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Briefing on How To Use the Federal Register
For information on a briefing in Washington, DC, see announcement on the inside cover of this issue.

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FOR: Any person who uses the Federal Register and Code of Federal Regulations.

WHO: The Office of the Federal Register.

WHAT: Free public briefings (approximately 3 hours) to present:

1. The regulatory process, with a focus on the Federal Register system and the public's role in the development of regulations.
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4. An introduction to the finding aids of the FR/CFR system.

WHY: To provide the public with access to information necessary to research Federal agency regulations which directly affect them. There will be no discussion of specific agency regulations.

WASHINGTON, DC

WHEN: February 2 and March 5 at 9:00 a.m.

WHERE: Office of the Federal Register, 7th Floor Conference Room, 800 North Capitol Street NW, Washington, DC

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

OFFICE OF PERSONNEL MANAGEMENT

5 CFR Part 351

RIN 3206–AF04

Reduction in Force

AGENCY: Office of Personnel Management.

ACTION: Final rule.

SUMMARY: The Office of Personnel Management (OPM) is revising its regulations to add a permissive temporary exception to the order of release from a competitive level in a reduction in force (RIF). Agency use of this exception would allow a covered employee to remain on the agency's rolls, past the effective date of the reduction in force, in an annual leave status if, in so doing, the employee would attain eligibility for an immediate annuity and/or would establish eligibility to carry health benefits coverage into retirement. OPM also is revising the RIF notice requirements to help assure that agencies notify employees about their eligibility to continue health benefits and life insurance after separation.

EFFECTIVE DATE: January 22, 1993.

FOR FURTHER INFORMATION CONTACT: Leota Shelkey on 202–606–0960 (FAX 202–606–0390).

SUPPLEMENTARY INFORMATION: On July 15, 1992, OPM published proposed revisions to the reduction in force regulations in the **Federal Register** (57 FR 31332). In rare instances, employees separated from Federal employment by reduction in force (RIF) may be very close to retirement eligibility on the effective date of the RIF. The purpose of OPM's proposed regulation was to provide a means for these employees to stay on an agency's rolls past the effective date of a RIF to reach their first retirement eligibility. To do this, OPM proposed a permissive temporary exception in § 351.608(a)(3) to the regular order of RIF release. OPM also proposed a revision to the RIF notice requirements to include information about continuation of health benefits and life insurance.

We received written comments from eight Federal agencies, two employee organizations, and two individuals. All but three commenters supported the proposed changes. The comments dealt primarily with either retirement or leave issues. In addition, OPM reviewed a similar issue—eligibility to carry health benefits into retirement. The major comments are summarized below. Additional information on reduction in force can be found in the Federal Personnel Manual Supplement 351–1 issued by OPM.

Eligibility for Health Benefits

During the comment period, OPM noted that some employees who retire as a result of a reduction in force are unable to continue health benefits coverage after retirement. This is because they do not satisfy 5 U.S.C. 8905, which requires enrollment in the Federal Employees Health Benefits Program for at least 5 years immediately prior to retirement. Because of the similarity between this and the situation where employees just miss meeting retirement eligibility, OPM has added a similar permissive temporary exception to § 351.608 to cover employees who would establish eligibility under 5 U.S.C. 8905 during their period of accrued annual leave.

Retirement Issues

Proposed § 351.608(a)(3)(ii) provided a permissive temporary exception for an agency to retain an employee on annual leave past the RIF effective date if the employee would attain "first eligibility" for an immediate retirement benefit under 5 U.S.C. 8336 or 8412.

One agency commented that section 8336, on the Civil Service Retirement System (CSRS), covers optional, discontinued service, and voluntary early retirement. Section 8412, on the Federal Employees Retirement System (FERS), covers only optional retirement. The agency suggested we add section 8414, which includes discontinued service and voluntary early retirement under FERS, to the proposed regulation. We have done so. However, the only types of retirement (under both CSRS and FERS) an employee could qualify for under this exception to the RIF order are optional retirement and discontinued service retirement. Any voluntary early retirement authority approved by OPM would have ended prior to a RIF effective date.

Another agency suggested we clarify whether "first eligibility" means discontinued service retirement (DSR) or optional retirement. This provision refers to either type of retirement. For example, if an employee would meet the DSR criteria after 1 week on annual leave, the agency would have to separate the employee on that eligibility date, even if the employee would meet the criteria for optional retirement after 2 weeks of annual leave. In most cases, the first eligibility would be DSR. In other cases, such as a 61-year old employee with 10 years of service, the first eligibility would be optional retirement. We have made no change in the regulation but will provide additional guidance through the Federal Personnel Manual.

Another agency asked whether an employee first has to make a commitment to retire upon reaching first eligibility and what procedures would apply. Because the separation from Federal service would be involuntary, an agency need not determine the employee's preference when approving the permissive temporary exception. The separation must occur on the date of first eligibility, as described above. A commitment to retire would be superfluous.

Leave Issues

One commenter suggested that the proposed regulation conflicts with Comptroller General opinion B–120074, dated August 10, 1954, and other related opinions. These opinions found that agencies are prohibited under the Lump Sum Leave Act of 1954 from granting terminal annual leave when it is known the employee will separate, unless the decision is based on the needs and interests of the Government. Two other commenters believed the proposal could significantly increase the Government's long-term costs.

The proposed permissive temporary exception is not in conflict with the Comptroller General opinions regarding "terminal" annual leave. This exception meets the needs and interests of the Government as well as the employee.

The Government seeks to avoid penalizing long-term employees who are close to retirement eligibility and will allow them the use of earned annual leave (including annual leave earned after the RIF separation date in some cases) to perfect that benefit. The earlier payment of annuities will not add a significant cost burden given the limited number of employees affected, the permissive nature of the exception, and the concomitant cost savings realized by staff reductions.

Approval of any permissive temporary exception under § 351.608 is at the discretion of an agency. An employee has no right to an exception. However, agencies are responsible under § 351.201(c) for applying part 351 uniformly and consistently in any one reduction in force.

One commenter suggested that the proposed regulation permit use only of "accumulated and accrued" annual leave to an employee's credit. The purpose is to exclude use of advanced annual leave under the exception provision. We agree and have changed the final regulation accordingly.

Three commenters suggested that other types of "leave" should be made available under the exception provision. These include restored annual leave, compensatory time accrued in lieu of overtime payments or for religious purposes, credit hours earned under a flexible work schedule, and leave without pay. We agree that restored annual leave should be available for use because, once approved, it is added to the employee's accumulated and accrued annual leave balance. We do not agree with inclusion of the other types of "leave" because of the resulting complexity, the lack of uniformity and equity in the systems, and the potential for abuse.

Several commenters asked whether an employee in an annual leave status would continue to earn annual and sick leave and whether the earned annual leave could be used to reach retirement eligibility. The answer to both questions is "yes." An employee retained in an annual or sick leave status under a temporary exception would continue to earn annual and sick leave. The annual leave earned after the RIF effective date is used to determine whether an employee would reach retirement or health benefits eligibility. This is a change from the proposed regulation, which limited use of this temporary exception to the amount of annual leave to an employee's credit as of the RIF effective date. Since ordinarily an employee may use leave earned while in a leave status, it was determined that leave earned on leave should be available for this purpose also. Thus, to be eligible for the temporary exception, an employee must be able to reach retirement or health benefits eligibility during the period represented by the amount of accumulated and accrued annual leave (including restored annual leave) to the employee's credit as of the effective date of the RIF, plus the amount of annual leave the employee would earn while in an annual leave status after the effective date of the RIF. (Similarly, an employee retained in a sick leave status could use sick leave earned after the RIF effective date, assuming that such use continued to be appropriate.)

A similar question was whether an employee on donated annual leave would be eligible for a temporary exception and, if so, whether the employee could continue to receive donated leave. An employee using donated annual leave under the Voluntary Leave Transfer Program (5 CFR part 630, subpart I) could be approved for a temporary exception only if he or she would reach retirement or health benefits eligibility during the period represented by the amount of donated leave to his or her credit as of the effective date of the RIF. If additional annual leave were to be donated after the RIF effective date, the employee could not use it. Also, these employees could not benefit from annual leave earned after the RIF effective date. Sections 6337 and 6371 of title 5, U.S. Code, provide that annual and sick leave earned as a result of using donated annual leave must go into a special annual and sick leave account not to exceed 40 hours, which is available only after the employee's medical emergency has ended. No leave is earned after annual and sick leave accounts reach 40 hours. The same is true under the Voluntary Leave Bank Program (5 CFR part 630, supart J).

The National Defense Authorization Act of Fiscal Year 1993 (Pub. L. 102–484 signed October 23, 1992) permits Department of Defense employees at installations scheduled to close during the period October 1, 1992, through December 31, 1997, to accumulate annual leave without restriction. Normally, an employee would carry no more than 240 hours of annual leave into a new leave year. Because the resulting accumulation of annual leave could become significant, we have added a provision to the final regulation permitting agencies to set a limit on the amount of leave that could be used under a temporary exception. For example, an organization undergoing a RIF might adopt a policy of retaining employees under a temporary exception for no more than 60 work days.

One agency noted that personnel offices should make clear to payroll offices how the use of terminal annual leave under the exception provision is treated for lump-sum payment purposes. The amount of annual leave used to retain the employee to the date of first retirement or health benefits eligibility is no longer to the employee's credit at separation and is not included in a lump-sum payment. However, the remaining accumulated and accrued annual leave (including restored leave), if any, plus any additional annual leave earned while in a leave status under a temporary exception, is included in the lump-sum payment.

A commenter asked whether an agency might grant sick leave to an employee when sickness occurs while an employee is in an annual leave status under a permissive temporary exception. A related question was whether an agency might grant annual leave after an employee retained on sick leave under a temporary exception has exhausted his or her sick leave. The answer to both questions is "no." The temporary exception provisions permit an agency to make an exception to the order of release in a RIF. Therefore, this determination, and the approval of either sick leave or annual leave for this purpose, must be made before the RIF effective date. An exception to the regular release order of a RIF cannot be made after the RIF actions have taken effect. We have revised the regulation to clarify this matter.

One commenter asked for clarification of an employee's reemployment rights while in annual leave status under a temporary exception. An employee carried in an annual leave status under a temporary exception has the same reemployment rights he or she otherwise would have. Employees who are involuntarily separated are eligible for the Reemployment Priority List (RPL) (5 CFR part 330, subpart B), even if they retire following separation. They are to be given notice of eligibility to apply for the RPL as part of the RIF notice, as required by 5 CFR 351.803. An employee who subsequently submits a timely application must be placed on the RPL, even if he or she is not yet separated. Also, employees are eligible for the Displaced Employee Program (5 CFR part 330, subpart C) after receiving a notice of involuntary separation, including when they retire in lieu of involuntary separation. For purposes of those programs, employees in an annual leave status under a temporary exception are treated no differently than other employees who receive a notice of

RIF separation. If while on annual leave an employee receives and accepts a job offer through the RPL, the agency processes the appropriate personnel action, in lieu of RIF separation, in accordance with FPM Supplement 296–33, The Guide to Processing Personnel Actions. Specific instructions relating to these regulations will be issued through that supplement.

Another commenter believed we should make clear that an employee retained under a permissive temporary exception may not be returned to duty status. As we pointed out in the Supplementary Information to the proposed rule, an employee temporarily retained under a permissive temporary exception is not entitled to any further RIF offer. The temporary exception simply extends the RIF separation date for the affected employee. The only circumstance in which an agency may return the employee to duty in the same competitive area, under either a permanent or temporary appointment, is when the employee receives and accepts a job offer through the RPL. In addition, an agency could offer the employee a job in a different competitive area, as long as the RPL is complied with. As suggested, we have revised § 351.608 accordingly.

One commenter suggested we add sick leave to this temporary exception. We have not done so. As explained in the Supplementary Information to the proposed regulation, an exception already exists to allow use of sick leave in appropriate circumstances. We have clarified use of sick leave in revised § 351.608(c).

Finally, one commenter suggested we reorganize paragraph (a) of § 351.608 for greater clarity. We have revised the entire § 351.608 for clarity and to address additional issues raised by commenters.

RIF Notice—Health Benefits and Life Insurance Coverage

OPM's proposed regulation also amended the RIF notice requirements to assure that employees are given timely notice of the right to continue coverage under the Federal Employees Health Benefits Program and the Federal Employees' Group Life Insurance Program. All commenters on this proposal supported it, and we have retained the language in § 351.803 as proposed but with minor editorial changes.

Waiver of Delay in Effective Date

Pursuant to 5 U.S.C. 553(d)(3), I find that good cause exists to make this amendment effective in less than 30 days. The delay in the effective date is being waived to give effect to the benefits extended by the amended provisions at the earliest practicable date.

E.O. 12291, Federal Regulation

I have determined that this is not a major rule as defined in E.O. 12291, Federal Regulation.

Regulatory Flexibility Act

I certify that this regulation will not have a significant economic impact on a substantial number of small entities because it affects only certain Federal employees.

List of Subjects in 5 CFR Part 351

Administrative practice and procedure, Government employees.

Office of Personnel Management.

Douglas A. Brook,

Acting Director.

Accordingly, OPM is amending part 351 of title 5, Code of Federal Regulations, as follows:

PART 351—REDUCTION IN FORCE

1. The authority citation for part 351 continues to read as follows:

Authority: 5 U.S.C. 1302, 3502, 3503.

2. § 351.608 is revised to read as follows:

§ 351.608 Permissive temporary exceptions.

(a) *General.* (1) In accordance with this section, an agency may make a temporary exception to the order of release in § 351.601 and to the action provisions of § 351.603 when needed to retain an employee after the effective date of a reduction in force.

(2) After the effective date of a reduction in force, an agency may not amend or cancel the reduction in force notice of an employee retained under a temporary exception so as to avoid completion of the reduction in force action. This does not preclude the employee from receiving and accepting a job offer in the same competitive area in accordance with a Reemployment Priority List established under part 330, subpart B, of this chapter (or equivalent program).

(3) An agency may not approve an employee's use of any other type of leave after the employee has been retained under a temporary exception authorized by paragraph (c)(1) or (c)(2) of this section.

(b) *Exception not to exceed 90 days.* An agency may make a temporary exception for not more than 90 days when needed to continue an activity without undue interruption or to satisfy a Government obligation to the retained employee.

(c) *Other temporary exceptions.* An agency may make a temporary exception under the conditions in this paragraph to extend an employee's separation date beyond the effective date of the reduction in force when the temporary retention of a lower standing employee does not adversely affect the right of any higher standing employee who is released ahead of the lower standing employee. The agency may establish a maximum number of days for which an exception may be approved. A temporary exception may be approved for the following purposes.

(1) *Sick leave.* An agency may make a temporary exception to retain on sick leave a lower standing employee covered by chapter 63 of title 5, United States Code (or other leave system for Federal employees), who is on approved sick leave on the effective date of the reduction in force, for a period not to exceed the date the employee's sick leave is exhausted. Use of sick leave for this purpose must be in accordance with the requirements in part 630, subpart D, of this chapter (or other applicable leave system for Federal employees).

(2) *Annual leave.* An agency may make a temporary exception to retain on accrued annual leave a lower standing employee covered by chapter 63 of title 5, United States Code (or other leave system for Federal employees), who will attain first eligibility for an immediate retirement benefit under 5 U.S.C. 8336, 8412, or 8414, and/or establish eligibility under 5 U.S.C. 8905 to carry health benefits coverage into retirement during the period represented by the amount of the employee's accrued annual leave.

(i) This exception may not exceed the date the employee first becomes eligible for immediate retirement or for continuation of health benefits into retirement, except that an employee may be retained long enough to satisfy both retirement and health benefits requirements.

(ii) Accrued annual leave includes all accumulated and accrued annual leave, restored annual leave, and annual leave donated to the employee under part 630, subpart I, of this chapter, or made available to the employee under part 630, subpart J, of this chapter, as of the effective date of the reduction in force, in addition to annual leave earned and available to the employee after the effective date of the reduction in force. When approving a temporary exception under this provision, an agency may not advance annual leave or consider any annual leave that might be credited to an employee's account after the effective

date of the reduction in force other than annual leave earned while in an annual leave status.

(d) *Notice to employees.* When an agency approves an exception for more than 30 days, it must:

(1) Notify in writing each higher standing employee in the same competitive level reached for release of the reasons for the exception and the date the lower standing employee's retention will end; and

(2) List opposite the employee's name on the retention register the reasons for the exception and the date the employee's retention will end.

3. In § 351.803, the heading and paragraph (a) are revised to read as follows:

§ 351.803 Notice of eligibility for reemployment assistance and other benefits.

(a) An agency must give to each employee who receives a specific notice of separation under this part the following additional information, either in or with the specific reduction in force notice or as a separate supplemental notice to the employee:

(1) The right to reemployment consideration under subparts B and C of part 330 of this chapter;

(2) Guidance on how to apply for unemployment insurance through the appropriate State program; and

(3) Notice on how eligible employees may convert or continue health benefits enrollment or convert life insurance coverage, as required by § 870.501, § 871.501, § 872.501, § 873.501, § 890.401, and § 890.1104 of this chapter.

* * * * *

[FR Doc. 93–1427 Filed 1–21–93; 8:45 am]

BILLING CODE 6325–01–M

DEPARTMENT OF AGRICULTURE

Farmers Home Administration

7 CFR Parts 1901, 1940, 1944, 1951, 1956, and 2003

Rural Development Administration

7 CFR Part 4284

RIN 0570–AB00

Community Facility Loans and Grants

AGENCIES: Rural Development Administration and Farmers Home Administration, USDA.

ACTION: Interim rule with request for comments.

SUMMARY: The Rural Development Administration (RDA) promulgates a new regulation for Community Facility Loans and Grants. The Farmers Home Administration (FmHA) amends its regulations that are utilized by RDA in administering Community Facility Loans and Grants. FmHA also amends its regulations to administer, on behalf of RDA, the direct grant program to individuals. This action is necessary to implement legislation that provides loans and grants for water and waste disposal facilities and services to rural communities whose residents face significant health risks. The health risks faced by these rural residents must be due to the fact that a significant proportion of the community's residents do not have access to, or are not served by, adequate, affordable water or waste disposal systems. This loan and grant program will provide financial assistance to water and waste disposal systems to assist them in providing services to these communities. Individuals can also receive financial assistance that will allow them to utilize the water and/or waste disposal system.

DATES: Interim rule effective January 22, 1993. Written comments must be received on or before March 23, 1993.

ADDRESSES: Submit written comments in duplicate to the Office of the Chief, Regulations, Analysis and Control Branch, Farmers Home Administration, USDA, South Agriculture Building, room 6348, 14th and Independence Avenue, SW., Washington, DC 20250. All written comments made pursuant to this notice will be available for public inspection during regular work hours at the above address.

FOR FURTHER INFORMATION CONTACT: Jerry W. Cooper, Loan Specialist, Water and Waste Disposal Division, Rural Development Administration, USDA, South Agriculture Building, room 6328, Washington, DC 20250, telephone: (202) 720–9589.

SUPPLEMENTARY INFORMATION:

Classification

This action has been reviewed under USDA procedures established in Departmental Regulation 1512–1, which implements Executive Order 12291, and has been determined to be non-major. The annual effect on the economy will be less than $100 million. There will be no significant increase in costs or prices for consumers, individual industries, organizations, governmental agencies, or geographic regions. There will be no significant adverse effects on competition, employment, investment, productivity, innovation or on the ability of United States-based enterprises to compete in domestic or export markets.

Intergovernmental Review

The program will be listed in the Catalog of Federal Domestic Assistance and will be subject to the provisions of Executive Order 12372 which requires intergovernmental consultation with State and local officials.

Environmental Impact Statement

This action has been reviewed in accordance with FmHA Instruction 1940–G, "Environmental Program." RDA has determined that the action does not constitute a major Federal action significantly affecting the quality of the human environment, and in accordance with the National Environmental Policy Act of 1969, Pub. L. 91–190, an Environmental Impact Statement is not required.

Compliance With Executive Order 12778

The regulation has been reviewed in light of Executive Order 12778 and meets the applicable standards provided in sections 2(a) and (2)(b)(2) of that Order. Provisions within this part which are inconsistent with state law are controlling. All administrative remedies pursuant to 7 CFR part 1900, subpart B must be exhausted prior to filing suit.

Cross References of Regulations

The Rural Development Administration is a result of a reorganization of programs administered by Farmers Home Administration as required by section 364 of the Consolidated Farm and Rural Development Act, as amended, (7 U.S.C. 2006f) and an order of the Secretary of Agriculture. Dual-references or cross-references to Farmers Home Administration regulations are provided for by section 364.

Discussion of the Interim Rule

Amendments to Public Law 101–624 contained in the "Farm Credit Banks and Associations Safety and Soundness Act of 1992" require that these amendments are being published as an interim final rule. Section 306C of the Consolidated Farm and Rural Development Act (7 U.S.C. 1926c) recognizes the emergency nature of the situation by designating that these loans and grants shall be available only to communities whose residents face significant health risks because of no access to adequate affordable water supply systems or waste disposal facilities. Little administrative discretion is involved in threshold determinations of qualifying communities because of a floor as to average per capita income, unemployment rate, and a designation

as a colonia provided by the statutes themselves. Congress has expressed its desire for quick, specific action to alleviate what it feels is a serious health problem in a specific geographic area. Accordingly, the Agency is complying with Congress's directions by publishing this rule as an interim final with a sixty-day comment period.

Section 2327 of Public Law 101–624 authorizes the financing of water and waste disposal projects in rural areas that primarily provide services to residents of low-income counties with a high unemployment rate. Loans and grants can be made to water and/or waste disposal systems to provide services to residents, including costs of connecting those residents to the system. The water and waste disposal systems can also obtain funds from RDA to make loans and grants available to individuals to pay the costs of improvements needed to facilitate the use of the system. Individuals can receive loans and/or grants to pay the cost of making improvements needed to use or connecting their residences to a community water and/or waste disposal system. The improvements or connection of individual residents will facilitate the use of water supply and/or waste disposal systems. This action develops new regulations to implement the program authorized by Public Law 101–624. The "Agriculture, Rural Development, Food and Drug Administration, and Related Agencies Appropriations Act, 1993" authorizes $25,000,000 in grant funding for this program.

List of Subjects

7 CFR Part 1901

Civil rights, Compliance reviews, Fair housing, Minority groups.

7 CFR Part 1940

Allocations, Administrative practice and procedure, Agriculture, Grant programs—Housing and community development, Loan programs—Agriculture, Rural areas.

7 CFR Part 1944

Aged, Grant programs—Housing and community development, Home improvement, Loan programs—Housing and community development.

7 CFR Part 1951

Account servicing, Grant programs—Housing and community development, Reporting requirements, Rural areas.

7 CFR Part 1956

Accounting, Loan programs—Agriculture, Rural areas.

7 CFR Part 2003

Organization and functions (government agencies).

7 CFR Part 4284

Community development, Community facilities, Loan programs—Housing and community development, Loan security, Rural areas, Waste treatment and disposal, Water supply.

Therefore, chapter XVIII, title 7, Code of Federal Regulations is amended and chapter XLII, title 7, Code of Federal Regulations is added as follows:

PART 1901—PROGRAM-RELATED INSTRUCTIONS

1. The authority citation for part 1901, subpart E, continues to read as follows:

Authority: 7 U.S.C. 1989; 42 U.S.C. 1480; 40 U.S.C. 442; 5 U.S.C. 301; 42 U.S.C. 2942; 7 CFR 2.23; 7 CFR 2.70.

Subpart E—Civil Rights Compliance Requirements *C*

2. Section 1901.204 is amended by revising paragraph (a)(2) and by adding paragraphs (a)(24) and (a)(25) to read as follows:

§ 1901.204 Compliance reviews.

(a) * * *

(20) Rural Business Enterprise grants and Television Demonstration grants.

* * * * *

(24) Emergency Community Water Assistance grants.

(25) Section 306C WWD Loans and Grants in subpart E of part 4284 of this title.

* * * * *

PART 1940—GENERAL

3. The authority citation for part 1940 continues to read as follows:

Authority: 7 U.S.C. 1989; 42 U.S.C. 1480; 5 U.S.C. 301; 7 CFR 2.70.

Subpart L—Methodology and Formulas for Allocation of Loan and Grant Program Funds

4. Section 1940.590 is amended by adding paragraph (i) to read as follows:

§ 1940.590 Community and Business programs appropriations not allocated by State.

* * * * *

(i) *Section 306C WWD Loans and Grants in Subpart E of Part 4284 of this title.* Control of funds will be retained in the National Office and allocated on a project case basis. Requests for funds will be made to the Director, Water and Waste Disposal Division.

PART 1944—HOUSING

5. The authority citation for part 1944 continues to read as follows:

Authority: 42 U.S.C. 1480, 5 U.S.C. 301, 7 CFR 2.23, 7 CFR 2.70.

Subpart J—Section 504 Rural Housing Loans and Grants

6. § 1944.475 is added to read as follows:

§ 1944.475 Individual Section 306C WWD Loans and Grants.

Exhibit D sets forth the policies and procedures for making Water and Waste Disposal grants to individuals authorized by section 306C(b) of the Consolidated Farm and Rural Development Act, (7 U.S.C. 1926(c)), as amended.

7. Exhibit D is added to subpart J to read as follows:

Exhibit D to Subpart J—Section 306C WWD Grants to Individuals

I. *General.* This exhibit sets forth the policies and procedures and delegates authority for making initial and subsequent Water and Waste Disposal (WWD) grants to individuals authorized by section 306C(b) of the Consolidated Farm and Rural Development Act, (7 U.S.C. 1926(c)), as amended. The objective of the section 306C WWD individual grant program is to facilitate the use of community water and/or waste disposal systems by the residents of colonias along the U.S./Mexico border. All conditions of this subpart apply unless modified by this exhibit.

II. *Definitions.* The following definitions apply to this exhibit:

(a) *Colonia.* Any identifiable community *designated in writing* by the State or county in which it is located; determined to be a colonia on the basis of objective criteria including lack of potable water supply, lack of adequate sewage systems, and lack of decent, safe, and sanitary housing, inadequate roads and drainage; and existed and was generally recognized as a colonia before October 1, 1989.

(b) *Individual.* Resident of a colonia located in a rural area.

(c) *Rural areas.* Includes unincorporated areas and any city or town with a population not in excess of 10,000 inhabitants according to the most recent decennial census of the United States.

(d) *System.* A community or central water supply or waste disposal system.

III. *Grant Purposes.* Grant funds may be used to pay the reasonable costs for individuals to:

(a) Extend service lines from the system to residence.

(b) Connect service lines to residence's plumbing.

(c) Pay reasonable charges or fees for connecting to a system.

(d) Pay for necessary installation of plumbing and related fixtures within dwellings lacking such facilities. This is

limited to one bath tub, sink, commode, kitchen sink, water heater, and outside spigot.

(e) Construction and/or partitioning off a portion of the dwelling for a bathroom, not to exceed 4.6 square meters (48 square feet) in size.

IV. *Grant Restrictions.*

(a) *Maximum grant.* (1) Maximum grant to any individual for water service lines, connections, and/or construction of a bathroom is $3,500.

(2) Maximum grant to any individual for sewer service lines, connections, and/or construction of a bathroom is $4,000.

(3) Lifetime assistance to any individual for initial or subsequent section 306C WWD grants may not exceed a cumulative total of $5,000.

(5) Document the amount of assistance provided each grantee on a list of section 306C WWD recipients and retain it in the office operational file. Maintenance of the list will permit destruction of closed section 306C WWD assistance case folders as prescribed in § 2033.10(b)(4)(i) of FmHA Instruction 2033–A (available in any FmHA office). The list must include the following information recorded at the time a section 306C WWD grant is made.

(i) Grantee name, address, and case number.

(ii) Name of co-grantee(s), if any.

(iii) Amount of the grant.

(iv) Date grant was made.

(b) *Limitation on use of grant funds.* Section 306C WWD grant funds *may not* be used to:

(1) Pay any debt or obligation of the grantee other than obligations incurred for items listed in section III of this exhibit.

(2) Pay individuals for their own labor.

(3) Pay costs that are not considered reasonable by Farmers Home Administration.

V. *Eligibility Requirements.* Section 306C WWD applicants must meet the following requirements (applicants need not be age 62 or older):

(a) Own dwelling located in a colonia. Evidence of ownership will be presented as outlined in § 1944.461(a) of this subpart.

(b) Have a total taxable income based on the latest Federal income tax form from all individuals residing in the household that is below the most recent poverty income guidelines established by the Department of Health and Human Services.

(c) Must not be delinquent on any Federal debt.

VI. *Processing Applications.* Applications for section 306C WWD grants will be handled in accordance with § 1944.467 of this subpart, except:

(a) An applicant need not be 62 years of age or older, and

(b) The applicant must furnish a copy of the most recent tax returns for all individuals residing in the household.

PART 1951—SERVICING AND COLLECTIONS

8. The authority citation for part 1951 continues to read as follows:

Authority: 7 U.S.C. 1989; 42 U.S.C. 1480; 5 U.S.C. 301; 7 CFR 2.23 and 7 CFR 2.70.

Subpart E—Servicing of Community and Insured Business Programs Loans and Grants

9. Section 1951.201 is revised to read as follows:

§ 1951.201 Purpose.

This subpart prescribes the Farmers Home Administration's (FmHA) policies, authorizations, and procedures for servicing Water and Waste Disposal System loans and grants; Community Facility loans; Rural Business Enterprise/Television Demonstration grants; loans for grazing and other shift-in-land-use projects; Association Recreation loans; Association Irrigation and Drainage loans; Watershed loans and advances; Resource Conservation and Development loans; Insured Business loans; Economic Opportunity Cooperative loans; loans to Indian Tribes and Tribal Corporations; Rural Renewal loans; Energy Impacted Area Development Assistance Program grants; National Nonprofit Corporation grants; Water and Waste Disposal Technical Assistance and Training grants; Emergency Community Water Assistance grants; System for Delivery of Certain Rural Development Programs panel grants; and section 306C WWD loans and grants in subpart E of part 4284 of this title. Loans sold without insurance by FmHA to the private sector will be serviced in the private sector and will not be serviced under this subpart. The provisions of this subpart are not applicable to such loans. Future changes to this subpart will not be made applicable to such loans.

PART 1956—DEBT SETTLEMENT

10. The authority citation for part 1951 continues to read as follows:

Authority: 7 U.S.C. 1989; 42 U.S.C. 1480; 5 U.S.C. 301; 31 U.S.C. 3711; 7 CFR 2.23; 7 CFR 2.70.

Subpart C—Debt Settlement—Community and Business Programs

11. Section 1956.101 is revised to read as follows:

§ 1956.101 Purpose.

This subpart delegates authority and prescribes polices and procedures for debt settlement of Water and Waste Disposal System loans; Community Facility loans; Association Recreation loans; Watershed loans and advances; Resource, Conservation and Development loans; Rural Renewal loans; insured Business and Industry loans; Irrigation and Drainage loans; Shift-in-land-use loans; Indian Tribal Land Acquisition loans; and section 306C WWD loans in subpart E of part 4284 of this title. Settlement Economic Opportunity Cooperative loans, Claims Against Third Party Converters, Nonprogram loans, Rural Business Enterprise/Television Demonstration Grants, Rural Development Loan Fund loans, Intermediary Relending Program loans, Nonprofit National Corporations Loans and Grants, and 601 Energy Impact Assistance Grants, is not authorized under independent statutory authority and settlement under these programs is handled pursuant to the Federal Claims Collection Joint Standards, 4 CFR parts 101–105 as described in § 1956.147 of this subpart.

