision applies to municipal securities business awarded on a negotiated basis; the rule does not prohibit dealers from engaging in business awarded on a competitive basis.

Some dealers have noted that it is not clear in subparagraph (C) of rule G-37(g)(vii) whether, for financial advisory services, the rule is referring to the selection of a financial advisor on other than a competitive bid basis or whether the rule is referring to financial advisory services provided only on negotiated deals. The proposed rule change amends rule G-37(g)(vii)(C) to make clear that the definition of "municipal securities business" includes financial advisory services when the dealer is chosen as financial advisor on a negotiated basis. It is irrelevant whether the financial advisory services provided by the dealer are with respect to a negotiated or competitive issue. A similar change has been made to rule G-37(g)(vii)(D) to clarify that the definition of "municipal securities business" includes remarketing agent services when the dealer is chosen as remarketing agent on a negotiated basis.

Recordkeeping

Rule G-37(e) requires dealers to submit Forms G-37/G-38 to the Board by certified or registered mail or some other equally prompt means that provides a record of dispatch. While rule G-8(a)(xvi), on books and records, requires dealers to keep records of all of the information reported on Form G-37/G-38, it also requires dealers to keep records of additional information (*e.g.*, a listing of the names, titles, city/county and state of residence of all municipal finance professionals). The Board believes it would be helpful to the

enforcement agencies for rule G-8(a)(xvi) to require dealers to keep copies of the Forms G-37/G-38 submitted to the Board so that these forms can be easily retrieved for review. In reviewing the timely submission of the forms, the Board also believes it would be helpful to the enforcement agencies to require dealers to keep the certified or registered mail record or other records indicating dispatch.⁷

The Board believes the proposed rule change is consistent with Section 15B(b)(2)(C) of the Act, which provides that the Board's rules shall:

Be designed to prevent fraudulent and manipulative acts and practices, to promote just and equitable principles of trade, to foster cooperation and coordination with persons engaged in regulating, clearing, settling, processing information with respect to, and facilitating transactions in municipal securities, to remove impediments to and perfect the mechanism of a free and open market in municipal securities, and, in general, to protect investors and the public interest.

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

Within 35 days of the 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 the 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.

⁷ Rule G-9, on preservation of records, requires dealers to retain the G-8(a)(xvi) records concerning political contributions and prohibitions on municipal securities pursuant to rule G-37 for a six year period.

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 submissions, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for inspection and copying in the Commission's Public Reference 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-96-7 and should be submitted by October 10, 1996.

For the Commission by the Division of Market Regulation, pursuant to delegated authority, 17 CFR 200.30-3(a)(12).

Jonathan G. Katz,
Secretary.

[FR Doc. 96-23975 Filed 9-18-96; 8:45 am]
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[Release No. 34-37668; File No. SR-NYSE-96-17]

Self-Regulatory Organizations; Notice of Filing and Order Granting Accelerated Approval of Proposed Rule Change by the New York Stock Exchange, Inc. Relating to Extension of Pilot Programs for Capital Utilization and Near Neighbor Measures of Specialist Performance

September 11, 1996.

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 July 1, 1996, the New York Stock Exchange, Inc. ("NYSE" or "Exchange") 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 self-regulatory organization.¹ The Commission is

¹ See Letter from James E. Buck, Senior Vice President and Secretary, NYSE, to Sharon Lawson, Senior Special Counsel, SEC, dated September 10, 1996 ("Amendment No. 1"). The Exchange originally requested that the capital utilization and near neighbor measure pilots be approved for an additional year, until September 10, 1997. In Amendment No. 1, the Exchange amended the filing to request that the pilots only be extended for an additional four months, until January 10, 1997 and requested that the four-month extension be approved on an accelerated basis. The Exchange

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 proposed rule change consists of extending for an additional four months, through January 10, 1997, the pilot programs to use specialist capital utilization and the "near neighbor" approach to measure specialist performance.²

II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, the self-regulatory organization included statements concerning the purpose of and basis for the proposed rule change and discussed any comments it received on the proposed rule change. The text of these statements may be examined at the places specified in Item IV below. The self-regulatory organization has prepared summaries, set forth in Sections A, B, and C below, of the most significant aspects of such statements.

The Exchange requests the Commission to find good cause, pursuant to Section 19(b)(2) of the Act, for approving the proposed rule change, and Amendment No. 1 thereto, prior to the thirtieth day after publication in the Federal Register.³

A. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

1. Purpose

The Exchange currently uses several programs to measure specialist

stated that during this time, it expected to seek permanent approval of the programs from its Board of Directors, and to subsequently file such requests with the Commission.

² The SEC notes that these measures currently are only used by the Allocation Committee in making specialist allocation decisions. See *infra* note 4. The SEC initially approved the capital utilization program on a one-year pilot basis in Securities Exchange Act Release No. 33369 (December 22, 1993), 58 FR 69431 (December 30, 1993). The SEC approved a six-month extension of the pilot program in Securities Exchange Act Release No. 35175 (December 29, 1994), 60 FR 2167 (January 6, 1995) (extending pilot through June 30, 1995). The SEC approved a subsequent extension of the pilot so that the Exchange and the SEC could evaluate the capital utilization and near neighbor programs concurrently. See Securities Exchange Act Release No. 35926 (June 30, 1995), 60 FR 35760 (July 11, 1995) (extending pilot through September 10, 1996). The SEC approved the near neighbor program on a pilot basis in Securities Exchange Act Release No. 35927 (June 30, 1995), 60 FR 35927 (July 11, 1995) (pilot approved through September 10, 1996).

³ See Amendment No. 1, *supra* note 1.

performance including specialist capital utilization and the near neighbor approach, which compares a stock's performance with stocks with similar characteristics. These measures are currently utilized on a pilot program basis in Allocation Committee deliberations.⁴ The pilot programs are scheduled to expire on September 10, 1996.

The capital utilization measure of performance focuses on a specialist unit's use of its own capital in relation to the total dollar value of trading activity in the unit's stocks.⁵ The near neighbor approach compares certain performance measures of a given stock (price continuity, depth, quotation spread and capital utilization) to those of its "near neighbors", *i.e.*, stocks that have certain similar characteristics. The stock is then categorized as either "below mean", "mean", or "above mean" as compared to its near neighbors for a given performance measure.⁶ These measures are presented to the Allocation Committee in summary form for each unit applying for a new listing and are a factor in allocating newly-listed stocks.

The Exchange believes the capital utilization and near neighbor programs provide useful objective measures of specialist performance, and is therefore proposing that the pilot programs be extended for an additional four months, through January 10, 1997. During this time, the Exchange expects to seek permanent approval of these programs from its Board of Directors, and to subsequently file such requests with the Commission.⁷

⁴ The Exchange's Allocation Policy and Procedures ("Allocation Policy") governs the allocation of equity securities to NYSE specialist units. The Allocation Committee has sole responsibility for the allocation of securities to specialist units pursuant to Board-delegated authority, and is overseen by the Quality of Markets Committee of the Board of Directors. The Allocation Committee renders decisions based upon the allocation criteria specified in the Allocation Policy. The Allocation Policy emphasizes that the most significant allocation criterion is specialist performance. In this regard, the Allocation Policy states that the Allocation Committee will base its allocation decisions on the Specialist Performance Evaluation Questionnaire ("SPEQ"), objective performance measures, and the Committee's expert professional judgment. See Securities Exchange Act Release No. 34906 (October 27, 1994), 59 FR 55142 (November 3, 1994) (order approving revisions to the NYSE's Allocation Policy).

⁵ For a comprehensive description of the capital utilization measure of specialist performance, see Securities Exchange Act Release No. 35927, *supra* note 2.

⁶ For a comprehensive description of the near neighbor measure, see Securities Exchange Act Release No. 35927, *supra* note 2.

⁷ See Amendment No. 1, *supra* note 1.

2. Statutory Basis

The basis under the Act for the proposed rule change is the requirement under Section 6(b)(5)⁸ that an Exchange have rules that are designed to promote just and equitable principles of trade, to remove impediments to, and perfect the mechanism of a free and open market and, in general, to protect investors and the public interest. The Exchange believes that the proposed rule change is consistent with these requirements in that continuing to develop objective measures of specialist performance would help perfect the mechanism of a free and open market.

B. Self-Regulatory Organization's Statement on Burden on Competition

The Exchange does not believe that the proposed rule change will impose any burden on competition that is not necessary or appropriate in furtherance of the purposes of the Act.

C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received From Members, Participants, or Others

The Exchange has neither solicited nor received written comments on the proposed rule change.

III. 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 at the Commission's Public Reference Section, 450 Fifth Street, N.W., Washington, D.C. 20549. Copies of such filing will also be available for inspection and copying at the principal office of the Exchange. All submissions should refer to File No. SR-NYSE-96-17 and should be submitted by [insert date 21 days from date of publication].

⁸ 15 U.S.C. 78f(b)(5).

IV. Commission's Findings and Order Granting Accelerated Approval of Proposed Rule Change

The Commission finds that the proposed rule change is consistent with the requirements of the Act and the rules and regulations thereunder applicable to a national securities exchange, and, in particular, with the requirements of Section 6(b)(5) of the Act. Section 6(b)(5) requires that the rules of an exchange be designed to promote just and equitable principles of trade, to prevent fraudulent and manipulative acts, and, in general, to protect investors and the public interest. Further, the Commission finds that the proposal is consistent with Section 11(b) of the Act⁹ and Rule 11b-1 thereunder,¹⁰ which allow exchanges to promulgate rules relating to specialists to ensure fair and orderly markets. For the reasons set forth below, the Commission continues to believe that the consideration of specialist capital utilization and near neighbor analysis by the Allocation Committee should enhance the Exchange's allocation process and encourage improved specialist performance, consistent with the protection of investors and the public interest.

Specialists play a crucial role in providing stability, liquidity and continuity to the trading of securities. Among the obligations imposed upon specialists by the Exchange, and by the Act and rules thereunder, is the maintenance of fair and orderly markets in designated securities.¹¹ To ensure that specialists fulfill these obligations, it is important that the Exchange develop objective measures of specialist performance and prescribe stock allocation procedures and policies that encourage specialists to strive for optimal performance. The Commission supports the NYSE's effort to develop objective measures of specialist capital utilization and near neighbor analysis for use in the allocation process to encourage improved specialist performance and market quality.

The Commission believes that extending the pilot period for these two measures is appropriate because the Exchange indicates that it has found these measures useful in providing the NYSE Allocation Committee with objective measures of specialist performance. The NYSE's Allocation Policy emphasizes that the most significant allocation criterion is

⁹ 15 U.S.C. 78k(b).

¹⁰ 17 CFR 240.11b-1.

¹¹ See, *e.g.*, 17 CFR 240.11b-1, NYSE Rule 104.

specialist performance.¹² In the Commission's view, performance based stock allocations not only help to ensure that stocks are allocated to specialists who will make the best markets, but will provide an incentive for specialists to improve their performance or maintain superior performance.

For these reasons and for the other reasons discussed in Securities Exchange Act Release Nos. 33369 and 35927, the Commission has determined to extend the pilot program for these measures through January 10, 1997. The Commission believes that extending the pilot period is appropriate because it will provide the Exchange and the Commission with an opportunity to study further the effects of the use of these measures on the NYSE's allocation process prior to the Exchange's submission of a request for permanent approval of these measures during the four month extension of the pilots. In addition, extending the pilots will permit the measures to run concurrently with the Rule 103A pilot.¹³ During the pilot period, the Commission continues to expect the NYSE to monitor carefully the effects of the near neighbor and capital utilization programs and report its findings to the Commission in order to assist the Commission in considering approval of the pilots on a permanent basis. Specifically, the Commission requests that the Exchange should, for the three month period between April 1, 1996 to June 30, 1996, submit a report that identifies the specialist units, the securities for which they applied, the stocks that were allocated to them, and the specialist units' SPEQ rating as presented to the Allocation Committee.¹⁴ In the report, the Exchange should identify allocations that were made to specialists units with relatively poor tier ratings in the objective measures and discuss the reasons the Allocation Committee made such allocations.¹⁵

¹² See, e.g., Securities Exchange Act Release No. 34906, *supra* note 4.

¹³ In Securities Exchange Act Release No. 37667 (September 11, 1996) (File No. SR-NYSE-96-22), the Commission approved an extension of the NYSE Rule 103A pilot program until January 10, 1997.

¹⁴ The Commission believes that this information will allow it to evaluate the extent to which the Allocation Committee's decisions appear consistent with the relative performance of specialist units according to the objective measures. In this regard, however, the Commission recognizes that the Allocation Committee also considers the SPEQ results and may use its professional judgment in making allocation decisions. See *supra* note 4.

¹⁵ The Exchange may submit one report for both the near neighbor and capital utilization pilots. This report should be submitted to the Commission no later than November 15, 1996, along with any Exchange request for permanent approval of the pilot programs.

The Commission finds good cause for approving the proposed rule change prior to the thirtieth day after the date of publication of notice of filing thereof in the Federal Register. The Commission believes that accelerated approval of the proposal is appropriate because it will enable the Exchange to continue to make use of the capital utilization and near neighbor measures of specialist performance on an uninterrupted basis and will ensure continuity and consistency in the stock allocation deliberation process prior to the Exchange's submission to the Commission of a request for permanent approval of these programs. Further, the initial proposals to adopt both the capital utilization pilot and near neighbor pilot were noticed previously in the Federal Register for the full statutory period and the Commission did not receive any comments on these proposals.¹⁶ Accordingly, the Commission believes good cause exists pursuant to Section 19(b) of the Act to grant accelerated approval of the pilots' extensions.

V. Conclusion

It is therefore ordered, pursuant to Section 19(b)(2)¹⁷ that the proposed rule change (File No. SR-NYSE-96-17), and Amendment No. 1 thereto, is hereby approved on an accelerated basis, through January 10, 1997.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.¹⁸

Jonathan G. Katz,
Secretary.

[FR Doc. 96-23976 Filed 9-18-96; 8:45 am]

BILLING CODE 8010-01-M

[Release No. 34-37677; File No. SR-OCC-96-12]

Self-Regulatory Organizations; the Options Clearing Corporation; Notice of Filing and Immediate Effectiveness of a Proposed Rule Change Regarding Schedule of Fees

September 13, 1996.

Pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 ("Act"),¹ notice is hereby given that on September 9, 1996, The Options Clearing Corporation ("OCC") filed with the Securities and Exchange Commission ("Commission") the proposed rule change as described in Items I, II, and III below, which items

¹⁶ See Securities Exchange Act Release Nos. 33369 and 35927, *supra* note 2.

¹⁷ 15 U.S.C. 78s(b)(2).

¹⁸ 17 CFR 200.30-3(a)(12).

¹ 15 U.S.C. § 78s(b)(1) (1988).

have been prepared primarily by OCC. 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 proposed rule change amends OCC's schedule of fees to increase the price at which certain brochures are sold to the public.

II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, OCC 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. OCC has prepared summaries, set forth in sections (A), (B), and (C) below, of the most significant aspects of such statements.²

(A) Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

OCC and its five participant exchanges collaborate to write, distribute, and print four generic exchange brochures: the Directory of Exchange Listed Options; LEAPS® (long term equity anticipation securities) (in which the New York Stock Exchange does not participate); Taxes and Investing; and Understanding Stock Options. Currently, these brochures are sold to the public either individually at \$.60 each or at \$.50 each for orders greater than 100. This pricing structure has been in place since the late 1980s.

OCC is proposing to increase the price structure of these brochures to \$1.00 each or \$.90 each for orders greater than 100 in light of rising printing and fulfillment costs. The proposed fee change is based on current average printing and fulfillment costs for these brochures. Accordingly, OCC will amend its schedule of fees to reflect this fee increase.

The proposed rule change is consistent with the requirements of Section 17A of the Act³ in that it allocates reasonable fees in an equitable manner in that it reflects OCC's current

² The Commission has modified parts of these statements.

³ 15 U.S.C. 78q-1 (1988).

printing and fulfillment costs for the four brochures.

(B) Self-Regulatory Organization's Statement on Burden on Competition

OCC does not believe that the proposed rule change would impose any burden on competition.

(C) Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received From Members, Participants or Others

Written comments were not and are not intended to be solicited with respect to the proposed rule change, and none have been received.

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

The foregoing rule change has become effective on filing pursuant to Section 19(b)(3)(A)(ii) of the Act⁴ and pursuant to Rule 19b-4(e)(2) thereunder⁵ as it concerns a change in fees. At any time within sixty days of the filing of this 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 Section, 450 Fifth Street, N.W., Washington, D.C. 20549. Copies of such filing will also be available for inspection and copying at the principal office of OCC. All submissions should refer to File No. SR-OCC-96-12 and should be submitted by October 10, 1996.

For the Commission by the Division of Market Regulation, pursuant to delegated authority.⁶

Jonathan G. Katz,

Secretary.

[FR Doc. 96-24056 Filed 9-18-96; 8:45 am]

BILLING CODE 8010-01-M

DEPARTMENT OF TRANSPORTATION

Coast Guard

[CGD 96-0002-CIV]

In the Matter of Energy Technical Services, Inc. & Richard Cunningham

AGENCY: Coast Guard, DOT.

ACTION: Notice of proposed penalty; opportunity to comment.

SUMMARY: The Coast Guard gives notice of, and provides an opportunity to comment on, the proposed assessment of a Class II administrative penalty on Energy Technical Services, Inc. & Richard Cunningham, for violations of the Federal Water Pollution Control Act (FWPCA). This proceeding arises as the result of a discharge of oil beginning on September 29, 1992 and ending on October 8, 1992. The Respondents are charged in one count with unlawfully discharging oil into the navigable waters of the United States in violation of 33 U.S.C. § 1321(b)(6).