PART 2003—ORGANIZATION

12. The authority citation for part 2003 continues to read as follows:

Authority: 7 U.S.C. 1989; 42 U.S.C. 1480; 5 U.S.C. 301; Public Law 100–82, 7 CFR 2.23 and 2.70.

Subpart A—Functional Organization of the Farmers Home Administration

13. Exhibit A of subpart A paragraph 2 under the heading of 07 02 03 Assistant Administrator—Community and Business Programs is amended by adding the words "section 306C WWD loans and grants, emergency community water assistance grants," after the words "waste disposal loans and grants,".

14. Title 7 is amended by adding a new chapter XLII consisting only of a new part 4284, subpart E at this time.

CHAPTER XLII—RURAL DEVELOPMENT ADMINISTRATION, DEPARTMENT OF AGRICULTURE

PART 4284—GRANTS

Subparts A–D—[Reserved]

Subpart E—Section 306C WWD Loans and Grants

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Exhibit A to Subpart E—Cooperative Agreement Between _____and the Rural Development Administration (RDA)

Authority: 7 U.S.C. 1989; 16 U.S.C. 1005, 5 U.S.C. 301; 7 CFR 2.70.

Subparts A–D—[Reserved]

Subpart E—Section 306C WWD Loans and Grants

§ 4284.401 General.

(a) This subpart outlines Rural Development Administration (RDA) policies and procedures for making Water and Waste Disposal (WWD) loans and grants authorized under section 306(C) of the Consolidated Farm and Rural Development Act (7 U.S.C. 1926(c)), as amended.

(b) RDA officials will maintain liaison with officials of other Federal, State, regional, and local development agencies to coordinate related programs to achieve rural development objectives.

(c) RDA officials shall cooperate with appropriate State agencies in making loans and/or grants that support State strategies for rural area development.

(d) Funds allocated in accordance with this subpart will be considered for use by Indian Tribes within the State regardless of whether State development strategies include Indian reservations within the State's boundaries. Indians residing on such reservations must have an equal opportunity to participate in this program.

(e) Federal statutes provide for extending RDA Financial programs without regard to race, color, religion, sex, national origin, marital status, age, or physical/mental handicap (provided the participant possesses the capacity to enter into legal contracts).

§ 4284.402 [Reserved]

§ 4284.403 Objective.

The objective of the section 306(C) WWD Loans and Grants program is to provide water and waste disposal facilities and services to low-income rural communities whose residents face significant health risks.

§ 4284.404 Definitions.

Applicant. Entity that receives the RDA loan or grant under this subpart. The entities can be public bodies such as municipalities, counties, districts, authorities, or other political subdivisions of a State, and organizations operated on a not-for-profit basis such as associations, cooperatives, private corporations, or Indian tribes on Federal and State reservations, and other Federally recognized Indian tribes

Colonia. Any identifiable community *designated in writing* by the State or county in which it is located; determined to be a colonia on the basis of objective criteria including lack of potable water supply, lack of adequate sewage systems, and lack of decent, safe, and sanitary housing, inadequate roads and drainage; and existed and was generally recognized as a colonia before October 1, 1989.

Cooperative. A cooperative formed specifically for the purpose of the installation, expansion, improvement, or operation of water supply or waste disposal facilities or systems.

Individual—Recipient of a loan or grant through the applicant to facilitate use of the applicant's water and/or waste disposal system.

Rural areas. Include unincorporated areas and any city or town with a population not in excess of 10,000 inhabitants according to the most recent decennial census of the United States. They can be located in any of the 50 States, the Commonwealth of Puerto Rico, the Western Pacific Territories, Marshall Islands, Federated States of Micronesia, Republic of Palau, and the U.S. Virgin Islands.

§§ 4284.405–4284.410 [Reserved]

§ 4284.411 Making, processing, and servicing loans and grants.

Unless specifically modified by this subpart, loans and/or grants will be made, processed, and serviced in accordance with subparts A and H of part 1942 of this title, respectively.

§ 4284.412 Eligibility.

(a) The provisions of paragraphs (a)(1) and (2) of this section do not apply to a rural area recognized as a colonia. Otherwise, the facility financed under this subpart must provide water and/or waste disposal services to rural areas of a county where, on the date the preapplication is received by RDA, the:

(1) Per capita income of the residents is not more than 70 percent of the most recent national average per capita income, as determined by the Department of Commerce; and

(2) Unemployment rate of the residents is not less than 125 percent of the most recent national average unemployment rate, as determined by the Bureau of Labor Statistics.

(b) Residents of the rural area to be served must face significant health risks due to the fact that a significant proportion of the community's residents do not have access to, or are not served by, adequate, affordable, water and/or waste disposal systems. The file should contain documentation to support this determination.

§ 4284.413 Project priority.

The following paragraphs indicate items and conditions which must be considered in selecting preapplications for further development. When ranking eligible preapplications for consideration for limited funds, RDA officials must consider the priority items met by each preapplication and the degree to which those priorities are met.

(a) *Preapplications.* The preapplication and supporting information submitted with it will be used to determine applicant eligibility and the proposed project's priority for available funds. Applicants determined ineligible will be advised of their appeal rights in accordance with subpart B of part 1900 of this title.

(b) *Regional Office review.* All preapplications will be reviewed and scored for funding priority at each Regional Office using Exhibit B of this subpart (available in any RDA office and FmHA State and District office). Funds will be requested from the National Office, Attention: Director, Water and Waste Disposal Division, using Exhibit C of this subpart (available in any RDA office and FmHA State and District office). Eligible applicants that cannot be funded should be advised that funds are not available and advised of their appeal rights as set forth in § 1900.55(a) of subpart B of part 1900 of this title.

(c) *National Office.* The National Office will allocate funds on a project-by-project basis as requests are received. If the amount of funds requested exceeds the amount of funds available, the total project score will be used to select projects for funding. The RDA Administrator may assign up to 35 additional points that will be considered in the total points for items such as geographic distribution of funds, severity of health risks, etc.

(d) *Selection priorities.* The priorities described below will be used to rate preapplications and in selecting projects for funding. Points will be distributed as indicated in paragraphs (d)(1) through (d)(6) of this section and will be used in selecting projects for funding. A copy of Exhibit B of this subpart (available in any RDA office and FmHA State and District office), used to rate applications, should be placed in the case file for future reference.

(1) *Population.* The proposed project will serve an area with a rural population:

(i) Not in excess of 1,500—30 points.

(ii) More than 1,500 and not in excess of 3,000—20 points.

(iii) More than 3,000 and not in excess of 5,500—10 points.

(2) *Income.* The median household income of population to be served by the proposed project is:

(i) Not in excess of 50 percent of the statewide nonmetropolitan median household income—30 points.

(ii) More than 50 percent and not in excess of 60 percent of the statewide nonmetropolitan median household income—20 points.

(iii) More than 60 percent and not in excess of 70 percent of the statewide nonmetropolitan median household income—10 points.

(3) *Joint financing.* The amount of joint financing committed to the proposed project is:

(i) Twenty percent or more private, local, or State funds except Federal funds channeled through a State agency—10 points.

(ii) Five to 19 percent private, local, or State funds except Federal funds channeled through a State agency—5 points.

(4) *Truly rural.* The proposed project is located in a truly rural area as defined in § 1942.17(c) of subpart A of part 1942 of this title—10 points.

(5) *Colonia.* (See definition in § 4284.404 of this subpart.) The proposed project will provide water and/or waste disposal services to the residents of a colonia—50 points.

(6) *Discretionary.* In certain cases, the RDA Regional Director may assign up to 15 points for items such as natural disaster, to improve compatibility/coordination between RDA's and other agencies' selection systems, to assist those projects that are the most cost effective, high unemployment rate, severity of health risks, etc. A written justification must be prepared and attached to Exhibit B of this subpart (available in any RDA office and FmHA State and District office) each time these points are assigned.

§§ 4284.414–4284.420 [Reserved]

§ 4284.421 Use of funds.

(a) *Applicant.* Funds may be used to:

(1) Construct, enlarge, extend, or otherwise improve community water and/or waste disposal systems. Otherwise improve would include extending service lines to and/or connecting residence's plumbing to the system.

(2) Make loans and grants to individuals for extending service lines to and/or connecting residences to the applicant's system. The approval official must determine that this is a practical and economical method of connecting individuals to the community water and/or waste disposal system. Loan funds can only be used for loans, and grant funds can only be used for grants.

(3) Make improvements to individual's residence when needed to allow use of the water and/or waste disposal system.

(4) Grants can be made up to 100 percent of eligible project costs.

(b) *Individuals.* Funds may be used to:

(1) Extend service lines to residence.

(2) Connect service lines to residence's plumbing.

(3) Pay reasonable charges or fees for connecting to a community water and/or waste disposal system.

(4) Pay for necessary installation of plumbing and related fixtures within dwellings lacking such facilities. This is limited to one bathtub, sink, commode, kitchen sink, water heater, and outside spigot.

(5) Construction and/or partitioning off a portion of the dwelling for a bathroom, not to exceed 4.6 square meters (48 square feet) in size.

§§ 4284.422–4284.430 [Reserved]

§ 4284.431 Rates.

(a) Applicant loans will bear interest at the rate of 5 percent per annum.

(b) Individual loans will bear interest at the rate of:

(1) Five percent per annum, or

(2) The Federal Financing Bank rate for loans of a similar term at the time of RDA loan approval, whichever is less.

§§ 4284.432–4284.440 [Reserved]

§ 4284.441 Individual loans and grants.

(a) The amount of loan and grant funds approved by RDA will be based on the need shown in the application and an implementation plan submitted by the applicant. The implementation plan will include such things as: purpose, how funds will be used, proposed application process, construction requirements, control and disbursement of funds, etc. The implementation plan will be attached to Exhibit A of this subpart.

(b) Exhibit A of this subpart is a Cooperative Agreement which sets forth the procedures and regulations for making and servicing loans and grants made by applicants to individuals. The RDA Regional Director is authorized to enter into a Cooperative Agreement with any applicant providing loans and/or grants to individuals. The Cooperative Agreement can be amended to comply with State law and recommendations by the Office of General Counsel. It may also be amended to eliminate references to loans and/or grants if no loan and/or grant is involved. The RDA Regional Director is responsible for:

(1) Ensuring that all provisions of the Agreement are understood.

(2) Determining that the applicant has the ability to make and service loans and/or grants in the manner outlined in the Agreement.

(c) RDA funds remaining after providing individual loans and/or grants will be returned to RDA. The funds should be disbursed to individuals within 1 year from the date water and/or waste disposal service is available to the individuals. The RDA Regional Director can make an exception to this 1 year requirement if written justification is provided by the applicant.

§ 4284.442 Delegation of authority.

The RDA Regional Director is responsible for the overall implementation of the authorities contained in this subpart and may redelegate any such authority to appropriate RDA employees.

§ 4284.443 Guides and attachments.

Exhibit C of subpart H of part 1942 of this title (published in the **Federal Register** only) and Exhibits A, B and C of this subpart (all available in any RDA office and FmHA State and District office) are for use in administering loans and/or grants made under this subpart.

§§ 4284.444–4284.499 [Reserved]

§ 4284.500 OMB control number.

The reporting and recordkeeping requirements contained in this regulation have been approved by the Office of Management and Budget and assigned OMB control number 0570–0001. Public reporting burden for this collection of information is estimated to vary from 5 to 30 hours per response with an average of 17.5 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. Send comments regarding this burden estimate or any other aspect of this collection of information, including suggestions for reducing this burden, to U.S. Department of Agriculture, Clearance Officer, OIRM, room 404–W, Washington, DC 20250; and to the Office of Information and Regulatory Affairs, Office of Management and Budget, Washington, DC 20503.

Exhibit A to Subpart E—Cooperative Agreement Between _____ and the Rural Development Administration (RDA)

This Cooperative Agreement establishes authorities and procedures whereby the _____ (Name of Organization), _____ (Address), _____, (Phone No.), a _____ system, (enter type of system such as waste disposal, or

water) hereinafter referred to as the "system," will process and service water and waste disposal loans and grants authorized under Section 306C of the Consolidated Farm and Rural Development Act, as amended, to facilitate individual's use of the system. It is agreed that the system will receive applications, process, close, and service loans or grants as provided in this agreement and the attached implementation plan. The system's files should be adequately documented to show the basis for individual loans and grant eligibility.

Effective date of this agreement: This agreement shall be effective on the date of the last signatures and date hereto.

Duration of agreement: This agreement shall continue to be in effect until all loans made are collected or otherwise satisfied by the system and any loan made by RDA for such purpose is paid in full or otherwise satisfied.

Purpose: The system will inform individual residents that loans and/or grants will be made available to eligible users through the system. Loans and grants will only be made to users to extend service to, connect their residence to, or make improvements needed to facilitate use of the system. Regulations and guidance for loan/grant making and loan servicing are provided in this part of the agreement. The individuals must reside in a community whose residents face significant health risks due to the fact that a significant portion of the community's residents do not have access to, or are not served by, adequate, affordable, water supply systems or waste disposal facilities.

A. Loan Eligibility

Loans may be made to individuals who:

1. Are individuals who are neither eligible for, nor have received a grant under this agreement; and

2. Have an ownership interest in the dwelling to be connected to the system or improved and located in a rural area; and

3. Have a total taxable income, based on the latest Federal income tax form from individuals residing in the household, of not more than 125 percent of the most recent poverty income guidelines established by Department of Health and Human Services; and

4. Are unable to pay for the costs of improvements without a loan.

B. Grant Eligibility

Grants may be made to individuals who:

1. Have an ownership interest in the dwelling to be connected to the system or improved and located in a rural area; and

2. Have a total taxable income based on the latest Federal income tax form from all individuals residing in the household that is below the most recent poverty income guidelines established by the Department of Health and Human Services; and

3. Are unable to repay a loan under paragraph A of this exhibit if funds are available.

C. Terms

1. The interest rate on loans made under this agreement will be _____percent per annum.

2. Loan repayment terms will not exceed the RDA loan repayment terms.

3. Loans will be evidenced by a promissory note developed in accordance with State law by the system.

4. The loan will be collected at the same time as the regular service bill is collected for such residence. Payments of the loan will be considered as part of the service rendered to users of the service until the loan is paid or otherwise satisfied.

D. Loan/Grant Purposes

Funds may be used to:

1. Extend service lines to, or connect the dwelling's plumbing to, the system to allow use of the system.

2. Pay reasonable costs of connection fees and other charges regularly charged by the system.

3. Pay for necessary installation of plumbing and related fixtures within dwellings lacking such facilities. This is limited to one bathtub, sink, commode, kitchen sink, water heater, and outside spigot.

4. Construction and/or partitioning off a portion of the dwelling for a bathroom, not to exceed 4.6 square meters (48 square feet) in size.

E. Restrictions on Use of Funds

Funds cannot be used to:

1. Make improvements to the residence, except for the improvements authorized by paragraph D of this exhibit.

2. Pay individuals for their own labor.

F. Loan/Grant Processing

1. The system will develop its own application for processing loans and grants.

2. The system will assist individuals in completing an application and promissory note.

3. The system will provide or arrange for technical assistance, as needed, to determine improvements to be made, their costs, and that the costs are reasonable.

4. The system may contract with the individuals to do the work or arrange for the improvements to be installed by a contractor satisfactory to the system and the individual. In either case, the individual will sign a contract agreement covering the planned improvements.

G. Payment for the Work

1. The system will pay the contractor after making such inspection of the work as it deems necessary and acceptance by the individual. The agreement between the contractor and the individual must require the contractor to warrant and guarantee, for a period of 12 months from the date of completion, that the work is free from all defects due to faulty materials or workmanship, and that the contractor shall promptly make such corrections as may be necessary by reason of such defects.

2. The system will advance funds, as needed, to individuals acting as his/her own contractor, to pay for materials and labor other than labor of the individual. The system will inspect the work as it deems necessary to assure that the improvements are being installed satisfactorily.

H. Account Servicing

1. The system will follow generally acceptable accounting practices in maintaining and servicing the borrower's account during the life of the loan. Scheduled note payments will be collected with the borrower's utility service billing and be deposited in the account used to make RDA's loan payment.

2. Interest on unpaid interest shall not be charged.

3. Late charges may be assessed at the option of the system on delinquent accounts.

I. Inspection of Records

The system will provide RDA (or other appropriate Federal agencies), at all reasonable times, access to all books and records relating to loans made under the provisions of this Agreement.

J. Personal Benefit Clause

No member of or delegate to Congress or resident commissioner shall be admitted to any share or part of this agreement or to any benefit to arise therefrom, unless it be made with a corporation for its general benefit.

K. Payment for Services

Individuals may be charged customary fees for technical services provided in determining the type and amount of improvements, obtaining cost estimates, and for inspections made to insure that the improvements have been properly completed. Loan funds may only be used for these purposes to the extent set forth in paragraph D of this exhibit. However, neither the RDA nor the system will pay a loan origination or packaging fee, nor will a fee be paid for servicing the account during the life of the loan.

L. Administrative Policy

1. RDA Regional Director will provide to the system the most recent poverty income guidelines.

2. RDA Regional Director will provide guidance needed by the system in carrying out this program.

3. When all funds covered by this Agreement have been disbursed by the system, the system will provide the RDA Regional Director a report on how the funds were used. The report will include the names of individuals that received assistance, the type of assistance (loan or grant), and the amount of assistance.

_____

(Name)

_____

(Title of System Representative)

Date: _____

_____

(Name)

_____

(RDA Regional Director)

Date: _____

Dated: October 22, 1992.

Mary Ann Baron,

Administrator, Rural Development Administration.

Fred Medero,

Acting Administrator, Farmers Home Administration.

[FR Doc. 93–1408 Filed 1–21–93; 8:45 am]

BILLING CODE 3410–07–M

NATIONAL CREDIT UNION ADMINISTRATION

12 CFR Part 741

Requirements for Insurance

AGENCY: National Credit Union Administration (NCUA).

ACTION: Final rule.

SUMMARY: The NCUA Board is amending part 741 to require federally insured credit unions whose assets exceed $50,000,000, to file with NCUA a quarterly Financial and Statistical Report (the "call report"). All other credit unions will continue to be subject to the current requirement of filing a semiannual call report. The intended effect of this amendment is to provide NCUA with timely and complete financial data from large credit unions.

EFFECTIVE DATE: March 31, 1993.

ADDRESSES: National Credit Union Administration, 1776 G Street, NW., Washington, DC 20456.

FOR FURTHER INFORMATION CONTACT: Michael J. McKenna, Office of General Counsel, telephone (202) 682–9630, or Alonzo Swann, Office of Examination and Insurance, telephone (202) 682–9640, at the above address.

SUPPLEMENTARY INFORMATION: Currently, under § 741.13(a) of the NCUA Regulations, all federally insured credit unions must file with NCUA a semiannual Financial and Statistical Report ("call report"). Credit unions whose assets exceed $100,000,000 as of March 31, 1992, are already required to file quarterly call report in accordance with Letter to Credit Unions No. 1 dated January 1992. (Section 741.13(b) of NCUA's Regulations states that "insured credit unions shall, upon written notice from the Board or Regional Director, file such other reports in accordance with instructions contained in such notice.") On July 28, 1992, the NCUA issued a proposed amendment (see 57 FR 34091, 8/3/92) to require federally insured credit unions whose assets exceed $100,000,000 as of March 31, 1992, $50,000,000 as of March 31, 1993, and $20,000,000 as of March 31, 1994, to file a quarterly call report.

Quarterly reporting was proposed to provide NCUA with timely and complete financial data to improve the efficiency and effectiveness of off-site monitoring of the industry and individual credit unions. Recognizing the increasing complexity of credit union operations, the NCUA Board believes the twice-yearly submission of financial and statistical data is too infrequent, particularly for large credit unions. Credit union assets have shown significant increases in more complex areas, such as real estate lending, member business lending, and investments. These changes have significantly increased the risk of loss to the National Credit Union Share Insurance Fund (NCUSIF). NCUA needs more timely call report data to detect areas of concern to the industry, as well as individual credit unions. In large credit unions, where the potential losses to the share insurance fund are greater, more frequent reporting is clearly desirable. Quarterly reporting will enable NCUA to act quickly to prevent financial loss, both to credit union members and the NCUSIF.

Seventy-seven comment letters were received. Fifty-eight comments were received from federal credit unions, fourteen from state-chartered credit unions, two from state credit union leagues, and two from national trade associations. One comment was received from a state regulatory agency. Twenty-three commenters generally approved of the amendment as proposed. Eight commenters recommend extending the quarterly reporting requirement to all credit unions. Forty-six commenters disapprove of the proposed amendment. Six of these commenters recommend limiting the quarterly reporting requirements to credit unions with assets over $100,000,000. Four commenters recommend thresholds of $100,000,000, $75,000,000, and $50,000,000.

In response to the commenters' concerns, NCUA has decided to limit the quarterly call reports to credit unions with assets in excess of $50,000,000 as of March 31, 1993. This change will provide NCUA with timely and complete financial data from large credit unions but at the same time allow NCUA to evaluate the effectiveness of the program before attempting to extend it to other credit unions.

Thirteen commenters believe the proposed amendment is regulatory overkill and unnecessary. Twelve commenters believe the proposed amendment will increase credit union costs and paperwork requirements. The NCUA Board believes that the benefits of quarterly reporting outweigh the increase in costs and paperwork requirements; however, the increase in cost is minimized by limiting the requirement to credit unions with over $50,000,000 in assets.

Fourteen commenters believe that NCUA's estimate of eight hours to complete the call report is too low. These commenters state that it takes substantially more time to complete the call report with estimates ranging from ten hours to four days. Nine commenters request that NCUA issue a streamlined call report which would be shorter and less complex. These commenters also object to the constant revision of the call report. They believe the inclusion of new data with every revision is overly burdensome. On average, NCUA believes its estimate is correct but NCUA will survey credit unions to determine which sections of the report take the most time to complete. Furthermore, in response to the commenters' concern about the estimated time to complete the call report, as well as the comments on the frequent revision, NCUA will attempt to limit revisions of the call report to only essential matters in the future. Also, if revisions are deemed necessary, NCUA will inform credit unions of such changes in advance.

Two commenters question whether the marginal benefit to NCUA is worth the extra cost to credit unions. Four commenters question whether NCUA can readily assimilate and effectively utilize such data. By limiting the reporting requirement to credit unions with more than $50,000,000 in assets, NCUA will be better able to utilize and assimilate the additional information. The additional data will assess trends in specific credit unions and the industry at large and will pay for itself in proactive supervision.

Seven commenters question whether any past losses to the NCUSIF could have been averted simply because of quarterly reporting. Furthermore, some of these commenters ask whether NCUA has any conclusive statistical data that would support an affirmative answer to their question. NCUA's review of past losses determined that in some cases credit unions deteriorated quickly and quarterly reporting would have averted some loss.

Seven commenters suggest that instead of quarterly reporting, credit unions furnish their regular monthly financial statements as a supplement to the semiannual call report. Five commenters recommend that credit unions with substandard performance or questionable practices be required to provide financial and statistical data on a more frequent basis, allowing stable, sound credit unions to continue semiannual reporting. One commenter suggests requiring semiannual reporting for credit unions with a 1 or 2 CAMEL rating while requiring credit unions with a 3 or 4 CAMEL rating to file quarterly reports. Although NCUA has considered each of these alternatives, the NCUA Board believes its approach will provide a more accurate and

reliable indicator of financial trends in large credit unions where the greatest risk is located.

In addition to the comments received on the proposed rule, NCUA issued a request for comment in July (see 57 FR 34090, 8/3/92) soliciting comment on regulatory burden imposed by NCUA regulations and the consumer compliance regulations. Although comments on NCUA regulations were generally favorable, eleven comments addressed the proposed quarterly reporting requirement. The same concerns with quarterly reporting were raised as have already been discussed.

The NCUA Board is issuing a final amendment to section 741.13 to require quarterly reporting for credit unions with over $50,000,000 in assets as of March 31, 1993. The current semiannual filing requirement would remain in effect for all other credit unions.

Paperwork Reduction Act

The final amendment contains a requirement for the collection and submission of additional information by federally insured credit unions with assets over $50,000,000 as of March 31, 1993. The paperwork requirements were submitted to the Office of Management and Budget for approval under the Paperwork Reduction Act. A notice will be published in the Federal Register once approval is received from OMB.

Regulatory Flexibility Act

The Regulatory Flexibility Act requires the NCUA to prepare an analysis to describe any significant economic impact any regulation may have on a substantial number of small credit unions (primarily those under $1 million in assets). Because the final amendment only affects credit unions whose assets exceed $50,000,000, a Regulatory Flexibility Analysis is not required.

Executive Order 12612

Executive Order 12612 requires NCUA to consider the effect of its actions on state interests. The NCUA Board has determined that this final amendment may have an occasional direct effect on the states, on the relationship between the states, or on the distribution of power and responsibilities among the various levels of government. However, it will enable NCUA and the NCUSIF to have sufficient information to ensure the safety and soundness of federally insured credit unions. The NCUA Board believes that the protection of the NCUSIF warrants this increased reporting by large credit unions and that the increased reporting required will not unduly burden federally insured state-chartered credit unions.

List of Subjects in 12 CFR Part 741

Credit unions, Requirements for insurance.

By the National Credit Union Administration Board on January 14, 1993.

Becky Baker,

Secretary of the Board.

Accordingly, 12 CFR chapter VII, subchapter A is amended as set forth below:

PART 741—REQUIREMENTS FOR INSURANCE

1. The authority citation for part 741 continues to read as follows:

Authority: 12 U.S.C. 1757, 1766(a), and 1781 through 1790; Pub. L. 101–73.

2. Section 741.13(a) is revised as follows:

§ 741.13 Financial and statistical and other reports.

(a) Each operating insured credit union, with assets in excess of $50,000,000, shall file with the NCUA a quarterly Financial and Statistical Report on Form NCUA 5300, on or before January 22 (as of the previous December 31), April 22 (as of the previous March 31), July 22 (as of the previous June 30) and October 22 (as of the previous September 30) of each year. All other operating insured credit unions shall file with the NCUA on or before January 31 and on or before July 31 of each year a semiannual Financial and Statistical Report on Form NCUA 5300, as of the previous December 31 (in the case of the January filing) or June 30 (in the case of the July filing).

* * * * *

[FR Doc. 93–1409 Filed 1–21–93; 8:45 am]

BILLING CODE 7535–01–M

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Parts 21 and 25

[Docket No. NM–74; Special Conditions No. 25–ANM–66]

Special Conditions: SAAB 2000 Airplane; Lightning and High Intensity Radiated Field (HIRF)

AGENCY: Federal Aviation Administration, DOT.

ACTION: Final special conditions.

SUMMARY: These special conditions are issued for the SAAB Model 2000 airplane. This airplane will utilize electrical and electronic systems which perform critical and essential functions These systems include electronic displays which present critical and essential flight and engine parameters to the flightcrew, and electronic propulsion and propeller controls. The applicable regulations do not contain adequate or appropriate safety standards for the protection of these systems from the effects of lightning and high-intensity radiated fields (HIRF). These special conditions provide the additional safety standards which the Administrator considers necessary to ensure that critical and essential functions that these systems perform are maintained when the airplane is exposed to lightning and HIRF.

EFFECTIVE DATE: February 22, 1993.

FOR FURTHER INFORMATION CONTACT: Mark Quam, Federal Aviation Administration (FAA), Standardization Branch, ANM–113, Transport Airplane Directorate, Aircraft Certification Service, 1601 Lind Avenue SW., Renton, Washington 98055–4056; telephone (206) 227–2145.

SUPPLEMENTARY INFORMATION:

Background

On April 28, 1989, SAAB SCANIA AB of Sweden applied for an FAA Type Certificate through the Swedish LFV to the FAA, AEU–100, for the SAAB 2000. (The application for FAA Type Certificate was dated June 9, 1989.)

The SAAB 2000 is a twin-engined, low-wing, pressurized turboprop aircraft for approximately 50 passengers, intended for short to medium haul (100 nm to 1,000 nm). The airplane will have two new Allison GMA–2100 engines rated at 3650 shp. The propeller is a new 6 bladed Dowty Rotol swept shaped propeller. A single lever controls each prop/engine combination. A new APU installation has been added in the tail. The fuselage cross-section will be the same as the SAAB 340. The fuselage skin will be thicker to handle greater pressures. The wing and empennage are new and larger in all dimensions and the fuselage is longer when compared to the SAAB SF–340B. The new cockpit will be a 5 or 6 screen CRT display with new Collins systems. There will be provisions for a Microwave Landing System, Global Positioning System, SELCAL, EICAS, and TCAS systems. The landing gear system will be new. The rudder system will be powered by two hydraulic systems (no manual reversion). The airplane will have provisions for two pilots, an observer, two flight attendants, overhead bins, a toilet, and provisions for the installation of a galley. There will be a forward and

aft stowage compartment and an aft cargo compartment. The airplane will have a maximum operating altitude of 31,000 feet.

Type Certification Basis

The applicable requirements for U.S. type certification must be established in accordance with §§ 12.16, 21.17, 21.19, 21.19, and 21.101 of the Federal Aviation Regulations (FAR).

The changes discussed above are so extensive that to comply with § 21.19, a new Type Certificate will be required for the SAAB 2000. Accordingly, based on the application date of June 9, 1989, the TC basis for this airplane, including rules the applicant volunteered to comply with, is as follows:

Part 25, Amendments 25–1 through 25–71.
Part 25, Amendment 25–72 for the following sections:
- § 25.361 Engine torque.
- § 25.365 Pressurized compartment loads.
- § 25.571 Damage tolerance and fatigue evaluation of structure.
- § 25.772 Pilot compartment doors.
- § 25.773 Pilot compartment view.
- § 25.783(g) Doors.
- § 25.905(d) Propellers.
- § 25.933 Reversing Systems.

Part 25, Amendments 25–73 through 25–76.
Part 34 (As replacement for SFAR 27).
Part 36, Latest amendment at TC.
Lightning and HIRF Protection special conditions.
Any equivalent safety findings.

Special conditions, as appropriate, are issued in accordance with § 11.49 of the FAR after public notice, as required by §§11.28 and 11.29(b), and become part of the type certification basis in accordance with § 21.101(b)(2).

Discussion

The existing lightning protection airworthiness certification requirements are insufficient to provide an acceptable level of safety with the new technology avionic systems. There are two regulations that specifically pertain to lightning protection: One for the airframe in general (§ 25.581), and the other for fuel system protection (§ 25.954). There are, however, no regulations that deal specifically with protection of electrical and electronic systems from lightning. The loss of a critical function of these systems due to lightning would prevent continued safe flight and landing of the airplane. Although the loss of an essential function would not prevent continued safe flight and landing, it would significantly impact the safety level of the airplane.

There is also no specific regulation that addresses protection requirements for electrical and electronic systems from HIRF. Increased power levels from ground based radio transmitters and the growing use of sensitive electrical and electronic systems to command and control airplanes have made it necessary to provide adequate protection.

To ensure that a level of safety is achieved equivalent to that intended by the regulations incorporated by reference, these special conditions are issued for the SAAB 2000 which require that new technology electrical and electronic systems, such as the electronic flight and engine information displays, electronic propulsion controls, and electronic propeller controls be designed and installed to preclude component damage and interruption of function due to both the direct and indirect effects of lightning and HIRF.

Lightning

To provide a means of compliance with these special conditions, a clarification on the threat definition of lightning is needed. The following "threat definition," based on FAA Advisory Circular 20–136, Protection of Aircraft Electrical/Electronic Systems Against the Indirect Effects of Lightning, dated March 5, 1990, is proposed as a basis to use in demonstrating compliance with the lightning protection special condition.