Interested persons may submit written comments on the proceeding, including comments on the amount of the proposed penalty, or written notice of intent to present evidence at any hearing held in the proceeding. Interested persons will be given notice of any hearing, a reasonable opportunity to be heard and to present evidence during any hearing, and notice of the decision. If no hearing is held, an interested person may, within 30 days after issuance of an order, petition the Commandant of the Coast Guard to set aside the order and to provide a hearing (33 CFR 20.1102).

DATES: Comments or notice of intent to present evidence at a hearing must be received not later than October 21, 1996.

ADDRESSES: Comments and requests for a hearing may be mailed to the Hearing Docket Clerk, Office of the Chief Administrative Law Judge, Commandant (G-CJ), U.S. Coast Guard, 2100 Second Street, SW., Washington, DC 20593-0001, or may be delivered to room 6302 at the same address between 8 a.m. and 3 p.m., Monday through Friday, except Federal holidays. Filings should reference docket number 96-

0002-CIV. The administrative record for this proceeding is available for inspection at the same address and times.

FOR FURTHER INFORMATION CONTACT:

Mr. George J. Jordan, Director of Judicial Administration, Office of the Chief Administrative Law Judge, Commandant (G-CJ), U.S. Coast Guard, 2100 Second Street SW., Washington, DC 20593-0001, telephone (202) 267-2940.

SUPPLEMENTARY INFORMATION: Notice of this proceeding is given pursuant to the Federal Water Pollution Control Act (33 U.S.C. 1251 et seq.), as amended by the Oil Pollution Act of 1990 and the Coast Guard's Class II Civil Penalty regulations (33 CFR Part 20). The proceeding is initiated under § 311(b) of the FWPCA (33 U.S.C. § 1321(b)).

Although no hearing is yet scheduled, the Coast Guard has asked that any hearing be held in New Orleans, Louisiana. The following additional information is provided:

Respondents: Energy Technical Services, Inc., P.O. Box 52731, Lafayette, Louisiana 70505; Richard Cunningham, 114 Evelyn Avenue, Houma, Louisiana 70363.

Complaint Filed: August 29, 1996, New Orleans, Louisiana.

Docket Number: 96-0002-CIV.

Amount of Proposed Penalty: Richard Cunningham—\$100,000, Energy Technical Services—\$100,000.

Dated: September 11, 1996.

George J. Jordan,

Director of Judicial Administration, Office of the Chief Administrative Law Judge, U.S. Coast Guard.

[FR Doc. 96-24071 Filed 9-18-96; 8:45 am]

BILLING CODE 4910-14-M

Federal Aviation Administration

[AC 43.13-1A]

Proposed Revision B to Advisory Circular (AC) on Acceptable Methods, Techniques and Practices—Aircraft Inspection and Repair

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Notice of availability of the Proposed Revision B to AC 43.13-1A and final request for comments.

SUMMARY: This notice announces the availability of and request comments on proposed revision B to AC 43.13-1A, Acceptable Methods, Techniques, and Practices—Aircraft Inspection and Repair, which provides guidance on acceptable methods, techniques, and practices associated with inspection and

⁴ 15 U.S.C. § 78s(b)(3)(A)(ii) (1988).

⁵ 17 CFR 240.19b-4(e)(4)(2) (1996).

⁶ 17 CFR 200.30-3(a)(12) (1996).

repairs to small, nonpressurized, older aircraft of 12,500 pounds or less. This final notice is necessary to give all interested persons an opportunity to present their views on the proposed revision to the AC. Any comments, corrections or suggestions should reflect the applicable AC chapter, page, and paragraph number. If new data are suggested, a copy of this data, repair methods, inspection procedures, or new techniques should be enclosed with the comments.

DATES: Comments must be received on or before November 15, 1996.

ADDRESSES: Send all comments on the proposed AC to: FAA Manufacturing Standards Section, AFS-610, 6500 MacArthur Boulevard, ARB Room 304, Oklahoma City, Oklahoma 73125. Comments may be inspected at the above address between 9 a.m. and 4 p.m. weekdays, except Federal holidays.

FOR FURTHER INFORMATION CONTACT: Mr. William O'Brien, General Aviation and Commercial Branch, AFS-340, FAA, 800 Independence Avenue, SW., Washington D.C. 20591, telephone (202) 267-3796, facsimile (202) 267-5559.

SUPPLEMENTARY INFORMATION: Requests for copies of the proposed AC can be facsimile to AFS-610 at (405) 954-4104.

Issued in Washington, D.C., on September 12, 1996.

Thomas C. Accardi,

Director, Flight Standards Service.

[FR Doc. 96-24066 Filed 9-18-96; 8:45 am]

BILLING CODE 4910-13-M

Federal Railroad Administration

Petition for Waiver of Compliance

In accordance with Title 49 CFR Sections 211.9 and 211.41, notice is hereby given that the Federal Railroad Administration (FRA) has received a request for waiver of compliance with certain requirements of the Federal safety laws and regulations. The individual petition is described below, including the party seeking relief, the regulatory provisions involved, the nature of the relief being requested, and the petitioner's arguments in favor of relief.

Westinghouse Air Brake Company

[Waiver Petition Docket Number H-92-3]

The Westinghouse Air Brake Company (WABCO), seeks a waiver of compliance with certain provisions of the Locomotive Safety Regulations (49 CFR part 229) for all locomotives equipped with the EPIC® 3101 Microprocessor Controlled Brakes operating in the United States. Section

229.29 stipulates that all brake valves be cleaned, repaired, and tested at intervals that do not exceed 736 calendar days. In 1992, WABCO requested and was granted temporary waivers of compliance (Docket Number H-92-3) with § 229.29, for locomotives equipped with the EPIC® 3101 and 3102 Microprocessor Controlled Brakes, by extending the required time interval from 736 calendar days to five years. In order to determine the optimum maintenance interval for this type of equipment, WABCO has requested that the time intervals for the requirements of § 229.29 be extended to a period of seven years for the eight locomotives (Norfolk Southern 7144-7150 and CP Rail 5501) which are currently equipped with the EPIC® 3101 Microprocessor Controlled Brakes. WABCO has determined the current "mean-time-between-failure" for the Norfolk Southern locomotives to be in excess of 900 days.

Since granting of the original waiver, WABCO has furnished the required quarterly reports of applications and of reported problems. None of the problems are considered related to maintenance intervals.

Interested parties are invited to participate in these proceedings by submitting written views, data, or comments. FRA does not anticipate scheduling a public hearing in connection with these proceedings since the facts do not appear to warrant a hearing. If any interested party desires an opportunity for oral comments, they should notify FRA, in writing, before the end of the comment period and specify the basis for their request.

All communication concerning these proceedings should identify the appropriate docket number (e.g. Docket Number H-92-3) and must be submitted in triplicate to the Docket Clerk, Office of Chief Counsel, FRA, Nassif Building, 400 Seventh Street S.W., Washington, D.C. 20590. Communications received within 45 days of the date of publication of this notice, will be considered by FRA before final action is taken. Comments received after that date will be considered as far as practical. All written communications concerning these proceedings are available for examination during regular business hours (9:00 a.m.-5:00 p.m.) in Room 7051, 1120 Vermont Ave., N.W., Washington, D.C. 20005.

Issued in Washington, D.C. on September 12, 1996.

Phil Olekszyk,

Acting Deputy Administrator for Safety.

[FR Doc. 96-23956 Filed 9-18-96; 8:45 am]

BILLING CODE 4910-06-P

Surface Transportation Board

Release of Waybill Data

The Surface Transportation Board has received a request from ALK Associates, Inc. for permission to use certain data from the Board's 1992 through 1995 Carload Waybill Samples. A copy of the request (WB464-9/6/96) may be obtained from the Office of Economics, Environmental Analysis and Administration.

The waybill sample contains confidential railroad and shipper data; therefore, if any parties object to these requests, they should file their objections with the Director of the Board's Office of Economics, Environmental Analysis and Administration within 14 calendar days of the date of this notice. The rules for release of waybill data are codified at 49 CFR 1244.8.

CONTACT: James A. Nash, (202) 927-6196.

Vernon A. Williams,

Secretary.

[FR Doc. 96-24062 Filed 9-18-96; 8:45 am]

BILLING CODE 4915-00-P

Surface Transportation Board¹

[STB Finance Docket No. 33053]

Lackland Western Railroad Company— Acquisition and Operation Exemption—St. Louis Southwestern Railway Company

Lackland Western Railroad Company (LWRC), a noncarrier, has filed a verified notice of exemption under 49 CFR 1150.31 to acquire and operate approximately 49.2 miles of rail line from the St. Louis Southwestern Railway Company (St. Louis) between Union, MO (SSW/MP 59.5, St. Louis District), and Rock Island Jct., MO (SSW/MP 10.3, St. Louis District). In addition, LWRC will acquire approximately 18.1 miles of trackage rights of St. Louis over Terminal Railroad Association of St. Louis between Rock Island Jct., MO (TRRA/MP 9.31, West Belt District), and Valley Jct., IL (TRRA/MP 7.21, Illinois Transfer District), for a total 67.3 miles of rail line.

The transaction is expected to be consummated on January 1, 1997.

¹ The ICC Termination Act of 1995, Pub. L. 104-88, 109 Stat. 803, which was enacted on December 29, 1995, and took effect on January 1, 1996, abolished the Interstate Commerce Commission and transferred certain functions to the Surface Transportation Board (Board). This notice relates to functions that are subject to Board jurisdiction pursuant to 49 U.S.C. 10901.

If the verified notice contains false or misleading information, the exemption is void *ab initio*. Petitions to reopen the proceeding to revoke the exemption under 49 U.S.C. 10502(d) may be filed at any time. The filing of a petition to revoke will not automatically stay the transaction.

An original and 10 copies of all pleadings, referring to STB Finance Docket No. 33053, must be filed with the Surface Transportation Board, Office of the Secretary, Case Control Branch, 1201 Constitution Avenue NW., Washington, DC 20423. In addition, a copy of each pleading must be served on C.A. Mennell, 31 Oak Terrace, Webster Groves, MO 63119-3614.

Decided: September 11, 1996.

By the Board, David M. Konschnik,
Director, Office of Proceedings.

Vernon A. Williams,

Secretary.

[FR Doc. 96-24061 Filed 9-18-96; 8:45 am]

BILLING CODE 4915-00-P

DEPARTMENT OF THE TREASURY

Fiscal Service

Financial Management Service

Proposed Collection of Information: Management of Federal Agency Disbursements

AGENCY: Financial Management Service, Fiscal Service, Treasury.

ACTION: Notice and request for comments.

SUMMARY: The Financial Management Service, as part of its continuing effort to reduce paperwork and respondent burden, invites the general public and other Federal agencies to comment on a continuing information collection. By this notice, the Financial Management Service solicits comments concerning the information collection for Management of Federal Agency Disbursements.

DATES: Written comments should be received on or before November 18, 1996.

ADDRESSES: Direct all written comments to Financial Management Service, 3361-L 75th Avenue, Landover, Maryland 20785.

FOR FURTHER INFORMATION CONTACT: Requests for additional information or copies of the form(s) and instructions should be directed to Aurora Kassalow, Cash Management Policy and Planning Division, 401-14th St., SW., Washington, DC 20227, (202) 874-7157.

SUPPLEMENTARY INFORMATION: Pursuant to the Paperwork Reduction Act of 1995,

(44 U.S.C. 3506(c)(2)(A)), the Financial Management Service solicits comments on the collection of information described below.

Title: Management of Federal Agency Disbursement.

OMB Number: 1510-0066

Form Number: None

Abstract: Recipients of Federal disbursements must furnish the Financial Management Service with their bank account number and the name and Routing and Transit Number (RTN) of their bank. Recipients without a bank account must certify to that in writing to the Financial Management Service.

Current Actions: Extension of currently approved collection

Type of Review: Regular

Affected Public: Individuals or households

Estimated Number of Respondents: 1300

Estimated Time Per Respondent: 15 minutes

Estimated Total Annual Burden Hours: 325

Comments: Comment submitted in response to this notice will be summarized and/or included in the request for Office of Management and Budget approval. All comments will become a matter of public record. Comments are invited on: (a) whether the collection of information is necessary for the proper performance of the functions of the agency, including whether the information shall have practical utility; (b) the accuracy of the agency's estimate of the burden of the collection of information; (c) ways to enhance the quality, utility, and clarity of the information to be collected on respondents, including through the use of automated collection techniques or other forms of information technology.

Dated: September 16, 1996.

Mitchell A. Levine,

Assistant Commissioner.

[FR Doc. 96-24055 Filed 9-18-96; 8:45 am]

BILLING CODE 4810-55-M

UNITED STATES INFORMATION AGENCY

Culturally Significant Objects Imported for Exhibition; Determinations

Notice is hereby given of the following determinations: Pursuant to the authority vested in me by the Act of October 19, 1965 (79 Stat. 985, 22 U.S.C. 2459), Executive Order 12047 of March 27, 1978 (43 FR 13359, March 29, 1978), and Delegation Order No. 85-5 of June 27, 1985 (50 FR 27393, July 2, 1985), I

hereby determine that the objects to be included in the exhibit, "Charles Rennie Mackintosh" (See list ¹), imported from abroad for the temporary exhibition without profit within the United States, are of cultural significance. These objects are imported pursuant to a loan agreement with the foreign lenders. I also determine that the exhibition or display of the listed exhibit objects at The Metropolitan Museum of Art, New York, New York, from on or about November 18, 1996, to on or about February 16, 1997, the Art Institute of Chicago, Chicago, Ill., from on or about March 26, 1997, to on or about June 22, 1997, and at the Los Angeles County Museum of Art, Los Angeles, CA, from on or about August 1, 1997, to on or about October 12, 1997, is in the national interest. Public Notice of these determinations is ordered to be published in the Federal Register.

Dated: September 13, 1996.

Les Jin,

General Counsel.

[FR Doc. 96-24073 Filed 9-18-96; 8:45 am]

BILLING CODE 8230-01-M

NIS Secondary School Initiative: DC Civics Education Program; Notice—Request for Proposals

SUMMARY: The Office of Citizen Exchanges, Division of the NIS Secondary School Initiative of the United States Information Agency's Bureau of Educational and Cultural Affairs announces an open competition for an assistance award. Public and private non-profit organizations meeting the provisions described in IRS regulation 26 CFR 1.501(c)(3)-1 may apply to develop a program in Washington, DC on the American political system for approximately 150 high school students from the New Independent States (NIS) of the former Soviet Union attending school in the United States during academic year 1996-97. These students will be equitably selected from a group of 1,200 students who are participating in the Division's NIS Academic Year Exchange Program. The Washington program should enable the students to learn about the federal system, observe institutions of the government, hear about and discuss issues on the federal agenda, and interact with government officials. The program should also address the principles of the Constitution and the history of

¹ A copy of this list may be obtained by contacting Ms. Neila Sheahan, Assistant General Counsel, at 202/619-5030, and the address is Room 700, U.S. Information Agency, 301 4th Street, S.W., Washington, D.C. 20547-0001.

federalism. USIA will award one or more grant in this competition.

Overall grant making authority for this program is contained in the Mutual Educational and Cultural Exchange Act of 1961, Public Law 87-256, as amended, also known as the Fulbright-Hayes Act. The purpose of the Act is "to enable the Government of the United States to increase mutual understanding between the people of the United States and the people of other countries . . . ; to strengthen the ties which unite us with other nations by demonstrating the educational and cultural interests, development, and achievements of the people of the United States and other nations * * * and thus to assist in the development of friendly, sympathetic and peaceful relations between the United States and the other countries of the world."

The funding authority for this program is contained in the Freedom Support Act (Pub. L. 102-391). These exchanges represent part of the activities for the NIS Secondary School Initiative and are subject to the availability of funding for the Fiscal Year 1997 program. Programs and projects must conform with Agency requirements and guidelines outlined in the Solicitation Package.

ANNOUNCEMENT TITLE AND NUMBER: All communications with USIA concerning this announcement should refer to the above title and reference number E/P-97-9.

DEADLINE FOR PROPOSALS: All copies must be received at the U.S. Information Agency by 5 p.m. Washington, D.C. time on Friday, October 18, 1996. Faxed documents will not be accepted, nor will documents postmarked October 18, 1996 but received at a later date. It is the responsibility of each applicant to ensure that proposals are received by the above deadline.

FOR FURTHER INFORMATION CONTACT: Please contact the Office of Citizen Exchanges, NIS Secondary School Division—Academic Year Program, Room 320, U.S. Information Agency, 301 4th Street, S.W., Washington, D.C. 20547, Telephone: 202-619-6299, Fax: 202-619-5311, e-mail: nfearhei@usia.gov to request a Solicitation Package, which includes more detailed award criteria; all application forms; and guidelines for preparing proposals, including specific criteria for preparation of the proposal budget. Please specify USIA Program Officer Nancy Fearheiley on all inquiries and correspondences. Interested applicants should read the complete Federal Register announcement before addressing

inquiries to the Office of Citizens Exchanges NIS Secondary School Initiative—or submitting their proposals. Once the RFP deadline has passed, the NIS Secondary School Division may not discuss this competition in any way with applicants until the Bureau proposal review process has been completed.

TO DOWNLOAD A SOLICITATION PACKAGE VIA INTERNET: The entire Solicitation Package may be downloaded from USIA's website at <http://www.usia.gov/> or from the Internet Gopher at <gopher://gopher.usia.gov>. Under the heading "International Exchanges/Training," select "Request for Proposals (RFPs)." Please read "About the Following RFPs" before downloading.

SUBMISSIONS: Applicants must follow all instructions given in the Solicitation Package. The original and six copies of the complete application should be sent to: U.S. Information Agency, Ref.: E/P-97-9, Office of Grants Management, E/XE, Room 336, 301 4th Street, S.W., Washington, D.C. 20547.

Applicants must also submit the "Executive Summary" and "Proposal Narrative" sections of the proposal on a 3.5" diskette, formatted for DOS. This material must be provided in ASCII text (DOS) format with a maximum line length of 65 characters USIA will transmit these files electronically to USIS posts overseas for their review, with the goal of reducing the time it takes to get posts' comments for the Agency's grants review process.

Diversity Guidelines

Pursuant to the Bureau's authorizing legislation, programs must maintain a non-political character and should be balanced and representative of the diversity of American political, social, and cultural life. "Diversity" should be interpreted in the broadest sense and encompass differences including but not limited to ethnicity, race, gender, religion, geographic location, socio-economic status, and physical challenges. Applicants are strongly encouraged to adhere to the advancement of this principle in program administration and in program content. Organizations are encouraged to seek diverse communities and host families in which to place students. Orientation programming should include information on diversity issues as part of American culture and should touch on current laws that mandate equal treatment of all people regardless of race, gender, national origin, or disabling condition. Please refer to the REVIEW CRITERIA under the "Support for Diversity" section for specific

suggestions on incorporating diversity into the total proposal.

SUPPLEMENTARY INFORMATION:

Overview

Grant funding is intended to provide a program in Washington, DC on the American political approximately 150 high school students from the New Independent States (NIS) of the former Soviet Union attending school in the United States during academic year 1996-97. The Washington program should enable the students to learn about the federal system, observe institutions of the government, hear about and discuss issues on the federal agenda, and interact with government officials. The program should address the principles of the Constitution and the history of federalism, along with key developments of the American political history. Special attention should be paid to those issues that will be especially significant to people from the former Soviet Union. The program may also examine the role of the United States in the world. The program should be arranged for 5 to 7 days, including arrival and departure.

The grantee organization will be provided with the names of the students who have been chosen at random by independent, objective selectors. Every effort will be made to ensure that this group is diverse regarding country of origin, ethnicity, age, gender, and physical disability. The Division would welcome suggestions from prospective grantees on creative methods of random selection.

Guidelines

Proposals must effectively describe the organization's ability to accomplish the following essential components of the program:

1. Provide a Washington, DC civics education program as described above during the time period indicated.
2. Provide training for organization staff on NIS society and culture.
3. Provide housing and meals for the students throughout the program.
4. Arrange travel to and from Washington, DC in coordination with Academic Year Program placement organizations. Provide ground transportation for students in the DC area, including to and from airports.
5. Provide opportunities to attend cultural events and visit museums and monuments.
6. Coordinate with USIA's Division for the NIS Secondary School Initiative (E/PY) and Congressional Liaison Office (CL) in arranging Congressional meetings.

7. Provide staff to assist in case of medical emergencies.

8. Incorporate a program component which is designed to facilitate students' transition from the DC program to their host communities.

9. Provide a mechanism for evaluation of the program in terms of its impact on the students and its success in fulfilling the objectives.

Proposed Budget

Organizations must bid on arranging a program for a minimum of 150 students but may increase the number of participants through cost sharing the additional expenses incurred. One grant will be awarded for this activity. It is anticipated that the total costs of the Washington, DC Enhancement program will average \$800 per NIS participant for a five day program, including domestic travel. The organization must submit a comprehensive line item budget. Details are available in the Solicitation Packet.

Review Process

USIA will acknowledge receipt of all proposals and will review them for technical eligibility. Proposals will be deemed ineligible if they do not fully adhere to the guidelines stated herein and in the Solicitation Package. Eligible proposals will be forwarded to panels of USIA officers for advisory review. All eligible proposals will be reviewed by the USIA East European NIS area office, and the budget and contract offices. Proposals may also be reviewed by the Office of the General Counsel or by other Agency elements. Funding decisions are at the discretion of the USIA Associate Director for Educational and Cultural Affairs. Final technical authority for grant awards resides with the USIA's Office of Contracts.

Review Criteria

Technically eligible applications will be competitively reviewed according to the criteria stated below. These criteria are not rank ordered and all carry equal weight in the proposal evaluation:

1. Quality of the Program Idea: Proposals should exhibit originality, substance, precision, and relevance to Agency mission and adherence to the conditions above.

2. Program Planning: Detailed agenda and relevant work plan should adhere to the program objectives, timing, and guidelines described above.

3. Ability to Achieve Program Objectives: Proposals should clearly demonstrate an understanding of the program's objectives stated above and how the organization will achieve them.

4. Support of Diversity: Proposals should demonstrate substantive support of the Bureau's policy on diversity.

Achievable and relevant features should be cited in both program administration (selection of participants, program venue and program evaluation) and program content (orientation and wrap-up sessions, program meetings, resource materials and follow-up activities).

5. Institutional Capacity: Proposed personnel and institutional resources should be adequate and appropriate to achieve and program or project's goals.

6. Institution's Track Record/Ability: Proposals should demonstrate a record of successful programs, including responsible fiscal management and full compliance with all reporting requirements for past Agency grants as determined by USIA's Office of Contracts (M/KG). The Agency will consider the past performance of prior grantees and the demonstrated potential of new applicants.

7. Project Evaluation: The proposal should include a plan to evaluate the success of the grantee organization in achieving the stated objectives. The grantee will also be expected to cooperate with USIA in evaluating the program under the requirements of the Government Performance and Results Act (GPRA). Proposals should reflect an understanding and grasp of these responsibilities.

8. Cost Effectiveness: The overhead and administrative components of grants, as well as salaries and honoraria, should be kept as low as possible. All other items should be necessary and appropriate.

9. Cost Sharing: Proposals should maximize cost-sharing through other private sector support as well as institutional direct funding contributions. Organizations that choose to enhance the program by using private funds to increase the number of participants will be viewed more favorably than those without cost sharing.

Notice

Organizations with less than four years of experience conducting similar programs for foreign visitors in Washington, DC, will be eligible for a grant of less than \$60,000.

The terms and conditions published in this RFP are binding and may not be modified by any USIA representative. Explanatory information provided by the Agency that contradicts published language will not be binding. Issuance of the RFP does not constitute an award commitment on the part of the Government. The Agency reserves the right to reduce, revise, or increase

proposal budgets in accordance with the needs of the program and the availability of funds. The award made will be subject to periodic reporting and evaluation requirements.

Notification

All applicants will be notified of the results of the review process on or after December 6, 1996. Awards made will be subject to periodic reporting and evaluation requirements.

Dated: September 13, 1996.

John P. Loiello,

Associate Director, Bureau of Educational and Cultural Affairs.

[FR Doc. 96-23985 Filed 9-18-96; 8:45 am]

BILLING CODE 8230-01-M

DEPARTMENT OF VETERANS AFFAIRS

VA Innovations in Nursing Advisory Committee, Notice of Establishment

As required by Section 9(a)(2) of the Federal Advisory Committee Act, U.S.C. (App. 1), the VA hereby gives notice of the establishment of the VA Innovations in Nursing Advisory Committee. VA has determined that this action is in the public interest.

The objectives of this Committee are to advise the Under Secretary for Health about nursing innovations and specify changes necessary for VA to foster this progress. The Committee will review current innovations in nursing, current organizational incentives that foster innovation, current disincentives for innovations and suggested opportunities for enhanced innovation. The Committee will examine such issues as: clinical care, education, management, research, information management, non-traditional roles and creative alternatives to current practice.

The Committee membership will be selected on the basis of professional expertise in current and future health care and nursing innovations. To ensure a balance, the Committee will be composed of a broad array of interdisciplinary individuals with expertise in current health care practices, business practices and entrepreneurial ventures. Some members will be selected from within VA to assure current policies and procedures are incorporated in the context of new recommendations developed by the Committee. Appointments will be for the duration of the Committee unless otherwise directed by the Secretary of Veterans Affairs. This is a mission-specific committee which will be terminated as soon as the stated mission is complete.

The Designated Federal Official for the Committee is Charlotte Beason, Ed.D., RN, Nursing Service Program Coordinator, Veterans Health Administration, at (202) 273-8422.

Dated: September 11, 1996.

By Direction of the Secretary.

Eugene A. Brickhouse,
Committee Management Officer.

[FR Doc. 96-23992 Filed 9-18-96; 8:45 am]

BILLING CODE 8320-01-M

Advisory Committee on Cemeteries and Memorials; Notice of Meeting

The Department of Veterans Affairs (VA) gives notice that a meeting of the Advisory Committee on Cemeteries and Memorials, authorized by 38 U.S.C. 2401, will be held at the Capitol Plaza Hotel, 100 State Street, Montpelier, Vermont 05602. This will be the committee's first meeting of fiscal year 1997 and will primarily address issues concerning the manufacturing of VA headstones and markers.

The meeting will convene at 8:00 a.m. (EST) on October 16, 1996 and will adjourn at 5:00 p.m. (EST) October 17, 1996. On October 16, 1996, the Advisory Committee will visit granite quarries in Barre, Vermont, in the morning and will visit the monument manufacturers in the afternoon. The purpose of these site visits is to allow the Advisory Committee to view start-to-finish processing of VA's applications for headstone and markers and to observe the process from a contractor's perspective.

The following day at 8:00 a.m. the Committee will reconvene to discuss old business and to travel to Vermont Veterans Memorial Cemetery, the state's only State Veterans Cemetery. The meeting will adjourn at 5:00 p.m.

The meeting will be open to the public. Those wishing to attend should contact Ms. Dina Wood, Special Assistant to the Director, National Cemetery System [phone (202) 273-5235] not later than 12 noon, EST, October 10, 1996.

Any interested person may attend, appear before, or file a statement with

the Committee. Individuals wishing to appear before the Committee should indicate this in a letter to the Director, National Cemetery System (40) at 810 Vermont Avenue, NW., Washington, DC 20420. In any such letters, the writers must fully identify themselves and state the organization, association or person they represent. Also, to the extent practicable, letters should indicate the subject matter they want to discuss. Oral presentations should be limited to 10 minutes in duration. Those wishing to file written statements to be submitted to the Committee must also mail, or otherwise deliver, them to the Director, National Cemetery System.

Letters and written statements as discussed above must be mailed or delivered in time to reach the Director, National Cemetery System, by 12 noon EST, October 10, 1996. Oral statements will be heard only between 3:00 p.m. and 5:00 p.m. EST, October 17, 1996 at the Capitol Plaza Hotel, Montpelier, Vermont.

Dated: September 10, 1996.

By Direction of the Secretary.

Eugene A. Brickhouse,
Committee Management Officer.

[FR Doc. 96-23991 Filed 9-18-96; 8:45 am]

BILLING CODE 8320-01-M

Medical Research Service Cooperative Studies Evaluation Committee; Notice of Meeting

The Department of Veterans Affairs gives notice under Pub. L. 92-463 (Federal Advisory Committee Act) as amended, by section 5 (c) of Pub. L. 94-409 that a meeting of the Medical Research Service Cooperative Studies Evaluation Committee will be held at the Madison Hotel, 15th and M Streets, N.W. Washington, D.C. 20005, October 28-29, 1996. The session on October 28 is scheduled to begin at 7:30 a.m. and end at 5 p.m. and on October 29 from 7:30 a.m. to 12:45 p.m. The meeting will be for the purpose of reviewing two new protocols for multi-hospital clinical trial: one on comparison of three procedures for bleeding esophageal varices and one on specialized

medication and revascularization therapy and progress of four on-going cooperative studies, one on genetic study on schizophrenia; one on secondary prevention of heart attack; one on treatment of chronic obstructive pulmonary disease; and one on prostate cancer.

The Committee advises the Director, Medical Research Service, through the Chief of the Cooperative Studies Program on the relevance and feasibility of the studies, the adequacy of the protocols, and the scientific validity and propriety of technical details, including protection of human subjects.

The meeting will be open to the public up to the seating capacity of the room from 7:30 a.m. to 8:00 a.m. on both days to discuss the general status of the program. To assure adequate accommodations, those who plan to attend should contact Dr. Ping Huang, Coordinator, Medical Research Service, Cooperative Studies Evaluation Committee, Department of Veterans Affairs, Washington, DC, (202.273.8295), prior to October 21, 1996.

The meeting will be closed from 8:00 a.m. to 5:00 p.m. on October 28, 1996 and from 8:00 a.m. to 12:45 p.m. on October 29, 1996 for consideration of specific proposal in accordance with provisions set forth in section 10(d) of Pub. L. 92-463, as amended by section 5(c) of Pub. L. 94-409, and 5 U.S.C. 552b(c)(6). During this portion of the meeting, discussions and recommendations will deal with qualifications of personnel conducting the studies, staff and consultant critiques of research protocols, and similar documents, and the medical records of patients who are study subjects, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

Dated: September 11, 1996.

By Direction of the Secretary.

Eugene A. Brickhouse,
Committee Management Officer.

[FR Doc. 96-23990 Filed 9-18-96; 8:45 am]

BILLING CODE 8320-01-M

Federal Register

Thursday
September 19, 1996

Part II

Department of Education

34 CFR Part 682
Federal Family Education Loan (FFEL)
Program; Proposed Rule

DEPARTMENT OF EDUCATION**34 CFR Part 682**

RIN 1840-AC33

Federal Family Education Loan (FFEL) Program

AGENCY: Department of Education.

ACTION: Notice of proposed rulemaking.

SUMMARY: The Secretary proposes to amend the Federal Family Education Loan (FFEL) Program regulations. These proposed regulations are needed to implement changes to the Higher Education Act of 1965, as amended (HEA) giving the Secretary additional powers to assure the safety of Federal reserve funds and assets maintained by guaranty agencies insuring educational loans under the FFEL Program pursuant to agreements with the Secretary. The proposed regulations would establish appropriate conflicts of interest restrictions for guaranty agency staff and affiliated individuals and would prohibit agencies from using Federal reserve funds for certain purposes.

DATES: Comments must be received on or before November 4, 1996.

ADDRESSES: All comments concerning these proposed regulations should be addressed to Ms. Pamela A. Moran, Chief, Loans Branch, Policy Development Division, Student Financial Assistance Programs, U.S. Department of Education, 600 Independence Avenue, SW., Room 3053, Regional Office Building 3, Washington, DC 20202-5449. Comments may also be sent through the internet to "ga_reserves@ed.gov".

To ensure that public comments have maximum effect in developing the final regulations, the Department urges the commenters to clearly identify the specific section or sections of the regulations that each comment addresses and to provide comments in the same order as those sections appear in the regulations. The Department has found it very helpful if commenters who wish to modify a proposed provision submit their version of how they believe the specific regulatory provision should read.

Comments that concern information collection requirements must be sent to the Office of Management and Budget at the address listed in the Paperwork Reduction Act section of this preamble. A copy of those comments may also be sent to the Department representative named in this section.

FOR FURTHER INFORMATION CONTACT: Mr. George Harris, Senior Policy Specialist, U.S. Department of Education, 600

Independence Avenue, SW., Room 3045, Regional Office Building 3, Washington, DC 20202-5449. Telephone: (202) 708-8242. Individuals who use a telecommunications device for the deaf (TDD) may call the Federal Information Relay Service (FIRS) at 1-800-877-8339 between 8 a.m. and 8 p.m., Eastern time, Monday through Friday.

SUPPLEMENTARY INFORMATION:**Background**

The FFEL Program regulations (34 CFR Part 682) govern the Federal Stafford Loan Program, the Federal Supplemental Loans for Students Program (no longer active), the Federal PLUS Program, and the Federal Consolidation Loan Program (formerly collectively known as the Guaranteed Student Loan Programs). A guaranty agency is a State or private nonprofit entity that performs certain administrative roles in the FFEL Program. The Department's regulations require the guaranty agency to deposit all funds received in connection with its FFEL guaranty activities into a reserve fund to be used solely for its activities as a guaranty agency under the FFEL Program. The regulations also specify that the reserve fund may only be used to pay certain costs associated with those programmatic activities. See 34 CFR 682.410(a). Under section 422(g) of the HEA, the reserve funds and assets of the guaranty agencies are the property of the United States.

In light of its role in the program and its responsibility for holding and protecting Federal funds, the guaranty agency's role is best characterized as that of a trustee holding money for the benefit of another. See *Education Assistance Corp. v. Cavazos*, 902 F.2d 617, 627 (8th Cir. 1990), cert. denied 111 S.Ct. 246 (1990); *Ohio Student Loan Com'n v. Cavazos*, 900 F.2d 894 (6th Cir. 1990), cert. denied 111 S.Ct. 245 (1990); *Student Loan Fund of Idaho v. Riley*, Case No. CV 94-0413-S-LMB (D.Ida, Memo. Decision, Sept. 14, 1995) at 17-19. Under these circumstances, a guaranty agency is responsible for acting as a fiduciary responsible for protecting the interests of the Department and the taxpayers in the reserve funds.

Over the years, some guaranty agencies, both State and private nonprofit, have become involved in activities outside of their FFEL guaranty activities. Since the FFEL Program reserve fund may be used only for FFEL guaranty activities, any other activities should have been funded exclusively from sources unrelated to the FFEL guaranty activities. These sources may

include specifically designated State appropriations or private capital raised independently of the agency's FFEL guaranty activities. If a guaranty agency has consistently funded and maintained these non-FFEL guaranty funds separate from its reserve funds, the separate funds are not covered by the restrictions in the Department's regulations. These proposed regulations cover only expenditures made from the reserve fund.

The Secretary understands that some guaranty agencies involved in separately funded non-FFEL guaranty activities use personnel and resources to perform both the activities of the FFEL guaranty agency and other activities. It is vital for the guaranty agency to establish and comply with a plan for allocating costs appropriately between the FFEL guaranty activities and other activities to ensure that Federal funds are not subsidizing non-FFEL guaranty activity. Thus, under § 682.418(c) in these proposed regulations, each guaranty agency that shares costs with any other program, agency, or organization must develop a cost allocation plan consistent with the requirements described in OMB Circular A-87 and maintain the plan and related supporting documentation for audit. A guaranty agency would be required to submit its cost allocation plans for the Secretary's approval if it is specifically requested to do so by the Secretary.

The Secretary is also aware that some guaranty agencies have contracted with other entities associated with the guaranty agency (through a shared holding company-like corporate structure or interlocking governing boards or officers) for services and goods. These arrangements raise the possibility of self-dealing and create concerns that the guaranty agency or its contracting officials may have a conflict of interest in establishing and monitoring the contracting arrangement. These proposed regulations address these issues.