The lightning current waveforms (Components A, D, and H) defined below, along with the voltage waveforms in AC 20–53A, will provide a consistent and reasonable standard which is acceptable for use in evaluating the effects of lightning on the airplane. These waveforms depict threats that are external to the airplane. How these threats affect the airplane and its systems depend upon their installation configuration, materials, shielding, airplane geometry, etc. Therefore, tests (including tests on the completed airplane or an adequate simulation) and/or verified analyses need to be conducted in order to obtain the resultant internal threat to the installed systems. The electronic systems may then be evaluated with this internal threat in order to determine their susceptibility to upset and/or malfunction.

To evaluate the induced effects to these systems, three considerations are required:

1. *First Return Stroke:* (Severe Strike—Component A, or Restrike—Component D). This external threat needs to be evaluated to obtain the resultant internal threat and to verify that the level of the induced currents and voltages is sufficiently below the equipment "hardness" level; then

2. *Multiple Stroke Flash:* (½ Component D). A lightning strike is often composed of a number of successive strokes, referred to as multiple strokes. Although multiple strokes are not necessarily a salient factor in a damage assessment, they can be the primary factor in a system upset analysis. Multiple strokes can induce a sequence of transients over an extended period of time. While a single event upset of input/output signals may not affect system performance, multiple signal upsets over an extended period of time (2 seconds) may affect the systems under consideration. Repetitive pulse testing and/or analysis needs to be carried out in response to the multiple stroke environment to demonstrate that the system response meets the safety objective. This external multiple stroke environment consists of 24 pulses and is described as a single Component A followed by 23 randomly spaced restrikes of ½ magnitude of Component D (peak aptitude of 50,000 amps). The 23 restrikes are distributed over a period of up to 2 seconds according to the following constraints: (1) The minimum time between subsequent strokes is 10 ms, and (2) the maximum time between subsequent strokes is 200 ms. An analysis or test needs to be accomplished in order to obtain the resultant internal threat environment for the system under evaluation.

And,

3. *Multiple Burst:* (Component H). In-flight data-gathering projects have shown bursts of multiple, low amplitude, fast rates of rise, short duration pulses accompanying the airplane lightning strike process. While insufficient energy exists in these pulses to cause physical damage, it is possible that transients resulting from this environment may cause upset to some digital processing systems.

The representation of this interference environment is a repetition of short duration, low amplitude, high peak rate of rise, double exponential pulses which represent the multiple bursts of current pulses observed in these flight data gathering projects. This component is intended for an analytical (or test) assessment of functional upset of the system. Again, it is necessary that this component be translated into an internal environmental threat in order to be used. This "Multiple Burst" consists of 24 random sets of 20 strokes each, distributed over a period of 2 seconds. Each set of 20 strokes is made up to 20 repetitive Component H waveforms distributed within a period of one millisecond. The minimum time between individual Component H pulses within a burst is 10 microseconds, the maximum is 50 microseconds. The 24 bursts are

distributed over a period of up to 2 seconds according to the following constraints: (1) The minimum time between subsequent strokes is 10ms, and (2) the maximum time between subsequent strokes is 200 ms. The individual "Multiple Burst" Component H waveform is defined below.

The following current waveforms constitute the "Severe Strike" (Component A), "Restrike" (Component D), "Multiple Stroke" (½ Component D), and the "Multiple Burst" (Component H).

These components are defined by the following double exponential equation:

$i(t)=I_o(e^{-at}-e^{-bt})$

where:

t=time in seconds,

i=current in amperes, and

	Severe strike (component A)	Restrike (component D)	Multiple stroke (½ component D)	Multiple burst (component H)
I_o, amp	= 218,810	109,405	54,703	10,572
a, sec^{-1}	= 11,354	22,708	22,708	187,191
b, sec^{-1}	= 647,265	1,294,530	1,294,530	19,105,100
This equation produces the following characteristics:				
I_{peak}	= 200 KA	100 KA	50 KA	10 KA
and,				
$(di/dt)_{max}$(amp/sec)	= 1.4×10^{11} @t=0+sec	1.4×10^{11} @t=0+sec	0.7×10^{11} @t=0+sec	2.0×10^{11} @t=0+sec
di/dt, (amp/sec)	= 1.0×10^{11} @t=.5μs	= 1.0×10^{11} @t=.25μs	= 0.5×10^{11} @t=.25μs	.....
Action Integral (amp^2 sec)	= 2.0×10^{6}	0.25×10^{6}	0.625×10^{6}	.....

High-Intensity Radiated Fields (HIRF)

With the trend toward increased power levels from ground based transmitters, plus the advent of space and satellite communications, coupled with electronic command and control of the airplane, the immunity of critical digital avionics systems, such as EFIS, to HIRF must be established.

It is not possible to precisely define the HIRF to which the airplane will be exposed in service. There is also uncertainty concerning the effectiveness of airframe shielding for HIRF. Furthermore, coupling to cockpit installed equipment through the cockpit window apertures is undefined. Based on surveys and analysis of existing HIRF emitters, an adequate level of protection exists when compliance with the HIRF protection special condition is shown with either paragraph 1 or 2 below:

1. A minimum threat of 100 volts per meter peak electric field strength from 10 KHz to 18 GHz.

a. The threat must be applied to the system elements and their associated wiring harnesses without the benefit of airframe shielding.

b. Demonstration of this level of protection is established through system tests and analysis.

2. A threat external to the airframe of the following field strengths for the frequency ranges indicated.

Frequency	Peak (V/M)	Average (V/M)
10 KHz–100 KHz	50	50
100 KHz–500 KHz	60	60
500 KHz–2000 KHz	70	70
2 MHz–30 MHz	200	200
30 MHz–70 MHz	30	30
70 MHz–100 MHz	30	30
100 MHz–200 MHz	150	33
200 MHz–400 MHz	70	70
400 MHz–700 MHz	4,020	935
700 MHz–1000 MHz	1,700	170
1 GHz–2 GHz	5,000	990
2 GHz–4 GHz	6,680	840
4 GHz–6 GHz	6,850	310
6 GHz–8 GHz	3,600	670
8 GHz–12 GHz	3,500	1,270
12 GHz–18 GHz	3,500	360
18 GHz–40 GHz	2,100	750

The envelope given in paragraph 2 above is a revision to the envelope used in previously issued special conditions in other certification projects. It is based on new data and SAE AE4R subcommittee recommendations. This revised envelope includes data from Western Europe and the United States.

Discussion of Comments

Notice of proposed special conditions No. SC–92–5–NM for the SAAB Model 2000 was published in the **Federal Register** on August 13, 1992 (57 FR 36375). Comments were received from two commenters. One of the commenters had no objection to the proposed special conditions as written.

Included in the comments from the remaining commenter are corrections to the certification basis for the airplane to include later amendments to part 25 that were voluntarily adopted by the applicant. These corrections were made as requested.

One of the comments objects to the definitions of "Critical Function" and "Essential Function" used in the Notice of proposed special conditions because they do not harmonize with those used by JAA, and because they are ambiguous in the way they are written. The comment proposed that they be changed to delete the words "contribute to or" from these definitions.

The FAA concurs that the words "contribute to or" may be deleted from the definitions of critical and essential functions as used in the Notice. Referring to the definition of "Failure Condition" as found in AC 25.1309–1A, the concept of considering contributory failures is included; therefore, referring to failures that contribute to a failure condition in the definition of critical and essential functions is redundant.

A comment is made proposing that the following be added to the definition of essential functions:

"* * * or contribute to a failure condition that in combination with other malfunctions or external events would prevent the continued safe flight and landing of the airplane."

The FAA concurs with the proposal to expand the definition of essential functions to include contributory functions that would prevent continued safe flight and landing of the airplane. However, referring to the above discussion of the previous comment, the word, "failure" was used rather than "failure condition" in the proposed addition which was added to the definition of essential functions.

Conclusion

This action affects only certain unusual or novel design features on one model of airplane. It is not a rule of general applicability and affects only the manufacturer who applied to the FAA for approval of these features on the airplane.

List of Subjects in 14 CFR Parts 21 and 25

Air transportation, Aircraft, Aviation safety, Safety.

The authority citation for these special conditions is as follows:

Authority: 49 U.S.C. app. 1344, 1348(c), 1352, 1354(a), 1355, 1421 through 1431, 1502, 1651(b)(2), 42 U.S.C. 1857f–10, 4321 *et seq.*; E.O. 11514; and 49 U.S.C. 106(g).

The Special Conditions

Accordingly, pursuant to the authority delegated to me by the Administrator, the following special conditions are issued as part of the type certification basis for the SAAB 2000 airplane:

1. Lightning Protection

a. Each electrical and electronic system that performs critical functions must be designed and installed to ensure that the operation and operational capability of these systems to perform critical functions are not adversely affected when the airplane is exposed to lightning.

b. Each essential function of electrical or electronic systems or installations must be protected to ensure that the function can be recovered in a timely manner after the airplane has been exposed to lightning.

2. Protection From Unwanted Effects of High-Intensity Radiated Fields (HIRF).

Each electrical and electronic system that performs critical functions must be designed and installed to ensure that the operation and operational capability of these systems to perform critical functions are not adversely affected when the airplane is exposed to high-intensity radiated fields external to the airplane.

3. The following definitions apply with respect to these special conditions:

Critical Functions. Functions whose failure would cause a failure condition that would prevent the continued safe flight and landing of the airplane.

Essential Functions. Functions whose failure would cause a failure condition that would significantly impact the safety of the airplane or the ability of the flightcrew to cope with adverse operating conditions, or contribute to a failure that in combination with other malfunctions or external events would prevent the continued safe flight and landing of the airplane.

Issued in Renton, Washington, on January 12, 1993.

Darrell M. Pederson,

Acting Manager, Transport Airplane Directorate, Aircraft Certification Service, ANM–100.

[FR Doc. 93–1445 Filed 1–21–93; 8:45 am]

BILLING CODE 4910–13–M

14 CFR Part 39

[Docket No. 92–NM–87–AD; Amendment 39–8468; AD 93–01–14]

Airworthiness Directives; Boeing Model 727 Series Airplanes

AGENCY: Federal Aviation Administration, DOT.

ACTION: Final rule.

SUMMARY: This amendment supersedes an existing airworthiness directive (AD), applicable to all Boeing Model 727 series airplanes, that currently requires inspection of the main landing gear (MLG) door actuator attach fitting bolts, and replacement, if necessary. This amendment requires revised inspection procedures, and provides a revised optional terminating modification. This amendment is prompted by a recent reassessment of the corrective actions required by the existing AD, which revealed that additional actions are necessary in order to fully address the unsafe condition. The actions specified by this AD are intended to prevent landing with one MLG partially extended.

DATES: Effective February 23, 1993.

The incorporation by reference of Boeing Service Bulletin 727–32–0383, dated December 6, 1990, as listed in this regulation, was approved previously by the Director of the Federal Register as of September 26, 1991 (56 FR 46112, September 10, 1991).

The incorporation by reference of Boeing Service Bulletin 727–32–0383, Revision 1, dated January 30, 1992, as listed in this regulation, is approved by the Director of the Federal Register as of February 23, 1993.

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

FOR FURTHER INFORMATION CONTACT: Stanton R. Wood, Aerospace Engineer, Seattle Aircraft Certification Office, Airframe Branch, ANM–120S, FAA, Transport Airplane Directorate, 1601 Lind Avenue, SW., Renton, Washington 98055–4056; telephone (206) 227–2772; fax (206) 227–1181.

SUPPLEMENTARY INFORMATION: A proposal to amend part 39 of the Federal Aviation Regulations by superseding AD 91–15–14, Amendment 39–7078 (56 FR 46112, September 10, 1991), which is applicable to all Boeing Model 727 series airplanes, was published in the **Federal Register** on July 10, 1992 (57 FR 30686). The action proposed to require revised inspection procedures of the main landing gear (MLG) door actuator attach fitting bolts, and replacement, if necessary; and provides a revised optional terminating modification.

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

One commenter supports the proposed rule.

One operator states that it used parts other than those specified in the service bulletin cited as the appropriate source of service information to accomplish the modification required by this AD. Since this operator has not experienced a failure due to this substitution in parts, it plans to request an alternative method of compliance. The FAA infers from this operator's comments that it requests that the final rule be revised to allow these substitute parts to be used when accomplishing the modification. The FAA does not concur. Since no substantiating data were submitted, the FAA cannot evaluate the integrity of these parts, nor can the long-term affect on other parts be determined. However, under the provisions of paragraph (g) of the final rule, the FAA may approve alternative methods of compliance with the requirements of this AD, if substantiating data are submitted to demonstrate that an acceptable level of safety can be maintained with the use of alternative parts.

One commenter questions whether an operator must comply with both proposed paragraphs (a) and (e), since proposed paragraph (e) does not state that it replaces proposed paragraph (a). The FAA notes that the applicability portion of proposed paragraph (e) states that it is applicable to those "airplanes that have not previously accomplished the actions required by paragraph (a)." Therefore, although proposed paragraph (e) does not state that it replaces proposed paragraph (a), it is clear that if the requirements of paragraph (a) have been accomplished, the requirements of

paragraph (e) do not need to be repeated.

One commenter requests that the compliance time for those airplanes that have not accomplished previously the requirements of AD 91–15–14 be revised from the proposed 1,500 flight cycles or 18 months to include the next scheduled "C" check as an alternative. This commenter requests a revision in the compliance time so that it will fall during regularly scheduled maintenance periods and that the exposure due to unnecessary assembly and disassembly of this critical joint will be reduced. The FAA does not concur. The compliance time, as proposed, represents what the FAA has determined to be the maximum interval of time allowable wherein the inspections could be accomplished and an acceptable level of safety could be maintained. Since maintenance schedules may vary from operator to operator, there would be no assurance that the inspection would be accomplished during that maximum interval.

One commenter requests that "credit" be given to those operators that have accomplished the bolt replacement procedure in accordance with Boeing Service Bulletin 727–32–0383, dated December 6, 1990. This commenter notes that proposed paragraph (d) requires replacement of the bolt only in accordance with Revision 1 of that service bulletin. The FAA concurs. The FAA has determined that the bolt replacement procedures for bolts 1 and 2 in both the original issue and Revision 1 of the service bulletin are identical; therefore, safety would not be adversely affected if the bolt replacement procedure is accomplished in accordance with the original issue of the service bulletin. Paragraph (d) of the final rule has been revised to add Boeing Service Bulletin 727–32–0383, dated December 6, 1990, as an alternative source of service information for accomplishing the bolt replacement procedure for bolts 1 and 2.

One commenter requests that the requirement for bolt replacement, as specified in proposed paragraph (d)(2), be revised to be consistent with Boeing Service Bulletin 727–32–0383, Revision 1, dated January 30, 1992, which permits a torque check of the third bolt in lieu of replacement of the third bolt. The FAA concurs. The FAA has reviewed and evaluated the torque check procedure described in Revision 1 of the service bulletin and has determined that an adequate level of safety can be maintained with this procedure. Paragraph (d)(2) of the final rule has been revised accordingly.

The final rule has been revised to clarify the compliance times for accomplishing the repair procedures for findings of loose bolts or serrations not fully mated. For findings of loose bolts, the repair procedures, included in paragraph (b) of the notice, are clearly required prior to further flight; however, paragraphs (d) and (f) have been clarified in the final rule to indicate that these repair procedures are also to be performed prior to further flight.

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

There are approximately 1,635 Model 727 series airplanes of the affected design in the worldwide fleet. The FAA estimates that 1,047 airplanes of U.S. registry will be affected by this AD, that it will take approximately 1 work hour per airplane to accomplish the required actions, and that the average labor rate is $55 per work hour. Based on these figures, the total cost impact of the AD on U.S. operators is estimated to be $57,585, or $55 per airplane. This total cost figure assumes that no operator has yet accomplished the requirements of this AD.

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 "major rule" under Executive Order 12291; (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 14 CFR part 39 of the Federal Aviation Regulations as follows:

PART 39—AIRWORTHINESS DIRECTIVES

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

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

§ 39.13 [Amended]

2. Section 39.13 is amended by removing amendment 39–7078 (56 FR 46112, September 10, 1991), and by adding a new airworthiness directive (AD), amendment 39–8468, to read as follows:

93–01–14. Boeing: Amendment 39–8468. Docket 92–NM–87–AD. Supersedes AD 91–15–14, Amendment 39–7078.

Applicability: All Model 727 series airplanes, certificated in any category.

Compliance: Required as indicated, unless accomplished previously.

To prevent a landing with one main landing gear (MLG) partially extended, accomplish the following:

(a) Within the next 1,500 flight cycles after October 15, 1991 (the effective date of AD 91–15–14, Amendment 39–7078), inspect for loose MLG door actuator attach fitting bolts, in accordance with Part III, Accomplishment Instructions, of Boeing Service Bulletin 727–32–0383, dated December 6, 1990.

(b) If loose bolts are found as a result of the inspection required by paragraph (a) of this AD, prior to further flight, accomplish Figure 1 or 2 of Boeing Service Bulletin 727–32–0383, dated December 6, 1990.

(c) For airplanes that have accomplished the actions required by paragraph (a) of this AD prior to the effective date of this AD: Prior to the accumulation of 3,700 flight cycles after accomplishing the inspection or replacement required by paragraphs (a) and (b) of this AD, or within 3 years after the effective date of this AD, whichever occurs first; and thereafter at intervals not to exceed 3,700 flight cycles or 3 years after the immediately preceding inspection, whichever occurs first; inspect the MLG door actuator attach fitting to ensure that serrations are fully mated, and to detect loose bolts, in accordance with Part III, Accomplishment Instructions, of Boeing Service Bulletin 727–32–0383, Revision 1, dated January 30, 1992.

(d) If serrations are not fully mated, or if loose bolts are found, as a result of the inspections required by paragraph (c) of this AD, prior to further flight, accomplish Figure

1 or 2 of Boeing Service Bulletin 727–32–0383, dated December 6, 1990; or Revision 1, dated January 30, 1992.

(1) If Figure 1 of either service bulletin is accomplished, repeat the inspection required by paragraph (c) of this AD at intervals not to exceed 3,700 flight cycles or 3 years after the immediately preceding inspection, whichever occurs first.

(2) Accomplishment of Figure 2 of Revision 1 of the service bulletin (for all bolts); or accomplishment of Figure 2 of the service bulletin dated December 6, 1990 (for bolts 1 and 2) and accomplishment of a torque check of bolt 3 in accordance with Revision 1 of the service bulletin; constitutes terminating action for the inspection requirements of paragraph (c) of this AD.

(e) For airplanes that have not previously accomplished the actions required by paragraph (a) of this AD prior to the effective date of this AD: Prior to the accumulation of 1,500 flight cycles after the effective date of this AD, or within 18 months after the effective date of this AD, whichever occurs first; and thereafter at intervals not to exceed 3,700 flight cycles or 3 years after the immediately preceding inspection, whichever occurs first; inspect the MLG door actuator attach fitting to ensure that serrations are fully mated, and to detect loose bolts, in accordance with Part III, Accomplishment Instructions, of Boeing Service Bulletin 727–32–0383, Revision 1, dated January 30, 1992.

(f) If serrations are not fully mated, or if loose bolts are found as a result of the inspections required by paragraph (e) of this AD, prior to further flight, accomplish Figure 1 or 2 of Boeing Service Bulletin 727–32–0383, Revision 1, dated January 30, 1992.

(1) If Figure 1 of the service bulletin is accomplished, repeat the inspection required by paragraph (e) of this AD at intervals not to exceed 3,700 flight cycles or 3 years after the immediately preceding inspection, whichever occurs first.

(2) Accomplishment of Figure 2 of the service constitutes terminating action for the inspection requirements of paragraph (e) of this AD.

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

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

(h) Special flight permits may be issued in accordance with FAR 21.197 and 21.199 to operate the airplane to a location where the requirements of this AD can be accomplished.

(i) Certain inspections and replacement shall be done in accordance with Boeing Service Bulletin 727–32–0383, dated December 6, 1990, as indicated. This incorporation by reference was approved previously by the Director of the Federal Register in accordance with 5 U.S.C. 552(a) and 1 CFR Part 51 as of September 26, 1991 (56 FR 46112, September 10, 1991). Certain other inspections and replacement shall be done in accordance with Boeing Service Bulletin 727–32–0383, Revision 1, dated January 30, 1992, as indicated. This incorporation by reference was approved by the Director of the Federal Register in accordance with 5 U.S.C. 552(a) and 1 CFR Part 51. Copies may be obtained from Boeing Commercial Airplane Group, P.O. Box 3707, Seattle, Washington 98124–2207. Copies may be inspected at the FAA, Transport Airplane Directorate, 1601 Lind Avenue, SW., Renton, Washington; or at the Office of the Federal Register, 800 North Capitol Street, NW., suite 700, Washington, DC.

(j) This amendment becomes effective on February 23, 1993.

Issued in Renton, Washington, on January 11, 1993.

N.B. Martenson,

Acting Manager, Transport Airplane Directorate, Aircraft Certification Service.

[FR Doc. 93–1433 Filed 1–21–93; 8:45 am]

BILLING CODE 4910–13–M

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14 CFR Part 39

[Docket No. 91–NM–220–AD; Amendment 39–8469; AD 93–01–15]

Airworthiness Directives; McDonnell Douglas Model DC–8 Series Airplanes

AGENCY: Federal Aviation Administration, DOT.

ACTION: Final rule.

SUMMARY: This amendment supersedes an existing airworthiness directive (AD), applicable to McDonnell Douglas Model DC–8 series airplanes, that currently requires structural inspections to detect fatigue cracking, reporting of the inspection results, and repair or replacement, as necessary, to ensure continued airworthiness as these airplanes approach the manufacturer's original fatigue design life goal. This amendment requires modification of the existing sampling program to: (a) Require additional visual inspections of all Principal Structural Elements (PSE's) on certain airplanes, (b) include expanded/modified PSE's, (c) revise the reporting requirements, and (d) increase the sample size. This amendment is prompted by new data submitted by the manufacturer indicating that additional inspections and an expanded sample size are necessary to increase the confidence level of the statistical program to ensure timely detection of cracks in PSE's. The actions specified by this AD are intended to prevent fatigue cracking, which could result in a compromise of the structural integrity of these airplanes.

DATES: Effective February 26, 1993.

The incorporation by reference of certain publications listed in the regulations was approved previously by the Director of the Federal Register as of August 10, 1987 (54 FR 25591, July 8, 1987).

The incorporation by reference of certain other publications listed in the regulations is approved by the Director of the Federal Register as of February 26, 1993.

ADDRESSES: The service information referenced in this AD may be obtained from McDonnell Douglas Corporation, P.O. Box 1771, Long Beach, California 90846–1771, Attention: Business Unit Manager, Technical Publications—Technical Administrative Support, C1–L5B. 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 FAA, Los Angeles Aircraft Certification Office, 3229 East Spring Street, Long Beach, California; or at the Office of the Federal Register, 800 North Capitol Street, NW., suite 700, Washington, DC.

FOR FURTHER INFORMATION CONTACT: Mike Lee, Aerospace Engineer, Airframe Branch, ANM–122L, FAA, Transport Airplane Directorate, Los Angeles Aircraft Certification Office, 3229 East Spring Street, Long Beach, California 90806–2425; telephone (310) 988–5325; fax (310) 988–5210.

SUPPLEMENTARY INFORMATION: A proposal to amend part 39 of the Federal Aviation Regulations by superseding AD 87–14–06, Amendment 39–5631 (54 FR 25591, July 8, 1987), which is applicable to McDonnell Douglas Model DC–8 series airplanes, was published in the Federal Register on January 15, 1992 (57 FR 1697). The action proposed to require structural inspections and necessary repair or replacement to ensure continued airworthiness as these airplanes approach the manufacturer's original fatigue design life goal.

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

One commenter supports the proposed rule.

Several commenters request that the AD be issued as a revision to AD 87–14–06, which would retain this same AD number, rather than as a supersedure, which would be given a new AD number. The commenters note that a revision would lessen the chances for a bookkeeping error to occur. The FAA does not concur. The FAA's current policy (reference FAA Order 8040.1B, "Airworthiness Directives") is that,

whenever a "substantive change" is made to an existing AD, the AD must be superseded, rather than revised. "Substantive changes" are those made to any instruction or reference that affects the substance of the AD, and includes part numbers, service bulletin and manual references, compliance times, applicability, methods of compliance, corrective action, inspection requirements, and effective dates. In the case of this AD rulemaking action, the changes being made to the existing AD are considered substantive. This superseding AD is assigned a new amendment number and new AD number; the previous amendment is deleted from the system. This procedure facilitates the efforts of the Principal Maintenance Inspectors in tracking AD's and ensuring that the affected operators have incorporated the latest changes into their maintenance programs.

With regard to bookkeeping changes required by affected operators, Federal Aviation Regulations (FAR) §121.380(a)(2)(v), "Maintenance recording requirements," requires that persons holding an operating certificate and operating under FAR part 121 must keep records "indicating the current status of applicable airworthiness directives, including the method of compliance." Whether an existing AD is superseded or revised, the new AD is assigned a new AD number: A superseding AD is assigned a new 6-digit AD number; a revising AD retains the original 6-digit AD number, but an "R1" is added to it. In either case, the new AD is identified by its "new" AD number, not by the "old" AD number. In light of this, affected operators updating their maintenance records to indicate the current AD status would have to record a new AD number in all cases, regardless of whether the AD is a superseding or a revising AD. Further, operators are always given credit for work previously performed in accordance with the existing AD by means of the phrase in the compliance section of the AD that states, "Required * * * unless accomplished previously."

One commenter requests a revision to the compliance time to accomplish the inspections of those Principal Structural Elements (PSE) that are near or past the end dates by extending it to one year. The commenter notes that the proposed compliance time of six months to incorporate the latest SID revision into an operator's maintenance program is inadequate to accomplish all overdue PSE's without imposing an undue burden on operators. The FAA does not concur with the commenter's request to extend the compliance time. The FAA has determined that the compliance time, as proposed, represents the maximum interval of time allowable for the affected airplanes to continue to operate prior to accomplishing the required inspections without compromising safety. However, under the provisions of paragraph (d) of the final rule, the FAA may approve an alternative method of compliance or adjustment of the compliance time if operators submit sufficient justification to the FAA.

Several commenters note that the process for reporting inspection results needs improvement. These commenters audited the reports from one operator and found over 200 discrepancies in appendix C of volume III–91 of McDonnell Douglas Report No. L26–011, "DC–8 Supplemental Inspection Document (SID)," dated April 1991, which contains the record of inspection results submitted to McDonnell Douglas Corporation. The FAA does not concur that a change to the AD is necessary. McDonnell Douglas has advised the FAA that it has recognized the occurrence of these discrepancies and has taken steps to correct them and to ensure that they will not occur again. However, under the provisions of paragraph (d) of the final rule, the FAA may approve, on a case-by-case basis, an alternative method of reporting inspection results, if sufficient justification is presented to the FAA.

One commenter requests that proposed paragraph (b), which references only section 2 of volume I of the SID for those PSE's that need to be inspected, be revised to include section 3 of volume 1, since PSE's related to previous AD's are defined in section 3. The FAA concurs. Paragraph (b) of the final rule has been revised accordingly.

One operator requests that proposed paragraph (c) be revised to delegate approval of repairs to Designated Engineering Representatives (DER) of the McDonnell Douglas Corporation, since this operator has experienced delays and additional costs in obtaining approval of repair data by Aircraft Certification Office (ACO) managers. The FAA does not concur. While DER's are authorized to determine whether a design or repair method complies with a specific requirement, they are not authorized to make the discretionary determination as to what the applicable requirement is. Further, it is crucial that the FAA, as well as McDonnell Douglas, be aware of all repairs made to PSE's or to their configuration, and that damage tolerance analysis be performed for each repair to establish its effect on the fatigue life of the affected structure.

Paragraph (d) of the final rule has been revised to clarify the procedure for requesting alternative methods of compliance with this AD.

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

There are approximately 337 Model DC–8 series airplanes of the affected design in the worldwide fleet. The FAA estimates that 222 airplanes of U.S. registry and 15 U.S. operators will be affected by this AD. The procedures required by this AD action will require approximately 544 work hours per operator to accomplish, at an average labor cost of $55 per work hour. Based on these figures, the cost to the 15 affected U.S. operators to incorporate the revisions of the SID program is estimated to be $448,800.

The recurring inspection cost will require approximately 298 work hours per airplane per year to accomplish. The average labor charge will be $55 per work hour. Based on these figures, the recurring inspection total cost impact of the AD on U.S. operators is estimated to be $16,390 per airplane, or $3,638,580 for the affected U.S. fleet.

Based on the above figures, the total cost impact of this AD is estimated to be $4,087,380 for the first year, and $3,638,580 for each year thereafter. This total cost figure assumes that no operator has yet accomplished the requirements of this AD.

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 "major rule" under Executive Order 12291; (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 14 CFR part 39 of the Federal Aviation Regulations as follows:

PART 39—AIRWORTHINESS DIRECTIVES

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

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

§ 39.13 [Amended]

2. Section 39.13 is amended by removing amendment 39–6330 (54 FR 25591, July 8, 1987), and by adding a new airworthiness directive (AD), amendment 39–8469, to read as follows:

93–01–15. McDonnell Douglas: Amendment 39–8469. Docket 91–NM–220–AD. Supersedes AD 87–14–06, Amendment 39–6330.

Applicability: Model DC–8 airplanes, certificated in any category.

Compliance: Required as indicated, unless accomplished previously.

To ensure the continuing structural integrity of these airplanes, accomplish the following:

(a) Within one year after August 10, 1987 (the effective date of AD 87–14–06, Amendment 39–5631), incorporate a revision into the FAA-approved maintenance inspection program which provides for inspection of the Principal Structural Elements (PSE's) defined in section 2 of volume I of McDonnell Douglas Report No. L26–011, "DC–8 Supplemental Inspection Document (SID)," dated December 1985, in accordance with section 2 of volume III of that document. The non-destructive inspection techniques set forth in Volume II of the SID provide acceptable methods for accomplishing the inspections required by this AD. All inspection results, negative or positive, must be reported to McDonnell Douglas, in accordance with the instructions of section 2 of volume III of the SID. Information collection requirements contained in this regulation have been approved by the Office of Management and Budget (OMB) under the provisions of the Paperwork Reduction Act of 1980 (44 U.S.C. 3501 *et seq.*) and have been assigned OMB Control Number 2120–0056.

(b) Within 6 months after the effective date of this AD replace the revision of the FAA-approved maintenance inspection program required by paragraph (a) of this AD with a revision that provides no less than the required inspection of the Principal Structural Elements (PSE's) defined in sections 2 and 3 of volume I of McDonnell Douglas Report No. L26–011, "DC–8 Supplemental Inspection Document (SID)," dated March 1991, in accordance with section 2 of volume III–91, dated April 1991, of that document. The non-destructive inspection techniques set forth in sections 2 and 3 of volume II, dated March 1991, of that SID provide acceptable methods for accomplishing the inspections required by this AD. All inspection results, negative or positive, must be reported to McDonnell Douglas, in accordance with the instructions of section 2 of volume III–91 of the SID. Information collection requirements contained in this regulation have been approved by the OMB under the provisions of the Paperwork Reduction Act of 1980 (44 U.S.C. 3501 *et seq.*) and have been assigned OMB Control Number 2120–0056.