In developing these proposed regulations, the Secretary has attempted to modify various governmentwide rules to fit the unique role and structure of guaranty agencies. As noted earlier, guaranty agencies receive and hold Federal funds to pay certain FFEL Program costs and expenses. They are trustees for the Federal Government and are expected to comply with fiduciary standards. Although guaranty agencies are not Federal contractors, the Secretary did consider whether, to protect the Federal fiscal interest, the Secretary should require agencies to conform to the strict rules applicable to government contractors in the areas of

permissible costs, required cost allocation, and conflicts of interest. However, the Secretary believes that it is not yet necessary to require a strict application of those rules to the guaranty agencies. Instead, the Secretary is proposing in this NPRM a more limited approach that is tailored to address the specific issue of reserve funds and to clarify ambiguities that have led to some of the concerns identified previously.

Prior to the publication of these proposed regulations, representatives of the Department met in Washington, DC on July 22–23, 1996 with representatives of guaranty agencies, the National Council of Higher Education Loan Programs, Inc., and other interested parties from various sectors of the FFEL and student aid community for the purpose of learning their views on the direction that the proposed regulations should take. Although any regulations the Secretary proposes pursuant to section 422(g)(1)(C) of the HEA to prevent the “misapplication, misuse, or improper expenditure of reserve funds and assets” are not required to be developed under a formal negotiated rulemaking process, the Department generally has found consultative dialogue with the FFEL industry to be helpful. In this respect, the parties at the consultation meeting provided useful information concerning some of the major points that the Department would need to take into consideration while drafting proposed regulations designed to assure the safety of reserve funds and assets maintained by guaranty agencies in the FFEL Program.

Proposed Regulatory Changes

The Secretary proposes to amend the following sections of the regulations:

Section 682.401 Basic Program Agreement

These regulations codify, in § 682.401(b)(28), the Department’s existing policy concerning the conversion of a guaranty agency’s loan records system if an agency plans to place its new guarantees or convert the records relating to its existing guaranty portfolio to an information or computer system that is owned by or otherwise under the control of an entity that is different than the party that owns or controls the agency’s existing information or computer system.

Section 682.410 Fiscal, Administrative, and Enforcement Requirements

Section 682.410(a)(2)—The Secretary proposes to clarify in § 682.410(a)(2)(i)

that a guaranty agency may use the reserve fund to pay an insurance claim only if the claim would meet the Federal reinsurance requirements specified in § 682.406 at the time the agency pays the claim.

If a guaranty agency fails to comply with Federal reinsurance requirements to the extent that the agency’s failure caused a lender’s properly serviced and submitted claim to be considered an ineligible claim for purposes of allowing the agency to receive a Federal reinsurance payment from the Secretary, the FFEL reserve fund may not be used by the agency to pay the claim. However, the Secretary expects that the agency would comply with any contractual agreement it had with the lender that would support the lender’s demand that the agency use or obtain non-FFEL funding to honor the terms of the agency’s insurance agreement with the lender.

Section 682.410(a)(11)—The proposed regulations add a definition of the term “reasonable cost” that would apply to guaranty agency reserve fund expenditures.

Section 682.410(b)(11)—The Secretary proposes to amend the FFEL Program regulations to require guaranty agencies to prohibit conflicts of interest by guaranty agency staff and affiliated individuals.

On November 29, 1993, the Director of the Office of Management and Budget published OMB Circular A–110 (“Uniform Administrative Requirements for Grants and Agreements with Institutions of Higher Education, Hospitals, and other Non-Profit Organizations”). This circular contains standards for obtaining consistency and uniformity among Federal agencies in the administration of grants to, and agreements with, institutions of higher education, hospitals, and other nonprofit organizations. OMB Circular A–110 is 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”).

After reviewing OMB Circular A–110, the Secretary has determined that, to maintain program integrity, the Secretary must issue regulations restricting actual or potential conflicts of interest among guaranty agencies and their personnel. In light of past reviews finding significant problems resulting from affiliations between guaranty agencies and other FFEL Program

participants, such as secondary markets and lender servicers, the Secretary initially considered a strict prohibition on any connection between guaranty agencies and those other organizations. A “bright line prohibition” would be easier for the Secretary to monitor and would provide the most assurance of program integrity. However, given the common and longstanding affiliations in the FFEL Program and wishing to minimize the potentially disruptive effect on the continuation of loans to students and parents that could result from a total divestiture of all guaranty agency affiliations, the Secretary is proposing a more conservative approach to determine if that approach would achieve the goal of preventing conflicts of interest involving guaranty agencies and their personnel. Therefore, these proposed regulations would require the adoption by guaranty agencies of appropriate procedures and policies to require—(a) increased auditing of the agency’s claims review process; (b) independent reporting lines for agency staff involved in the claim review function; and (c) sufficient internal controls to ensure that staff involved in originating and servicing loans are not involved in the claims review process. In addition, under the proposed “prohibited uses of the reserve fund” section in § 682.418(a), further protection of the Federal fiscal interest would be provided by the Secretary’s proposal to prohibit an agency from making any payment for goods, property, or services provided by an affiliated organization that exceeds the affiliated organization’s actual and reasonable cost of providing those goods, property, or services, unless the guaranty agency demonstrates to the Secretary, and receives the Secretary’s concurrence, that such a payment is in the Federal fiscal interest. However, in light of the previous discussion of the “bright line prohibition,” the Secretary requests comment on that approach.

When the Department’s Inspector General reviewed the management structures and affiliations at 12 selected guaranty agencies that held \$59 billion in loan guarantees for the period ending September 30, 1992, the Inspector General concluded that those guaranty agencies had potential conflicts of interest involving a significant portion of their loan portfolios. At the beginning of fiscal year 1996, the original principal amount of outstanding loans insured by guaranty agencies exceeded \$123 billion. Based on the Inspector General’s previous analysis, this suggests that a substantial portion of the loan portfolios held by all agencies may continue to be

at risk because of guaranty agency organizational structures and affiliations that have caused real or potential conflicts of interest. Therefore, given the magnitude of the Federal interest that guaranty agencies administer under their agreements with the Secretary, the Secretary has decided to couple the protections proposed in these regulations with a provision stating that the Secretary may impose more stringent requirements, including requiring the agency's total divestiture of any interest in an affiliated organization, if the agency fails to comply with these requirements or there is evidence of a compromised claims review process. The Secretary expects that the more limited restrictions will eliminate the need for stricter measures. However, public comment is solicited as to whether a strict prohibition against an agency having any affiliation with another organization would be more appropriate at this time.

These proposed regulations are intended to avoid the potential misuse of a guaranty agency's reserve fund if the guaranty agency contracts for goods, property, or services with an organization with which it is affiliated or with which it has overlapping personnel or financial interests. As the Secretary has previously stated, "it is already well understood that * * * [existing regulations were not] meant to permit excessive or unreasonable expenditures." 59 FR 41184-85 (August 10, 1994). This current understanding would be made explicit in proposed § 682.418(a)(1). In addition, under existing law, the guaranty agency and its personnel must act consistently with their fiduciary obligations in all procurement activities. Nevertheless, the Secretary is concerned that a guaranty agency may have an incentive to use its reserve fund to pay unreasonable prices and fees for supplies, equipment, property, and services provided by an affiliated organization or one with overlapping personnel or financial interests, and the Secretary is now proposing the requirement of specific conflict of interest codes to deal with this potential for abuse.

If there are overlapping personnel or financial interests or both between the guaranty agency and another party to a procurement, it is possible that decisions concerning the appropriate use of the guaranty agency's reserve fund could be improperly influenced by prospects of personal gain resulting from the guaranty agency's payment of unreasonable prices and fees. In this instance, the interests of borrowers and taxpayers would be relegated to a

secondary consideration. The proposed conflict of interest codes address this potential influence by prohibiting guaranty agency personnel from participating in the procurement process if they have a real or potential conflict of interest.

Currently, in the case of an affiliation between a guaranty agency and the party supplying goods, property, or services to the agency, the existing fiduciary obligations of guaranty agencies and their personnel preclude them from delegating to affiliated organizations functions previously performed by the guaranty agency itself, unless the affiliated organization provides those goods, property, or services to the guaranty agency at its actual cost. Although no occasion has yet come to the Secretary's attention in which the delegated function had never been performed by the guaranty agency itself, similar fiduciary principles would also be applicable to this latter situation. The proposed regulations would codify the effect of these existing fiduciary requirements by prohibiting a guaranty agency from making any payments to affiliated organizations for goods, property, or services if those payments exceed the affiliated organization's actual and reasonable cost of providing them. Since there may be exceptional circumstances in which a compelling reason justifies payments that may appear to exceed the reasonable costs for supplies, equipment, property, and services provided to a guaranty agency by an affiliate, a guaranty agency may demonstrate to the Secretary, on a case-by-case basis, that such a payment would be in the Federal fiscal interest. If the Secretary agrees with the guaranty agency's proposed payment, the Secretary would notify the guaranty agency that it may use its reserve fund to pay for the goods, property, or services in question.

The proposed regulations generally follow the governmentwide codes of conduct provisions established in OMB Circular A-110. The Secretary has determined that a guaranty agency administered under the authority of a State as a political subdivision or agency of the State is subject to oversight pursuant to State codes of conduct rules affecting personnel and contracting procedures. In the Secretary's view, the various State codes of conduct laws provide protection of the Federal fiscal interest that would meet some of the requirements of the conflict of interest provisions proposed in these regulations and provide special protection of the Federal fiscal interest unavailable in other agencies. Therefore, for purposes of these proposed

regulations, a State guaranty agency whose employees are covered under codes of conduct established by State law would be exempted from the general prohibition proposed in § 682.410(b)(11)(i)(A) against agency employees, officers, trustees, or agents being engaged in the selection, award, and administration of contracts or agreements. However, a State guaranty agency would not be exempted from either the specific provisions proposed in § 682.410(b)(11)(i)(B) relating to claims processing or the prohibition proposed in § 682.410(b)(11)(i)(C) relating to the solicitation or acceptance of gratuities, favors, or anything of monetary value from contractors or parties to agreements. This exemption for States is designed to tailor the regulations to only those situations in which Federal action is necessary.

Section 682.418 Prohibited Uses of Reserve Fund Assets

The Secretary proposes to add a new § 682.418 to specify certain uses of a guaranty agency's reserve fund that are prohibited.

The Secretary, Congress, and other parties have been concerned about the improper uses of the Federal reserve funds by guaranty agencies. In the course of conducting program reviews of guaranty agencies, the Department has found that some guaranty agencies have used the reserve fund, which is intended to be used for the benefit of students and taxpayers, to pay excessive compensation to their officers and employees or have spent excessive amounts of the reserve fund on buildings or equipment and other assets. The Department's reviewers have also found that some guaranty agencies frequently use the reserve fund for costs of entertaining school personnel and other individuals for purposes unrelated to the fulfillment of the agency's responsibilities under the HEA. The use of Federal funds to pay for a guaranty agency's hospitality suite or entertainment at functions such as school association meetings clearly is not the type of expense for which the reserve fund is intended, nor should the assets of the reserve fund be used by the agency to pay its legal expenses in contesting the Secretary's efforts to enforce regulatory or statutory requirements against the agency. The concerns that Congress had about these abuses were instrumental in its decision to legislate in this area. The Omnibus Budget Reconciliation Act of 1993 (Pub. L. 103-66) was enacted on August 10, 1993, and added section 422(g)(1)(C) of the HEA, which authorized the Secretary to direct guaranty agencies to

cease and desist from any misapplication, misuse, or improper expenditure of reserve funds and assets.

To implement this requirement, the Secretary has determined that it is appropriate to issue regulations governing cost principles and cost allocation for guaranty agencies and identifying prohibited costs that a guaranty agency may not charge to the reserve fund under the FFEL Program. As explained in the following paragraphs, under existing regulations the Secretary has expected guaranty agencies to follow, as appropriate, OMB Circular A-87 ("Cost Principles for State and Local Governments") and OMB Circular A-122 ("Cost Principles for Nonprofit Organizations"). However, the Secretary has determined that the OMB circulars do not fully address the issues raised by the activities of guaranty agencies. Accordingly, the Secretary has decided to issue these proposed regulations based in large measure on the OMB circulars.

Currently, under § 682.410(b)(1)(i), a guaranty agency that is a State agency must have an audit conducted in accordance with 31 U.S.C. chapter 75 (the "Single Audit Act"). Under the Single Audit Act, the Director of the Office of Management and Budget has issued OMB Circular A-128 ("Audits of State and Local Governments"), which requires the auditor to determine that amounts claimed are determined in accordance with OMB Circular A-87. Thus, while there is no explicit provision in the Department's regulations requiring a State guaranty agency to follow the cost principles of OMB Circular A-87, a failure to do so could result in an audit finding that the agency violated the Department's regulations by failing to comply with these principles.

With regard to nonprofit guaranty agencies, § 682.410(b)(1)(ii) currently requires that an audit be conducted in accordance with OMB Circular A-133 ("Audits of Institutions of Higher Education and other Non-Profit Institutions"). OMB Circular A-133 requires the auditor to determine that amounts claimed were determined in accordance with OMB Circular A-122. Some guaranty agencies have misinterpreted the language in OMB Circular A-133 that states "* * * the auditor shall determine whether * * * amounts claimed or used for matching were determined in accordance with * * * Circular A-122." These guaranty agencies interpreted this to mean that the only funds covered by the circular are matching funds. The Secretary believes that such an interpretation is incorrect. The definition of Federal

financial assistance in Circular A-133 does not limit that assistance to matching funds.

The proposed regulations generally follow existing governmentwide cost principles established in OMB Circulars A-87 and A-122. The Secretary has determined, however, that to ensure the efficient and effective operation of the FFEL Program, some cost items prohibited under those OMB circulars should be allowable under the FFEL Program, and some limits specific to the guaranty agencies should be imposed. OMB Circular A-122 also includes definitions of items of cost that the Secretary believes should apply to guaranty agency operations in these proposed regulations.

Executive Order 12866

1. Potential Costs and Benefits

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 proposed 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 the title IV, HEA programs effectively and efficiently. Burdens specifically associated with information collection requirements, if any, are identified and explained elsewhere in this preamble under the heading of Paperwork Reduction Act of 1995.

In assessing the potential costs and benefits—both quantitative and qualitative—of these proposed regulations, the Secretary has determined that the benefits of the proposed regulations justify the costs.

The Secretary has also determined that this regulatory action does not unduly interfere with State, local, and tribal governments in the exercise of their governmental functions.

To assist the Department in complying with the specific requirements of Executive Order 12866, the Secretary invites comment on whether there may be further opportunities to reduce any potential costs or increase potential benefits resulting from these proposed regulations without impeding the effective and efficient administration of the title IV, HEA programs.

Summary of Potential Costs and Benefits

The potential costs and benefits of these proposed regulations are discussed elsewhere in this preamble

under the headings Proposed Regulatory Changes and Paperwork Reduction Act of 1995.

2. Clarity of the Regulations

Executive Order 12866 requires each agency to write regulations that are easy to understand.

The Secretary invites comments on how to make these proposed regulations easier to understand, including answers to questions such as the following: (1) Are the requirements in the proposed regulations clearly stated? (2) Do the proposed regulations contain technical terms or other wording that interferes with their clarity? (3) Does the format of the proposed regulations (grouping and order of sections, use of headings, paragraphing, etc.) aid or reduce their clarity? Would the proposed regulations be easier to understand if they were divided into more (but shorter) sections? (A section is preceded by the symbol "§" and a numbered heading; for example, § 682.410 Fiscal, administrative, and enforcement requirements.) (4) Is the description of the proposed regulations in the "Supplementary Information" section of this preamble helpful in understanding the proposed regulations? How could this description be more helpful in making the proposed regulations easier to understand? (5) What else could the Department do to make the proposed regulations easier to understand?

A copy of any comments that concern how the Department could make these proposed regulations easier to understand should be sent to Stanley M. Cohen, Regulations Quality Officer, U.S. Department of Education, 600 Independence Avenue, S.W. (Room 5100, FB-10B), Washington, DC 20202-2241.

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.

Guaranty agencies are financial organizations. According to the U.S. Small Business Administration Size Standards, financial organizations with less than \$100 million in assets are classified as small entities. All guaranty agencies have at least \$100 million in assets. Therefore, there are no small entities affected by these proposed regulations.

Paperwork Reduction Act of 1995

Section 682.418 contains information collection requirements. As required by the Paperwork Reduction Act of 1995 (44 U.S.C. 3507(d)), the Department of Education has submitted a copy of this

section to the Office of Management and Budget (OMB) for its review.

Collection of Information: Federal Family Education Loan Program. Documentation and notification requirements.

Guaranty agencies receive payments from the Secretary and others for exclusive use in the FFEL Program, and the accumulated surplus of those payments over permissible expenditures is Federal property to be returned to the Secretary upon the guaranty agency's termination or under certain other circumstances. The Secretary needs and uses the information to determine whether the guaranty agencies comply with the requirements for safeguarding this property and the limitations on its use.

Section 682.418(c) of these regulations requires a guaranty agency that shares costs with any other program, agency, or organization to develop a cost allocation plan consistent with the requirements described in OMB Circular A-87 and to maintain the plan and related supporting documentation for audit. A guaranty agency is not required to submit its cost allocation plans for the Secretary's approval unless it is specifically requested to do so by the Secretary. There is no requirement to annually report this information to the Secretary. However, the annual recordkeeping burden required by the development of an agency's cost allocation plan and the maintenance of required supporting documentation for audit is estimated to be one hour for each of the agencies that would be subject to this requirement. There are 36 existing guaranty agencies. Approximately 25 of those agencies share costs with other programs, agencies, or organizations. The Secretary estimates that it will take each of the 25 agencies approximately 1 hour to develop its cost allocation plan, resulting in a collective annual recordkeeping burden of 25 hours for all of those agencies. The maintenance of documentation supporting an agency's shared costs is already required under existing regulations in § 682.410(a); thus, these proposed regulations add no new burden in that area.

Organizations and individuals desiring to submit comments on the information collection requirements should direct them to the Office of Information and Regulatory Affairs, OMB, room 10235, New Executive Office Building, Washington, DC 20503; Attention: Desk Officer for U.S. Department of Education.

The Department considers comments by the public on this proposed collection of information in—

- Evaluating whether the proposed collection of information is necessary for the proper performance of the functions of the Department, including whether the information will have practical use;

- Evaluating the accuracy of the Department's estimate of the burden of the proposed collection of information, including the validity of the methodology and assumptions used;

- Enhancing the quality, usefulness, and clarity of the information to be collected; and

- Minimizing the burden of the collection of information on those who are to respond, including through the use of appropriate automated, electronic, mechanical, or other technological collection techniques or other forms of information technology; e.g., permitting electronic submission of responses.

OMB is required to make a decision concerning the collection of information contained in these proposed regulations between 30 and 60 days after publication of this documentation in the Federal Register. Therefore, a comment to OMB is best assured of having its full effect if OMB receives it within 30 days of publication. This does not affect the deadline for the public to comment to the Department on the proposed regulations.

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 3042, Regional Office Building 3, 7th and D Streets, 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.

Assessment of Educational Impact

The Secretary particularly requests comments on whether the proposed regulations in this document would require transmission of information that is being gathered by or is available from any other agency or authority of the United States.

List of Subjects in 34 CFR Part 682

Administrative practice and procedure, Colleges and universities, Education, Loan Programs, Reporting and recordkeeping requirements, Student aid, Vocational education.

Dated: September 12, 1996.

Richard W. Riley,
Secretary of Education.

(Catalog of Federal Domestic Assistance Number 84.032 Federal Family Education Loan Program)

The Secretary proposes to amend title 34 of the Code of Federal Regulations by revising Part 682 as follows:

PART 682—FEDERAL FAMILY EDUCATION LOAN (FFEL) PROGRAM

1. The authority citation for Part 682 continues to read as follows:

Authority: 20 U.S.C. 1071 to 1087-2, unless otherwise noted.

2. Section 682.401 is amended by adding a new paragraph (b)(28) to read as follows:

§ 682.401 Basic program agreement.

* * * * *

(b) * * *

(28) *Change in agency's records system.* The agency shall provide written notification to the Secretary 30 days prior to placing its new guarantees or converting the records relating to its existing guaranty portfolio to an information or computer system that is owned by or otherwise under the control of an entity that is different than the party that owns or controls the agency's existing information or computer system. If the agency is soliciting bids from third parties with respect to a proposed conversion, the agency shall provide written notice to the Secretary as soon as the solicitation begins. The notifications described in this paragraph must include a concise description of the agency's conversion project and the actual or estimated cost of the project.

* * * * *

3. Section 682.410 is amended by revising the introductory text in paragraph (a)(2), revising paragraphs (a)(2) (i), (ii), and (x), and adding new paragraphs (a)(11)(iii) and (b)(11) to read as follows:

§ 682.410 Fiscal, administrative, and enforcement requirements.

(a) * * *

(2) *Uses of reserve fund assets.* A guaranty agency may not use the assets of the reserve fund established under paragraph (a)(1) of this section to pay costs prohibited under § 682.418, but shall use the assets of the reserve fund to pay only—

(i) Insurance claims that meet the requirements of § 682.406 at the time the claims are paid;

(ii) Costs that are reasonable, as defined under § 682.410(a)(11)(iii), and that are ordinary and necessary for the

agency to fulfill its responsibilities under the Act, including costs of collecting loans, providing preclaims assistance, monitoring enrollment and repayment status, and carrying out any other guaranty activities. Those costs must be—

- (A) Allocable to the FFEL Program;
- (B) Not prohibited under applicable Federal, State, or local laws or regulations;
- (C) In compliance with any limitations or exclusions contained in the regulations in this part, Federal laws, terms and conditions of the agency's agreements with the Secretary, or other governing regulations as to types or amounts of cost items;
- (D) Not higher than the agency would incur under established policies, regulations, and procedures that apply to any non-Federal activities of the guaranty agency;
- (E) Not included as a cost or used to meet cost sharing or matching requirements of any other federally supported activity, except as specifically provided by Federal law;
- (F) The net of all applicable credits; and
- (G) Documented in accordance with applicable legal and accounting standards;

* * * * *

(x) Any other costs or payments ordinary and necessary to perform functions directly related to the agency's responsibilities under the Act and for their proper and efficient administration;

* * * * *

(11) * * *

(iii) *Reasonable cost* means a cost that, in its nature and amount, does not exceed that which would be incurred by a prudent person under the circumstances prevailing at the time the decision was made to incur the cost. The burden of proof is upon the guaranty agency, as a fiduciary under its agreements with the Secretary, to establish that costs are reasonable. In determining reasonableness of a given cost, consideration must be given to—

(A) Whether the cost is of a type generally recognized as ordinary and necessary for the proper and efficient performance and administration of the guaranty agency's responsibilities under the Act;

(B) The restraints or requirements imposed by factors such as sound business practices, arms-length bargaining, Federal, State, and other laws and regulations, and the terms and conditions of the guaranty agency's agreements with the Secretary; and

(C) Market prices of comparable goods or services.

* * * * *

(b) * * *

(11) *Conflicts of interest.* (i) A guaranty agency shall maintain and enforce written standards of conduct governing the performance of its employees, officers, trustees, and agents engaged in the selection, award, and administration of contracts or agreements. The standards of conduct must, at a minimum, require disclosure of financial or other interests and must mandate disinterested decisionmaking. The standards must provide for appropriate disciplinary actions to be applied for violations of the standards by employees, officers, trustees, or agents of the guaranty agency, and must include provisions to—

(A) Prohibit any employee, officer, trustee, or agent participating in the selection, award, or decisionmaking as to the administration of a contract or agreement supported by the reserve fund described in paragraph (a) of this section if that participation would create a conflict of interest. Such a conflict would arise if the employee, officer, trustee, or agent, or any member of his or her immediate family, his or her partner, or an organization that employs or is about to employ any of those parties has a financial or ownership interest in the organization selected for an award or would benefit from the decision made in the administration of the contract or agreement. The prohibitions described in this paragraph do not apply to employees of a State agency covered by codes of conduct established under State law;

(B) Ensure sufficient separation of responsibility and authority between its lender claims processing as a guaranty agency and its lending or loan servicing activities or both within the guaranty agency or between that agency and one or more affiliates, including independence in direct reporting requirements and such management and systems controls as may be necessary to demonstrate, in the independent audit required under § 682.410(b)(1), that claims filed by another arm of the guaranty agency or by an affiliate of that agency receive no more favorable treatment than that accorded the claims filed by a lender or servicer that is not an affiliate or part of the guaranty agency; and

(C) Prohibit the employees, officers, trustees, and agents of the guaranty agency from soliciting or accepting gratuities, favors, or anything of monetary value from contractors or

parties to agreements, except that nominal and unsolicited gratuities, favors, or items may be accepted.

(ii) *Guaranty agency restructuring.* If the Secretary determines that action is necessary to protect the Federal fiscal interest because of an agency's failure to meet the requirements of § 682.410(b)(11)(i), the Secretary may require the agency to comply with any additional measures that the Secretary believes are appropriate, including the total divestiture of the agency's non-FFEL functions and the agency's interests in any affiliated organization.

* * * * *

4. A new § 682.418 is added to subpart D to read as follows:

§ 682.418 Prohibited uses of reserve fund assets.

(a) *General.* (1) A guaranty agency may not use the assets of the reserve fund established under § 682.410(a)(1) to pay costs prohibited under paragraph (b) of this section and may not use the assets of the reserve fund to pay for goods, property, or services provided by an affiliated organization that would exceed the affiliated organization's actual and reasonable cost of providing those goods, property, or services, unless the agency demonstrates to the Secretary, and receives the Secretary's concurrence, that such a payment would be in the Federal fiscal interest.

(2) All guaranty agency contracts with respect to its reserve fund or assets must include a provision stating that the contract is terminable by the Secretary upon 30 days notice to the contracting parties if the Secretary determines that the contract includes an impermissible transfer of the reserve fund or assets or is otherwise inconsistent with the terms and purposes of section 422 of the HEA.

(b) *Prohibited uses of reserve fund assets.* A guaranty agency may use the assets of the reserve fund established under § 682.410(a)(1) only as prescribed in § 682.410(a)(2). Uses of the reserve fund that are not allowable under § 682.410(a)(2) include, but are not limited to—

(1) *Advertising,* either directly or through a third party, except for those advertising costs solely related to recruitment of personnel, procurement of goods or services, or disposal of surplus materials;

(2) *Compensation for personnel services,* including wages, salaries, pension plan costs, post-retirement health benefits, employee life insurance, unemployment benefit plans, severance pay, costs of leave, and other benefits, to the extent that total compensation to an employee, officer, trustee, or agent of the guaranty agency is not reasonable

for the services rendered. Compensation is considered reasonable to the extent that it is comparable to that paid in the labor market in which the guaranty agency competes for the kind of employees involved. Costs that are otherwise unallowable may not be considered allowable solely on the basis that they constitute personnel compensation. In no case may the reserve fund be used to pay any compensation, whether calculated on an hourly basis or otherwise, that would be proportionately greater than 118.05 percent of the total salary paid (as calculated on an hourly basis) under section 5312 of title 5, United States Code (relating to Level I of the Executive Schedule).

(3) *Contributions and donations*, including cash, property, and services, by the guaranty agency to others, regardless of the recipient or purpose, unless pursuant to written authorization from the Secretary;

(4) *Entertainment*, including amusement, diversion, hospitality suites, and social activities, and any costs associated with those activities, such as tickets to shows or sports events, meals, alcoholic beverages, lodging, rentals, transportation, and gratuities;

(5) *Fines, penalties, damages, and other settlements* resulting from violations or alleged violations of the guaranty agency's failure to comply with Federal, State, or local laws and regulations that are unrelated to the FFEL Program. This prohibition does not apply if the violation or alleged violation occurred as a result of compliance with specific requirements of the FFEL Program or in accordance with written instructions from the Secretary;

(6) *Legal expenses* for prosecution of claims against the Federal government, unless the guaranty agency substantially prevails on those claims. In that event, the Secretary approves the reimbursement of reasonable legal

expenses incurred by the guaranty agency;

(7) *Lobbying activities*, as defined in section 501(h) of the Internal Revenue Code, including dues to membership organizations to the extent that those dues are used for lobbying;

(8) *Major expenditures*, including those for land, buildings, equipment, or information systems, whether singly or as a related group of expenditures, that exceed 5 percent of the guaranty agency's reserve fund balance at the time the expenditures are made, unless the agency has provided written notice of the intended expenditure to the Secretary 30 days before the agency makes or commits itself to the expenditure. For those expenditures involving the purchase of an asset, the term "major expenditure" applies to costs such as the cost of purchasing the asset and making improvements to it, the cost to put it in place, the net invoice price of the asset, ancillary charges, such as taxes, duty, protective in transit insurance, freight, and installation costs, and the costs of any modifications, attachments, accessories, or auxiliary apparatus necessary to make the asset usable for the purpose for which it was acquired, whether the expenditures are classified as capital or operating expenses;

(9) *Public relations*, and all associated costs, paid directly or through a third party, to the extent that those costs are used to promote or maintain a favorable image of the guaranty agency. The term "public relations" does not include any activity that is ordinary and necessary for the fulfillment of the agency's FFEL guaranty responsibilities under the Act, such as training of program participants and secondary school personnel and customer service functions that disseminate FFEL-related information and materials to schools, loan holders, prospective loan applicants, and their parents. In providing that training at workshops, conferences, or other

ordinary and necessary forums customarily used by the agency to fulfill its responsibilities under the Act, the agency may provide light meals and refreshments of a reasonable nature and amount to the participants;

(10) *Relocation of employees* in excess of an employee's actual or reasonably estimated expenses or for purposes that do not benefit the administration of the guaranty agency's FFEL program. Except as approved by the Secretary, reimbursement must be in accordance with an established written policy; and

(11) *Travel expenses* that are not in accordance with a written policy approved by the Secretary or a State policy. If the guaranty agency does not have such a policy, it may not use the assets of the reserve fund to pay for travel expenses that exceed those allowed for lodging and subsistence under subchapter I of chapter 57 of title 5, United States Code, or in excess of commercial airfare costs for standard coach airfare, unless those accommodations would require circuitous routing, travel during unreasonable hours, excessively prolonged travel, would result in increased cost that would offset transportation savings, or would offer accommodations not reasonably adequate for the medical needs of the traveler.

(c) *Cost allocation*. Each guaranty agency that shares costs with any other program, agency, or organization shall develop a cost allocation plan consistent with the requirements described in OMB Circular A-87 and maintain the plan and related supporting documentation for audit. A guaranty agency is required to submit its cost allocation plans for the Secretary's approval if it is specifically requested to do so by the Secretary.

(Authority: 20 U.S.C. 1078)

[FR Doc. 96-24013 Filed 9-18-96; 8:45 am]

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Federal Register

Thursday
September 19, 1996

Part III

Department of Education

34 CFR Part 668, et al.
Student Assistance General Provisions;
Proposed Rule

DEPARTMENT OF EDUCATION**34 CFR Parts 668, 673, 674, 675, 676, and 690**

RIN 1840-AC34

Student Assistance General Provisions; General Provisions for the Federal Perkins Loan Program, Federal Work-Study Program, and Federal Supplemental Educational Opportunity Grant Program; Federal Perkins Loan Program; Federal Work-Study Programs; Federal Supplemental Educational Opportunity Grant Program; and Federal Pell Grant Program

AGENCY: Department of Education.

ACTION: Notice of proposed rulemaking.

SUMMARY: The Secretary proposes to amend the regulations governing the student financial assistance programs authorized under title IV of the Higher Education Act of 1965, as amended (title IV, HEA programs). These programs include the campus-based programs (Federal Perkins Loan, Federal Work-Study (FWS), and Federal Supplemental Educational Opportunity Grant (FSEOG) programs) and the Federal Pell Grant Program. These proposed amendments, which eliminate duplicate provisions for the student financial assistance programs and consolidate common provisions for the campus-based programs, are part of a planned series of regulatory reform and relief proposals for the title IV, HEA programs. The Secretary is proposing these changes in response to the President's Regulatory Reform Initiative.

DATES: Comments must be received on or before October 21, 1996.

ADDRESSES: All comments concerning these proposed regulations should be addressed to Nancy Adams, U.S. Department of Education, P.O. Box 23272, Washington, D.C. 20026-3272. Comments may also be sent through the Internet to "reg-relief@ed.gov".

To ensure that public comments have maximum effect in developing the final regulations, the Department urges that each comment clearly identify the specific section or sections of the regulations that the comment addresses and that comments be in the same order as the proposed regulations.

FOR FURTHER INFORMATION CONTACT:

1. For the Federal Perkins Loan Program: Gail H. McLarnon, U.S. Department of Education, 600 Independence Avenue, S.W., Regional Office Building 3, Room 3053, Washington, D.C. 20202-5447. Telephone: (202) 708-8242.

2. For the FWS and FSEOG programs: Richard P. Coppage, U.S. Department of Education, 600 Independence Avenue, S.W., Regional Office Building 3, Room 3053, Washington, D.C. 20202-5447. Telephone: (202) 708-4690.

3. For the Federal Pell Grant Program: Daniel J. Sullivan, U.S. Department of Education, 600 Independence Avenue, S.W., Regional Office Building 3, Room 3053, Washington, D.C. 20202-5447. Telephone: (202) 708-4607.

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: On March 4, 1995, the President directed every Federal agency to review its rules and procedures to reduce regulatory and paperwork burden and directed Federal agencies to eliminate or revise those regulations that are outdated or otherwise in need of reform. Responding to the President's Regulatory Reform Initiative, the Secretary announced plans to eliminate or revise 93 percent of the Department's regulations. To launch the Department's reinvention effort, the Secretary published a notice in the May 23, 1995 Federal Register (60 FR 27223-27226), eliminating more than 30 percent of the Department's regulations, primarily in areas not related to student financial assistance.

The Secretary is conducting a page-by-page review of all student financial assistance regulations to identify those that should be eliminated or improved. The Secretary is considering amending these regulations by moving the provisions that are common to all three of the campus-based programs to a new part 673 of the Department's regulations. The Secretary is proposing these changes to eliminate duplication in the regulations and to make the regulations easier to understand and use in administering the campus-based programs. The public is invited to comment on this proposal. The Secretary is also considering developing proposals for statutory amendments to eliminate unnecessary administrative burden.

As part of his response to the President's Regulatory Reinvention Initiative, the Secretary published the first part of a planned series of regulatory reform and relief measures that apply to the title IV, HEA programs on December 1, 1995. These amendments are part of that series.

A description of the major proposed changes follows. The proposed changes

that apply to more than one program are described first followed by descriptions of provisions that apply only to a specific program.

Summary of Proposed Changes*Campus-Based Programs*

A new part 673 of Title 34 of the Code of Federal Regulations is being created to consolidate sections with common provisions contained in the Federal Perkins Loan—part 674, the FWS—part 675, and the FSEOG—part 676, program regulations.

Sections 674.3, 675.3, and 676.3 Application

Sections 674.3, 675.3, and 676.3 of the Federal Perkins Loan, FWS, and FSEOG program regulations, respectively, provide the procedures for an institution to apply for campus-based program funds. The application procedures are the same for all three programs. Therefore, the Secretary is proposing to delete these sections currently found in parts 674, 675, and 676 and consolidate the application procedures into the new part 673 under § 673.3.