(c) Cracked structure detected during the inspections required by paragraphs (a) and (b) of this AD must be repaired before further flight, in accordance with a method approved by the Manager, Los Angeles Aircraft Certification Office, 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, Los Angeles Aircraft Certification Office (ACO), FAA, Transport Airplane Directorate. Operators shall submit their requests through an appropriate FAA Principal Maintenance Inspector, who may add comments and then send it to the Manager, Los Angeles ACO.

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

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

(f) Certain inspections and reporting shall be done in accordance with McDonnell Douglas Report No. L26–011, "DC–8 Supplemental Inspection Document (SID)," dated December 1985, as indicated. This incorporation by reference was approved previously by the Director of the Federal Register in accordance with 5 U.S.C. 552(a) and 1 CFR part 51 as of August 10, 1987 (54 FR 25591, July 8, 1987). Certain other inspections and reporting shall be done in accordance with McDonnell Douglas Report No. L26–011, "DC–8 Supplemental Inspection Document (SID)," volume I, revision 3, dated March 1991; volume II, revision 5, dated March 1991; and volume III–91, dated April 1991. Volume I (revision 3, dated March 1991) and volume II (revision 5, dated March 1991) of McDonnell Douglas Report No. L26–011, "DC–8 SID," contain the following list of effective pages:

Volume	Shown on "list of effective pages"	Revision level shown on page	Date shown on page
Volume I	List of effective pages A, B, C	3	March 1991.
Volume II	List of effective pages A, B, C, D, E, F, G, H, I, J, K, L	5	March 1991.

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 McDonnell Douglas Corporation, P.O. Box 1771, Long Beach, California 90846–1771, attention: Business Unit Manager, Technical Publications—Technical Administrative Support, C1–L5B. Copies may be inspected at the FAA, Transport Airplane Directorate, 1601 Lind Avenue, SW., Renton, Washington; or at the FAA, Los Angeles Aircraft Certification Office, 3229 East Spring Street, Long Beach, California; or at the Office of the Federal Register, 800 North Capitol Street, NW., suite 700, Washington, DC.

(g) This amendment becomes effective on February 26, 1993.

Issued in Renton, Washington, on January 11, 1993.

N.B. Martenson,

Acting Manager, Transport Airplane Directorate, Aircraft Certification Service.

[FR Doc. 93–1432 Filed 1–21–93; 8:45 am]

BILLING CODE 4910–13–U

14 CFR Part 39

[Docket No. 92–CE–42–AD; Amendment 39–8474; 93–01–20]

Airworthiness Directives; Beech Model 300 Airplanes

AGENCY: Federal Aviation Administration, DOT.

ACTION: Final rule.

SUMMARY: This amendment supersedes Airworthiness Directive (AD) 89–22–12, which requires inspecting the upper aft cowling access door latches for proper

tension and total engagement of the adjusting bolts and striker plates on certain Beech Model 300 airplanes, adjusting or modifying the latches if tension or engagement requirements are not met, and modifying the cowling door to provide a more positive retention. A cowling door latch replacement kit has been developed that, if properly installed, provides a level of safety equivalent to the cowling door retention modification required by AD 89–22–12. This action retains the requirements of the previous AD and incorporates this new modification into the AD as a compliance option. The actions specified by this AD are intended to prevent separation of an aft cowling door, which could result in occupant injury if decompression or structural damage occurs.

DATES: Effective March 10, 1993.

The incorporation by reference of certain publications listed in the regulations is approved by the Director of the Federal Register as of March 10, 1993.

ADDRESSES: Service information that applies to this AD may be obtained from the Beech Aircraft Corporation, P.O. Box 85, Wichita, Kansas 67201–0085. This information may also be examined at the Federal Aviation Administration (FAA), Central Region, Office of the Assistant Chief Counsel, 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. James M. Peterson, Aerospace Engineer, Wichita Aircraft Certification Office, FAA, 1801 Airport Road, Mid-Continent Airport, Wichita, Kansas 67209; Telephone (316) 946–4145; Facsimile (316) 946–4407.

SUPPLEMENTARY INFORMATION: A proposal to amend part 39 of the Federal Aviation Regulations to include an AD that would apply to certain Beech Model 300 airplanes was published in the **Federal Register** on September 9, 1992 (57 FR 41114). The action proposed to supersede AD 89–22–12, Amendment 39–6351 (54 FR 41438, October 10, 1989), with a new AD that would (1) retain the inspection and modifications of the aft cowling doors that are required by AD 89–22–12; and (2) allow a cowling door latch replacement kit to be installed in lieu of the cowling door retention modification required by AD 89–22–12. The proposed actions would be accomplished in accordance with Beech SB No. 2394, issued August 1989, revised February 1991.

Interested persons have been afforded an opportunity to participate in the making of this amendment. No comments were received on the proposed rule or the FAA's determination of the cost to the public.

After careful review, the FAA has determined that air safety and the public interest require the adoption of the rule as proposed except for minor editorial corrections. The FAA has determined that these minor corrections will not change the meaning of the AD nor add any additional burden upon the public than was already proposed.

The FAA estimates that 152 airplanes in the U.S. registry will be affected by this AD, that it will take approximately 17 workhours per airplane to accomplish the required action if the operator chose to install the cowling door latch replacement kit (latch replacement option) or approximately 3 workhours per airplane to accomplish the required action if the operator accomplished the modification to provide a more positive cowling door retention (cowling door retention option), and that the average labor rate is approximately $55 an hour. Parts for the cowling door latch replacement kit cost approximately $2,372 per airplane. Based on these figures, the total cost impact of this AD on U.S. operators is estimated to be $505,664 (latch replacement option) or $25,080 (cowling door retention option).

AD 89–22–12, which will be superseded by this AD, requires that the cowling door retention option be accomplished on the affected airplanes. The only difference between that AD and this action is the choice of accomplishing either the latch replacement option or the cowling door retention option. Since the latch replacement option is not mandatory, the required action poses no additional cost impact upon U.S. operators of the affected airplanes than that which is already required by AD 89–22–12.

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 "major rule" under Executive Order 12291; (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 14 CFR part 39 of the Federal Aviation Regulations as follows:

PART 39—AIRWORTHINESS DIRECTIVES

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

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

§ 39.13 [Amended]

2. Section 39.13 is amended by removing AD 89–22–12, Amendment 39–6351 (54 FR 41438, October 10, 1989), and adding the following new AD:

93–01–20 Beech Aircraft Corporation: Amendment 39–8474; Docket No. 92–CE–42–AD. Supersedes AD 89–22–12, Amendment 39–6351.

Applicability: Model 300 airplanes (serial numbers FA–2 through FA–211 and FF–1 through FF–19), certificated in any category.

Compliance: Required as indicated, unless already accomplished (compliance with superseded AD 89–22–12).

To prevent separation of an aft cowling door, which could result in occupant injury if decompression or structural damage occurs, accomplish the following:

(a) Within the next 25 hours time-in-service (TIS) after the effective date of this AD, inspect the upper aft cowling access door latches for proper tension and total engagement of the adjusting bolts and striker plates in accordance with part I of the Accomplishment Instructions section of Beech Service Bulletin (SB) No. 2329, dated August 1989, revised February 1991.

(1) If improper tension is found, prior to further flight, adjust the cowling door latch in accordance with Beechcraft Super King Air 300 Maintenance Manual, chapter 71–10.

(2) If the adjusting bolts and striker plates do not totally engage, prior to further flight, modify the cowling door in accordance with Beechcraft Safety Communique No. 300–75.

(b) Within the next 50 hours TIS after the effective date of this AD, accomplish one of the following:

(1) Modify the cowlings to provide upper aft cowling access door retention in accordance with part II of the Accomplishment Instructions section of Beech SB No. 2329, dated August 1989, revised February 1991; or

(2) Install cowling door latch replacement Kit No. 101–9052–1 S in accordance with Part III of the Accomplishment Instructions section of Beech SB No. 2329, dated August 1989, revised February 1991.

(c) If the requirements of paragraphs (a), (a)(1), (a)(2), and (b)(1) were previously accomplished (compliance with superseded AD 89–22–12) in accordance with Beech SB No. 2329, dated August 1989, then no further action is required by this AD.

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

(e) An alternative method of compliance or adjustment of the compliance time that provides an equivalent level of safety may be approved by the Manager, Wichita Aircraft Certification Office, FAA, 1801 Airport Road, room 100, Wichita, Kansas 67209. The request shall be forwarded through an appropriate FAA Maintenance Inspector, who may add comments and send it to the Manager, Wichita Aircraft Certification Office.

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

(f) The inspection and modification or installation required by this AD shall be done in accordance with Beech Service Bulletin No. 2329, dated August 1989, revised February 1991. 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 Beech Aircraft Corporation, P.O. Box 85, Wichita, Kansas 67201–0085. 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.

(g) This amendment (39–8474) supersedes AD 89–22–12, Amendment 39–6351.

(h) This amendment (39–8474) becomes effective on March 10, 1993.

Issued in Kansas City, Missouri, on January 13, 1993.

Michael K. Dahl,

Acting Manager, Small Airplane Directorate, Aircraft Certification Service.

[FR Doc. 93–1437 Filed 1–21–93; 8:45 am]

BILLING CODE 4910–13–M

14 CFR Part 39

[Docket No. 90–CE–58–AD; Amendment 39–8431; AD 92–26–04]

Airworthiness Directives; Cessna 210 Series Airplanes

AGENCY: Federal Aviation Administration, DOT.

ACTION: Final rule; suspension of effectiveness.

SUMMARY: This document suspends the effectiveness for Airworthiness Directive (AD) 92–26–04, Amendment 39–8431, published in the **Federal Register** on Monday, December 7, 1992 (57 FR 57658). The Federal Aviation Administration (FAA) has received a petition for reconsideration of this action, and the FAA has concluded that the issues raised by the petition warrant further consideration.

EFFECTIVE DATE: Effective January 22, 1993, AD 92–26–04, Amendment 39–8431, is suspended.

FOR FURTHER INFORMATION CONTACT: Mr. Paul O. Pendleton, Aerospace Engineer, FAA, Wichita Aircraft Certification Office, 1801 Airport Road, room 100, Wichita, Kansas 67209; Telephone (316) 946–4143; Facsimile (316) 946–4407.

SUPPLEMENTARY INFORMATION: AD 92–26–04, Amendment 39–8431, which applies to certain Cessna 210 series airplanes, was published in the **Federal Register** on Monday, December 7, 1992 (57 FR 57658), with an effective date of January 22, 1993. This AD requires accomplishing operational checks of the fuel gauges, modifying the fuel caps and adapters, and incorporating pilot operating procedures that relate to preflight fuel system quantity checks into the airplane flight manual or airplane records.

The FAA has received a petition for reconsideration of this action, and believes that the issues raised by that petition warrant further consideration before compliance is mandated.

This rule would become effective on January 22, 1993. Since a situation exists that requires immediate public notice that the effective date has been suspended, it is found that notice and public procedure hereon are impracticable and good cause exists for making this amendment effective in less than 30 days.

Adoption of the Amendment

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

PART 39—AIRWORTHINESS DIRECTIVES

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

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

§ 39.13 [Amended]

2. Section 39.13 is amended by suspending until further notice AD 92–26–04, Amendment 39–8431 (57 FR 57658, December 7, 1992), effective January 22, 1993.

Issued in Kansas City, Missouri, on January 15, 1993.

Michael K. Dahl,

Acting Manager, Small Airplane Directorate, Aircraft Certification Service.

[FR Doc. 93–1618 Filed 1–19–93; 11:20 am]

BILLING CODE 4910–13–M

COMMODITY FUTURES TRADING COMMISSION

17 CFR Part 34

Regulation of Hybrid Instruments

AGENCY: Commodity Futures Trading Commission.

ACTION: Final rules.

SUMMARY: The Commodity Futures Trading Commission ("Commission" or "CFTC") is adopting final regulations concerning certain "hybrid" instruments that combine equity or debt securities or depository interests with features of either commodity futures or option contracts, or both. The final rules establish an exemption from CFTC regulations under the Commodity Exchange Act ("CEA" or "Act") 7 U.S.C. 1 et seq., for these hybrid instruments, based on the limited nature of the instrument's exposure to price movements in the underlying commodity and in reliance on other applicable regulatory frameworks.

EFFECTIVE DATE: February 22, 1993.

FOR FURTHER INFORMATION CONTACT: Gregory Kuserk, Industry Economist, or Barry Schachter, Financial Economist, Division of Economic Analysis, Commodity Futures Trading Commission, 2033 K St. NW., Washington, DC 20581. Telephone: (202) 254–6990.

I. Introduction

A. The Proposed Rulemaking

On November 12, 1992, the Commission published for comment proposed regulations to amend its part 34 rules which exempt from regulation

under the CEA certain hybrid instruments.[1] The Commission proposed to expand part 34, which previously applied only to hybrid instruments that combine characteristics of commodity option contracts with securities or depository interests, to include hybrid instruments which have a futures-like component as well. As proposed, amended part 34 would establish a new test to determine the predominant character of a hybrid instrument. Those hybrid instruments in which the commodity interest did not predominate, as measured by the new test, would be exempt from regulation under the CEA. These proposals were based, in part, on the direction provided by Congress that the Commission may move promptly to exercise the exemptive authority granted to the Commission contained in section 4(c)(5)(A) of the recently enacted Futures Trading Practices Act of 1992.[2] The Commission proposed to determine the predominant character of a hybrid instrument, by decomposing it into its constituent components and then comparing a measure of the commodity price exposure associated with the commodity-dependent component of the hybrid instrument to the value of its commodity-independent component. Under the proposed test, hybrid instruments would have been exempt from Commission regulation if the measured commodity price exposure is less than the present value of the instrument's commodity-independent payments.[3]

Nothing in the revised test, as proposed or adopted herein, however, would change the underlying requirement that to qualify for this exemption an instrument must be a hybrid instrument; that is, it must combine the characteristics of an equity or debt security or a depository instrument with a futures-like or option-like component. Accordingly, instruments having returns indexed to, or calculated on, the basis of the price of a commodity that are not *bona fide* equity or debt securities or depository instruments will not be viewed as hybrid instruments even though they may incorporate some features common to securities or depository instruments.

B. Comments Received

The comment period ended on December 28, 1992, after having been extended for an additional period of 14 days. The Commission received 26 comment letters on the proposal: Two from futures exchanges (one of which was a joint letter from three futures exchanges), one from a stock exchange, three from law firms, two from banks, one from an individual, four from trade associations, five from investment banks, two from bank holding companies, two from professional associations and four from federal regulatory agencies.

Most commenters generally supported the overall objectives of the rulemaking. They noted that the proposed rule would provide greater legal certainty as to the regulatory framework applicable to specific hybrid instruments, reduce duplicative regulation and enhance financial innovation in U.S. capital markets. Most commenters also expressed the belief that exempting such instruments would be in the public interest. Accordingly, they urged the Commission to act expeditiously in adopting final rules.

However, these commenters also tempered their support with suggestions to modify or clarify certain aspects of the rule. Most requested that the proposed definition of an eligible security be simplified and enhanced to include a wider range of securities. Several also requested that the exempt status of any severable component-hybrids be determined at the time of issuance. In addition to the recommended modifications, other commenters suggested various clarifications, including the use of alternative, but commercially acceptable ways, to value the option components of the instrument when applying the test.[4]

A few commenters, however, strongly disagreed with the proposed rules. Several expressed the view that the technique used to establish predominance is flawed because the test uses a volatility-sensitive measure of exposure for futures-like components. Several also raised a concern that the proposed rule would deprive purchasers of hybrid instruments of protection under the commodity futures laws for that portion of a hybrid instrument that is commodity-dependent. One comment letter argued that the Commission's proposed test is flawed because it treats "the return of the performance bond deposit as if it were part of the return on the customer's investment."[5]

II. Statutory Determinations

As stated above, section 4(c) requires that the Commission make a number of determinations in granting exemptions. If an exemption is granted pursuant to section 4(c) from the requirements of section 4(a), the determinations are that the requirement of section 4(a) should not be applied to the agreement, contract or transaction and that the exemption is: (1) Consistent with the public interest; (2) consistent with the purposes of the Act and (3) the agreement, contract or transaction "will not have a material adverse effect on the ability of the Commission or any contract market to discharge its regulatory or self-regulatory duties" under the Act.[6] The Commission has considered each of these criteria in making its determination that this exemption of certain hybrid instruments is consistent with the public interest.[7]

[1] 57 FR 53618 (November 12, 1992). The Notice of Proposed Rulemaking contains a fuller description of the statutory basis for the proposed rule and of the history regarding the Commission's regulation of hybrid instruments. It also contains a fuller description, and explanation, of the economic calculations necessary under the rule.

[2] By exempting eligible hybrids from all of the provisions of the Act (other than section 2(a)(1)(B)), the Commission does not intend to suggest that the Commission's jurisdiction and authority under these provisions will be affected, including its authority to determine compliance with the terms of the exemption. See section 4(d) of the Act. As suggested by the Securities and Exchange Commission ("SEC"), the Commission also reiterates that in enacting these final rules, the Commission intends to provide legal certainty to novel instruments without necessarily making a determination that such instruments are subject to the Act. In certain cases the determination as to jurisdiction regarding such novel instruments is not straightforward and as noted in the Commission's proposed rulemaking, the Commission is not required to make such a finding in order to exercise this exemptive authority. See, 57 FR 53618 footnote 2 (November 12, 1992). Moreover, the Commission also notes that participants may continue to rely on its Statutory Interpretation Concerning Certain Hybrid Instruments for existing and new hybrid instruments. 55 FR 13582 (April 11, 1990).

However, the Commission's intention to exempt a direct investment that contains an equity or debt security or depository instrument in combination with a commodity-dependent component, does not apply to a trading vehicle, such as a pooled account, formed for the purpose of trading commodity instruments. Although commodity pools issue securities, such as limited partnership interests, the issuance of such securities, however, does not alter the basic nature of the commodity pool as a vehicle for trading commodity instruments.

[3] By the term "payment" the Commission meant any interest, coupon or dividend payment as well as any return of principal or liquidation preference.

[4] A comment submitted by a stock exchange raised the issue of the Commission's ability, under the authority of the Act, to exempt instruments referred to as "index participations." That action is not being considered by the Commission as part of this rulemaking.

[5] In this regard, the Commission notes that the commenter incorrectly characterized the commodity-independent component of a hybrid instrument as a "performance deposit." The hybrid exemption clearly extends only to certain securities and depository instruments as defined by federal law and regulation, and as such, payment to the issuer is not in the nature of a "performance deposit."

[6] Section 4(c)(2), 7 U.S.C. 6(c)(2). This section also conditions an exemption upon the transaction being entered into solely between appropriate persons.

[7] Persons engaged in activity otherwise subject to the Act would not be exempt for such activity, even

Continued

Public Interest and Purposes of the Act Determination

As is frequently the case when Congress grants a regulatory agency authority to act consistent with "the public interest and the purposes of" its enabling statute, little statutory elaboration is given to the full scope of the phrase. As commonly understood, however, an agency, such as the Commission, is to apply this standard against the template of its regulatory scheme. In this regard, the Conference Report states that the "public interest" under section 4(c) includes "the national public interests noted in the (Act), the prevention of fraud and the preservation of the financial integrity of markets, as well as the promotion of responsible economic or financial innovation and fair competition." H.R. Rep. No. 978, 102d Cong., 2d Sess. 78. The Conference Report goes on to state that "(t)he Conferees intend for this reference to the 'purposes of the Act' to underscore their expectation that the Commission will assess the impact of a proposed exemption on the maintenance of the integrity and soundness of markets and market participants." H.R. Rep. No. 978, 102d Cong., 2d Sess. 78.

Hybrid instruments, in various forms, have been offered to the public under the Commission's Statutory Interpretation Concerning Certain Hybrid Instruments and part 34 of the Commission's regulations. The Commission's intent at the time was to provide regulatory certainty to hybrid instruments which are predominantly a debt, preferred equity or depository instrument but which also incorporate futures or commodity options in innovative formats.[8]

Hybrid instruments have widespread economic utility, offering a novel means of combining capital raising and risk shifting instruments in a single investment vehicle. Hybrid instruments can offer issuers means to raise capital through instruments that better fit the specific risk profile of the issuer. For example, the linking of debt repayment in a hybrid instrument issued by an oil company to the price of oil can allow the issuer to offer the possibility of a greater return in those instances when the issuer is better able to do so. This can allow issuers to obtain a lower cost of funds due to the willingness of the purchasers to pay a premium for the instruments. Purchasers of hybrid instruments may be willing to pay this premium to obtain instruments that fit specific risk management needs. Accordingly, the Commission is of the opinion that these innovative products offer economic utility and serve a *bona fide* capital raising function. In conclusion, the Commission believes that in consideration of the economic utility gained from these instruments, in combination with the protections afforded under the laws and regulations of other regulators, the exemption satisfies the statutory requirement that it be consistent with the public interest and the purposes of the Act.

Material Adverse Effect on Regulatory or Self-Regulatory Responsibilities

In making this determination, Congress indicated that the Commission is to consider such regulatory concerns as "market surveillance, financial integrity of participants, protection of customers and trade practice enforcement."[9]

In adopting these final rules, the Commission has been careful to ensure that any instruments exempted hereunder from CFTC regulation will be covered by alternative regulatory regimes.[10] Hybrid instruments would be subject to the same general regulations, including applicable anti-fraud laws, as apply to the comparable non-hybrid interests and no further limitation on who may purchase, sell, offer or enter into hybrid instruments was therefore deemed necessary.

Moreover, the record before the Commission provides no basis to support a conclusion that the purposes of or regulating efforts under the Act have been adversely affected by the markets in hybrids or will be so affected by the issuance of these rules. In particular, the Commission is unaware that the issuance of these instruments has been a source of fraud or abuse or in any way had a material adverse effect on the ability of the Commission or any contract market to discharge its regulatory or self-regulatory duties under the Act.

In addition, the structure and size of these offerings has been such that, to date, they do not represent a relevant pricing mechanism for the general price discovery process of the underlying commodity. Nevertheless, the Commission has determined in the final rule to preclude the ability of hybrid instruments to settle by means of a delivery instrument, such as an exchange-approved warehouse receipt or shipping certificate, that is specified in the rules of a designated contract market. This provision would prevent only settlement in delivery instruments specifically defined as such in exchange rules. It would not prevent settlement in the form of a commodity that is of deliverable grade or quality under exchange rules. The Commission believes that this requirement will not interfere with the ability of issuers to provide physical delivery alternatives to cash settlement but provides some protection against interference with deliverable supplies for settlement of designated futures or options contracts.[11] Thus, the Commission is amending the proposed rules to add § 34.3(a)(3)(iii) that will prohibit hybrid instruments from providing for settlement in the form of a delivery instrument such as an exchange-approved warehouse receipt or shipping certificate.

Finally, the Commission notes that under section 4(d) of the Act "the granting of an exemption under this section does not affect the authority of the Commission under any provision of this Act to conduct investigations in order to determine compliance with the requirements or conditions of such exemption or to take enforcement action for any violation of any provision of this Act or any rule, regulation or order thereunder caused by the failure to comply with or satisfy such conditions or requirements."

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if it were connected to their exempted hybrid activity. In this regard, the Commission wishes to make clear that the exemption does not apply to any financial, recordkeeping, reporting or other requirements imposed on any person in connection with their activities that remain subject to regulation under the Act. Thus, for example, futures commission merchants must continue to account for any liabilities arising out of any hybrid instruments in meeting the net capital requirements of Commission Rule 1.17 just as they do in the case of other financial instruments not regulated under the Act. Similarly, the risk assessment, recordkeeping and reporting requirements imposed on futures commission merchants by new section 4f(c) of the Act apply to the hybrid activities of their affiliated persons. As part of its ongoing review of its regulations, the Commission is considering revisions to Commission Rule 1.19. Suggestions by some commenters that Rule 1.19 should not be applicable to exempted hybrid instruments will be considered as part of this review.

[8] 54 FR 1128 (January 11, 1989) and 54 FR 1139 (January 11, 1989).

[9] H.R. Rep. No. 978, 102d Cong., 2d Sess. 79 (1992).

[10] If a hybrid instrument which is otherwise subject to the Act fails to meet the conditions of this exemption, the Act and Commission regulations would continue to apply.

[11] An important regulatory concern of the Commission is to reduce the likelihood of pricing anomalies on designated contract markets. Such protection against interference with those deliverable supplies represented by delivery instruments facilitates this function. The Commission also specifically wishes to make clear that those provisions of sections 6(c) and 9(a)(2) of the Act concerning manipulation or attempted manipulation of the market price of any commodity in interstate commerce or for future delivery on or subject to the rules of any contract market, would continue to apply to persons engaging in hybrid transactions.

Pursuant to its authority in new section 4(d) of the Act, the Commission intends routinely to consult with other regulators who have information concerning hybrid instruments, *e.g.*, the SEC and bank regulators, to seek to assure they include in their routine examination program these transactions. Under section 4(d) the Commission would exercise its authority to investigate, as appropriate.

Anticompetitive Considerations

Section 15 of the Act provides, in relevant part, that the Commission must consider the public interest to be protected by the antitrust laws and endeavor to take the least anticompetitive means of achieving the objectives, policies and purposes of the Act in adopting any rule, regulation or exemption under section 4(c).[12] Thus, a formal analysis under the antitrust laws is not, by itself, dispositive of the issues raised by a rule.[13] As a result, the Commission is not compelled by section 15 to take the least anticompetitive course of action. Rather, where alternatives with varying degrees of regulatory benefit exist, the Commission may adopt the approach that appears to be most likely to achieve the objectives, policies and purposes of the Act, even if that approach is not the least anticompetitive.[14]

Accordingly, section 15 requires the Commission to balance the likely anticompetitive impact of adopting a rule against the objective, policy or purpose of the Act which the rule may further. And, although the Commission must consider the public interest in maintaining or promoting competition, it need not weigh this interest equally against an objective, policy or purpose of the Act being served by a rule in reaching its final determination concerning the adoption of the rule.

The Commission's consideration of the proposed rule, and its evaluation of the comments received in this regard, for the following reasons, has led it to conclude that any possible anticompetitive effects are clearly outweighed by the rule's furtherance of the policies, purposes and objectives of the Act. In terms of fair competition, the Commission believes that the exemption of hybrid instruments from Commission regulation does not place regulated exchange-traded instruments at a competitive disadvantage to the commodity components of hybrid instruments. First, hybrid instruments, assessed as a whole, are not economic substitutes for exchange traded futures or options contracts. Exchange traded futures and option contracts serve mainly as risk shifting and price discovery vehicles. Although the commodity-component of a hybrid instrument can also function in this way, hybrid instruments more generally serve as capital raising devices.[15]

Secondly, although certain hybrid instruments would be exempt from Commission regulation, they will remain subject to the rules and regulations governing the issuance and trading of comparable instruments that do not have a commodity-dependent component. Thus, by enacting the exemption, new and innovative products that are predominantly not futures or options contracts can be developed under regulations common to other similar products in their class, without unnecessary, duplicative regulation, thereby fostering healthy competition in those markets.

In conclusion, the part 34 rules as set forth below and adopted herein are supported by appropriate determinations made in accordance with the standards set forth in section 4c of the Act for the granting of exemptions.

III. Substantive Revisions

Based upon its consideration of the comments received, and its own analysis, the Commission, as discussed in greater detail below, is adopting the amendments to part 34, as proposed, with the following modifications.

A. Section 34.2 Definitions

1. Section 34.2(a)—Hybrid Instrument

As proposed, under the definition of "hybrid instrument," the predominance test would be reapplied at the time of severance, for those instruments that could be severed, to determine the exempt status of the individual components. Several commenters suggested, however, that reapplying the proposed test at the time of severance would cast uncertainty on the legality of the severance of the instrument, thereby making such instruments unmarketable. Additionally, determining the exempt status at the time of severance, they argued, would shift to the investor the burden of applying the test.

These commenters suggested that to ameliorate this problem, the test be applied at the time of the instrument's issuance to all of the instruments that would result from its severance. Thus, at issuance, the issuer of an instrument that contained potentially severable components would first test the instrument as a whole to determine whether it was predominantly a security, and secondly, the potential individual instruments resulting from its severance. A hybrid instrument would be exempt from Commission regulation only where the instrument as a whole and each of the resulting potential severable hybrid instruments were deemed to be predominantly a security or depository interest.[16]

The Commission agrees with this suggested treatment of instruments with severable components and is deleting the phrase "and is determined at the time of issuance or severance" from the definition of hybrid instrument. The determination as to whether a hybrid instrument that provides for severability is predominantly an equity or debt security or depository interest, therefore, is to be determined at the time of issuance.[17]

2. Section 34.2(f)—Option premium

The definition of "option premium," proposed as § 34.2(d), stated that the value of the premium must be calculated using the same method as that used to determine the issue price of the instrument. Several commenters

[12] Specifically section 15, as amended by section 502(b) of the 1992 Act, provides:

The Commission shall take into consideration the public interest to be protected by the antitrust laws and endeavor to take the least anticompetitive means of achieving the objectives of this Act, as well as the policies and purposes of this Act, in issuing any order or adopting any Commission rule or regulation (including any exemption under sections 4(c) or 4c(b)), or in requiring or approving any bylaw, rule, or regulation of a contract market or registered futures association established pursuant to section 17 of this Act.

[13] *See Gordon* v. *New York Stock Exchange*, 422 U.S. 659, 690–691 (1975); *Silver* v. *New York Stock Exchange*, 373 U.S. 341 (1963).

[14] *See, e.g., British American Commodity Options Corp.* v. *Bagley*, CCH Comm. Fut. L. Rep. ¶ 20,245 at 21,334 (S.D.N.Y. 1976), *aff'd in part and rev'd in part*, 552 F.2d 482 (2d Cir. 1977), *cert. denied*, 98 S.Ct. 427 (1977).

[15] In this regard, it should be noted that the purchaser of a hybrid securities instrument, in addition to obtaining an exposure to commodity prices, also obtains an exposure to the risk-return profile associated with the security of the firm that is bundled in the hybrid instrument.

[16] For example, if after a year, a hybrid instrument could be split into two hybrid instruments—*i.e.* each containing a commodity-independent and commodity-dependent component—the predominance test would be applied at the time of issuance to the instrument as a whole and to each of the two potentially severable hybrid instruments. If the instrument as a whole and each of the potentially severable components met the criteria of the rule, the instrument would be exempted from CFTC regulation.

[17] A comment by the Department of the Treasury asked the Commission to clarify in the rule the timing of the application of the predominance test. In addition, they contended that the statement in proposed § 34.2(a) that a hybrid instrument is "determined at the time of issuance or severance" appears to refer to the determination as to whether an instrument is a hybrid instrument, not to whether or not the hybrid instrument meets the predominance test. The above changes address these points.

noted that an option pricing model may not be used to determine the value of a commodity-dependent component, depending upon the component's nature. For example, it would be unnecessary to price the individual options that make up a synthetic futures position to determine its value. Instead, one could rely on the value of futures prices or some other pricing model which does not explicitly produce the value of the options.

The Commission is clarifying the definition of option premium, now in § 34.2(f), to make explicit that users may rely on commercially reasonable valuation methods to price options when the option prices have not been calculated directly in pricing the instrument. Commercially reasonable valuation methods would be those that conform to generally accepted economic principles and are appropriate to the nature of the instrument being priced. An appropriate model to price the individual options of a commodity-dependent component should result in a value that reflects the value of the commodity-dependent component used to price the hybrid instrument.[18] Similarly, in cases of an index, a spread or a basket of commodities, where an option premium is not directly calculated, issuers could rely on an appropriate option pricing model to price the options for purposes of applying the test. *See*, 57 FR 53622, n. 13.

B. Section 34.3 Hybrid Instrument Exemption

1. Section 34.3(a)(1)—Eligible Security and Deposit Interests

In proposed § 34.3(a)(1), the Commission specified a list of various debt, preferred equity or depository interests that were eligible for exemption under the criteria of part 34. Most comments received by the Commission, including those of the SEC, expressed a view that the list of securities in this section unnecessarily restricts the type of hybrid instruments that could qualify for an exemption. Moreover, the rules, by enumeration, may unnecessarily prevent new securities, not yet in existence, from obtaining exemption without further positive action by the Commission. Most commenters viewed as irrelevant the type of security or depository interest included in a hybrid instrument. In their view, it is important only that the security or depository interest be the dominant component and that the instrument be subject to another regulatory regime.

The Commission finds that these comments have merit. As a consequence, the Commission is amending its proposal to recognize as a hybrid, any instrument which combines a debt or equity security within the meaning of section 2(1) of the Securities Act of 1933 with futures or option-like features.

Similarly, a commenter expressed the view that, the method of offering the instrument is not germane to its predominant character or nature. Rather, it is only important that a hybrid instrument which is predominantly a security or depository instrument be issued in accordance with applicable securities and/or banking laws and regulations. The Commission concurs with this view. Thus, decisions regarding the issuance of hybrids that are predominately depository instruments are properly determined by the applicable banking regulator. Accordingly, the Commission is deleting from the final rule the proposed restriction that a depository instrument be sold through a broker registered in accordance with section 15 of the Securities Exchange Act of 1934.

2. Section 34.3(a)(2)—The Predominance Test

One comment letter argued that the proposed test is flawed because, when applied to a hybrid with an embedded futures contract, "adding the put and call premiums * * * (measures) * * * the volatility of the underlying commodity, just as if one were writing a commodity straddle." Rather than this evidencing a flaw, the Commission believes that, because price volatility is the fundamental source of risk in the commodity, it is desirable that the measure of the commodity price exposure be related to the volatility of the underlying commodity.

The commenter further argued that in designing a test, "volatility cannot be confused with 'commodityness'" and that "the return of principal loaned cannot be treated as part of the return on an investment." The Commission is unpersuaded by both of these assertions. First, as stated above, price volatility is the fundamental source of risk in the commodity, and any measure of commodity price exposure that is not sensitive to this fact can result in an inequitable treatment of potential instruments. Second, the existence of counterparty risk and the fact that there is an opportunity cost of funds loaned for a period of time require that the principal be part of the determination of the commodity-independent value.[19]

The Commission has determined, nevertheless, that the rule could be further clarified. Accordingly, the Commission is adding definitions for commodity-independent value and commodity-dependent value to § 34.2 of the final rules and is making the changes noted below to § 34.3(a)(2). Section 34.2(c), added to the final rules, defines "commodity-independent value" to mean the present value of the payments attributable to the commodity-independent component of a hybrid instrument, the payments of which do not result from indexing to, or calculation by reference to, the price of a commodity.[20] New § 34.2(e) defines "commodity-dependent value" to mean, for purposes of application of Rule 34.3(a)(2), the value of a commodity dependent-component, which when decomposed into an option payout or payouts, is measured by the absolute net value of the put option premia with strike prices less than or equal to the reference price, as defined in § 34.2(g), plus the absolute net value of the call option premia with strike prices greater than or equal to the reference price,

[18] The phrase "value of the commodity-dependent component" used in this sense means the economic value of the commodity-dependent component, where, for example, in the case of a futures-like component, the long option premium is netted against the short option premium, as opposed to the sum of the absolute values of the long and short option premia. This differs from the definition in § 34.2(e) of the final rule which is intended to measure the commodity price exposure of the commodity-dependent component.

[19] The proposed test compares two values, the value of the commodity-independent component to the value of the commodity-dependent component. These values are, by necessity, measured differently, using those measures which are appropriate to ascertain the value of the particular component depending upon its nature. Accordingly, the exposure of the commodity-dependent component of the instrument is reflected by the value of individual option positions, and the value of the commodity-independent component is measured by its present value, a common means of valuation. Moreover, the proposed test achieves regulatory consistency because, under the test, instruments that produce an identical payout would qualify for exemption whether from a portfolio of hybrid instruments with simple commodity-dependent components or from a single instrument containing complex commodity-dependent components. In the simplest case the commodity-dependent component would be a single option combined with an equity or debt security or depository interest. The predominance test, as proposed, would then compare the value of that option to the value of the commodity-independent component. In order to treat a complex hybrid instrument in the same way as a portfolio of such simple hybrids that replicates the payout of the complex instrument, the relevant measure of the commodity-independent component of the complex instrument must be the value of the commodity-independent component. Such value is best reflected by the present value of all payments or considerations made by the issuer to the holder over the lifetime of the instrument.

[20] The term "commodity-dependent value," as defined in § 34.2(e), means the same as the term "commodity-price exposure" which was used in the proposed rule.

calculated as of the time of issuance of the hybrid instrument.

The remaining definitions are renumbered as a result of these additions. Finally, the predominance test of § 34.3(a)(2) is revised to conform to these revised definitions. It now states that for a hybrid instrument to be exempt, the sum of the commodity-dependent values of the commodity-dependent components must be less than the commodity-independent value of the commodity-independent component.[21]

3. Section 34.3(a)(3)—Maximum Loss Provisions of the Rules

Proposed § 34.3(a)(3) would have restricted the maximum loss to which a hybrid instrument holder could be subject. As proposed, the loss on any indexed coupon or interest payment could have been no greater than the commodity-independent coupon or interest payment and the loss on the indexed face value could not have exceeded the face value of the instrument. Several commenters indicated that this criterion could unnecessarily restrict an issuer's ability to allocate indexed returns between principal and interest in the design of the hybrid instrument.

The purpose of the maximum loss provision was not to place constraints on the structure of instruments that otherwise satisfy the criteria of part 34. Such restrictions on the overall structure are handled through the comparison of the commodity-dependent and commodity-independent components. Nevertheless, as stated in the Notice of Proposed Rulemaking, it is the Commission's view that instruments which allow commodity-dependent losses to accrue in excess of the face value of the instruments are more characteristic of a commodity interest than a debt, depository or equity interest. Accordingly, to restrict commodity-dependent losses while avoiding unnecessarily restricting the structure of hybrids deemed to be predominantly security or depository instruments, the Commission is revising § 34.3(a)(3). As revised, § 34.3(a)(3) provides that an issuer must receive full payment of the hybrid instrument's purchase price, and a purchaser or holder of a hybrid instrument may not be required to make additional out-of-pocket payments to the issuer during the life of the instrument or at maturity.[22]

4. Section 34.3(b)—Appropriate Persons

Under section 4(c)(2)(b)(i) of the Act, only transactions that are entered into between "appropriate persons" may be exempted from the requirements of section 4(a) of the Act. Proposed § 34.3(b) would have exempted instruments from regulation under the Act if, among other things, "the instrument is entered into solely between persons set forth in section 4(c)(3)(A)–(J) of the Act or otherwise permitted to enter into or purchase those instruments enumerated in paragraph (a)(1) of this section."

Many commenters requested the Commission to clarify that the exemption would be available to any participant who reasonably believes when entering into a hybrid instrument that the participant's counterparty qualifies as an "appropriate person." As revised, the final rule provides that, for purposes of this exemption, any person permitted by applicable securities or banking requirements to purchase or enter into the security or depository interest of the hybrid instrument would be an "appropriate person." Accordingly, to qualify for this exemption, the issuer or depository institution must have a reasonable basis to believe that its counterparty was permitted to purchase the instrument or to enter into the transaction under applicable federal or state securities or banking laws and regulations.[23]

IV. Other Comments

1. Instruments Beyond the Purview of the CEA and Commission Regulation

The Notice of Proposed Rulemaking noted that floating interest rate lending and depository instruments are not generally subject to the Act. See, 57 FR 53619 n. 8. Several commenters questioned whether this statement covers, in addition to depository or lending instruments, floating rate instruments that are securities. The Commission is clarifying that it did not intend to exclude floating interest rate securities from this list.

The Commission further stated that, regardless of the character of the formula or calculation used to determine the interest payment, floating rate instruments, the principal of which are returned upon maturity or redemption, are beyond the purview of the Act. The interest payment, however, in any period, must be determined solely by reference to interest rates (or indices thereof), or relationships between a constant and one or more interest rates (or indices thereof). See, 57 FR 53619 n. 8.

Several commenters asked whether this statement applies to instruments in which the principal is indexed to interest rates or indices thereof, and whether the term "formula" used in the statement includes multiples of interest rates, rate indices and spreads. In the view of the Commission, instruments in which the periodic payment is determined solely by reference to interest rates or indices, including multiples thereof, are beyond the purview of the Act. However, the Commission reiterates that instruments which are indexed to an interest rate in combination with indexation to a commodity, may fall under the purview of the Act. Of course, such an instrument nevertheless may be exempt from CFTC regulation under the terms of these part 34 rules.[24]

2. Reliance on Representations by Underwriters or Other Advisors

Several commenters noted that issuers typically rely on underwriters, selling agents or others to structure an offering in a manner which accomplishes the issuer's objectives and complies with applicable law. These commenters requested that the Commission clarify that an issuer should not be required to undertake its own analysis to assure compliance, but rather, that the issuer should be able to rely on the representation of the underwriter or other advisor as to compliance with these rules. In this regard, the

[21] As a point of clarification, the Commission notes that a hybrid instrument may contain multiple commodity components—*e.g.*, an instrument that contains both indexed coupons and principal. For such instruments, a value for each of the commodity-dependent components would be calculated and summed to obtain an overall value of the commodity-dependent portion of the instrument. This measure would then be used in the application of § 34.3(a)(2). The Commission further notes that a commodity-dependent component is not necessarily limited to indexing on a single commodity, but may be referenced to an index, a spread or a basket of commodities.

[22] The Commission intends that the issuer must receive full payment of the instrument's purchase price, excluding commissions and other selling costs. However, this restriction is not intended to prevent the purchaser or holder from acquiring the instrument on margin in accordance with applicable federal securities margin requirements.

[23] The above changes eliminate commenter's concerns whether such a hybrid is an eligible security in secondary market transactions.

[24] The Commission also noted in footnote 8 that instruments which simply involve spot translations from one currency into another would not be deemed to be commodity-dependent. Reference made to several interpretative letters—*i.e.*, CFTC Advisory No. 39–88, June 23, 1988 [Interpretative Letter No. 88–10, June 20, 1988, 2 Comm. Fut. L. Rep. (CCH) ¶ 24,262] (notes indexed to dollar/Yen exchange rate); CFTC Advisory No. 45–88, July 19, 1988 [Interpretative Letter No. 88–11, July 13, 1988, 2 Comm. Fut. L. Rep. (CCH) ¶ 24,284] (notes indexed to dollar/Yen exchange rate); and CFTC Advisory No. 48–88, July 26, 1988 [Interpretative Letter No. 88–12, July 22, 1988, 2 Comm. Fut. L. Rep. (CCH) ¶ 24,285] (notes indexed to dollar/foreign currency exchange rate)—was inadvertent.

Commission is of the opinion that although issuers may not necessarily themselves be required to perform all of the required calculations and analysis regarding whether an issue qualifies for exemption, and may rely on underwriters or other advisors for this analysis, they nevertheless must have a reasonable basis to believe that the instrument complies with these rules.

V. Other Matters

A. Paperwork Reduction Burden

The Paperwork Reduction Act of 1980 ("PRA"), 44 U.S.C. 3501, et seq., imposes certain requirements on Federal agencies (including the Commission) in connection with their conducting or sponsoring any collection of information as defined by the Paperwork Reduction Act. As the Commission noted in proposing these rules, it has determined that these rules do not impose any information collection requirements as defined by the PRA. No comments were received concerning the Commission's determination in this regard.

B. Regulatory Flexibility Act

The Regulatory Flexibility Act ("RFA"), 5 U.S.C. 601 et seq., requires that agencies, in promulgating rules, consider the impact of these rules on small entities. The Commission notes that the final rules are not intended to introduce any new prohibition but, rather, to provide exemptive relief from existing regulatory requirements. The adoption of these rules would enable current and potential issuers of hybrid instruments to expand the line of instruments now offered and allow issuers who issue instruments that contain option-like and futures-like components to rely on a single rule to determine regulatory jurisdiction. The Commission anticipates that the rule amendments will dispel uncertainty and establish consistent regulatory requirements for various types of commodity-related hybrid instruments, and thereby facilitate novel forms of financial transactions while fulfilling the mandates of the CEA. The Commission continues to believe that these rules do not have a significant economic impact on a substantial number of small entities. No comments were received concerning the RFA implications of the proposed rules.

List of Subjects in 17 CFR Part 34

Commodity futures, Commodity options, Hybrid instruments.

In consideration of the foregoing and pursuant to the authority contained in the Commodity Exchange Act and, in particular, sections 2, 4, 4c and 8a thereof, 7 U.S.C. 2, 6, 6c and 12a, the Commission hereby revises part 34 of title 17 of the Code of Federal Regulations as follows:

PART 34—REGULATION OF HYBRID INSTRUMENTS

Sec.
34.1 Scope
34.2 Definitions.
34.3 Hybrid instrument exemption.

Authority: 7 U.S.C. 2, 6, 6c and 12a.

§ 34.1 Scope.

The provisions of this part shall apply to any hybrid instrument which may be subject to the Act, and which has been entered into on or after October 23, 1974.

§ 34.2 Definitions.

(a) *Hybrid instruments.* Hybrid instrument means an equity or debt security or depository instrument as defined in § 34.3(a)(1) with one or more commodity-dependent components that have payment features similar to commodity futures or commodity option contracts or combinations thereof.

(b) *Commodity-independent component.* Commodity-independent component means the component of a hybrid instrument, the payments of which do not result from indexing to, or calculation by reference to, the price of a commodity.

(c) *Commodity-independent value.* Commodity-independent value means the present value of the payments attributable to the commodity-independent component calculated as of the time of issuance of the hybrid instrument.

(d) *Commodity-dependent component.* A commodity-dependent component means a component of a hybrid instrument, the payment of which results from indexing to, or calculation by reference to, the price of a commodity.

(e) *Commodity-dependent value.* For purposes of application of Rule 34.3(a)(2), a commodity-dependent value means the value of a commodity dependent-component, which when decomposed into an option payout or payouts, is measured by the absolute net value of the put option premia with strike prices less than or equal to the reference price plus the absolute net value of the call option premia with strike prices greater than or equal to the reference price, calculated as of the time of issuance of the hybrid instrument.

(f) *Option premium.* Option premium means the value of an option on the referenced commodity of the hybrid instrument, and calculated using the same method as that used to determine the issue price of the instrument, or where such premia are not explicitly calculated in determining the issue price of the instrument, the value of such options calculated using a commercially reasonable method appropriate to the instrument being priced.

(g) *Reference Price.* A reference price means a price nearest the current spot or forward price, whichever is used to price instrument, at which a commodity-dependent payment becomes non-zero, or, in the case where two potential reference prices exist, the price that results in the greatest commodity-dependent value.

§ 34.3 Hybrid instrument exemption.

(a) A hybrid instrument is exempt from all provisions of the Act and any person or class of persons offering, entering into, rendering advice or rendering other services with respect to such exempt hybrid instrument is exempt for such activity from all provisions of the Act (except in each case section 2(a)(1)(B)), provided the following terms and conditions are met:

(1) The instrument is:

(i) An equity or debt security within the meaning of section 2(1) of the Securities Act of 1933; or

(ii) A demand deposit, time deposit or transaction account within the meaning of 12 CFR 204.2 (b)(1), (c)(1) and (e), respectively, offered by an insured depository institution as defined in section 3 of the Federal Deposit Insurance Act; an insured credit union as defined in section 101 of the Federal Credit Union Act; or a Federal or State branch or agency of a foreign bank as defined in section 1 of the International Banking Act;

(2) The sum of the commodity-dependent values of the commodity-dependent components is less than the commodity-independent value of the commodity-independent component;

(3) Provided that:

(i) An issuer must receive full payment of the hybrid instrument's purchase price, and a purchaser or holder of a hybrid instrument may not be required to make additional out-of-pocket payments to the issuer during the life of the instrument or at maturity; and

(ii) The instrument is not marketed as a futures contract or a commodity option, or, except to the extent necessary to describe the functioning of the instrument or to comply with applicable disclosure requirements, as having the characteristics of a futures contract or a commodity option; and

(iii) The instrument does not provide for settlement in the form of a delivery instrument that is specified as such in the rules of a designed contract market;

(4) The instrument is initially issued or sold subject to applicable federal or state securities or banking laws to persons permitted thereunder to purchase or enter into the hybrid instrument.

Issued in Washington DC. on January 14, 1993, by the Commission.

Jean A. Webb,

Secretary of the Commission.

[FR Doc. 93-1366 Filed 1-21-93; 8:45 am]

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17 CFR Part 35

Exemption for Certain Swap Agreements

AGENCY: Commodity Futures Trading Commission.

ACTION: Final rule.

SUMMARY: On November 12, 1992, the Commodity Futures Trading Commission ("Commission") published for comment proposed new part 35 (the "Proposal") [1] which would exempt swap agreements (as defined herein) meeting specified criteria from regulation under the Commodity Exchange Act (the "Act"). This rule was proposed pursuant to authority recently granted the Commission, a purpose of which is to give the Commission a means of improving the legal certainty of the market for swap agreements. The original 30 day comment period was extended 14 days and closed December 28, 1992.[2]

The Commission has carefully considered the comments received and, based upon its review of the comments and its own reconsideration of the proposed rule, has determined to adopt part 35 in modified form, as discussed herein.

EFFECTIVE DATE: February 22, 1993.

FOR FURTHER INFORMATION CONTACT: Joanne T. Medero, General Counsel, Pat G. Nicolette, Deputy General Counsel, or David R. Merrill, Deputy General Counsel, Office of the General Counsel, Commodity Futures Trading Commission, 2033 K Street, NW., Washington, DC 20581. Telephone: (202) 254-9880.

SUPPLEMENTARY INFORMATION:

I. Statutory and Other Background

Section 2(a)(1)(A) of the Commodity Exchange Act ("CEA" or "Act") grants the Commission exclusive jurisdiction over "accounts, agreements (including any transactions which is of the character of * * * an 'option' * * *), and transactions involving contracts of sale of a commodity for future delivery traded or executed on a contract market * * * or any other board of trade, exchange, or market * * *." 7 U.S.C. 2. The CEA and Commission regulations require that transactions in commodity futures contracts and commodity option contracts, with narrowly defined exceptions, occur on or subject to the rules of contract markets designated by the Commission.[3]

On October 28, 1992, the Futures Trading Practices Act of 1992 ("1992 Act") was signed into law.[4] This legislation added new subsections (c) and (d) to section 4 of the Act. New section 4(c)(1) authorizes the Commission, by rule, regulation, or order, to exempt any agreement, contract or transaction, or class thereof, from the exchange-trading requirement of section 4(a) or any other requirement of the Act other than section 2(a)(1)(B).[5] New section 4(c)(2) provides that the Commission may not grant an exemption from the exchange-trading requirement of the Act unless, *inter alia*, the agreement, contract, or transaction will be entered into solely between appropriate persons listed in new section 4(c)(3), and the Commission determines that the agreement, contract, or transaction in question will not have a material adverse affect on the ability of the Commission or any contract market to discharge its regulatory or self-regulatory duties under the Act.[6]

Finally, new section 4(c)(5)(B) of the Act authorizes the Commission to exercise "promptly" the exemptive authority granted in section 4(c)(1) and to exempt swap agreements that are not part of a fungible class of agreements that are standardized as to their material economic terms to the extent that these instruments may be considered as subject to regulation under the Act.[7]

Pursuant to this new authority, the Commission on November 5, 1992 proposed rules to be set forth in a new part 35 that generally would exempt certain swap agreements from the Act. 57 FR 53627 (Nov. 12, 1992). The comment period, which had been extended by the Commission, expired on December 28, 1992.

The Commission has received in excess of 30 comment letters on the Proposal. The commenters included four futures exchanges; commercial banks, investment banks and other swap market participants; bank, securities industry, futures industry, and other trade associations; bar associations and law firms; government departments and agencies and members of the U.S. House of Representatives. Comments received after December 28 have been considered to the extent the Commission has been able to do so. All commenters, except the four futures exchanges and one commodity trade association, supported the Proposal but suggested modifications or clarifications to certain aspects of its provisions. These

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[1] 57 FR 53627.

[2] 57 FR 58423.

[3] Sections 4(a), 4c(b) and 4c(c) of the Act; 7 U.S.C. 6(a), 6c(b), 6c(c). Section 4(a) of the CEA specifically provides, *inter alia*, that it is unlawful to enter into a commodity futures contract that is not made "on or subject to the rules of a board of trade which has been designated by the Commission as a 'contract market' for such commodity." 7 U.S.C. 6(a). This prohibition does not apply to futures contracts made on or subject to the rules of a foreign board of trade, exchange or market. 7 U.S.C. 6(a).

[4] Pub. L. 102-546.

[5] Section 4(c)(1), 7 U.S.C. 6(c)(1), reads as follows: In order to promote responsible economic or financial innovation and fair competition, the Commission by rule, regulation, or order, after notice and opportunity for hearing, may (on its own initiative or on application of any person, including any board of trade designated as a contract market for transactions for future delivery in any commodity under section 5 of this Act) exempt any agreement, contract, or transaction (or class thereof) that is otherwise subject to subsection (a) (including any person or class of persons offering, entering into, rendering advice or rendering other services with respect to, the agreement, contract, or transaction), either unconditionally or on stated terms or conditions or for stated periods and either retroactively or prospectively, or both, from any of the requirements of subsection (a), or from any other provision of this Act (except section 2(a)(1)(B)), if the Commission determines that the exemption would be consistent with the public interest.

[6] Section 4(c)(2), 7 U.S.C. 6(c)(2), reads as follows: The Commission shall not grant any exemption from any of the requirements of subsection (a) unless the Commission determines that—(A) The requirement should not be applied to the agreement, contract, or transaction for which the exemption is sought and that the exemption would be consistent with the public interest and the purposes of this Act; and (B) The agreement, contract, or transaction—(i) Will be entered into solely between appropriate persons; and (ii) Will not have a material adverse effect on the ability of the Commission or any contract market to discharge its regulatory or self-regulatory duties under this Act. In this regard, the Conference Report on the 1992 Act states: The Conferees do not intend for this provision to allow an exchange or any other existing market to oppose the exemption of a new product solely on grounds that it may compete with or draw market share away from the existing market. H.R. Rep. No. 978, 102d Cong., 2d Sess. 79 (1992).

[7] Specifically, new section 4(c)(5)(B) states the Commission may: (B) Promptly following the enactment of this subsection, or upon application by any person, exercise the exemptive authority granted under paragraph (1) effective as of October 23, 1974, with respect to classes of swap agreements (as defined in section 101 of title 11, United States Code) that are not part of a fungible class of agreements that are standardized as to their material economic terms, to the extent that such agreements may be regarded as subject to the provisions of this Act.

commenters generally expressed the view that Part 35 would provide greater legal certainty to swap agreements, promote the development of certain financial safeguards in the swap market, and allow U.S. swap market participants to more effectively compete with foreign participants. Three of the four futures exchanges filed a joint comment letter (hereinafter the "Futures Exchanges Letter") which opposed the proposal on procedural and substantive grounds. Similar issues were raised in the other comment letter filed separately by a futures exchange.[8]

As discussed below, the Commission believes that part 35, as adopted, is responsive to the concerns of the commenters and has determined that it meets the criteria for the issuance of exemptive rules set forth in the Act.

II. Discussion

A. Scope of Rule

Several comment letters, including the Futures Exchanges Letter, have noted the Commission's efforts, both legislative and regulatory, to provide legal certainty for swap agreements. The Commission's review of the regulatory issues raised by swap agreements resulted in the issuance in July 1989 of a Statement of Policy ("Policy Statement") concerning certain swap transactions which recognized a non-exclusive safe harbor for transactions satisfying the statement's criteria.[9] Although the Policy Statement provided much needed clarity at that time concerning the regulatory treatment of swaps, Congress, in enacting the 1992 Act, encouraged the Commission to act promptly to issue an exemption to promote legal certainty in this area.[10] New part 35 is intended to promote domestic and international market stability, reduce market and liquidity risks in financial markets, including those markets (such as futures exchanges) linked to the swap market, and eliminate a potential source of systemic risk. To the extent that swap agreements may be regarded as subject to the provisions of the Act, the rules provide that those swap agreements which meet the terms and conditions set forth therein are exempt from all provisions of the Act, except section 2(a)(1)(B).[11] Although the Commission proposed to reserve certain non-regulatory sections of the Act from the exemption, the Commission agrees with those commenters that this reservation is unnecessary.[12] Nevertheless, in response to suggestions made in the Futures Exchanges Letter and the letter from the fourth commodity exchange, and to the extent that swap agreements may be deemed to be subject to the Act, the Commission has determined specifically to reserve in these rules the antifraud authority applicable to futures contracts and option transactions set forth in Sections 4b and 4o of the Act and Commission Rule 32.9, 17 CFR 32.9 (1992).

The rule is retroactive and effective as of October 23, 1974, the date of enactment of the Commodity Futures Trading Commission Act of 1974. The exemption would thus implement Congressional intent that the exemption from the Act be available for all eligible swap agreements, regardless of when (subsequent to October 23, 1974) the agreements may have been entered into. The issuance of this rule should not be construed as reflecting any determination that the swap agreements covered by the terms hereof are subject to the Act, as the Commission has not made and is not obligated to make any such determination.[13]

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[8] The exchanges questioned the adequacy of the comment period for the rulemaking, noting that the Commission has employed a 60 day comment period in other instances. There is, of course, no legal impediment to the Commission's use of a 30 or 44 day comment period in this rulemaking, as the Administrative Procedure Act requires no fixed period for the submission of comments. *Phillips Petroleum Co.* v. *Environmental Protection Agency*, 803 F.2d 545 (10th Cir. 1986). The Commission notes, however, that its initial selection of 30 days was prompted by its desire to act "promptly" as Congress intended, and the fact that the swaps issue had already been subject to lengthy and careful consideration by both the Commission and the Congress over the past several years. See, e.g. Hearings on S. 207 before the Senate Committee on Agriculture, Nutrition, and Forestry, 102d Cong., 1st Sess. 452 (1991); Advanced Notice of Proposed Rulemaking, 52 FR 47022 (Dec. 11, 1987).

[9] 54 FR 30694 (July 21, 1989). The Commission has also recognized, as have others, that certain swap transactions may fall within the Act's jurisdictional exclusions for forward contracts, or the so-called Treasury Amendment or within the Commission's regulatory trade option exemption. *Id.* at 30695, fn. 12–15. To the extent that swaps transactions do not meet the exemptive criteria of part 35, but nevertheless fall within the trade option exemption, they will continue to be covered by that provision.

[10] In granting exemptive authority to the Commission under new section 4(c), the Conferees on the 1992 Act: recognize[d] the need to create legal certainty for a number of existing categories of instruments which trade today outside the forum of a designated contract market. These instruments may contain some features similar to those of regulated exchange-traded products but are sufficiently different in their purpose, function, design, or other characteristics that, as a matter of policy, traditional futures regulation and the limitation of trading to the floor of an exchange may be unnecessary to protect the public interest and may create an inappropriate burden on commerce. H.R. Rep. No. 978, 102d Cong., 2d Sess. 80 (1992). The Futures Exchanges Letter questions whether the Commission was "directed" by Congress to act promptly in issuing this exemption. A fair reading of section 4(c)(5) and the Conference Report indicates a clear expectation by Congress that the Commission would act promptly. H.R. Rep. No. 978, 102d Cong., 2d Sess. 81 (1992). If the word "promptly" is to be given effect, as it must under rules of statutory construction, its plain meaning argues for agency action sooner rather than later. Indeed the Commission was urged "to act and act swiftly." *Id.* There is no requirement for the Commission to wait until the completion of the study requested by Congress. In fact, Congress expected the Commission to exercise its exemptive authority before the study was completed. *Id.* at 83. In addition, once an agency is granted rulemaking authority it may proceed on a timetable established in its discretion, absent statutory language to the contrary.

[11] Numerous commenters asked that the Commission clarify its views regarding the section 2(a)(1)(B) limitation, part of the Shad/Johnson Jurisdictional Accord. As stated in the Proposal, by enactment of this part 35 the Commission does not intend to affect transactions undertaken in accordance with the Policy Statement. Further, in enacting this limitation, Congress "did not intend to call into question the legality of securities-based swap or other transactions which occur in the private marketplace at the present time, that do not violate the Accord." H.R. Rep. No. 978, 102d Cong., 2d Sess. 78 (1992). Swap market participants may continue to rely on the Policy Statement for existing and new swap agreements, including securities-based swaps.

[12] These proposed reservations encompassed sections 1a and 2(b), definitions; section 4(c) and 4(d), the exemptive authority provisions; section 8 dealing with, among other things, the Commission's treatment of confidential information; and, section 12(e)(2)(A), regarding the non-applicability of certain state laws to agreements exempted under section 4(c). By eliminating the reservations as applied to swap agreements, the Commission does not intend to suggest that these sections or any other section of the Act do not continue to apply to the Commission or to its authority and obligations under these sections or to any person or transaction not eligible for the exemption. See section 4(d) of the Act. Pursuant to its authority in new section 4(d) of the Act, the Commission intends routinely to consult with other regulators who have information concerning swap transactions, *e.g.*, the Securities and Exchange Commission pursuant to its risk assessment authority under the Market Reform Act of 1990, the Federal Reserve Board and other bank regulators to seek to assure they include in their routine examination program these transactions. Under section 4(d), the Commission would exercise its authority to investigate, as appropriate. The Commission also specifically wishes to make clear that those provisions of sections 69(c) and 9(a)(2) of the Act concerning manipulation or attempted manipulation of the market price of any commodity in interstate commerce or for future delivery on or subject to the rules of any contract market, would continue to apply to persons engaging in swap agreements but not to the swap agreements themselves. Part 35 does not affect the applicability or protections of state law (other than gaming or "bucket shop" laws), including applicable securities laws or antifraud statutes of general applicability, to these swap agreements or any other protections provided by other applicable federal laws. Congress specifically noted that, in exempting an instrument from the Act, the Commission cannot exempt it from applicable securities and banking laws and regulations. H.R. Rep. No. 978, 102d Cong., 2d Sess. 83 (1992).

[13] The contention expressed in the Futures Exchanges Letter that the Commission must make such a determination ignores the express language of 4(c)(5) and misstates Congressional intent as expressed in the Conference Report: The Conferees do not intend that the exercise of exemptive authority * * * would require any determination beforehand that the agreement * * * is subject to the Act * * *. Rather than making a finding as to

In enacting this exemptive rule, the Commission is also acting under its plenary authority under section 4c(b) of the Act with respect to swap agreements that may be regarded as commodity options.[14] The rule also exempts, as permitted by section 4(c)(1), all persons and entities for the activity of offering, entering into, rendering advice, or rendering other services with respect to swap agreements covered by the rule. Commenters indicated that the placement of this language in the rule was confusing. Accordingly, a clarifying modification has been made. Such persons, however, engaged in activity otherwise subject to the Act would not be exempt for such activity, even if it were connected to their exempted swaps activity. Also in this regard, the Commission wishes to make clear that the exemption does not apply to any financial, recordkeeping, reporting, or other requirements imposed on any person in connection with their activities that remain subject to regulation under the Act.[15] Thus, for example, futures commission merchants must continue to account for any liabilities arising out of any swap agreement in meeting the net capital requirements of Commission Rule 1.17 just as they do in the case of other financial instruments not regulated under the Act. Similarly, the risk assessment recordkeeping and reporting requirements imposed on futures commission merchants by new section 4f(c) of the Act apply to the swap agreement activities of their affiliated persons.