Sections 674.4, 675.4, and 676.4 Allocation and Reallocation

The procedures for allocating and reallocating campus-based funds are contained in the HEA for the Federal Perkins Loan Program in section 462, the FWS Program in section 442, and the FSEOG Program in section 413D. The current regulations for allocating and reallocating these program funds are common in several areas. Therefore, the Secretary is proposing to delete these sections currently found in parts 674, 675, and 676 and consolidate the allocation and reallocation provisions into the new part 673 under § 673.4.

Sections 674.14, 675.14, and 676.14 Overaward

A financial aid administrator may not award or disburse aid from a campus-based program if that aid, when combined with all other resources, would exceed the student's need. Before awarding aid from campus-based programs, the aid administrator must take into account the aid that the student will receive from other student financial assistance programs and other resources that the aid administrator knows about or can reasonably anticipate at the time aid is awarded to the student. If the student receives additional resources at any time during the award period that were not considered in determining the student's eligibility for aid, and these resources combined with the expected financial

aid will exceed the student's need, the amount in excess of the student's need is considered an overaward.

Currently §§ 674.14, 675.14, and 676.14 of the campus-based program regulations provide procedures that institutions must follow in the event that an overaward situation occurs. The majority of the overaward provisions are the same for all three programs. The Secretary believes that the provisions are duplicates as presented in the three program parts. Therefore, the Secretary is proposing to delete these sections from parts 674, 675, and 676 and consolidate them into the new part 673 under § 673.5.

*Sections 674.15, 675.15, 676.15
Coordination With BIA Grants*

Sections 674.15, 675.15, and 676.15 of the Federal Perkins Loan, FWS, and FSEOG program regulations provide institutions with the procedures to follow when awarding title IV student financial aid to a student who is also eligible for a Bureau of Indian Affairs (BIA) education grant. Identical procedures are duplicated in all three program regulations. The Secretary proposes to delete these identical sections from parts 674, 675, and 676 and consolidate the provisions into the new part 673 under § 673.6.

*Sections 674.18, 675.18, and 676.18
Use of Funds*

Section 674.18(b), 675.18(b), and 676.18(b) of the Federal Perkins Loan, FWS, and FSEOG program regulations provide the formula for calculating an institution's administrative cost allowance and the permissible use of the allowance. Institutions participating in these programs are entitled to an allowance to help offset administrative costs incurred in the administration of the campus-based programs and the Federal Pell Grant program. These costs include salaries, furniture, travel, supplies, and equipment and also include the expense incurred for carrying out the student consumer information services requirements of Subpart D of the Student Assistance General Provisions regulations, 34 CFR part 668.

The formula for calculating this allowance is identical and duplicated in all three program regulations. The allowable use of the allowance is almost the same in all three program regulations. Therefore, the Secretary is proposing to remove these duplicate formulas and the allowable use provisions from parts 674, 675, and 676 and present them in the new part 673 under § 673.7 with a new heading of *Administrative cost allowance*.

Federal Pell Grant Program

There are no major proposed changes to the Federal Pell Grant Program. However, the Secretary plans to make some minor technical changes as described in the following paragraphs.

Section 690.2 General Definitions

The Secretary is proposing to clarify the definition of "Annual award" in § 690.2(c) to inform institutions of what a Federal Pell Grant payment would be under the appropriate Disbursement Schedule for a student attending half-time, three-quarter-time, and less-than-half-time during that academic year. The Secretary also is proposing to remove the definition for "Comparable State income tax return." This definition predated § 668.57(a)(1) of Subpart E (Verification of Student Aid Application Information) of the Student Assistance General Provisions regulations, which requires the use of the income tax return.

Subpart B—Application Procedures for Determining Expected Family Contribution (EFC)

Section 690.14 Request for Recalculation of Expected Family Contribution Because of Clerical or Arithmetic Error

The Secretary is proposing to amend § 690.14 by revising the heading of the section to include "or if the information submitted was incorrect" and by clarifying paragraph (b)(1) to include the phrase "or inaccurate information was submitted when the application was signed." These changes would add an additional reason for recalculating a student's EFC that was inadvertently left out of earlier regulations.

Subpart F—Determination of Federal Pell Grant Awards

Section 690.61 Submission Process and Deadline for a Student Aid Report or Institutional Student Information Record

The Secretary is proposing to amend § 690.61(b)(2) by deleting the June 30 deadline date for a student to submit a valid Student Aid Report (SAR) or the institution to obtain a valid Institutional Student Information Record (ISIR) and adding "By the deadline date established by the Secretary through publication of a notice in the Federal Register." Due to faster electronic data processing, a student now has an extended period of time to submit the required documents.

Subpart G—Administration of Grant Payments

Section 690.75 Determination of Eligibility for Payment

The Secretary is proposing to amend § 690.75(e) by deleting "the family contribution amount of \$3,000" and adding "family contribution amount at least equal to the maximum authorized award amount for the award year."

Section 690.78 Method of Disbursement—by Check or Credit to a Student's Account

The Secretary is proposing to amend § 690.78 (c)(2), (c)(3), and (c)(4) to revise from 15 days to 20 days the timeframes governing disbursements. If a student does not pick up the check on time, the institution would still be required to pay the student if he or she requests payment within 20 days after the last date of enrollment in the award year. Also, the Secretary proposes to change from 15 days to 20 days the time period after which the institution may credit only certain items to a student's account and after which the student forfeits the right to receive payment. This additional five days would give the student a longer time to claim Federal Pell Grant Program funds to which he or she is entitled and would help standardize the numerous timeframes in the title IV program regulations.

Section 690.81 Fiscal Control and Fund Accounting Procedures

The Secretary is proposing to delete § 690.81(c) because the provisions contained in this paragraph duplicate provisions in 34 CFR 668.161(b) of the Student Assistance General Provisions regulations, which cover all of the title IV programs.

Goals 2000: Educate America Act

The Goals 2000: Educate America Act (Goals 2000) focuses the Nation's education reform efforts on the eight National Education Goals and provides a framework for meeting them. Goals 2000 promotes new partnerships to strengthen schools and expands the Department's capacities for helping communities to exchange ideas and obtain information needed to achieve the goals.

These proposed regulations would address the National Education Goal that calls for increasing the rate at which students graduate from high school and pursue high quality postsecondary education and for supporting life-long learning.

Executive Order 12866

Clarity of the Regulations

Executive Order 12866 requires each agency to write regulations that are easy to understand.

The Secretary invites comments on how to make these proposed regulations easier to understand, including answers to questions such as the following: (1) Are the requirements in the proposed regulations clearly stated? (2) Do the proposed regulations contain technical terms or other wording that interferes with their clarity? (3) Does the format of the proposed regulations (grouping and order of sections, use of headings, paragraphing, etc.) aid or reduce their clarity? Would the proposed regulations be easier to understand if they were divided into more (but shorter) sections? (A "section" is preceded by the symbol "§" and a numbered heading; for example, § 674.18 Use of funds.) (4) Is the description of the proposed regulations in the "Supplementary Information" section of this preamble helpful in understanding the proposed regulations? How could this description be more helpful in making the proposed regulations easier to understand? (5) What else could the Department do to make the proposed regulations easier to understand?

A copy of any comments that concern how the Department could make these proposed regulations easier to understand should be sent to Stanley M. Cohen, Regulations Quality Officer, U.S. Department of Education, 600 Independence Avenue, S.W., (Room 5100, FB-10B), Washington, D.C. 20202-2241.

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. The small entities that would be affected by these proposed regulations are small institutions of postsecondary education. The proposed changes in these regulations would not substantially increase institutions' workload or costs associated with administering the title IV, HEA programs and, therefore, would not have a significant economic impact on a substantial number of small entities.

Paperwork Reduction Act of 1995

These proposed regulations have been examined under the Paperwork Reduction Act of 1995 and have been found to contain no new information collection requirements.

Intergovernmental Review

The Federal Supplemental Educational Opportunity Grant Program is subject to the requirements of Executive Order 12372 and the regulations in 34 CFR part 79. The objective of the Executive order is to foster an intergovernmental partnership and a strengthened federalism by relying on processes developed by State and local governments for coordination and review of proposed Federal financial assistance.

In accordance with the order, this document is intended to provide early notification of the Department's specific plans and actions for this program.

The Federal Perkins Loan, FWS, and Federal Pell Grant programs are not subject to the requirements of Executive Order 12372 and the regulations in 34 CFR part 79.

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 3045, ROB-3, 7th and D Streets, S.W., Washington, D.C., between the hours of 8:30 a.m. and 4:00 p.m., Monday through Friday of each week except Federal holidays.

Assessment of Educational Impact

The Secretary particularly requests comments on whether the proposed regulations in this document would require transmission of information that is being gathered by or is available from any other agency or authority of the United States.

List of Subjects

34 CFR part 668

Administrative practice and procedure, Colleges and universities, Consumer protection, Loan programs—education, Grant programs—education, Student aid.

34 CFR part 673

Loan programs—education, Grant programs—education, Student aid.

34 CFR part 674

Loan programs—education, Student aid.

34 CFR part 675

Loan programs—education, Student aid.

34 CFR part 676

Grant programs—education, Student aid.

34 CFR part 690

Grant programs—education, Student aid.

Dated: September 16, 1996.

Richard W. Riley,
Secretary of Education.

(Catalog of Federal Domestic Assistance Numbers: 84.007 Federal Supplemental Educational Opportunity Grant Program; 84.033 Federal Work-Study Program; 84.038 Federal Perkins Loan Program; and 84.063 Federal Pell Grant Program)

The Secretary proposes to amend chapter VI of Title 34 of the Code of Federal Regulations as follows:

1. A new part 673 is added to read as follows:

PART 673—GENERAL PROVISIONS FOR THE FEDERAL PERKINS LOAN PROGRAM, FEDERAL WORK-STUDY PROGRAM, AND FEDERAL SUPPLEMENTAL EDUCATIONAL OPPORTUNITY GRANT PROGRAM

Subpart A—Purpose and Scope

Sec.

673.1 Purpose.

673.2 Applicability of regulations.

Subpart B—General Provisions for the Federal Perkins Loan, FWS, and FSEOG programs

673.3 Application.

673.4 Allocation and reallocation.

673.5 Overaward.

673.6 Coordination with BIA grants.

673.7 Administrative cost allowance.

Authority: 20 U.S.C. 421-429, 1070b-1070b-3, 1087aa-1087ii; 42 U.S.C. 2751-2756b, unless otherwise noted.

Subpart A—Purpose and Scope**§ 673.1 Purpose.**

This part governs the following three programs authorized by title IV of the Higher Education Act of 1965, as amended (HEA) that participating institutions administer:

(a) The Federal Perkins Loan Program, which encourages the making of loans by institutions to needy undergraduate and graduate students to help pay for the students' cost of education.

(b) The Federal Work-Study (FWS) Program, which encourages the part-time employment of undergraduate and graduate students who need the income to help pay for the students' costs of education and which encourages FWS recipients to participate in community service activities.

(c) The Federal Supplemental Educational Opportunity Grant (FSEOG) Program, which encourages the providing of grants to exceptionally needy undergraduate students to help pay for the students' cost of education.

(Authority: 20 U.S.C. 421–429, 1070b–1070b–3, 1087aa–1087ii; 42 U.S.C. 2751–2756b)

§ 673.2 Applicability of regulations.

The participating institution is responsible for administering these programs in accordance with the regulations in this part and the applicable program regulations in 34 CFR part 674, 675, or 676.

(Authority: 20 U.S.C. 421–429, 1070b–1070b–3, 1087aa–1087ii; 42 U.S.C. 2751–2756b)

Subpart B—General Provisions for the Federal Perkins Loan, FWS, and FSEOG Programs

§ 673.3 Application.

(a) To participate in the Federal Perkins Loan, FWS, or FSEOG programs, an institution shall file an application before the deadline date established annually by the Secretary through publication of a notice in the Federal Register.

(b) The application for the Federal Perkins Loan, FWS, and FSEOG programs must be on a form approved by the Secretary and must contain the information needed by the Secretary to determine the institution's allocation or reallocation of funds under sections 462, 442, and 413D of the HEA, respectively.

(Authority: 20 U.S.C. 1070b–3, 1087bb; 42 U.S.C. 2752)

§ 673.4 Allocation and reallocation.

(a) *Allocation and reallocation of Federal Perkins Loan funds.* (1) The Secretary allocates Federal capital contributions to institutions participating in the Federal Perkins Loan Program in accordance with section 462 of the HEA.

(2) The Secretary reallocates Federal capital contributions to institutions participating in the Federal Perkins Loan Program by—

(i) Reallocating 80 percent of the total funds available in accordance with section 462(j) of the HEA; and

(ii) Reallocating 20 percent of the total funds available in a manner that best carries out the purposes of the Federal Perkins Loan Program.

(b) *Allocation and reallocation of FWS funds.* The Secretary allocates and reallocates funds to institutions participating in the FWS Program in accordance with section 442 of the HEA.

(c) *Allocation and reallocation of FSEOG funds.* (1) The Secretary allocates funds to institutions participating in the FSEOG Program in accordance with section 413D of the HEA.

(2) The Secretary reallocates funds to institutions participating in the FSEOG Program in a manner that best carries out the purposes of the FSEOG Program.

(d) *General allocation and reallocation—*(1) *Categories.* As used in section 462 (Federal Perkins Loan Program), section 442 (FWS Program), and section 413D (FSEOG Program) of the HEA, “Eligible institutions offering comparable programs of instruction” means institutions that are being compared with the applicant institution and that fall within one of the following six categories:

- (i) Cosmetology.
- (ii) Business.
- (iii) Trade/Technical.
- (iv) Art Schools.
- (v) Other Proprietary Institutions.
- (vi) Non-Proprietary Institutions.

(2) *Payments to institutions.* The Secretary allocates funds for a specific period of time. The Secretary pays an institution its allocation in periodic installments as determined by the Secretary.

(3) *Unexpended funds.* (i) If an institution returns more than 10 percent of its Federal Perkins Loan, FWS, or FSEOG allocation for an award year, the Secretary reduces the institution's allocation for that program for the second succeeding award year by the dollar amount returned.

(ii) The Secretary may waive the provision of paragraph (d)(3)(i) of this section for a specific institution if the Secretary finds that enforcement would be contrary to the interests of the program.

(iii) The Secretary considers enforcement of paragraph (d)(3)(i) of this section to be contrary to the interest of the program only if the institution returns more than 10 percent of its allocation due to circumstances beyond the institution's control that are not expected to recur.

(e) *Anticipated collections of Federal Perkins Loan funds.*

(1) For the purposes of calculating an institution's share of any excess allocation of Federal Perkins Loan funds, an institution's anticipated collections are equal to the amount that was collected during the second year preceding the beginning of the award period multiplied by 1.21.

(2) The Secretary may waive the provision of paragraph (e)(1) of this section for any institution that has a cohort default rate that does not exceed 7.5 percent.

(f) *Authority to expend FWS funds after the award year.* Except as specifically provided in 34 CFR 675.18 (b), (c), and (f), an institution may not

use funds allocated or reallocated for an award year—

(1) To meet FWS wage obligations incurred with regard to an award of FWS employment made for any other award year; or

(2) To satisfy any other obligation incurred after the end of the designated award year.

(g) *Authority to expend FSEOG funds after the award year.* Except as specifically provided in 34 CFR 676.16(e), an institution shall not use funds allocated or reallocated for an award year—

(1) To make FSEOG disbursements to students in any subsequent award year; or

(2) To satisfy any other obligation incurred after the end of the designated award year.

(Authority: 20 U.S.C. 1070b–3, 1087bb; 42 U.S.C. 2752)

§ 673.5 Overaward.

(a) *Overaward prohibited.* (1) *Federal Perkins Loan and FSEOG Programs.* An institution may only award or disburse a Federal Perkins loan or an FSEOG to a student if that loan or the FSEOG, combined with the other resources the student receives, does not exceed the student's financial need.

(2) *FWS Program.* An institution may only award FWS employment to a student if the award, combined with the other resources the student receives, does not exceed the student's financial need.

(b) *Awarding and disbursement.* (1) When awarding and disbursing a Federal Perkins loan or an FSEOG or awarding FWS employment to a student, the institution shall take into account those resources it—

(i) Can reasonably anticipate at the time it awards Federal Perkins Loan funds, an FSEOG, or FWS funds to the student;

(ii) Makes available to its students; or

(iii) Otherwise knows about.

(2) If a student receives resources at any time during the award period that were not considered in calculating the Federal Perkins Loan amount or the FWS or FSEOG award, and the total resources including the loan, the FSEOG, or the prospective FWS wages exceed the student's need, the overaward is the amount that exceeds need.

(c) *Resources.* (1) Except as provided in paragraph (c)(2) of this section, the Secretary considers that “resources” include, but are not limited to, any—

(i) Funds a student is entitled to receive from a Federal Grant;

(ii) William D. Ford Federal Direct Loans;

(iii) Federal Family Education Loans;
(iv) Long-term loans, including Federal Perkins loans made by the institution;

(v) Grants, including FSEOGs, State grants, and ROTC subsistence allowances;

(vi) Scholarships, including athletic scholarships and ROTC scholarships;

(vii) Waiver of tuition and fees;

(viii) Fellowships or assistantships;

(ix) Veterans benefits;

(x) Net earnings from need-based employment; and

(xi) Insurance programs for the student's education.

(2) The Secretary does not consider as a resource—

(i) Any portion of the resources described in paragraph (c)(1) of this section that are included in the student's expected family contribution (EFC); and

(ii) Earnings from non-need-based employment.

(3) The institution may treat a Federal Direct PLUS Loan, a Federal PLUS Loan, a Federal Direct Unsubsidized Stafford/Ford Loan, a Federal Unsubsidized Stafford Loan, or a State-sponsored or private loan as a substitute for a student's EFC. However, if the sum of the loan amounts received exceeds the student's EFC, the excess is a resource.