In adopting part 35, it is the intention of the Commission to exempt from regulation (to the full extent permissible by the Act) all swap agreements which satisfy the requirements of the rule and which may otherwise be subject to regulation under the Act.

B. Definition of Swap Agreement

Rule 35.1(b)(1) adopts the definition of "swap agreement" incorporated into new section 4(c)(5)(B) and specifically set forth in 11 U.S.C. 101(55). Although one commenter thought the definition was too restrictive and several encouraged broader application, the majority of those who commented on the use of this definition stated their support for its adoption. This definition reflects Congressional intent that the Commission endeavor to give legal certainty to swap agreements with differing economic and financial characteristics. In addition, as noted by one commenter, the use of the same definition that is used in the Bankruptcy Code will help to create greater certainty in the marketplace for swaps, given the extent to which market certainty has been enhanced by the exemption of "swap agreements" (as defined in the Bankruptcy Code) from the automatic stay and other provisions of the Bankruptcy Code. The definition reflects the diversity and evolving nature of swap transactions in the marketplace.[16] The Commission believes the terms and conditions of Rule 35.2 adequately limit the scope of activity permitted under the exemption.

C. Eligible Swap Participants

Most commenters suggested various modifications to the proposed definition of "appropriate person." The Commission has considered these comments and the final rule reflects the changes discussed below. In addition, in order to avoid confusion with the use in section 4(c)(3) of the Act of the phrase "appropriate person," the final rule substitutes the phrase "eligible swap participant." No substantive change is intended by this new phrase.

In the Proposal, the Commission generally used the list of "appropriate persons" set forth in new section 4(c)(3)(A) through (J) and utilized the authority granted by section 4(c)(3)(K) to determine other persons to be "appropriate persons" provided that a natural person would only qualify to the extent his or her net worth exceeds $5 million or total assets exceed $10 million. This approach is consistent with Congressional intent that the Commission may limit the terms of an exemption to some, but not all, of the listed categories of appropriate persons.[17]

In defining "eligible swap participant" in the final rule, the basic list is retained but is refined to clarify issues raised by the commenters. As the Act specifies that the swap agreement may only be "entered into" by appropriate persons, this determination is to be made at the inception of the transaction.[18] Further, it is sufficient that the parties have a reasonable basis to believe that the other party is an eligible swap participant at such time.[19]

Many commenters noted the international scope of the swaps market. While most of the categories of eligible swap participants are not limited to U.S. persons, subsections (iv), (v), (vii), (ix), and (x) of proposed Rule 35.1(b)(2) reference persons regulated under the United States law applicable to each. Thus, these references exclude regulated foreign persons performing similar roles in their home jurisdictions. Consistent with the policy reflected in section 4(c)(3)(K), the Commission believes that regulated foreign persons are "appropriate persons" and has modified these subsections of the final rule to include such persons as "eligible swap participants."[20]

The eligible swap participant must be acting on its own behalf or on behalf of another eligible swap participant as a counterparty in order to qualify under the Rule. A conforming change to Rule 35.1(b)(2)(i) has therefore been made. In most circumstances, the Commission will not "look through" eligible swap participants to their investors to apply the qualifications of Rule 35.1(b)(2) again. However, investment companies, commodity pools or entities which are collective investment vehicles formed solely for the specific purpose of constituting an eligible swap participant to enter into swap agreements will not be considered eligible swap participants

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whether a product is or is not a futures contract, the Commission in appropriate cases may proceed directly to issuing an exemption. H.R. Rep. No. 978, 102 Cong., 2d Sess. 82–83 (1992). The Futures Exchanges Letter advocates the view that to provide legal certainty to swap agreements the Commission need only exempt such agreements from the requirements of section 4(a) of the Act. The Commission does not read Congressional intent or its authority under section 4(c) so narrowly and has determined to exempt swap agreements which satisfy the requirements of the rule from regulation under the Act.

[14] See also footnote 12, *supra*.

[15] As part of its ongoing review of its regulations, the Commission is considering revisions to Commission Rule 1.19. Suggestions by some commenters that Rule 1.19 should not be applicable to exempted swap agreements will be considered as part of this review.

[16] The words "any similar agreement" in the definition includes any agreement with a similar structure to those transactions expressly included in the definition (e.g., a cap, collar, or floor) without regard to the nature of the underlying commodity interest involved.

[17] H.R. Rep. No. 978, 102d Cong., 2d Sess. 79 (1992).

[18] There is no requirement that a swap agreement be terminated if an eligible swap participant no longer qualifies as such. However, in order to permit the orderly winding-down of the positions of counterparties undergoing financial or other distress, an eligible swap participant may enter into a "closing transaction" with a counterparty even if the counterparty no longer qualifies as an eligible swap participant, provided however, that such closing transaction terminates all obligations between the counterparties to the swap. Under this circumstance, the Commission will consider such non-qualifying counterparty an "eligible swap participant" solely for the purpose of terminating any outstanding swap agreements.

[19] An eligible swap participant that has a reasonable basis to believe its counterparty is also an eligible swap participant when it enters into a master agreement may rely on such representation continuing, absent information to the contrary.

[20] The Commission considered comments that all non-United States persons be included in the definition of "eligible swap participant." However, as most categories of eligible swap participants are not limited to U.S. persons, this change accomplishes much the same result without favoring foreign participants over United States participants.

under the exemption. Conforming changes to Rule 35.1(b)(2) have been made to make this clear.

In the Proposal the Commission requested specific comment regarding the net worth and asset tests for "appropriate persons." A number of commenters indicated that the financial thresholds should be lower, particularly for individuals (for example, that the "accredited investor" threshold of Rule 501 under the Securities Act of 1933 be used), and that no financial thresholds should be imposed on individuals who are otherwise registered and regulated under the Act or the Securities Exchange Act of 1934 (such as broker-dealers, futures commission merchants, commodity trading advisors, and investment advisers).[21] Others noted the lower thresholds applicable to partnerships, corporations, or proprietorships under proposed Rule 35.1(b)(2)(vi). At least one commenter indicated that the proposed list of appropriate persons went beyond the existing market.

These financial thresholds are applied as an indication of financial sophistication and background. No commenters suggested that the proposed financial thresholds would adversely affect the market as conducted today, and on further consideration the Commission has determined to alter the financial tests for corporations and other entities, employee benefit plans and natural persons and to require commodity pools to have assets of at least $5,000,000.

In the final rule the Commission has increased the financial threshold tests for entities specified in Rule 35.1(b)(2)(vi) and natural persons to $10 million in total assets, and eliminated the net worth threshold. The Commission has added an alternative test for entities specified in Rule 35.1(b)(2)(vi) having net worth of at least $1 million and which enter into the swap agreement in connection with their businesses or to manage the risk of an asset or liability owned or incurred in the conduct of their businesses or reasonably likely to be owned or incurred in the conduct of their businesses.[22] Finally, the Commission has increased the asset test for employee benefit plans to $5,000,000.

D. Other Conditions

In addition to the condition that the swap agreement be entered into solely between eligible swap participants as specified in Rule 35.2(a), the final rule imposes three further conditions.[23]

First, as specified by section 4(c)(5) of the Act, Rule 35.2(b) provides that swap agreements may not be part of a fungible class of agreements that are standardized as to their material economic terms.[24] This condition is designed to assure that the exemption does not encompass the establishment of a market in swap agreements, the terms of which are fixed and are not subject to negotiation, that functions essentially in the same manner as an exchange but for the bilateral execution of transactions.[25] Standardization of material economic terms is a necessary, but not sufficient, condition for fungibility, as other factors, such as individual negotiation of other material terms or counterparty credit risk also affect fungibility.[26] As a result of, for example, the existence of common conventions in related markets or the hedging of risks incident to common assets or liabilities, a swap agreement may have the same economic terms but yet not be one of a fungible class of standardized agreements. For example, parties hedging the same or similar asset, such as a five year bond with semi-annual interest coupons, may individually negotiate the same economic terms to match cash flows, yet negotiate other terms and conditions, including the consideration of the creditworthiness of the counterparty.

Standardization of terms that are not material economic terms, for example, definitions, representations and warranties, and default and remedies provisions, as found in certain forms and master agreements published by various associations, is not by itself violative of this requirement.[27] Moreover, a swap agreement would not be considered fungible or standardized simply because it is subject to a netting system or arrangement permitted under paragraph (d) of the rule provided the material economic terms of the swap agreement are subject to individual negotiation by the parties.

Second, Rule 35.2(c) requires that the creditworthiness of any party having an actual or potential obligation under the swap agreement be a material consideration in entering into or determining the terms of the swap agreement including pricing, cost, or credit enhancement terms.[28] The

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[21] The Futures Exchanges Letter suggested that the financial threshold for natural person floor traders and floor brokers be eliminated if such person's activities are guaranteed by a clearing member. Although the Commission has declined to make this change, it has added an alternative test for proprietorships as described above.

[22] To avoid uncertainty in the application of Rule 35.1(b)(2)(vi), the Commission is deleting reference to "business" before "entities" in this subsection. In addition, based upon comments received, the Commission has added credit unions to 35.1(b)(2)(ii) and made minor clarifying changes to subsections (vi) and (vii). Some commenters requested that the Commission specifically list entities, such as 501(c)(3) organizations under the Internal Revenue Code, in subsection (viii). The Commission believes such entities are contained within this subsection, and such specificity is unnecessary.

[23] The Futures Exchanges Letter proposes that the Commission add as a condition to the exemption that a self-regulatory organization ("SRO") be established to govern the swap market. Although couched in terms of the benefits of self-regulation, the objective underlying this proposal is revealed by the exchanges' statement that "(b)y the time the exchanges are ready to compete effectively * * * the dealers should have made and effectuated their SRO selection." Futures Exchanges Letter at 102. While it may be appropriate in some circumstances or for other reasons to condition an exemption on the existence or establishment of an SRO, the Commission declines to so condition this exemption and thus delay its implementation.

[24] The phrase "material economic terms" is intended to encompass terms that define the rights and obligations of the parties under the swap agreement and that, as a result, may affect the value of the swap at origination or thereafter. Examples of such terms may include notional amount, amortization, maturity, payment dates, fixed and floating rates or prices (including the methods by which such rates or prices may be determined), payment computation methodologies, and any rights to adjust any of the foregoing.

[25] The Futures Exchanges Letter questions the use of this condition and, in particular, one of the Commission's explanations of its purpose. Futures Exchanges Letter at 70–78. Distilled to its essence, the exchanges argue that the Commission's explanation is ambiguous because some swap agreements are as standardized as exchange traded futures, and that a swaps market which functions essentially as an exchange may exist today. The Commission does not find the purposes of this condition to be ambiguous as the exchanges assert. As to the assertion that some swap agreements are as standardized as exchange-traded futures contracts, this ignores the fact that most terms of exchange-traded futures contracts are set by the contract market, while all terms of swap agreements are subject to negotiation. As to the exchanges' other contention, a swaps market that today functions as an exchange would not be entitled to a part 35 exemption since the rule precludes exchange trading. See also Rule 35.2(d). Of course, what constitutes the "essential functions" of an "exchange" is subject to reasonable dispute but is generally left to an expert agency to decide. *Cf. Board of Trade* versus *Securities and Exchange Commission*, 883 F.2d 525 (7th Cir. 1989).

[26] One commenter suggested that legal certainty would be increased if the Commission deleted 35.2(b) and stated that a swap agreement which is assignable and transferable only with counterparty consent and/or the obligations thereunder are terminable, absent default, only with counterparty consent, is not part of a fungible class of agreements that are standardized as to their material economic terms. While the Commission agrees that transferability is one indicia of fungibility, other facts or circumstances may also determine whether or not a swap agreement meets the requirements of Rule 35.2(b).

[27] Standardization of these terms in published forms is not dissimilar to the standardization of terms for other areas, such as letters of credit. The publication of such standard terms facilitates communications and negotiations, but does not mean the provisions themselves are not subject to substantial negotiation.

[28] The Futures Exchanges Letter asserted that the Commission's choice of certain conditions in the Proposal was an impermissible attempt to employ the criteria from the Senate version of the 1992 Act

standard is intended to be objective, and does not require parties to actually negotiate (or demonstrate that they have negotiated) particular provisions. The clarifying phrase in the rule regarding "any party having an actual or potential future obligation" refers to obligations that create credit risk, not to ancillary obligations, such as obligations to deliver documents or perform (or refrain from performing) financial or business-related covenants. By this criterion, at this time, the exemption does not extend to transactions that are subject to a clearing system where the credit risk of individual members of the system to each other in a transaction to which each is a counterparty is effectively eliminated and replaced by a system of mutualized risk of loss that binds members generally whether or not they are counterparties to the original transaction.[29]

Based upon comments from futures exchanges and others, the Commission has revised the proviso to Rule 35.2(b) and (d) to clarify its meaning and to distinguish bilateral arrangements or facilities from multiparty arrangements or facilities. Under the proviso, bilateral arrangements for the netting of obligations to make payments or transfers of property, including margin or collateral, would be permitted. Multiparty netting arrangements would also be permitted, provided that the underlying gross obligations among the parties are not extinguished until all netted obligations are fully performed.

In addition, the "creditworthiness" condition is not intended to limit the ability of parties to undertake any bilateral collateral or margining arrangements to address credit issues. By expanding the ability of swap participants to utilize collateral and margin arrangements beyond that which is explicitly permitted under the Policy Statement, these rules should promote arrangements that will reduce risk within the financial system.[30]

Third, Rule 35.2(d) provides that the swap agreement may not be entered into and traded on or through a multilateral transaction execution facility. In this context, a multilateral transaction execution facility is a physical or electronic facility in which all market makers and other participants that are members simultaneously have the ability to execute transactions and bind both parties by accepting offers which are made by one member and open to all members of the facility. This limitation is not intended to preclude participants from engaging in privately negotiated bilateral transactions, even where these participants use computer or other electronic facilities, such as "broker screens," to communicate simultaneously with other participants so long as they do not use such systems to enter orders to execute transactions.[31] The Commission understands such facilities are in use today.

The Commission believes that transaction execution facilities could provide important benefits in terms of increased liquidity and price transparency. However, as is the case with clearing facilities, transaction execution facilities for swap agreements are not yet in existence, and present different regulatory issues than are raised by the exemption provided by the final rule. Thus, transaction execution facilities are beyond the scope of part 35 as adopted today. Consistent with the proviso in the final rule, however, the Commission invites applications for appropriate exemptive relief for such facilities as they are developed.

E. Statutory Determinations

As stated above, section 4(c) requires that the Commission make a number of determinations in granting exemptions.[32] If an exemption is granted pursuant to section 4(c) from the requirements of section 4(a), the determinations are that the requirement of section 4(a) should not be applied to the agreement, contract, or transaction and that the exemption is (1) consistent with the public interest; (2) consistent with the purposes of the Act; and (3) the agreement, contract, or transaction "will not have a material adverse effect on the ability of the Commission or any contract market to discharge its regulatory or self-regulatory duties" under the Act.[33] With regard to the exchange trading requirement of section 4(a), the swaps market presently exists outside the forum of exchange trading

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which had mandated a swap exemption. However, as enacted, section 4(c)(1) expressly empowers the Commission to grant exemptions on "stated terms or conditions." As the Conferees recognized, the Commission may impose conditions on the swaps exemption "beyond those of lack of fungibility and standardization." H. Rep. 978, 102 Cong., 2d Sess. at 82 (1992).

[29] As recognized by the Futures Exchanges Letter, such a mutualized system would constitute a clearing system not unlike those employed by the exchanges. See also footnote 30, *infra*.

[30] The Commission shares the goal of financial system risk reduction as expressed in the comment letters from the Department of the Treasury, the Board of Governors of the Federal Reserve System ("Board"), and Office of the Comptroller of the Currency ("OCC"). The Commission understands these comment letters to generally support the promulgation of part 35 but to express concern that Commission rules should go further to promote the reduction of systemic risk. In this regard, while the OCC and the Board endorsed the development of appropriately structured multilateral payment netting for swaps, the Board also observed that the Commission should permit multilateral settlement (or clearing) so risk of loss could be mutualized. The Commission believes that a clearing house system for swap agreements could be beneficial to participants and the public generally. However, as such mechanisms are not yet in existence, and may take many forms and raise different regulatory concerns depending upon their structure or participants or whether another regulatory regime is applicable, the Commission will consider the terms and conditions of such an exemption for swap clearing houses in the context of specific proposals from exchanges, other regulators, or others. The Commission has added a proviso to the final rule to make clear that in this regard any party may apply for exemptions from the Act and that the Commission will consider the terms and conditions that may be appropriate, including other applicable regulatory regimes. While not limiting exemptions to those conditioned upon another regulatory scheme (and not otherwise limiting the imposition of conditions) the Commission is mindful of the costs of duplicative regulation. The Commission intends to give market participants maximum latitude in developing multilateral mechanisms to control credit and settlement risk which may reduce systemic risk. The new proviso reflects the Commission's determination to encourage innovation in developing the most efficient and effective types of systemic risk reduction. The Commission has previously recognized the virtues of clearing systems that mutualize risk and do not believe that this Rule should disadvantage the development of such systems. The Commission believes that the design of swap clearing facilities and the services that the facility will offer should be driven by the needs and desires of swap market participants.

[31] The Futures Exchanges Letter appears to confuse electronic and computer facilities which provide information to those having access to the facility, with physical or electronic facilities which allow participants to execute and trade instruments or contracts. A computer-based trading system for swap agreements is beyond the scope of these rules but may be the proper subject of the Commission's further exercise of its authority under section 4(c). See also footnote 30, *supra*.

[32] Contrary to the contention of the Futures Exchanges Letter, the plain meaning of the statute requires only that the determinations be made when the exemption is granted, but not when an exemption is merely proposed. *See* section 4(c)(2). The four exchanges also contend that the Proposal violates the Administrative Procedure Act ("APA") by failing to provide, among other things, an opportunity for "meaningful comment." The APA requires that a notice of proposed rulemaking include "either the terms or substance of the proposed rule or a description of the subjects and issues involved." 5 U.S.C. 553(b). In this instance the Proposal met both tests: it not only provided a description of the subject issues involved, it set forth the full text of the proposed rule. Further, this APA provision has been interpreted by one court to mean that the notice should be of sufficient detail and rationale to permit parties to comment meaningfully. *See, Fertilizer Inst. v. EPA*, 935 F.2d 1302, 1310–11 (D.C. Cir. 1991). The numerous detailed comment letters received support the conclusion that an opportunity for meaningful comment was provided by the Proposal. Further, despite their protestations to the contrary, the four futures exchanges who filed in opposition (and, in particular, the 108-page Futures Exchanges Letter) appeared to be sufficiently informed of the Commission's rationale to comment "meaningfully" on the Proposal.

[33] Section 4(c)(2), 7 U.S.C. 6(c)(2). This section also places a condition on an exemption from section 4(a) of the Act that the transaction will be entered into solely between appropriate persons. As discussed above, the Commission has made this a prerequisite for the swap agreement to qualify for exemption under Part 35.

and the Commission has determined that the requirement should not be applied to swap agreements meeting the conditions of the exemption. Indeed, one of the prerequisites for the exemption is that the swaps agreement not be standardized like exchange products or entered into or traded on a multilateral execution transaction facility.[34]

Public Interest and Purposes of the Act Determination

As is frequently the case when Congress grants a regulatory agency authority to act consistent with "the public interest and the purposes of" its enabling statute, little statutory elaboration is given to the full scope of the phrase. As commonly understood, however, an agency, such as the Commission, is to apply this standard against the template of its regulatory scheme. In this regard, the Conference Report states that the "public interest" under section 4(c) includes "the national public interests noted in the (Act), the prevention of fraud and the preservation of the financial integrity of markets, as well as the promotion of responsible economic or financial innovation and fair competition." H.R. Rep. No. 978, 102d Cong., 2d Sess. 78 (1992).[35] The Conference Report goes on to state that "(t)he Conferees intend for this reference to the 'purposes of the Act' to underscore their expectation that the Commission will assess the impact of a proposed exemption on the maintenance of the integrity and soundness of markets and market participants." *Id.*

Swap agreements are used by corporations, financial institutions, governments, governmental entities, and others, and are important tools that are used by these entities to hedge or manage financial risk and accomplish other financial objectives. In issuing this exemption, the legal risk (that the agreements would be unenforceable), and thus financial risk, is reduced within the financial markets and that legal certainty contributes to the preservation of the financial integrity of the markets.[36] By removing or reducing uncertainty, the final rule should promote innovation in the swaps market by allowing participants to negotiate and structure transactions that most effectively address their economic needs.[37]

Further, the exemption will assist United States financial institutions to compete with foreign rivals in the highly competitive market for swaps by removing a regulatory uncertainty with respect to the market in the United States that has not been present in most other major financial and industrial countries. In this regard, the exchanges' comment that "fair competition" under section 4(c) means that the rule as finalized must permit the exchanges to conduct a swaps market in their own manner is without merit. Exchanges and their members are not excluded from these rules, however, and may participate in swap agreements on the same terms and conditions that apply to all other eligible swaps participants.[38]

Material Adverse Effect on Regulatory or Self-Regulatory Responsibilities

In making this determination, Congress indicated that the Commission is to consider such regulatory concerns as "market surveillance, financial integrity of participants, protection of customers and trade practice enforcement."[39]

The record before the Commission does not support a conclusion that the purposes of the Act or the Commission's regulatory efforts thereunder have been adversely affected by the swaps market or will be so affected by the issuance of this exemption. Swap transactions have been entered into by a variety of participants for more than a decade, and the number of defaults appears to be low.[40] Nor do allegations of fraud appear to be an issue in this market. The Commission has addressed concerns regarding financial integrity and customer protection through the requirement that swaps only be entered into between eligible swap participants and that, as provided in Rule 35.2(b), creditworthiness of the parties be a material consideration. This approach precludes anonymous transactions and ensures that swap agreements will be limited to those persons who are sophisticated or financially able to bear risks associated with the transactions.[41]

The Commission also notes that the existence of the swap market, which by any measurement (*e.g.*, total notional amount at year end 1991 of $4 trillion) has not to date affected the ability of the futures exchanges to fulfill their self-regulatory duties.[42] It is widely acknowledged that the futures market and the swap market are linked, with swap market participants using certain exchange traded futures as hedging vehicles.[43] By creating a more certain legal environment for swaps, the potential for systemic risk is reduced, and there is no reason to conclude that the exchanges' self-regulatory responsibilities will be adversely affected by permitting the swaps market to continue on this basis.[44]

Anticompetitive Considerations

Section 15 of the Act provides, in relevant part, that the Commission must consider the public interest to be protected by the antitrust laws and endeavor to take the least anticompetitive means of achieving the objectives, policies, and purposes of the Act in adopting any rule, regulation, or exemption under section 4(c).[45] Thus, a

[34] See discussion above regarding Rule 35.2(c) and (d). See also H. Rep. No. 102–978, 102d Cong., 2d Sess. 80 (1992).

[35] The Futures Exchanges Letter notes that in addressing certain elements of the public interest for futures trading, Congress has indicated that contract market designation and regulation under the Act is necessary to avoid creating an undue burden on commerce. See section 3 of the Act. Seventy years after the enactment of section 3, however, Congress enacted section 4(c) authorizing exemptions from section 4(a) of the Act because "traditional futures regulation * * * may create an inappropriate burden on commerce." H.R. Rep. No. 978, 102d Cong., 2d Sess. 80 (1992).

[36] The Futures Exchanges Letter appears to say in several places that the Commission must find that the exemption provides legal certainty. While this is certainly a goal of the final rule, it is not a statutorily mandated finding which the Commission must make.

[37] As noted in several comment letters, including comments from federal regulators, permitting mark-to-market margin and collateral and multiparty payment netting systems reduces financial risk and encourages responsible economic innovation.

[38] In considering fair competition, Congress expected that "the Commission will apply consistent standards based on the underlying facts and circumstances of the transaction and markets being considered and may make distinctions between exchanges and other markets, taking into account the particular facts and circumstances involved * * * where such distinctions are not arbitrary and capricious." H.R. Rep. No. 978, 102d Cong., 2d Sess. 78 (1992).

[39] H.R. Rep. No. 978, 102d Cong., 2d Sess. 79 (1992).

[40] Azarchs, "Banks Face Manageable Risks in Derivative Businesses," Standard & Poors Credit Week, November 1992.

[41] In enacting the 1992 Act, Congress explicitly authorized exemptions from all provisions of the Act (except 2(a)(1)(B)) and simultaneously enacted a "conforming amendment" to 12(e)(2) explicitly acknowledging that state antifraud statutes of general applicability would continue to apply to exempted transactions. See also footnote 12, *supra*.

[42] Indeed, in their lengthy submissions, the futures exchanges do not claim that approval of the Proposal will adversely affect their self-regulatory responsibilities.

[43] See, *e.g.*, Thompson, "Oil Swaps, A Potential Source of New Business for NYMEX," Futures Industry, November–December 1992.

[44] The Commission is unaware of any swap agreements that provide for settlement by tendering a delivery instrument, such as an exchange-approved warehouse receipt or shipping certificate, that is specified in the rules of a designated contract market. Swap agreements of this kind could have an effect upon deliverable supplies for settlement of designated futures or option contracts and, accordingly, the creation of such agreements should occur only after consultation with the Commission.

[45] Specifically section 15, as amended by section 502(b) of the 1992 Act, provides: The Commission shall take into consideration the public interest to be protected by the antitrust laws and endeavor to take the least anticompetitive means of achieving

formal analysis under the antitrust laws is not, by itself, dispositive of the issues raised by a rule.[46] As a result, the Commission is not compelled by section 15 to take the least anticompetitive course of action. Rather, where alternatives with varying degrees of regulatory benefit exist, the Commission may adopt the approach that appears to be most likely to achieve the objectives, policies, and purposes of the Act, even if that approach is not the least anticompetitive.[47]

Accordingly, section 15 requires the Commission to balance the likely anticompetitive impact of adopting a rule against the objective, policy, or purpose of the Act which the rule may further. And, although the Commission must consider the public interest in maintaining or promoting competition, it need not weigh this interest equally against an objective, policy, or purpose of the Act being served by a rule in reaching its final determination concerning the adoption of the rule.

The Commission's consideration of the proposed rule and its evaluation of the comments received in this regard has led it to conclude that any possible anticompetitive effects are clearly outweighed by the rule's furtherance of the policies, purposes, and objectives of the Act for the following reasons.

First, the proposal does not appear to raise any significant competitive issues. As several commenters noted, the exemption, by improving the legal certainty of the market for swap agreements, will increase growth, innovation, and competition in this market. Competition, in particular, will be promoted because of the flexibility provided by the exemption concerning persons who may appropriately enter swap transactions. In this regard, in addition to those now participating in swap transactions under the Commission's Policy Statement, the exemption would allow other persons, including futures exchanges or affiliates thereof, to engage in swap transactions on the same basis as all other participants.[48]

Second, the exemption furthers a fundamental objective of the Act, i.e., implementing new section 4(c)(5)(B) of the Act, which authorizes the Commission to exercise "promptly" its exemptive authority concerning swap agreements of the kind described therein. In this regard, the Conference Report on the 1992 Act notes that "the Conferees expect and strongly encourage the Commission to use its new exemptive powers promptly upon enactment in * * * areas where significant concerns of legal uncertainty have arisen (including) * * * swap * * *."[49] The Commission believes that the exemption adopted herein is responsive to these Congressional concerns and is properly circumscribed in accordance with the criteria set forth in the 1992 Act.

Finally, the Commission is unaware of any anticompetitive practices or other discernible adverse effects arising during the evolution and development of the swaps market, particularly as the market has developed in reliance on its Swaps Policy Statement. It is therefore reasonable to expect that the exemption will be similarly devoid of adverse effects on competition.

In conclusion, the part 35 rules as set forth below and adopted herein are supported by appropriate determinations made in accordance with the standards set forth in section 4(c) of the Act for the granting of exemptions.

F. Future Exemptive Relief

The Commission will, consistent with section 4(c), consider further exemptive relief on its own initiative or upon application by any person (including futures exchanges) for agreements, transactions, or contracts (including classes thereof) not addressed in this rule. To the extent that market participants wish to use or establish a multilateral transaction execution facility for swap transactions, or clearing systems involving mutualized risk or multiparty netting of payment obligations, the Commission will evaluate the terms and conditions, if any, that would be appropriate under section 4(c) of the Act in connection with any request for exemptive relief involving such a facility.

II. Related Matters

A. Regulatory Flexibility Act

The Regulatory Flexibility Act ("RFA"), Public Law No. 96–354, 94 Stat. 1164 (1980), 5 U.S.C. 601 *et seq.*, requires each federal agency to consider, in the course of proposing substantive rules, the effect of those rules on small entities. A small entity is defined to include, *inter alia*, a "small business" and a "small organization." 5 U.S.C. 601(6).[50] The Commission previously has formulated its own standards of what constitutes a small business with respect to the types of entities regulated by it. The Commission has determined that contract markets,[51] futures commission merchants,[52] registered commodity pool operators,[53] and large traders[54] should not be considered small entities for purposes of the RFA.

The Commission continues to believe that it is unlikely that firms defined as small businesses under section 3 of the Small Business Act could offer or be offered swap agreements and thus be affected by the proposed rule exempting such agreements. Further, the proposed rule would not add any legal, accounting, consulting, or expert costs but rather would broaden the categories of permissible products sold other than on designated exchanges. The determination of whether a swap agreement would qualify for the proposed exemption requires minimal analysis of data that will be readily accessible to the offeror.

No comments were received with respect to the RFA implications of new part 35.

B. Paperwork Reduction Act

The Paperwork Reduction Act of 1989 ("PRA"), 44 U.S.C. 3501 *et seq.*, imposes certain requirements on federal agencies (including the Commission) in connection with their conducting or sponsoring any collection of information as defined by the PRA. As the Commission noted in proposing part 35, it has determined that proposed part 35 does not impose any information

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the objectives of this Act, as well as the policies and purposes of this Act, in issuing any order or adopting any Commission rule or regulation (including any exemption under sections 4(c) or 4c(b)), or in requiring or approving any bylaw, rule, or regulation of a contract market or registered futures association established pursuant to section 17 of this Act.

[46] See *Gordon* v. *New York Stock Exchange*, 422 U.S. 659, 690–691 (1975); *Silver* v. *New York Stock Exchange*, 373 U.S. 341 (1963).

[47] See, *e.g.*, *British American Commodity Options Corp.* v. *Bagley*, Comm. Fut. L. Rep. (CCH) ¶20,245 at 21,334 (S.D.N.Y. 1976), *aff'd in part and rev'd in part*, 552 F.2d 482 (2d Cir. 1977), *cert. denied*, 98 S.Ct. 427 (1977).

[48] The Futures Exchanges Letter argues that the exemption, because it does not permit exchange trading of the swap agreements being exempted, promotes unfair competition. As is noted above, however, the exchanges (or their affiliates) remain free to compete under the final rules on an equal footing with all other eligible swap participants.

[49] H.R. Rep. No. 978, 102d Cong., 2d Sess. 81 (1992).

[50] "Small organizations," as used in the RFA, means "any not-for-profit enterprise which is independently owned and operated and is not dominant in its field * * *" 5 U.S.C. 601(4). The RFA does not incorporate the size standards of the Small Business Administration ("SBA") for small organizations. Agencies are expressly authorized to establish their own definition of small organization. *Id.*

[51] 47 FR 18618 (April 30, 1982).

[52] *Id.* at 18619.

[53] *Id.*

[54] *Id.* at 18620.

collection requirements as defined by the PRA. No comments were received concerning the Commission's determination in this regard.

List of Subjects in 17 CFR Part 35

Commodity futures, Commodity options, Prohibited transactions.

In consideration of the foregoing, and pursuant to the authority contained in the Commodity Exchange Act, and in particular, sections 2, 4, 4c, and 8a, 7 U.S.C. 2, 6, 6c, and 12a, as amended, the Commission hereby adds part 35 of chapter I of title 17 of the Code of Federal Regulations as follows:

PART 35—EXEMPTION OF SWAP AGREEMENTS

Sec.
35.1 Definitions.
35.2 Exemption.

Authority: 7 U.S.C. 2, 6, 6c, and 12a.

§ 35.1 Definitions

(a) *Scope.* The provisions of this part shall apply to any swap agreement which may be subject to the Act, and which has been entered into on or after October 23, 1974.

(b) *Definitions.* As used in this part:

(1) *Swap agreement* means:

(i) An agreement (including terms and conditions incorporated by reference therein) which is a rate swap agreement, basis swap, forward rate agreement, commodity swap, interest rate option, forward foreign exchange agreement, rate cap agreement, rate floor agreement, rate collar agreement, currency swap agreement, cross-currency rate swap agreement, currency option, any other similar agreement (including any option to enter into any of the foregoing);

(ii) Any combination of the foregoing; or

(iii) A master agreement for any of the foregoing together with all supplements thereto.

(2) *Eligible swap participant* means, and shall be limited to the following persons or classes of persons:

(i) A bank or trust company (acting on its own behalf or on behalf of another eligible swap participant);

(ii) A savings association or credit union;

(iii) An insurance company;

(iv) An investment company subject to regulation under the Investment Company Act of 1940 (15 U.S.C. 80a–1 *et seq.*) or a foreign person performing a similar role or function subject as such to foreign regulation, *provided* that such investment company or foreign person is not formed solely for the specific purpose of constituting an eligible swap participant;

(v) A commodity pool formed and operated by a person subject to regulation under the Act or a foreign person performing a similar role or function subject as such to foreign regulation, *provided* that such commodity pool or foreign person is not formed solely for the specific purpose of constituting an eligible swap participant and has total assets exceeding $5,000,000;

(vi) A corporation, partnership, proprietorship, organization, trust, or other entity not formed solely for the specific purpose of constituting an eligible swap participant (A) which has total assets exceeding $10,000,000, or (B) the obligations of which under the swap agreement are guaranteed or otherwise supported by a letter of credit or keepwell, support, or other agreement by any such entity referenced in this paragraph (b)(2)(vi)(A) of this section or by an entity referred to in paragraph (b)(2) (i), (ii), (iii), (iv), (v), (vi) or (viii) of this section; or (C) which has a net worth of $1,000,000 and enters into the swap agreement in connection with the conduct of its business; or which has a net worth of $1,000,000 and enters into the swap agreement to manage the risk of an asset or liability owned or incurred in the conduct of its business or reasonably likely to be owned or incurred in the conduct of its business;

(vii) An employee benefit plan subject to the Employee Retirement Income Security Act of 1974 or a foreign person performing a similar role or function subject as such to foreign regulation with total assets exceeding $5,000,000, or whose investment decisions are made by a bank, trust company, insurance company, investment adviser subject to regulation under the Investment Advisers Act of 1940 (15 U.S.C. 80a–1 *et seq.*), or a commodity trading adviser subject to regulation under the Act;

(viii) Any governmental entity (including the United States, any state, or any foreign government) or political subdivision thereof, or any multinational or supranational entity or any instrumentality, agency, or department of any of the foregoing;

(ix) A broker-dealer subject to regulation under the Securities Exchange Act of 1934 (15 U.S.C. 78a *et seq.*) or a foreign person performing a similar role or function subject as such to foreign regulation, acting on its own behalf or on behalf of another eligible swap participant: *Provided, however,* that if such broker-dealer is a natural person or proprietorship, the broker-dealer must also meet the requirements of either paragraph (b)(2) (vi) or (xi) of this section;

(x) A futures commission merchant, floor broker, or floor trader subject to regulation under the Act or a foreign person performing a similar role or function subject as such to foreign regulation, acting on its own behalf or on behalf of another eligible swap participant: *Provided, however,* that if such futures commission merchant, floor broker, or floor trader is a natural person or proprietorship, the futures commission merchant, floor broker, or floor trader must also meet the requirements of paragraph (b)(2) (vi) or (xi) of this section; or

(xi) Any natural person with total assets exceeding at least $10,000,000.

§ 35.2 Exemption.

A swap agreement is exempt from all provisions of the Act and any person or class of persons offering, entering into, rendering advice, or rendering other services with respect to such agreement, is exempt for such activity from all provisions of the Act (except in each case the provisions of sections 2(a)(1)(B), 4b, and 4o of the Act and § 32.9 of this chapter as adopted under section 4c(b) of the Act, and the provisions of sections 6(c) and 9(a)(2) of the Act to the extent these provisions prohibit manipulation of the market price of any commodity in interstate commerce or for future delivery on or subject to the rules of any contract market), provided the following terms and conditions are met:

(a) The swap agreement is entered into solely between eligible swap participants at the time such persons enter into the swap agreement;

(b) The swap agreement is not part of a fungible class of agreements that are standardized as to their material economic terms;

(c) The creditworthiness of any party having an actual or potential obligation under the swap agreement would be a material consideration in entering into or determining the terms of the swap agreement, including pricing, cost, or credit enhancement terms of the swap agreement; and

(d) The swap agreement is not entered into and traded on or through a multilateral transaction execution facility;

provided, however, that paragraphs (b) and (d) of Rule 35.2 shall not be deemed to preclude arrangements or facilities between parties to swap agreements, that provide for netting of payment obligations resulting from such swap agreements nor shall these subsections be deemed to preclude arrangements or facilities among parties to swap agreements, that provide for netting of payments resulting from such swap

agreements; *provided further*, that any person may apply to the Commission for exemption from any of the provisions of the Act (except 2(a)(1)(B)) for other arrangements or facilities, on such terms and conditions as the Commission deems appropriate, including but not limited thereto, the applicability of other regulatory regimes.

Issued in Washington, DC on January 14, 1993, by the Commission.

Jean A. Webb,

Secretary of the Commission.

[FR Doc. 93–1365 Filed 1–21–93; 8:45 am]

BILLING CODE 6351–01–M

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

18 CFR Part 284

[Docket Nos. RM90–7–003, CP93–111–000 and CP93–83–000]

Revisions to Regulations Governing Transportation Under Section 311 of the Natural Gas Policy Act of 1978 and Blanket Transportation Certificates; El Paso Natural Gas Company; Order No. 537–B

AGENCY: Federal Energy Regulatory Commission; Energy.

ACTION: Order clarifying final rule.

SUMMARY: Order No. 537–A, III FERC Statutes and Regulations ¶ 30,952 (September 21, 1992), 57 FR 46,496 (October 9, 1992), established a three-month time period, from September 21, 1992 to December 21, 1992, during which pipelines could seek authority under section 7 of the Natural Gas Act to operate facilities which has been constructed and were being operated under section 311 of the Natural Gas Policy Act of 1978. This order clarifies that if a pipeline applied, by December 21, 1992, for appropriate authorization but had not obtained the authorization by that date, it may continue to operate the facilities under the Natural Gas Act until the Commission has issued a final order on the pipeline's application, or the authorization automatically becomes effective under the provisions of section 157.205 of the Commission's regulations, if blanket authority is sought and no protest has been filed. On the other hand, if a pipeline has not applied for appropriate authorization to operate section 311 facilities under part 157 of the Commission's regulations within the three-month time period, its authority to operate said facilities pursuant to the exemption issued in the interim rule expired on December 21, 1992. In order to continue operating such facilities to provide section 7 services, a pipeline will have to apply to the Commission for authority to do so, and must demonstrate good cause for not having filed a timely application for permanent section 7 authority to operate such facilities.

EFFECTIVE DATE: January 14, 1993.

FOR FURTHER INFORMATION CONTACT: Amy R. Heyman, Office of the General Counsel, Federal Energy Regulatory Commission, 825 North Capitol Street NE., Washington, DC 20426 (202) 208–0115.

SUPPLEMENTARY INFORMATION: In addition to publishing the full text of this document in the **Federal Register**, the Commission has made this document available so that all interested persons may inspect or copy its contents during normal business hours in room 3308, 941 North Capitol Street NE., Washington, DC, 20426.

The Commission Issuance Posting System (CIPS), an electronic bulletin board service, provides access to the texts of formal documents issued by the Commission. CIPS is available at no charge to the user and may be accessed using a personal computer with a modem by dialing (202) 208–1397. To access CIPS, set your communications software to use 300, 1200 or 2400 baud, full duplex, no party, 8 data bits and 1 stop bit. The full text of Order No. 541–A will be available on CIPS for 30 days from the date of issuance. The complete text on diskettes in WordPerfect format may also be purchased from the Commission's copy contractor, La Dorn Systems Corporation, also located in room 3308, 941 North Capitol Street NE., Washington, DC 20426.

Before Commissioners: Martin L. Allday, Chairman; Charles A. Trabandt, Elizabeth Anne Moler, Jerry J. Langdon and Branko Terzic.

El Paso Natural Gas Company

Issued January 14, 1993.

On December 17, 1992, El Paso Natural Gas Company (El Paso) filed a motion for an extension of the time provided in Order No. 537–A,[1] for pipelines to obtain certificate authority under section 7(c) of the Natural Gas Act (NGA) to operate facilities previously constructed and operated under section 311 of the Natural Gas Policy Act of 1978 (NGPA).[2] Since El Paso raises an issue which other similarly situated pipelines may raise with regard to the time period provided for in Order No. 537–A, we will clarify that order so that other pipelines will not be required to file similar requests with the Commission.

Background

On September 20, 1991, the Commission issued Order No. 537,[3] a final rule revising the regulations governing transportation by interstate pipelines under section 311 of the NGPA. On September 21, 1992, the Commission issued an order on rehearing of the final rule, Order No. 537–A.[4] In Order No. 537–A, the Commission acknowledged that the final rule should have provided for a reasonable time period during which interstate pipelines could seek authorization under the NGA to operate facilities previously constructed and operated pursuant to authority under section 311 of the NGPA.

This issue arose because contemporaneously with the issuance of the Notice of Proposed Rulemaking in Docket No. RM90–7–000, which proceeding resulted in the issuance of Order Nos. 537 and 537–A, the Commission issued two interim rules. The first, in Docket No. RM90–13–000, provided a time period during which pipelines and shippers could convert non-qualifying section 311 transactions to transactions authorized under section 7 of the NGA.[5] The second, in Docket No. RM90–14–000, exempted from the requirements of section 7 of the NGA the operation of facilities constructed under section 311 of the NGPA, but utilized to provide services converted from section 311 to section 7 authorization.[6] This interim rule also stated that, if necessary, the Commission would prescribe in the final rule in Docket No. RM90–7–000 a reasonable time period within which pipelines could seek permanent authority under section 7 of the NGA to operate facilities constructed and operated under section 311, but utilized

[1] Revisions to Regulations Governing Transportation Under section 311 of the Natural Gas Policy Act of 1978 and Blanket Transportation Certificates, Order 537–A, 57 FR 46496 (October 9, 1992), FERC Stats. & Regs. ¶ 30,952 (1992).

[2] 15 U.S.C. 3301–3432 (1988).

[3] Revisions to Regulations Governing Transportation Under Section 311 of the Natural Gas Policy Act of 1978 and Blanket Transportation Certificates, 56 FR 50235 (October 4, 1991), FERC Stats. & Regs., Regs. Preambles, ¶ 30,927 (1991).

[4] See *supra* note 1.

[5] Interim Revisions to Regulations Governing Transportation Under Section 311 of the Natural Gas Policy Act of 1978 and Blanket Transportation Certificates. FERC Stats. & Regs., Reg. Preamble (1986–1990), ¶ 30,894, *amended*, FERC Stats. & Regs. Preambles (1986–1990), ¶ 30,899, *reh'g denied*, 53 FERC ¶ 61,141 (1990).

[6] Interim Revisions to Regulations Governing Construction of Facilities pursuant to NGPA section 311 and Replacement of Facilities, 55 FR 33011 (August 13, 1990), FERC Stats & Regs. ¶ 30,895 (1990) at note 2.

to provide transportation services under the NGA. However, as noted above, such a period was not prescribed until Order No. 537–A was issued.

Although many pipelines had already applied for and obtained authority under section 7 of the NGA to operate facilities formerly operated under section 311 of the NGPA by the time Order No. 537 issued, others had not. Therefore, on rehearing of Order No. 537, certain parties requested clarification regarding the time period during which pipelines still requiring section 7 authorization could apply for it. Order No. 537–A provided that pipelines which had not yet sought section 7 authority to operate their facilities could do so within three months of the date Order No. 537–A issued. Order No. 537–A issued on September 21, 1992; therefore, the three-month period expired on December 21, 1992.

El Paso's Request for an Extension of Time

On November 27, 1992, in Docket No. CP93–83–000 and on December 15, 1992, in Docket No. CP93–111–000, El Paso filed prior notice requests in order to obtain permanent authority to operate certain facilities under its blanket facilities certificate pursuant to part 157, subpart F, of the Commission's regulations. The facilities in question had been constructed and were being operated pursuant to section 311 of the NGPA. El Paso states in its request for an extension of time that the authority it seeks may not be granted within three-month time period provided for in Order No. 537–A. Therefore, El Paso seeks an extension of time in which it may continue to operate the facilities in question pursuant to the exemption issued in the interim rule in Docket No. RM90–14–000.

Clarification

In Order No. 537–A, the Commission referred to a three-month time period during which pipelines could seek authority under the NGA to operate facilities which had been constructed and were being operated under section 311 of the NGPA. The Commission also stated that to the extent authority had not been obtained within the three-month time period, it would consider extensions of time on a case-by-case basis.

We clarify that if a pipeline has applied for appropriate authorization under the NGA to operate section 311 facilities within the three-month time period, *i.e.*, by December 21, 1992, but has not obtained the authorization within that time frame, the exemption issued in the interim rule in Docket No. RM90–14–000 will continue until the Commission has issued a final order on the pipeline's application, or the authorization automatically becomes effective under the provisions of section 157.205, if blanket authority is sought and no protest has been filed. In such situations, an extension of the three-month time period is unnecessary. Since El Paso applied for authorization within the three-month time period, its authority to operate the section 311 facilities, as provided in the interim rule, will continue until the automatic authorization sought becomes effective or the Commission rules on its application. Therefore, we will deny El Paso's request for an extension of time.

On the other hand, if a pipeline has not applied for appropriate authorization to operate section 311 facilities under Part 157 of the Commission's regulations within the three-month time period, its authority to operate said facilities pursuant to the exemption issued in the interim rule expired on December 21, 1992. In order to continue operating such facilities to provide section 7 services, a pipeline will have to apply to the Commission for authority to do so, and must demonstrate good cause for not having filed a timely application for permanent section 7 authority to operate such facilities.

The Commission Orders

(A) Order No. 537–A is clarified to the extent discussed herein.

(B) El Paso's request for an extension of time is denied.

By the Commission.

Lois D. Cashell,

Secretary.

[FR Doc. 93–1498 Filed 1–21–93; 8:45 am]

BILLING CODE 6717–01–M

DEPARTMENT OF THE TREASURY

Customs Service

19 CFR Parts 118, 151 and 178

RIN 1515–AB10

[T.D. 93–6]

Centralized Examination Stations

AGENCY: Customs Service, Department of the Treasury.

ACTION: Final rule.

SUMMARY: This document amends the Customs Regulations to set forth a regulatory framework for the establishment, operation and termination of Centralized Examination Stations (CESs). A CES is a privately operated facility at which imported merchandise is made available to Customs officers for physical examination. These regulatory amendments will allow Customs to better use its inspectional resources and clear higher volumes of cargo.

EFFECTIVE DATE: February 22, 1993.

FOR FURTHER INFORMATION CONTACT: Patricia Duffy, Office of Inspection and Control (202–927–1344).

SUPPLEMENTARY INFORMATION:

Background

In recent years there has been a significant increase in the number of Container Freight Stations (CFSs), bonded warehouses, truck and rail terminals, and other facilities which receive and hold imported cargo for purposes of examination and clearance by Customs. As a result of this increase, and due to the fact that these facilities often are not in close proximity to each other within a given port of entry, Customs inspectors have had to spend a greater proportion of their time traveling from one location to another in order to perform cargo examinations necessary to ensure compliance with the law. This increase in travel time has had a negative effect on Customs productivity, has complicated Customs efforts to properly allocate personnel to meet its workload, and has had a corresponding negative effect on Customs ability to render efficient clearance and related services to the importing community.

The Centralized Examination Station (CES) program was developed by Customs in order to address the problems outlined above. A CES is a privately operated facility at which imported merchandise identified by Customs for physical examination is made available to Customs inspectors for that purpose. Once Customs identifies merchandise for examination, the importer or the importer's agent is responsible for selecting the CES to be used (where there is more than one CES within the port and unless the District Director of Customs has reason to make the selection), for arranging the bonded transfer of the merchandise to the CES, and for paying the costs of the transfer as well as any fees charged by the CES facility for its services. The services which the CES operator renders are for the benefit of the importer (who is required under law to make the imported merchandise available to Customs for inspection) and involve storage of the merchandise under bond and with liability insurance, opening the container in which the merchandise

is packed, presenting the merchandise to the Customs inspector for examination, and closing the container after examination. A CES may consist of a preexisting warehouse, freight station, terminal or similar facility or portion thereof or may be an entirely new facility developed specifically for operation as a CES. Each CES is designated as such by Customs through a specific application and selection process, and the operation of each CES is governed by a written agreement executed by the selected CES operator and Customs prior to commencement of the CES operation.

Experience with the CES program has shown that CESs provide benefits to both Customs and the trade community. By reducing the number of locations at which examinations are performed, Customs is able to more efficiently allocate inspectional resources while at the same time performing more intensive and effective examinations. In addition, a CES enables Customs to provide improved inspectional supervision and ensure more timely and predictable service to importers by Customs officers. By streamlining the cargo inspection process, CESs ultimately allow Customs to clear higher volumes of cargo and thus improve the overall importation/entry process.

In order to provide an appropriate regulatory framework for the CES program, on July 23, 1991, Customs published a notice in the Federal Register (56 FR 33734) proposing to amend the Customs Regulations (19 CFR Ch. I) by adding thereto a new part 118 entitled "Centralized Examination Stations". Proposed new part 118 incorporated four subparts: Subpart A contained general provisions regarding the establishment and operation of a CES; subpart B set forth the specific requirements and procedures for the establishment of a CES; subpart C set forth rules governing the movement of cargo to a CES; and subpart D covered the termination of a CES. The public comment period on the proposed regulations closed on September 23, 1991.

Analysis of Comments

A total of 39 commenters responded to the solicitation of comments during the public comment period. The comments received, and the Customs responses thereto, are set forth below.

Comment: Several commenters suggested that the regulations should prohibit a broker or CFS operator from being selected as a CES operator because of the potential for obtaining a competitive edge in selling its non-CES services. One commenter stated that if a CES operator is a broker or is broker-affiliated, the regulations should prohibit the giving of a preference to its brokerage clients and their entries. Motivated by similar competitive concerns, one commenter suggested adding specific language to § 118.4 to prohibit a CES operator from disclosing any of an importer's confidential business information except to Customs and to provide that any such improper disclosure could result in Federal prosecution and/or cancellation of the CES agreement.

Customs response: With regard to the general relationship between competitive advantage and the CES selection process, the most important consideration remains selection of the applicant best qualified to be a CES operator. Accordingly, Customs believes that the mere potential for obtaining a competitive advantage, so long as that advantage is consistent with normal business practices and does not violate the letter or spirit of applicable Customs laws and regulations, is not a proper basis for limiting the field of potential CES operator applicants as suggested by these commenters. As regards a broker or broker-affiliate CES operator giving preferences to its brokerage clients, Customs believes that the regulations as proposed already address this both by giving to Customs the initial role in determining whether a CES examination will take place and by providing for a basic "first come-first served" operating principle in § 118.4(b).

Customs does not agree with the suggestion to amend § 118.4 to prohibit disclosure of an importer's confidential business information. A CES operator does not have access to invoices, bills of lading, entry summaries and other documents in the entry package which may contain confidential business information. Moreover, since the CES operator is in effect operating for the benefit of the importer, any disclosure of information to the detriment of the importer should be dealt with as a private matter between those parties and thus is not an appropriate matter for these regulations.

Based on the above analysis, Customs no longer believes that it is necessary to require submission of information regarding possible conflicts of interest in the application process. Accordingly, § 118.11 as set forth below has been modified by removing proposed paragraph (h) and redesignating (i) as (h).

Comment: Several commenters suggested a different duration for the agreement to operate a CES. One commenter wanted a 5–7 year term rather than the proposed 3–5 year term, one commenter suggested no pre-set term, and one commenter requested a 1–3 year term. The commenters in favor of a longer term reasoned that this would permit a business to recover the expenses of starting a CES without having to charge high fees to do so.

Customs response: Customs agrees that a duration of more than 5 years will encourage some potential CES operators to make the economic commitment necessary to begin operations. However, Customs still believes a limitation on the duration of an operator's agreement is necessary to keep an operator responsive to those using the CES services and to importing trends. Accordingly, § 118.3 as set forth below has been modified to provide for agreements of from 3 to 6 years.

Comment: Six commenters suggested adding a requirement that there be at least two CESs in any port in order to promote competition so as to keep fees reasonable and allow for choice by the importer.

Customs response: Although Customs agrees in principle that competition is desirable, the number of CESs within a given port more properly should be a function of the volume of examinations to be performed, the availability of Customs resources to perform them, and the willingness of private parties to operate a CES. Accordingly, requiring a minimum of two CESs in a given port would not be appropriate.

Comment: Two commenters stated that § 118.3 was too restrictive in that it would not allow a CES agreement to be transferred under certain conditions such as inheritance by children of the operator or upon sale of stock in a company operating a CES.

Customs response: Customs does not agree that the transfer of an agreement should be permitted even under the special circumstances cited by these commenters. Customs performs background checks on applicants as part of the CES operator selection process, and any transfer of an agreement executed by the selected operator would undermine the purpose behind the background check and thus could ultimately compromise the ability of Customs to perform effective compliance examinations. In addition, Customs considers as material factors in the selection process the physical plant to be used as the CES and the applicant's experience in handling international cargo. Further, it would not be fair to potential users of the CES, or to operator applicants who were not selected, to permit transfer of an operator's agreement.

Comment: Two commenters stated that § 118.2 should be modified to

provide for wider dissemination of notice that a CES is to be established or that the term of an existing CES is about to expire. In addition to the proposed posting of a written bulletin at the customhouse, these commenters suggested including publication in the **Federal Register**, in the Customs Bulletin, in local newspapers, in trade journals, and in regional and district pipelines.

Customs response: Customs agrees that it would be beneficial to have wider dissemination of the notice of intent to establish a CES or of expiration of an existing CES term, but Customs also believes that such wider dissemination should not include publications of national interest and circulation but rather should be limited to local distribution channels which are more likely to reach the potential applicants and other interested parties. Accordingly, § 118.2 as set forth below has been modified to provide the district director with more flexibility as regards the local channels to be used for disseminating the notice. In addition, the regulatory text has been changed to refer to a written "notice" rather than "bulletin" since more than posting at the customhouse could be involved under the section as so modified.

Comment: Nine commenters stated that there should be greater consultation with the importing community both when the district director is considering whether a new CES should be established and during the operation of any established CES. A number of these commenters stated that the CES committee (the permissive use of which was provided for in proposed § 118.12 in connection with the review of applications) should be used for these purposes as well, that use of the CES committee should be mandatory for all such purposes under the regulations, and that private sector representation on the CES committee should reflect a broad cross-section of the trade community. With regard to use of a CES committee in reviewing applications, one commenter suggested that a CES committee should not have non-Customs (that is, private sector) members because existing business relationships could improperly influence the selection process.

Customs response: The comments submitted suggest a basic problem with the CES committee concept: While recognizing that a membership consisting of only Customs personnel would not address the need for private sector input in the decision-making process, Customs also believes that it would be difficult to select members from the private sector in such a way as to avoid complaints from one party or another regarding the procedures or results of the member selection process or regarding potential conflicts of interest relating to the committee's intended functions. In addition, the legal requirements that would apply to a CES committee with non-governmental members under the Federal Advisory Committee Act, 5 U.S.C. App. 2, which include publication of a notice in the **Federal Register** both when an advisory committee is initially established and whenever such a committee is planning to meet, would be particularly cumbersome in a CES context because (1) the decision to create or convene a CES committee would normally be made at the local level whereas publication of notices in the **Federal Register** is always initiated at Customs Headquarters and (2) the additional time needed to prepare and approve a notice for publication in the **Federal Register** would only further delay the establishment of a needed CES, thus frustrating the purpose behind the CES program. For these reasons, Customs has concluded that CES committees should not be used for any purpose under the regulations.

Notwithstanding this decision to do away with the CES committee concept, Customs agrees that input from the private sector would be beneficial to the trade and to the CES program, not only in connection with the CES operator selection process as originally provided in proposed § 118.12 but also in connection with the basic determination to establish a CES (or to accept new applications if an existing CES term is about to expire and the district director believes that a CES operation is still needed) under § 118.2. Accordingly, in addition to the public notification procedure changes discussed above and in order to provide a clear context for public procedures, § 118.2 as set forth below has been modified (1) to refer both to the district director's preliminary determination to establish a new CES and to the district director's belief that a CES operation is still needed when the term of a CES is about to expire and (2) in either situation, to provide for submission of relevant comments from the general public within 30 days after publication of the notice that applications are being accepted. In addition, the following changes have been incorporated in § 118.12 as set forth below: (1) The sentence regarding use of a CES committee has been removed; (2) a new opening sentence has been added to provide for public notice and comment procedures (with a cross-reference to § 118.2 for this purpose) with the notice setting forth specific information relevant to each submitted application (the applicant's name, the location of the CES facility, the proposed fee schedule, an equipment list, and the number of employees); (3) the remainder of the section has been modified to refer to the review of public comments submitted under §§ 118.2 and 118.12 and to reflect the possibility that the district director may decide not to select a CES operator (either because it has been decided not to establish or retain a CES or because a suitable applicant has not come forward); and (4) the title of the section has been changed to read "action on application" because the section as modified covers more than merely the review of applications. Finally, in order to ensure trade community awareness of the existence of the CES, § 118.13 as set forth below has been modified to provide for local publication of a notice advising the public of the selection of the CES operator and of the date on which the CES operation will commence.

With regard to private sector input during the operation of a CES, Customs does not believe that it is necessary or appropriate to make formal provision for such input in these regulations. While information regarding the ongoing operation of a CES would be of interest to Customs (in particular as regards observance of CES operator responsibilities under § 118.4), Customs believes that existing informal procedures, whereby any importer or other private party may bring a complaint or other relevant information to the attention of the district director, are sufficient for this purpose. Moreover, in a case involving a CES operator who reapplies when his authority to operate the CES is about to expire, the notice and comment procedures described above will afford the public ample opportunity to comment on that CES operation.

Comment: One commenter stated that, in order to avoid unnecessary expenditures, a CES applicant should not be disqualified for failure to meet one or two specific selection criteria in § 118.11 so long as the applicant agrees to comply with such criteria within 30 days if selected.

Customs response: Customs believes that this commenter has a valid point as regards the avoidance of unnecessary expenditures in the event that a particular applicant is not selected as the CES operator. However, Customs believes that this principle should be limited to cases involving a significant capital expenditure to make an existing

facility conform to security and other physical or equipment requirements necessary for the CES operation. Accordingly, § 118.11(b) as set forth below has been modified to give the district director the authority in such circumstances, and if an applicant so requests in the application, to permit the applicant to meet security and other physical or equipment requirements within up to 30 days after tentative selection but with the proviso that the agreement to operate the CES shall not be executed (and thus the selection does not become final and the CES operation may not commence) until the facility conforms to those requirements.

Comment: One commenter stated that the regulations should allow an unsuccessful applicant the opportunity to appeal the nonselection by providing any relevant supplementary information within 10 days, and this commenter further suggested that any selection should be subject to a 180-day probationary period in case a more qualified applicant appeared after the selection was made or in case the selected applicant is unable to operate properly.

Customs response: Customs does not agree with these proposals because they would unnecessarily lengthen, and add uncertainty to, the selection process. Moreover, the problem of a CES selectee operating improperly is adequately covered by the provisions regarding selection revocation and agreement cancellation.

Comment: Eight commenters expressed concern about the responsibility for cargo both while it is being moved to a CES and while it is at the CES. To address these concerns, these commenters suggested the following amendments to the proposed regulatory texts: Clarifying the definition of a CES as a place not in the charge of a Customs officer; requiring operators to carry a minimum of $1 million liability insurance; requiring that such liability insurance cover all damage to merchandise; holding the CES operator liable for any duties or taxes on lost or stolen merchandise; including the broker's importation and entry bond as one of the bonds under which merchandise is transferred; and specifically prohibiting any non-bonded transfer of merchandise. Another commenter stated that the reference to a "performance bond" in the first sentence of § 118.4(g) was unclear and suggested that the text be revised to state that the CES operator agrees that "the terms of its custodial bond will apply to the CES operation".

Customs response: Before responding to the above comments, an issue concerning the organization of the regulations must be addressed. It is noted in this regard that proposed subparts A, B, and D of new part 118 set forth general provisions and establishment and termination rules applicable to CESs, whereas proposed subpart C (consisting of §§ 118.21–118.24) sets forth specific procedures and requirements for the movement of merchandise to a CES for purposes of examination. It is further noted that part 151 of the Customs Regulations (19 CFR part 151) concerns the examination, sampling and testing of merchandise and, in subpart A thereof, sets forth certain basic requirements and procedures for the examination of merchandise which are equally applicable in a CES context. In order to ensure consistency of context and better proximity as between related provisions, proposed subpart C of part 118 has been transferred in this document to subpart A of part 151 as one new § 151.15 (with paragraphs (a)–(d) thereof corresponding to proposed §§ 118.21–118.24 respectively), and the following conforming changes to other regulatory provisions have been made as set forth below to reflect this transfer: (1) Adding a sentence to § 118.0 (Scope) to clarify that the procedures governing the transfer of merchandise to a CES are set forth in part 151; (2) renumbering proposed §§ 118.31–118.34 as §§ 118.21–118.24 and redesignating proposed subpart D as subpart C; (3) modifying the first sentence of § 151.6 to include a reference to examination required or authorized under § 151.15; and (4) modifying the first sentence of § 151.7 to include a reference to examination at a CES as provided in § 151.15. For ease of reference within this document, where submitted comments concern aspects of proposed §§ 118.21–118.24 and result in changes to the proposed texts, the agreed changes are described in the relevant discussion as changes appearing in new § 151.15 as set forth in this document.