(d) *Treatment of resources in excess of need—General.* An institution shall take the following steps if it learns that a student has received additional resources not included in the calculation of Federal Perkins Loan, FWS, or FSEOG eligibility that would result in the student's total resources exceeding his or her financial need by more than \$300:

(1) The institution shall decide whether the student has increased financial need that was unanticipated when it awarded financial aid to the student. If the student demonstrates increased financial need and the total resources do not exceed this increased need by more than \$300, no further action is necessary.

(2) If the student's total resources still exceed his or her need by more than \$300, as recalculated pursuant to paragraph (d)(1) of this section, the institution shall cancel any undisbursed loan or grant (other than a Pell Grant).

(3) *Federal Perkins loan and FSEOG overpayment.* If the student's total resources still exceed his or her need by more than \$300, after the institution takes the steps required in paragraphs (d) (1) and (2) of this section, the institution shall consider the amount by which the resources exceed the student's financial need by more than \$300 as an overpayment.

(e) *Termination of FWS employment.*

(1) An institution may fund a student's FWS employment with FWS funds only until the amount of the FWS award has been earned or until the student's financial need, as recalculated under paragraph (d)(1) of this section, is met.

(2) Notwithstanding the provisions of paragraph (e)(1) of this section, an institution may provide additional FWS funding to a student whose need has been met until that student's cumulative earnings from all need-based employment occurring subsequent to the time his or her financial need has been met exceed \$300.

(f) *Liability for and recovery of Federal Perkins loans and FSEOG overpayments.* (1) A student is liable for any Federal Perkins loan or FSEOG overpayment made to him or her.

(2) The institution is also liable for a Federal Perkins loan or FSEOG overpayment if the overpayment occurred because the institution failed to follow the procedures in this part, 34 CFR part 668, 34 CFR part 674 and 34 CFR part 676. The institution shall restore an amount equal to the overpayment and any administrative cost allowance claimed on that amount to its loan fund for a Federal Perkins loan overpayment or to its FSEOG account for an FSEOG overpayment if it cannot collect the overpayment from the student.

(3) If an institution makes a Federal Perkins loan or FSEOG overpayment for which it is not liable, it shall help the Secretary recover the overpayment by promptly attempting to recover the overpayment by sending a written notice to the student requesting repayment of the overawarded funds. The notice must state that failure to make that repayment or to make arrangements, satisfactory to the holder of the overpayment debt, to pay the overpayment renders the student ineligible for further title IV aid until final resolution of the overpayment.

(4) If a student objects to the institution's Federal Perkins loan or FSEOG overpayment determination on the grounds that it is erroneous, the institution shall consider any information provided by the student and determine whether the objection is warranted.

(5) *Referral of FSEOG overpayments.*

(i) If the student fails to repay an FSEOG overpayment or make arrangements, satisfactory to the holder of the overpayment debt, to pay the FSEOG overpayment after taking the action required by paragraphs (f)(3) and, if applicable, (f)(4) of this section, and the Federal share of the FSEOG overpayment is \$25.00 or more, the

institution shall notify the Secretary identifying the Federal share of the FSEOG overpayment, the student's name, most recent address, telephone number, and any other relevant information. After notifying the Secretary under this section, the institution need make no further recovery efforts of FSEOG overpayments.

(ii) If an institution fails in its attempt to collect the overpayment and the Federal share of the FSEOG overpayment is less than \$25.00, the institution need make no further recovery efforts of the FSEOG overpayment.

(Approved by the Office of Management and Budget under control number 1840-0535)

(Authority: 20 U.S.C. 1070b-1, 1087dd, and 1087hh; 42 U.S.C. 2753)

§ 673.6 Coordination with BIA grants.

(a) *Coordination of BIA grants with Federal Perkins Loans, FWS awards, or FSEOGs.* To determine the amount of a Federal Perkins Loan, FWS compensation, or an FSEOG for a student who is also eligible for a Bureau of Indian Affairs (BIA) education grant, an institution shall prepare a package of student aid—

(1) From resources other than the BIA education grant the student has received or is expected to receive; and

(2) That is consistent in type and amount with packages prepared for students in similar circumstances who are not eligible for a BIA education grant.

(b) (1) The BIA education grant, whether received by the student before or after the preparation of the student aid package, supplements the student aid package specified in paragraph (a) of this section.

(2) No adjustment may be made to the student aid package as long as the total of the package and the BIA education grant is less than the institution's determination of that student's financial need.

(c) (1) If the BIA education grant, when combined with other aid in the package, exceeds the student's need, the excess must be deducted from the other assistance (except for Federal Pell Grants), not from the BIA education grant.

(2) The institution shall deduct the excess in the following sequence: loans, work-study awards, and grants other than Federal Pell Grants. However, the institution may change the sequence if requested to do so by a student and the institution believes the change benefits the student.

(d) To determine the financial need of a student who is also eligible for a BIA

education grant, a financial aid administrator is encouraged to consult with area officials in charge of BIA postsecondary financial aid.

(Authority: 20 U.S.C. 1070b-1, 1087dd; 42 U.S.C. 2753)

§ 673.7 Administrative cost allowance.

(a) An institution participating in the Federal Perkins Loan, FWS, or FSEOG programs is entitled to an administrative cost allowance for an award year if it advances funds under the Federal Perkins Loan Program, provides FWS employment, or awards grants under the FSEOG Program to students in that year.

(b) An institution may charge the administrative cost allowance calculated in accordance with paragraph (c) of this section for an award year against—

(1) The Federal Perkins Loan Fund, if the institution advances funds under the Federal Perkins Loan Program to students in that award year;

(2) The FWS allocation, if the institution provides FWS employment to students in that award year; or

(3) The FSEOG allocation, if the institution awards grants to students under the FSEOG program in that award year.

(c) For any award year, the amount of the allowance equals—

(1) Five percent of the first \$2,750,000 of the institution's total expenditures to students in that award year under the FWS, FSEOG and the Federal Perkins Loan programs; plus

(2) Four percent of its expenditures to students that are greater than \$2,750,000 but less than \$5,500,000; plus

(3) Three percent of its expenditures to students that are \$5,500,000 or more.

(d) The institution shall not include, when calculating the allowance in paragraph (c) of this section, the amount of loans made under the Federal Perkins Loan Program that it assigns during the award year to the Secretary under section 463(a)(6) of the HEA.

(e) An institution shall use its allowance to offset its cost of administering the Federal Pell Grant, FWS, FSEOG, and Federal Perkins Loan programs. Administrative costs also include the expenses incurred for carrying out the student consumer information services requirements of Subpart D of the Student Assistance General Provisions regulations, 34 CFR part 668.

(f) An institution may use up to 10 percent of the allowance, as calculated under paragraph (c) of this section, that is attributable to the institution's expenditures under the FWS program to pay the administrative costs of conducting its program of community

service. These costs may include the costs of—

(1) Developing mechanisms to assure the academic quality of a student's experience;

(2) Assuring student access to educational resources, expertise, and supervision necessary to achieve community service objectives; and

(3) Collaborating with public and private nonprofit agencies and programs assisted under the National and Community Service Act of 1990 in the planning, development, and administration of these programs.

(g) If an institution charges any administrative cost allowance against its Federal Perkins Loan Fund, it must charge these costs during the same award year in which the expenditures for these costs were made.

(Authority: 20 U.S.C. 1087cc, 20 U.S.C. 1096, 42 U.S.C. 2753, and 20 U.S.C. 1070b-2)

PART 668—STUDENT ASSISTANCE GENERAL PROVISIONS

2. The authority citation for part 668 continues to read as follows:

Authority: 20 U.S.C. 1085, 1088, 1091, 1092, 1094, 1099c, and 1141, unless otherwise noted.

§ 668.1 [Amended]

3. Section 668.1, paragraph (c)(4) is amended by adding "673 and" before "676" and adding an "s" to the word "part"; paragraph (c)(10) is amended by adding "673 and" before "675" and adding an "s" to the word "part"; and paragraph (c)(12) is amended by adding "673 and" before "674" and adding an "s" to the word "part".

§ 668.2 [Amended]

4. Section 668.2, in paragraph (b) amend the definition of "Campus-based programs" in paragraph (1) by adding "673 and" before "674" and adding an "s" to the word "part"; in paragraph (2) add "673 and" before "675" and add an "s" to the word "part"; and in paragraph (3) add "673 and" before "676" and add an "s" to the word "part".

§ 668.22 [Amended]

5. Section 668.22, paragraph (g)(3)(i) is amended by removing "674, 675, 676,".

PART 674—FEDERAL PERKINS LOAN PROGRAM

6. The authority citation for part 674 continues to read as follows:

Authority: 20 U.S.C. 1087aa-1087hh and 20 U.S.C. 421-429, unless otherwise noted.

§ 674.3 [Removed]

7. Section 674.3 is removed and reserved.

§ 674.4 [Removed]

8. Section 674.4 is removed and reserved.

§ 674.8 [Amended]

9. Section 674.8 is amended by removing in paragraph (b)(2), "§ 674.18(b)" and adding in its place "34 CFR 673.7".

§ 674.14 [Removed]

10. Section 674.14 is removed and reserved.

§ 674.15 [Removed]

11. Section 674.15 is removed and reserved.

§ 674.18 [Amended]

12. Section 674.18 is amended by removing paragraph (b) and by redesignating paragraph (c) as paragraph (b).

PART 675—FEDERAL WORK-STUDY PROGRAM

13. The authority citation for part 675 is revised to read as follows:

Authority: 42 U.S.C. 2751-2756b, unless otherwise noted.

§ 675.3 [Removed]

14. Section 675.3 is removed and reserved.

§ 675.4 [Removed]

15. Section 675.4 is removed and reserved.

§ 675.14 [Removed]

16. Section 675.14 is removed and reserved.

§ 675.15 [Removed]

17. Section 675.15 is removed and reserved.

§ 675.18 [Amended]

18. Section 675.18 is amended by removing paragraph (b) and by redesignating paragraphs (c), (d), (e), (f), (g), and (h) as paragraphs (b), (c), (d), (e), (f), and (g), respectively.

§ 675.49 [Amended]

19. Section 675.49 is amended by adding the words "34 CFR part 673 and" before the words "this part 675".

PART 676—FEDERAL SUPPLEMENTAL EDUCATIONAL OPPORTUNITY GRANT PROGRAM

20. The authority citation for part 676 continues to read as follows:

Authority: 20 U.S.C. 1070b-1070b-3, unless otherwise noted.

§ 676.3 [Removed]

21. Section 676.3 is removed and reserved.

§ 676.4 [Removed]

22. Section 676.4 is removed and reserved.

§ 676.14 [Removed]

23. Section 676.14 is removed and reserved.

§ 676.15 [Removed]

24. Section 676.15 is removed and reserved.

§ 676.16 [Amended]

25. Section 676.16 is amended by removing in paragraph (e)(1) and (e)(2) “(f)” and adding in its place “(e)”.

§ 676.18 [Amended]

26. Section 676.18 is amended by removing paragraph (b) and by redesignating paragraph (c) as paragraph (b).

PART 690—FEDERAL PELL GRANT PROGRAM

27. The authority citation for part 690 continues to read as follows:

Authority: 20 U.S.C. 1070a, unless otherwise noted.

28. Section 690.2, paragraph (c) is amended by removing the definition of “Comparable State income tax return” and by revising the definition of “Annual award” to read as follows:

§ 690.2 General definitions.

* * * * *

(c) * * *

Annual award: The Federal Pell Grant award amount a full-time student would receive under the Payment Schedule for a full academic year in an award year, and the amount a three-quarter-time, half-time, and less-than-half-time student would receive under the appropriate Disbursement Schedule for being enrolled in that enrollment status for a full academic year in an award year.

* * * * *

29. Section 690.10(b) is revised to read as follows:

§ 690.10 Administrative cost allowance to participating schools.

* * * * *

(b) All funds an institution receives under this section must be used solely to pay the institution’s cost of administering the Federal Pell Grant, Federal Perkins Loan, Federal Work-Study, and Federal Supplemental Educational Opportunity Grant programs.

* * * * *

§ 690.12 [Amended]

30. Section 690.12(b)(1) is amended by removing “a copy of”.

31. Section 690.13 is revised to read as follows:

§ 690.13 Notification of expected family contribution.

The Secretary sends a student’s application information and EFC as calculated by the central processor to the student on an SAR and allows each institution designated by the student to obtain an ISIR for that student.

(Approved by the Office of Management and Budget under control number 1840-0681) (Authority: 20 U.S.C. 1070a)

32. Section 690.14 is amended by removing paragraphs (b)(1) and (b)(2); by redesignating paragraph (b)(3) introductory text as paragraph (c) introductory text; by redesignating paragraph (b)(3)(i) as paragraph (c)(1); by redesignating paragraph (b)(3)(ii) as paragraph (c)(2); by redesignating paragraph (b)(4) as paragraph (d); and by revising the heading and paragraphs (a) and (b) to read as follows:

§ 690.14 Applicant’s request to recalculate expected family contribution because of a clerical or arithmetic error or the submission of inaccurate information.

(a) An applicant may request the Secretary to recalculate his or her expected family contribution if—

- (1) He or she believes a clerical or arithmetic error has occurred; or
(2) The information he or she submitted was inaccurate when the application was signed.

(b) The applicant shall request the Secretary to make the recalculation

described in paragraph (a) of this section by—

(1) Having his or her institution transmit that request to the Secretary under EDE; or

(2) Sending to the Secretary an approved form, certified by the student, and one of the student’s parents if the student is a dependent student.

* * * * *

33. Section 690.61 is amended by revising paragraphs (a)(1)(ii) and paragraph (b)(2) to read as follows:

§ 690.61 Disbursement conditions and deadlines.

(a) * * *

(1) * * *

(ii) The institution obtains a valid ISIR for the student.

* * * * *

(b) * * *

(2) By the deadline date established by the Secretary through publication of a notice in the Federal Register.

* * * * *

§ 690.75 [Amended]

34. Section 690.75 (a)(2) is amended by adding “in an eligible program” after “enrolled”; and paragraph (e) is amended by removing the phrase “an expected family contribution of at least \$3,000” and adding in its place “an expected family contribution amount at least equal to the maximum authorized award amount for the award year”.

§ 690.78 [Amended]

35. Section 690.78 (c)(2) is amended by removing “15” and adding in its place “20”; paragraph (c)(3) is amended by removing “15” and adding in its place “20”; and paragraph (c)(4) is amended by removing “15” and adding in its place “20”.

§ 690.81 [Amended]

36. Section 690.81 is amended by removing paragraph (c).

[FR Doc. 96-24010 Filed 9-18-96; 8:45 am]

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**Real Estate
Federal Register**

Thursday
September 19, 1996

Part IV

**Department of
Housing and Urban
Development**

**24 CFR Part 3500
Real Estate Statement Procedures Act;
Statement of Enforcement Standards:
Title Insurance Practices in Florida; Final
Rule**

DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT**24 CFR Part 3500**

[Docket No. FR-4114-N-01]

Office of the Assistant Secretary for Housing-Federal Housing Commissioner; Real Estate Settlement Procedures Act; Statement of Enforcement Standards: Title Insurance Practices in Florida; RESPA Statement of Policy 1996-4

AGENCY: Office of the Assistant Secretary for Housing-Federal Housing Commissioner, HUD.

ACTION: Statement of policy.

SUMMARY: This Statement advises the public of the enforcement standards HUD applies to determine whether certain practices involving title insurance companies and title insurance agents comply with the Real Estate Settlement Procedures Act (RESPA). Although this Statement specifically addresses issues and practices that HUD reviewed in the State of Florida, its general principles may apply by analogy to other geographic and settlement service areas.

This Statement discusses HUD's interpretation of two exceptions: Section 8(c)(1)(B) involving "payments of a fee by a title company to its duly appointed agent for services actually performed in the issuance of a policy of title insurance;" and Section 8(c)(2) involving the "payment to any person of a *bona fide* salary or compensation or other payment for goods or facilities actually furnished or for services actually performed." HUD is publishing this Statement to inform the public of its interpretation of the law.

EFFECTIVE DATE: September 19, 1996.

FOR FURTHER INFORMATION CONTACT: David R. Williamson, Director, Office of Consumer and Regulatory Affairs, Room 5241, telephone: (202) 708-4560. For legal enforcement questions, contact Peter S. Race, Assistant General Counsel, Program Compliance Division, Room 9253, telephone: (202) 708-4184. (These are not toll free numbers.) For hearing and speech-impaired persons, this number may be accessed via TTY (text telephone) by calling the Federal Information Relay Service at 1-800-877-8339. (This number is toll free.) The address for the above listed persons is: Department of Housing and Urban Development, 451 Seventh Street, SW, Washington, DC 20410.

SUPPLEMENTARY INFORMATION:

General Background

Section 8(a) of the Real Estate Settlement Procedures Act (RESPA) prohibits any person from giving or accepting any fee, kickback, or thing of value for the referral of settlement service business involving a federally related mortgage loan. (See 12 U.S.C. 2607(a).) Section 8(b) of RESPA prohibits any person from giving or accepting any portion, split or percentage of any charge made or received for the rendering of a settlement service other than for services actually performed. (See 12 U.S.C. 2607(b).) Two exemptions to section 8's prohibitions against compensated referrals in RESPA covered transactions involve payments for title insurance services actually performed. Section 8(c)(1)(B) specifically exempts payments of a fee "by a title company to its duly appointed agent for services actually performed in the issuance of a policy of title insurance." A more general provision, section 8(c)(2), exempts the "payment to any person of a *bona fide* salary or compensation or other payment for goods or facilities actually furnished or for services actually performed." (See also 24 CFR 3500.14(g)(1).)

In enacting RESPA, Congress stated its intent that section 8 of RESPA did not prohibit payments by title insurance companies for "goods furnished or services actually rendered, so long as the payment bears a reasonable relationship to the value of the goods or services received by the person or company making the payment." (H. Rep. No. 1177, 93d Cong., 2nd Sess. 1974 at 7-8 (hereafter "the Report").) The Report stated that "to the extent the payment is in excess of the reasonable value of the goods provided or services performed, the excess may be considered a kickback or referral fee proscribed by Section [8]." The legislative history of section 8(c)(1)(B) also noted that the "value of the referral itself is not to be taken into account in determining whether the payment is reasonable." (Report at 8.) The Report specifically elaborated on the exemption for payments made by title insurance companies to duly appointed agents for services actually performed in the issuance of a policy of title insurance and stated:

Such agents, who in many areas of the country may also be attorneys, typically perform substantial services for and on behalf of a title insurance company. These services may include a title search, an evaluation of the title search to determine the insurability

of the title (title examination), the actual issuance of the policy on behalf of the title insurance company, and the maintenance of records relating to the policy and policyholder. In essence, the agent does all of the work that a branch office of the title insurance company would otherwise have to perform.

Report at 8.

On November 2, 1992, HUD issued regulations that, among other things, gave guidance concerning title agent services under RESPA. These regulations relied in part on the legislative history. Section 3500.14(g)(3)¹ of the regulations provides an example of the type of substantial or "core" title insurance agent services necessary for an attorney to receive multiple fees in a RESPA covered transaction. It states:

For example, for an attorney of the buyer or seller to receive compensation as a title agent, the attorney must perform core title agent services (for which liability arises) separate from attorney services, including the evaluation of the title search to determine the insurability of the title, the clearance of underwriting objections, the actual issuance of the policy or policies on behalf of the title insurance company, and, where customary, the issuance of the title commitment, and the conducting of the title search and closing.

Appendix B to the regulations provides additional guidance on the meaning and coverage of RESPA. Illustration 4 provides a factual situation in which an attorney represented a client as an attorney and as a title insurance agent and received fees for each role in a residential real estate transaction. In its comments on Illustration 4, HUD stated that the attorney was double billing his clients because the work he performed as a "title agent" was work he was already performing for his clients as an attorney. The title insurance company was actually performing the title agent work and providing the attorney with an opportunity to collect a fee as a title agent in exchange for referrals of title insurance business. HUD also stated that for the attorney to receive a separate payment as a title insurance agent, the attorney must "perform necessary core title work and may not contract out the work."

To qualify for a section 8(c)(1)(B) exemption, the attorney title insurance agent must "provide his client with core title agent services for which he assumes liability, and which includes, at a minimum, the evaluation of the title search to determine insurability of the title, and the issuance of a title

¹ All citations in this Statement of Policy refer to recently streamlined regulations published on March 26, 1996 (61 FR 13,232), in the Federal Register (to be codified at 24 C.F.R. 3500 *et seq.*).

commitment where customary, the clearance of underwriting objections, and the actual issuance of the policy or policies on behalf of the title company.” (See 24 CFR part 3500, Appendix B, Illustration 4.)

In another example, Illustration 10 of Appendix B, a real estate broker refers title insurance business to its own affiliate title company. This company, in turn, refers or contracts out all of its business to another title company that performs all the title work and splits its fees with the affiliate. HUD stated that because the affiliate title company provided no substantive services for its portion of the fee, the arrangement between the two title companies would be in violation of section 8 of RESPA. This illustration showed that the controlled business arrangement exemption did not extend to “shell” entities that did not perform substantive services for the fees it collected from the transaction. (See 24 CFR part 3500, Appendix B, Illustration 10.)

Section 19(a) of RESPA authorizes the Secretary to interpret RESPA to achieve the purposes of the Act. Section 19(c) of RESPA authorizes HUD to investigate possible violations of RESPA. During the course of its RESPA investigations, HUD applies the facts revealed by the investigation to the statute and regulations in determining whether a violation exists.

After receiving complaints of possible RESPA violations, HUD, in 1993, initiated an investigation of practices by some title insurance companies and some title insurance agents in the State of Florida. On September 21, 1995, HUD sent a letter and document entitled “Findings of HUD’s Investigation of Florida Title Insurance Companies and Statement of Enforcement Standards” to certain title insurance companies in Florida. In November 1995, HUD met with Florida title insurance companies and received input from them on the enforcement standards. On June 19, 1996, HUD sent additional guidance to the particular companies that received the September 21, 1995 letter.

Statement of Policy—1996-4

To give guidance to interested members of the public on the application of RESPA and its implementing regulations to these issues, the Secretary, pursuant to section 19(a) of RESPA and 24 CFR 3500.4(a)(1)(ii), hereby issues the following Statement of Policy.² In issuing this Statement, HUD is not

² This Statement provides additional guidance to the 1995 standards issued to the particular companies and, to the extent there are any inconsistencies, supersedes those standards.

dictating particular practices for title insurance companies and their agents but is setting forth HUD’s enforcement position for qualification in Florida for exemptions from section 8 violations.

Generally, it is beneficial for title insurance companies and their agents to qualify under the section 8(c)(1)(B) exemption since HUD does not normally scrutinize the payments as long as they are “for services actually performed in the issuance of a policy of title insurance.” (HUD will, however, continue to examine payments to agents that are merely for the referral of business such as gifts or trips based on the volume of business referred.) If the practices of a title insurance company or its agent do not qualify under the section 8(c)(1)(B) exemption, the company and the agent may still qualify under section 8(c)(2). Under a section 8(c)(2) standard, HUD will examine the amount of the payments to or retentions by the title insurance agent to see if they are reasonably related to services actually performed by the agent.

A. Definitions

For purposes of this statement, the terms listed below are defined as follows:

1. “*Title Insurance Agent*” means a person who has entered into an agreement with a title insurance company to act as an agent in connection with the issuance of title insurance policies, and includes title agents, title agencies, attorneys, and law firms.

2. “*Core title services*” are those basic services that a title insurance agent must actually perform for the payments from or retention of the title insurance premium to qualify for RESPA’s section 8(c)(1)(B) exemption for “payments by a title company to its duly appointed agent for services actually performed in the issuance of a policy of title insurance.”

In performing core title services, the title insurance agent must be liable to his/her title insurance company for any negligence in performing the services. In considering liability, HUD will examine the following type of indicia: the provisions of the agency contract, whether the agent has errors and omissions insurance or malpractice insurance, whether a contract provision regarding an agent’s liability for a loss is ever enforced, whether an agent is financially viable to pay a claim, and other factors the Secretary may consider relevant.

“*Core title services*” mean the following in Florida:

a. The examination and evaluation, based on relevant law and title

insurance underwriting principles and guidelines, of the title evidence (as defined below) to determine the insurability of the title being examined, and what items to include and/or exclude in any title commitment and policy to be issued.

b. The preparation and issuance of the title commitment, or other document, that discloses the status of the title as it is proposed to be insured, identifies the conditions that must be met before the policy will be issued, and obligates the insurer to issue a policy of title insurance if such conditions are met.

c. The clearance of underwriting objections and the taking of those steps that are needed to satisfy any conditions to the issuance of the policies.

d. The preparation and issuance of the policy or policies of title insurance.

e. The handling of the closing or settlement, when it is customary for title insurance agents to provide such services and when the agent’s compensation for such services is customarily part of the payment or retention from the insurer.

3. A “*pro forma commitment*” is a document that contains a determination of the insurability of the title upon which a title insurance commitment or policy may be based and that contains essentially the information stated in Schedule A and B of a title insurance commitment (and may legally constitute a commitment when countersigned by an authorized representative). A pro forma commitment is a document that contains determinations or conclusions that are the product of legal or underwriting judgment regarding the operation or effect of the various documents or instruments or how they affect the title, or what matters constitute defects in title, or how the defects can be removed, or instructions concerning what items to include and/or to exclude in any title commitment or policy to be issued on behalf of the underwriter.

4. “*Title evidence*” means a written or computer generated document that identifies and either describes or compiles those documents, records, judgments, liens, and other information from the public records relevant to the history and current condition of the title to be insured. Title evidence does not, however, include a pro forma commitment.

B. Qualification Under Section 8(c)(1)(B)

To qualify for an exemption as an agent in Florida under section 8(c)(1)(B), the payments to (or retentions by) a title insurance agent must be “for services actually performed in the issuance of a

policy of title insurance." HUD interprets this language as requiring a title insurance agent to perform core title services, as defined above, in order for title insurance company payments to the title insurance agent to qualify for this exemption. These "core title services" describe the type of services that Congress stated would come within this exemption, that is, the type of work that a branch office of the title insurance company would otherwise have to perform in the issuance of a title insurance policy. Thus, as applied to practices in Florida, for a title insurance agent to be able to retain the maximum agency portion of the risk premium payment allowed under Florida law, the title insurance agent must actually perform "core title services," and generally may not contract out those services.

HUD recognizes, however, that there may be a legitimate temporary need (such as surges in business) for the title insurance agent to contract out some part of the core title services to an independent third party, not affiliated with the title insurance company. In such cases, payments to these agents still qualify under section 8(c)(1)(B). However, there is no qualification for the exemption if such contracting out of core title services is done on a regular basis.

HUD also will not consider a title insurance agent to be an agent for purposes of section 8(c)(1)(B) and to have actually performed (or incurred liability for) core title services when the service is undertaken in whole or in part by the agent's insurance company (or an affiliate of the insurance company). For example, if the title insurance company provides its title insurance agent with a pro forma commitment, typing, or other document preparation services, the title insurance agent is not "actually performing" these services. As such, the title insurance agent would not be providing "core title services" for the payments to come within the section 8(c)(1)(B) exemption. HUD acknowledges, however, that title insurance companies often provide their own title insurance agents with general advice and assistance on a particular unusual question or concern on an individual case by case basis, and this type of assistance would not affect the

scrutiny of the payments to the title insurance agent under this exemption.

Within the section 8(c)(1)(B) context, moreover, title insurance companies may provide their title insurance agents with title evidence, as defined above. HUD acknowledges that title insurance companies have invested in title plants and may sell title evidence to their title insurance agents. In doing so, however, title insurance companies should not charge fees that reflect a payment for the referral of the title insurance order. (See 24 CFR 3500.14(b).) By this, HUD interprets the section 8 requirements to mean that the title insurance company must charge its title insurance agents a fee for title evidence that is not a disguised referral fee given in exchange for the referral of title business. It is evidence of a thing of value given for referrals if the title insurance company is not charging fees for title evidence that cover its costs of producing the title evidence or if the title insurance company charges less for title evidence to be used for a commitment or policy issued on behalf of the title insurance company than on another company's behalf.

In performing core title services, a title insurance agent is likely to use employees. If a title insurance company supplies employees or has control over or directs the work of employees of the title insurance agent, then the title insurance agent is not actually performing the core title services. In such a case, HUD will review the services provided by the insurance company to the agent for sufficiency under section 8(c)(2).

C. Qualification Under Section 8(c)(2)

If a title insurance agent does not perform "core title services" to qualify for the exemption under section 8(c)(1)(B) of RESPA, that agent may receive payment for services actually performed pursuant to section 8(c)(2), so long as the payment is reasonably commensurate with the reduced level of responsibilities assumed by the agent.

With respect to practices under Florida's title insurance statute, it is HUD's enforcement position that it is difficult to justify the payment (or retention) of a significant portion of the title insurance risk premium to a title insurance agent who fails to perform

and assume responsibility for the title examination function. Likewise, if the title insurance company provides other services, or carries out the title insurance agent functions, or provides or controls "part time examiners," HUD may scrutinize the net level of retention realized by the agent to determine whether the agent's compensation from the insurer reflects a meaningful reduction from the compensation generally paid to agents in the area who perform all core title services. The level of such reduction in compensation must be reasonably commensurate with the reduced level of responsibilities assumed by such person for the services provided and the underwriting risks taken. The value of a referral, however, is not to be taken into account in determining whether the payment bears a reasonable relationship to the services rendered. (See 24 CFR 3500.14(g)(2).)

D. Unearned Fees

Under the RESPA regulations, when a person in a position to refer title insurance business, such as an attorney, real estate broker or agent, mortgage lender, or developer or builder, receives a payment for providing title insurance agent services, such payment must be for services that are actual, necessary, and distinct from the primary services provided by such person. (See 24 CFR 3500.14(g)(3).) Thus, if an attorney is representing a consumer in a home purchase and also acting as a title insurance agent, he or she may not receive duplicate fees for the same work.

If a title insurance agent obtains third party services, such as the provision of title evidence, and does not add any additional value to the service provided by the third party, but increases the charge to the consumer for that service and retains the difference, then HUD views the amount that the person retains as an unearned fee in violation of section 8(b) of RESPA. (See 24 CFR 3500.14(c).)

Dated: September 6, 1996.
 Nicolas P. Retsinas,
Assistant Secretary for Housing—Federal Housing Commissioner.
 [FR Doc. 96-24069 Filed 9-18-96; 8:45 am]
 BILLING CODE 4210-27-P

Federal Register

Thursday
September 19, 1996

Part V

Department of Defense General Services Administration National Aeronautics and Space Administration

48 CFR Parts 1, et al.
Federal Acquisition Regulation;
Certification Requirements Public
Meeting; Proposed Rule

DEPARTMENT OF DEFENSE

**GENERAL SERVICES
ADMINISTRATION**

**NATIONAL AERONAUTICS AND
SPACE ADMINISTRATION**

**48 CFR Parts 1, 3, 4, 6, 8, 9, 12, 14, 16,
19, 22, 23, 25, 27, 29, 31, 32, 36, 37, 42,
45, 47, 49, 52, and 53**

[FAR Case 96-312]

**Federal Acquisition Regulation;
Certification Requirements; Public
Meeting**

AGENCIES: Department of Defense (DOD),
General Services Administration (GSA),
and National Aeronautics and Space
Administration (NASA).

ACTION: Notice of public meeting.

SUMMARY: The Administrator for Federal
Procurement Policy, in concert with the
Federal Acquisition Regulatory Council,

is sponsoring a meeting to solicit public comments on the implementation of Section 4301(b) of the National Defense Authorization Act for Fiscal Year 1996 (Pub. L. 104-106) (the Act). The Act requires the Administrator for Federal Procurement Policy to issue for public comment a proposal to amend the Federal Acquisition Regulation (FAR) to remove certification requirements for contractors and offerors that are not specifically imposed by statute. The Act provides the Administrator with authority to retain, under certain circumstances, certification requirements that are not specifically imposed by statute. The Administrator's proposal to implement the Act was published in the Federal Register on September 12, 1996 (61 FR 48354). In an effort to obtain public input in the rulemaking process, the FAR Council is inviting interested parties to participate in a public meeting to provide comments on the Administrator's proposed rule.

DATES: A public meeting will be conducted at the address shown below from 1:30 p.m. to 4:30 p.m., eastern daylight time, on October 9, 1996.

ADDRESSES: The public meeting will be held at the White House Conference Center, Truman Room, 726 Jackson Place, NW, Washington, DC 20503. Individuals who would like to participate or submit a formal statement shall, by October 2, 1996, notify: Defense Acquisition Regulations Council, Attn: Mr. Michael Mutty, PDUSD(A&T)DP(DAR), IMD 3D139, 3062 Defense Pentagon, Washington, DC 20301-3062.

FOR FURTHER INFORMATION CONTACT: Mr. Michael Mutty (703) 602-0131. FAX (703) 602-0350.

Dated: September 13, 1996.

Edward C. Loeb,

Director, Federal Acquisition Policy Division.

[FR Doc. 96-24005 Filed 9-18-96; 8:45 am]

BILLING CODE 6820-EP-P

Executive Order

Thursday
September 19, 1996

Part VI

The President

Proclamation 6917—Citizenship Day and
Constitution Week, 1996

Presidential Documents

Title 3—

Proclamation 6917 of September 17, 1996

The President

Citizenship Day and Constitution Week, 1996

By the President of the United States of America

A Proclamation

At a time when many nations around the world are becoming ever more factionalized, the citizens of the United States are blessed with an overarching identity as Americans. The wisdom of our Nation's founders, as embodied in our Constitution, still binds us in a united community of purpose and ideals. Our Constitution invites us all to recognize ourselves as Americans first—not to de-emphasize our personal or familial roots, but to celebrate the diversity that adds strength to our national character. As Daniel Webster put it more than a century ago, we share "One country, one constitution, one destiny."

This week we celebrate the Constitution of the United States of America. This remarkably flexible document has stood for more than two centuries as a unique achievement in the world of nations. The more we study and understand the Constitution, the more we grow, mature, and blossom as citizens. This process links us to the Nation's founders by making us part of their great adventure in democracy. By living our daily lives according to the founders' principles, we keep alive their vision and demonstrate its truth and wisdom.

In order to become a naturalized U.S. citizen, immigrants undertake a formal study of the guiding principles and institutions of American government. Those who choose to become citizens proudly welcome this responsibility. In fact, all of us would do well to emulate the zeal and interest shown by these newest Americans, who deeply appreciate their bond with the noble tradition of our Constitution. Therefore, on this occasion I call upon all Americans to consider the wonderful blessings of their United States citizenship and to look upon our Constitution and celebrate the freedom and protection that it has always afforded us.

In commemoration of the signing of our Constitution and in recognition of the importance of informed, responsible citizenship, the Congress, by joint resolution of February 29, 1952 (36 U.S.C. 153), designated September 17 as "Citizenship Day," and by joint resolution of August 2, 1956 (36 U.S.C. 159), requested the President to proclaim the week beginning September 17 and ending September 23 of each year as "Constitution Week."

NOW, THEREFORE, I, WILLIAM J. CLINTON, President of the United States of America, do hereby proclaim September 17, 1996, as Citizenship Day and September 17 through September 23, 1996, as Constitution Week, and urge all Americans to join in observing these occasions with appropriate programs and activities.

IN WITNESS WHEREOF, I have hereunto set my hand this seventeenth day of September, in the year of our Lord nineteen hundred and ninety-six, and of the Independence of the United States of America the two hundred and twenty-first.

William Clinton

[FR Doc. 96-24296

Filed 9-18-96; 11:22 am]

Billing code 3195-01-P

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The items in this list were editorially compiled as an aid to Federal Register users. Inclusion or exclusion from this list has no legal significance.

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