Customs agrees with the comment regarding clarification of the definition of a CES as a place not in the charge of a Customs officer, and the first sentence of § 118.1 as set forth below has been modified accordingly. In addition, the introductory text of § 151.15(b) as set forth below has been modified to expressly prohibit non-bonded transfers as one commenter suggested and to also improve the clarity of the text. Customs also agrees that a broker, if acting as importer of record, should be allowed to obligate his importation and entry bond for the transfer of cargo to a CES, and § 151.15(b)(4) as set forth below has been modified to clarify that liability is under the bond of the importer of record who may be the actual importer or an agent of the importer.

Customs does not agree with the suggestion regarding the need to set a specific minimum of $1 million liability insurance. Customs is of the view that a specific regulatory minimum level would be inappropriate because the necessary level would depend on the overall number and type of examinations performed within the port and at the particular CES facility.

Customs also disagrees with the suggestion that the operator's liability insurance should cover all damage to merchandise stored in the CES. Such insurance is intended to compensate the owner of merchandise for loss, theft, or damage occurring while the merchandise is in the operator's control and resulting from actions or negligence on the part of the operator or his employees. On the other hand, the CES operator should not be required to carry liability insurance to cover damage occurring outside the operator's control as, for example, when Customs causes damage to merchandise in connection with an examination to determine whether contraband is concealed within that merchandise.

Customs does not agree that the CES operator should be made solely liable for any duties and taxes on lost or stolen merchandise. The CES operator's liability for duties and taxes exists only during the period when the merchandise is covered by the operator's custodial bond and not when the loss or theft occurs during coverage of the merchandise by another bond such as an importer's entry bond or a cartman's custodial bond.

Finally, Customs agrees that the "performance bond" reference in § 118.4(g) is confusing because it can only have reference to a Customs custodial bond covering the CES operation (which, under § 118.11(e), must be in existence when an applicant is selected as a CES operator). In order to address this point, § 118.4(g) as set forth below has been modified by removing from the first sentence the words "and further agrees to its application as a performance bond to the CES operation" which are redundant in this context. In this way a clear and proper relationship will exist between possession of a custodial bond for selection purposes as required by § 118.11 and continued maintenance of that bond during operation of the CES as required by § 118.4.

Comment: A large number of comments was received on subpart D (redesignated in this document as

subpart C as discussed above) relating to the immediate or proposed revocation of selection and cancellation of the agreement to operate a CES. Several commenters raised a number of procedural issues, arguing in favor of longer appeal periods, more extensive appeal rights, and specific provision for a formal hearing and for judicial review as is done in the regulations applicable to Customs bonded warehouses and licensed cartmen. Two commenters suggested that these regulations should not cover existing CESs. One commenter wanted clarification that a CFS operator also operating a CES would have revocation procedures concerning the CFS operation covered by the appropriate regulations in part 19 of the Customs Regulations. One commenter believed it was unreasonable to propose revocation and cancellation for not following a single order of a Customs officer, and another commenter argued that immediate revocation and cancellation for commission of criminal acts should not be permitted in the absence of either an actual conviction or an admission by the alleged violator that the act occurred. One commenter suggested adding offering or giving a gratuity to a Customs officer as grounds for immediate revocation and cancellation. Another commenter suggested adding the following circumstances as grounds for proposed revocation and cancellation: (1) When a CES operator charges, or proposes to charge, excessive fees for services; and (2) when the CES committee requests the district director to take such action.

Customs response: Customs does not agree with the proposals to extend the appeal time limits and to provide for formal hearings and for appeal rights beyond the level of the Commissioner of Customs. The appeal time limits are restricted in each case to a 10-day period because a longer period would be extremely disruptive to the cargo operation of any district due to the relatively small number of CESs in operation there. A more extended appeal procedure would have a detrimental effect on the delivery of cargo to many importers and would have a negative impact on the efficient use of Customs personnel by increasing Customs costs and reducing Customs ability to detect contraband.

With regard to the comments in favor of formal hearings and more extended appeal rights, Customs notes that there is a fundamental operational distinction between CESs and the bonded warehouses and licensed cartmen mentioned by the commenters: Whereas use of a CES occurs only as a result of a case-by-case Customs determination to examine particular merchandise (and in some cases to use a particular CES), in the majority of cases use of a bonded warehouse or cartman occurs at the instigation of the importer or the importer's agent and without the initial involvement of Customs. Moreover, Customs is not required under the law to provide formal hearings or more extended appeal rights in connection with an administrative procedure such as a CES revocation and cancellation action. In light of these factors, and given the extensive due process protection reflected in the CES regulations, Customs does not believe that it is necessary to precisely track the procedures used for bonded warehouses and cartmen. Finally, it should be noted that the presence or absence of a specific reference to judicial appeal in the Customs Regulations has no legal effect on the right of a party to seek review of an administrative action in any court of competent jurisdiction.

Customs does not agree with the proposal to existing CESs from these regulations. It would be inappropriate to treat two CES operations in a different manner when the purpose behind the revocation and cancellation procedure (to ensure that CESs are operated properly) clearly applies to all CES operations. Accordingly, Customs cannot accede to the enforcement loophole which this comment appears to suggest. On the other hand, and assuming that an existing CES otherwise operates in conformity with the regulatory requirements, Customs will honor any existing agreement as regards the duration of the CES operation and the security and other physical requirements needed at the CES.

A CFS operator continues to be subject to the provisions in part 19 concerning suspension or revocation of the privilege to operate a CFS. The CES regulations do not supersede or otherwise affect the CFS regulations in this regard.

Customs believes that proposing revocation because a CES operator failed to follow a Customs order is reasonable because in the appeal process the operator will be given the opportunity to show, for example, that he did comply with the order, that the order was not correctly communicated by Customs, or that the order was, in fact, improper.

Customs does not agree with the suggestion that immediate revocation and cancellation for a criminal act be limited to cases involving an actual conviction or admission. The only criminal offenses which will result in an immediate revocation and cancellation are those which involve theft, smuggling, or a theft-connected crime. These specific offenses were included in the regulation in question because they are of overriding concern to Customs given the threat that a perpetrator of such offenses could pose to a CES operation and to the merchandise under the control thereof. In view of the fact that significant procedural and other delays often occur in the criminal justice system before conviction or acquittal results and since admissions of guilt are comparatively rare, these special concerns militate strongly against basing an immediate revocation and cancellation only on an actual conviction or admission.

Customs does not believe that it is necessary or appropriate to list the giving or offering of a gratuity as one of the offenses which will be grounds for immediate revocation and cancellation. While bribery is a serious offense, it is usually committed in conjunction with smuggling or theft which are already grounds for immediate revocation and cancellation. Moreover, since the giving of a gratuity does not intrinsically involve a threat to the revenue or to the merchandise stored at a CES, Customs believes that if the gratuity is offered or given by an employee of the CES rather than by the operator himself, the CES operator should first be given an opportunity to demonstrate that he had no prior knowledge of, and involvement in, the improper action of his employee.

Customs does not agree that charging or proposing to charge excessive fees should be grounds for revocation and cancellation because (1) all fee schedules and changes thereto must be approved by the district director and (2) a failure to abide by the fees as approved by the district director is already a ground for revocation and cancellation. Finally, in view of the decision not to employ the CES committee concept as discussed above, the suggested ground for proposed revocation and cancellation based on a request made by a CES committee has become moot.

Comment: A number of commenters made the following suggestions regarding the fees charged by a CES operator: That any proposed fee changes be reviewed by a CES committee; that Customs audit operator's records; that each CES applicant include a detailed operating budget, including profit margin, in the application; that a new user fee be assessed on all importers, or that the existing merchandise processing fee (MPF) be used, to cover examination costs in place of the CES operator fees; that the notice period for proposed fee changes in § 118.4(c) be shortened from 90 days to 30 days; that

§ 118.4(c) be amended to refer to "reasonable" service fees; and that the regulations be amended to define reasonable fees as fees which are "comparable to fees for similar services in the community", as was stated in regard to the selection process outlined in the Directive implementing the CES program.

Customs response: Before responding to the above comment, two issues regarding changes to approved fee schedules must be discussed and resolved.

The first issue is both organizational and procedural in nature, and in this regard Customs notes that whereas the first sentence of proposed § 118.4(c) requires that fees be assessed as outlined in the fee schedule included in the approved application, the remaining sentences thereof concern the procedures for subsequent changes to an approved fee schedule. On further reflection, Customs does not believe it is appropriate to include fee change procedures within § 118.4 which is only intended to outline the basic responsibilities of a CES operator and thus more properly in paragraph (c) should only cover the responsibility to abide by the approved fee schedule (including any subsequent changes thereto). Accordingly, this document incorporates the following changes: (1) A new § 118.5 has been added to cover procedures for changes to a fee schedule; and (2) paragraph (c) of § 118.4 has been modified to reflect only the first sentence of the paragraph as proposed and with the addition of a reference to fee changes approved under § 118.5. Consistent with the principle of allowing input from the public during the decision-making process without utilizing the CES committee concept as discussed above in connection with the CES operator application process, new § 118.5 as set forth below provides for (1) publication of a notice of the proposed fee schedule changes with the solicitation of comments from the general public, with a cross-reference to § 118.2 as regards the procedures for dissemination of the notice and for submission of the public comments, and (2) publication of a notice of the new fee schedule if the proposed changes are approved by the district director. In addition, new § 118.5 refers to the intention of a CES operator to "increase, add to or otherwise change" the service fees (in order to clarify that the section applies to any change to the fee schedule, including an increase of an existing fee amount, the addition of a new fee, or the reduction or elimination of an existing fee), requires written justification also for the addition of a new fee (which is akin to a fee increase for which written justification was specified in proposed § 118.4(c)), and provides for written notice to the CES operator of the district director's decision on the proposed fee change.

The second issue concerns the relationship between the obligation of a CES operator to abide by a changed fee schedule and the sanctions that may be imposed if the operator fails to do so. It is noted in this regard that whereas proposed § 118.31(b)(1) (renumbered in this document as § 118.21(b)(1) as discussed above) provided that the district director may propose revocation and cancellation if the CES operator "* * * fails to operate in accordance with the terms of his agreement", a changed fee schedule in effect replaces the fee schedule approved as part of the CES operator application process but does not become part of the agreement itself. Thus a potential anomaly could arise whereby sanctions could be taken for failure to follow the original fee schedule but not for failure to follow a changed one. In order to avoid such an unintended and inappropriate result, § 118.21(b)(1) as set forth below has been modified by adding at the end a general reference to § 118.4 so that the obligation to follow a changed fee schedule (as provided in modified § 118.4(c) discussed above) will be treated the same as the obligation to follow an original fee schedule for purposed of a proposed revocation and cancellation action.

Customs does not agree with those commenters who argued that Customs should audit an operator's records and that each applicant should provide a detailed operating budget including profit margin. Neither an applicant's operating budget nor a CES operator's general business records are matters over which Customs should exercise direct control or oversight by audit or otherwise. Although Customs is directly concerned with the nature of the fees charged (as further discussed below) and the manner in which the operator makes merchandise available for examination and thus may have occasion to look into complaints affecting those areas, Customs has no intention of routinely auditing or otherwise controlling each and every aspect of a CES operation.

Customs lacks the authority to impose a new user fee in this situation. As regards use of the present MPF in place of CES operator fees, Customs does not agree with this suggestion for two related reasons: (1) Contrary to the case of the MPF, CES fees are not paid to Customs for services provided by Customs to the importer (rather, they are paid to the CES operator for services provided by that operator to the importer); and (2) CES fees cover, among other things, the maintenance and operating costs of the CES and thus they do not relate to Customs costs for examining the merchandise (which, in terms of salary and expenses of the Customs inspector performing the examination, would normally be covered by the MPF). Customs further notes that under a longstanding principle established in an opinion of the Attorney General (35 O.A.G. 431 (1928)) and reflected in §§ 151.6 and 151.7 of the Customs Regulations, the expenses incurred in making merchandise available to Customs for purposes of examination are to be borne by the importer rather than by Customs (except when the examination takes place at the public stores); this principle was reaffirmed in T.D. 84–152 (49 FR 29372) which amended §§ 151.6 and 151.7 to limit the use of public stores as places for the examination of merchandise. The legal responsibility of importers to cover expenses in connection with the examination of merchandise is based on legal authority totally separate from the user fee statute (19 U.S.C. 58c), and the importer's payment of a fee to a CES operator for his services is nothing more than an alternative means for the importer to carry out that legal responsibility.

Customs does not agree with the suggestion that the notice period regarding a proposed fee schedule change be reduced from 90 to 30 days. In view of the changes to the regulatory texts to provide public notice and comment procedures on fee schedule changes (which will include a 30-day public comment period under new § 118.5 and modified § 118.2) as discussed above, the 90-day period must be retained in order to ensure sufficient time for all required procedures.

As regards the comment that § 118.4(c) should refer to "reasonable" service fees, Customs agrees that some type of standard should apply to fees charged by a CES operator because the limited number of CESs established in a given area could otherwise give rise to monopolistic fee levels. However, Customs does not believe that a mere reference to "reasonable" fees would be useful because this would impose a requirement without providing any meaningful definition or standard. The better approach, as suggested by one of the commenters, would be to refer to fees that are "comparable to fees for similar services" in the area in which the CES is located, and Customs believes that the appropriate place for such a standard would be § 118.11(c)

(rather than § 118.4(c)) so that the standard is properly applied at the very beginning in connection with the application approval process. Accordingly, § 118.11(c) as set forth below has been modified to refer to service fees comparable to fees for similar services in the area to be served by the CES, but with the qualification that this comparability requirement may be affected by special costs borne by the applicant such as facility modifications to meet specific cargo handling or storage requirements or Customs security needs. However, it should be noted that since the fee schedule is one of the criteria used to judge an application, proposing a higher-than-normal fee schedule in order to recover such costs could have an adverse effect on an applicant's candidacy (particularly if another otherwise equal applicant does not have to modify his facility and thus proposes a lower fee schedule). Finally, a reference to this principle of comparability has been included in § 118.5 to ensure consistency in the context of fee schedule changes.

Comment: Several commenters stated that the regulatory criteria for selection were too general. In this regard, they recommended providing specific standards concerning location and physical and security requirements (for example, maximum distance from the unloading facility, minimum square footage, number of bay doors, alarm system, sprinkler system) and concerning required experience or training for CES employees, with these specific criteria to be supplemented as necessary by any special local criteria set forth in the notice to the public in connection with the application process.

Customs response: Customs does not agree that such detailed standards should be included in the regulations because operational and physical requirements too often vary from one CES to another even within the same district or port of entry. For example, the operation of an airport CES where much cargo is loose or on pallets (and thus more easily examined) is different from a seaport CES where most cargo is containerized. Moreover, as compared to CESs in large seaports, CESs at land border points and at inland ports often handle less varied types of cargo and have lower examination volumes and thus often have to meet less stringent requirements regarding floor space, bay doors, machinery or handling equipment and other physical factors. Accordingly, in order to retain sufficient flexibility to meet local needs, Customs believes that specific criteria are inappropriate for the regulations but rather should be applied on a case-by-case basis by setting them out in connection with the notice by the district director that applications to operate a CES are being accepted.

Comment: Two commenters recommended language prohibiting any CES operations at airports.

Customs response: The need for a CES is based on two principal factors: The cargo activity in a port of entry and the demands placed on the Customs resources needed to examine that cargo so as to ensure compliance with the law. Thus, the regulations neither mandate nor preclude CES operations based on the particular type of location because the central issue in establishing a CES is the workload level in the area to be serviced by the CES. If cargo activity increases significantly at an airport (particularly in terms of the number of cargo receivers) so as to put a strain on Customs examination resources, it would be in the interest of both Customs and importers to establish a CES. Accordingly, Customs believes it would be inconsistent with the purpose of the CES program to exclude airports as CES locations.

Comment: One commenter suggested requiring applicants to commit to participation in the Automated Manifest System (AMS).

Customs response: Customs does not believe it would be appropriate to impose such a requirement because at this time there is no provision for CES participation as a receiver or transmitter of information through AMS.

Comment: One commenter suggested listing types of cargo that cannot be sent to a CES.

Customs response: Customs notes that certain types of merchandise (for example, heavy machinery) probably could not be transported to or handled at a CES and that other types of merchandise (for example, explosives and other dangerous products) would rarely, if ever, be designated for examination at a CES. However, Customs does not believe that it would be appropriate to include such an exclusionary list in the regulations because there will also be cases in which a special cargo (for example, frozen fish) could be handled at one CES but not at another. Since Customs makes the determination as to whether merchandise is to be sent to a CES for examination, it would be preferable to deal with such issues on a case-by-case basis so that, when special types of merchandise require examination, arrangements can be made to perform the examination at the best suited location.

Comment: Several commenters argued that the cargo owner or broker, and not the district director, should designate the CES to which merchandise is to be sent.

Customs response: Although under § 151.15(a) as set forth below the entry filer normally designates the CES to be used, the district director has authority under § 151.15(d) to override the entry filer's designation, consistent with the authority of a Customs officer to designate the place of examination under 19 U.S.C. 1499. Customs believes that the authority reflected in § 151.15(d) should be retained because (1) as previously noted, Customs controls the entire process starting with the decision to examine the merchandise, (2) Customs must ensure that the CES is compatible with the type of merchandise to be examined, and (3) the availability of Customs officers at a particular CES at a particular time may affect the selection of the CES to be used.

Comment: One commenter said that § 118.22 (§ 151.15(b) as set forth below) should state exactly how the importer or broker selects the specific movement method among the four methods listed.

Customs response: Customs does not agree that § 151.15(b) should be modified as suggested, because the movement method and resulting custodial bond liability is more properly a private, nonregulatory matter that should be resolved among the affected parties (importing carrier, importer, broker, bonded carrier, CES operator).

Comment: One commenter suggested adding language stating that the CES operator will make every effort to reload a container and will notify the carrier if he cannot. Another commenter stated that the principle of an "appointed" examination time should be added to § 118.4(b) (which only refers to service provided on a "first come-first served" basis) to reflect the fact that Customs often sends a particular cargo specialist to a CES to examine specific merchandise at a prearranged time.

Customs response: Since under the basic CES operating principle the CES operator renders services on behalf of the importer rather than for the benefit of the carrier, Customs cannot require in the regulations that the CES operator provide notice of reloading problems to the carrier; however, there is nothing to prevent a CES operator and a carrier from making their own private arrangements in this regard. As regards an appointed time for an examination, this procedure is not generally used in the case of CESs and therefore § 118.4(b) should not be modified as suggested.

Comment: The Food and Drug Administration (FDA) recommended adding general references to "other government agencies" or "other government agency personnel" to various regulatory provisions regarding office space availability, making merchandise available for inspection, selection of a CES operator who will best meet examination needs, and authority to order merchandise to a CES and to designate the CES to be used.

Customs response: Customs agrees in principle that, as a general rule, it is desirable for other government agencies to examine merchandise at a CES because it will generally save time and money for the importer to have all interested agencies examine his goods at one place. However, Customs does not believe that the suggested regulatory changes should be made at this time because publication of specific proposals by Customs and the other interested agencies, with opportunity for public comment, would be necessary before such substantive changes could be implemented. Customs will, of course, continue to coordinate with other government agencies to the greatest extent possible in arranging examinations at CESs to ensure compliance with laws administered by those agencies.

Comment: One commenter questioned the propriety of these regulations based on the argument that the CES selection process is actually a contracting process subject to Federal procurement regulatory procedures.

Customs response: Customs does not agree. The CES selection process does not involve a procurement (that is, a purchase and sale) between Customs and the CES operator and thus there is no contract within the meaning of the Federal procurement regulations.

Comment: One commenter recommended (1) amending § 118.11(f) to require that a CES applicant identify in the employee list any employee known to have had a felony conviction and (2) amending § 118.4(f) to require that a CES operator provide the same information as part of keeping the list of employees current, similar to what is required of Customs brokers in § 111.53(e) of the Customs Regulations. This commenter also stated that providing an employee's social security number should be mandatory as is the case with Customs brokers.

Cutoms response: Customs does not agree that the regulations should require that an applicant identify, or that an operator update the employee list regarding, any employee known to have had a felony conviction. Customs notes in this regard that the commenter's reliance on § 111.53(e) of the broker regulations in the present context is misplaced for the following reasons: (1) The cited broker regulation is based directly on a statutory provision (19 U.S.C. 1641(d)(1)(E)); (2) the broker statutory/regulatory provision is a ground for disciplinary proceedings (for knowingly employing a felon) but is not a substantive reporting requirement; and (3) the sensitivity issue as regards employment of a felon is clearer in the case of brokers because not all aspects of a broker's business are covered by a Customs bond and liability insurance. As concerns the voluntary providing of social security numbers, Customs notes that § 118.11(f) conforms to the requirements of the Privacy Act of 1974 (5 U.S.C. 552a) in this regard.

Additional Changes to the Proposed Regulatory Texts

In addition to the changes discussed above in connection with the comment analysis, the regulatory texts as set forth below incorporate further editorial or other non-substantive changes to the proposed regulations in order to improve the clarity, readability or organization of the texts. The following principal changes are noted in this regard:

Section 118.3

The second sentence has been changed to state that failure to execute the agreement "may result in" tentative selection of another applicant "or republication of the notice soliciting applications", to clarify that certain circumstances (for example, the absence of another suitable applicant) may make another selection impracticable at that time.

Section 118.4

The introductory text has been changed by adding a reference to "commencing operation" of a CES, because certain requirements set forth in the section (for example, abiding by a fee schedule change adopted under § 118.5) may not be directly reflected in the agreement. In addition, paragraph (h) has been reworded and rearranged to clarify that record retention and availability to Customs both have reference to the basic provisions contained in part 162.

Section 118.11

Paragraph (e) has been modified to clarify that where Customs Form 301 is submitted for approval with the application, approval of the custodial bond is a prerequisite to selection.

Section 118.21

In paragraph (a), the introductory test has been changed to state that the district director "shall" immediately revoke the selection and cancel the agreement, to more clearly reflect the mandatory nature of the provision. In addition, in paragraph (a)(2) the second sentence has been redrafted for clarity.

Sections 118.22–118.24

These sections have been modified to more clearly distinguish between an immediate action and a proposed action, to refer to a "notice" of the action in each case, and to simplify the references to a written decision on an appeal. In addition, in § 118.23, the second sentence has been amplified to clarify that a proposed revocation and cancellation does not take effect until the administrative appeal process has been concluded with a decision adverse to the operator.

Section 151.15

Paragraph (a) has been modified by adding a qualification at the end to reflect the authority of the district director under paragraph (d) to designate the CES to be used, and a qualification has similarly been added at the end of the introductory text of paragraph (b) as regards the district director's authority under paragraph (d) to specify the bonded movement to be used; in addition, in order to ensure a proper record of either action by the district director, paragraph (d) has been modified to provide for notation of the action on the Customs Form 3461 or 3461 (ALT) or attachment thereto. Finally, paragraphs (b) (1)–(4) have been modified to refer to the specific bond and the nature of the bond obligation involved, paragraph (b)(2) has been further modified by removing the unnecessary qualifier "formally" before "receipted", and paragraph (b)(4) has been further modified to refer to an importer or agent who "transfers" the merchandise to the CES (to clarify that the bond liability relates to the party who performs the transfer) and to refer at the end to receipt by the CES operator as is done in paragraphs (b) (1) and (2).

Conclusion

Accordingly, based on the comments received and the analysis of those comments as set forth above, Customs believes that the proposed centralized examination station regulations should be adopted as a final rule with certain changes thereto as discussed above. In addition, part 178 of the Customs Regulations (19 CFR part 178) is being amended to indicate the OMB-assigned

control number for the information collection contained in this final rule.

Executive Order 12291

This document does not meet the criteria for a "major rule" as specified in E.O. 12291. Accordingly, no regulatory impact analysis has been prepared.

Regulatory Flexibility Act

Pursuant to the provisions of the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*), it is certified that the regulations will not have a significant economic impact on a substantial number of small entities. Importers are required under present law to bear the costs incurred in making imported merchandise available to Customs for examination, and the regulations, by streamlining examination procedures, should reduce those costs and improve the overall importation/entry process. Accordingly, the regulations are not subject to the regulatory analysis or other requirements of 5 U.S.C. 603 and 604.

Paperwork Reduction Act

The collection of information in these final regulations, contained in § 118.11, has been reviewed and approved by the Office of Management and Budget in accordance with the requirements of the Paperwork Reduction Act (44 U.S.C. 3507(h)) under control number 1515–0183. The estimated average annual burden associated with this collection is 2 hours per respondent or recordkeeper. Comments concerning the accuracy of this burden estimate and suggestions for reducing this burden should be directed to the U.S. Customs Service, Paperwork Management Branch, room 6316, 1301 Constitution Avenue NW., Washington, DC 20229, or the Office of Management and Budget, Attention: Desk Officer for the Department of the Treasury, Office of Information and Regulatory Affairs, Washington, DC 20503.

Drafting Information

The principal author of this document was Francis W. Foote, Regulations Branch, U.S. Customs Service. However, personnel from other offices participated in its development.

List of Subjects

19 CFR Part 118

Customs duties and inspection, Imports, Centralized examination stations.

19 CFR Part 151

Customs duties and inspection, Imports, Examination, Sampling and testing.

19 CFR Part 178

Reporting and recordkeeping requirements, Paperwork requirements, Collections of information.

Amendments to the Regulations

For the reasons set forth above, chapter I of title 19, Code of Federal Regulations (19 CFR ch. I), is amended by adding part 118 and amending parts 151 and 178 as set forth below.

PART 118—CENTRALIZED EXAMINATION STATIONS

Sec.

118.0 Scope.

Subpart A—General Provisions

118.1 Definition.
118.2 Establishment of a CES.
118.3 Written agreement.
118.4 Responsibilities of a CES operator.
118.5 Procedures for changes to a fee schedule.

Subpart B—Application to Establish a CES

118.11 Contents of application.
118.12 Action on application.
118.13 Notification of selection or nonselection.

Subpart C—Termination of a CES

118.21 Revocation of selection and cancellation of agreement to operate a CES.
118.22 Notice of revocation and cancellation.
118.23 Appeal procedure.
118.24 Appeal from the Regional Commissioner's decision.

Authority: 19 U.S.C. 66, 1499, 1623, 1624.

§ 118.0 Scope.

This part sets forth regulations providing for the making of agreements between Customs and person desiring to operate a centralized examination station (CES). It covers the application process, the responsibilities of the person or entity selected to be a CES operator, the CES operator's agreement, the grounds and procedures for revoking a selection and cancelling an agreement, and the procedures for challenging a revocation and cancellation action. Procedures and requirements for the transfer of merchandise to a CES are set forth in part 151 of this chapter.

Subpart A—General Provisions

§ 118.1 Definition.

A centralized examination station (CES) is a privately operated facility, not in the charge of a Customs officer, at which imported merchandise is made available to Customs officers for physical examination. A CES may be established in any port or any portion of a port, or any other area under the jurisdiction of a district director.

§ 118.2 Establishment of a CES.

When a district director makes a preliminary determination that a new CES should be established, or when the term of an existing CES is about to expire and the district director believes that the need for a CES still exists, he will announce, by written notice posted at the customhouse and by any other written methods he may consider appropriate (such as normal district information distribution channels, trade bulletins or local newspapers), that applications to operate a CES are being accepted. This notice will include the general criteria together with any local criteria that applicants must meet (see § 118.11 of this part), and will invite the public to submit any relevant written comments on whether a new CES should be established or on whether there is still a need for a CES. Applications will be accepted only in response to the district notice and must be received within 60 calendar days from the date of the notice. Public comments must be received within 30 calendar days from the date of the notice.

§ 118.3 Written agreement.

The applicant tentatively selected to operate a CES must sign a written agreement with Customs before commencing operations. Failure to execute a written agreement with Customs in a timely manner will result in the revocation of that applicant's tentative selection and may result in tentative selection of another applicant or republication of the notice soliciting applications. In addition to the provisions described elsewhere in this part, the agreement will specify the duration of the authority to operate the CES. That duration will be not less than three years nor more than six years. Such agreements cannot be transferred, sold, inherited, or conveyed in any manner. At the expiration of the agreement, an operator wishing to reapply may do so pursuant to this part and his application will be considered de novo.

§ 118.4 Responsibilities of a CES Operator.

By signing the agreement and commencing operation of a CES, an operator agrees to:

(a) Maintain the facility designated as the CES in conformity with the security standards as outlined in the approved application;

(b) Provide adequate personnel and equipment to ensure reliable service for the opening, presentation for inspection, and closing of all types of cargo designated for examination by Customs.

Such service must be provided on a "first come-first served" basis;

(c) Assess service fees as outlined in the fee schedule included in the approved application or as changed under § 118.5 of this part and bill users directly for services rendered;

(d) Assume responsibility for any charges or expenses incurred in connection with the operation of the CES;

(e) Maintain, at his own expense, adequate liability insurance with respect to the property within his control and with respect to persons having access to the CES;

(f) Keep current the list filed with the district director pursuant to § 118.11(f) of this part. Additions to or deletions from the list must be submitted in writing to the district director within 10 calendar days of the commencement or termination of employement;

(g) Maintain a Customs custodial bond in an amount set by the district director. The operator also agrees to increase the amount of the bond if deemed appropriate by the district director;

(h) Maintain and make available for Customs examination all records connected with the operation of the CES in accordance with part 162 of this chapter and retain such records for a period of not less than five years from the date of the transaction or examination conducted pursuant to the agreement to operate the CES;

(i) Submit, if requested by Customs, the fingerprints of all employees involved in the CES operation;

(j) Provide office space, parking spaces, appropriate sanitary facilities, and potable water to Customs personnel at no charge or a charge of $1 per year; and

(k) Perform in accordance with any other reasonable requirements imposed by the district director.

§ 118.5 Procedures for changes to a fee schedule.

Whenever a CES operator intends to increase, add to or otherwise change the service fees set forth in the fee schedule referred to in § 118.4(c) of this part, the operator shall provide 90 calendar days advance written notice to the district director of such proposed fee schedule change and shall include in the notice a justification for any increased or additional fee. Following receipt of this written notice, the district director will advise the public of the proposed fee schedule change and invite comments thereon under the public notice and comment procedures set forth in § 118.2 of this part. After a review of the proposed fee schedule change and any public comments thereon, and based on the principle of comparability set forth in § 118.11(c) of this part, the district director will decide whether to approve the change, will notify the CES operator in writing of his decision, and will notify the public of any approved fee schedule change by the same methods that were used to provide the public with notice of the proposed change. A CES operator shall remain bound by the existing fee schedule and shall not implement any fee schedule change prior to receipt of written approval of the change from the district director.

Subpart B—Application To Establish a CES

§ 118.11 Contents of application.

Each application to operate a CES shall consist of the following information, any application not providing all of the specified information will not be considered, and the responses to paragraphs (b), (c), (d), (g) and (h) of this section shall constitute the criteria used to judge the application:

(a) The name and address of the facility to be operated as the CES, the names of all principals or corporate officers, and the name and telephone number of an individual to be contacted for further information;

(b) A description of the CES's accessibility within the port or other location, and a floor plan of the facility actually dedicated to the CES operation showing bay doors, office space, exterior features, security features, and staging and work space. Where a significant capital expenditure would be required in order for an existing facility to meet security or other physical or equipment requirements necessary for the CES operation, the applicant may request in the application, and the district director may allow, up to an additional 30 calendar days after tentative selection to conform the facility to such requirements, but in such a case the agreement referred to in § 118.3 of this part shall not be executed until those requirements are met;

(c) A schedule of fees clearly showing what the applicant will charge for each type of service. Subject to any special costs incurred by the applicant such as facility modifications to meet specific cargo handling or storage requirements or to meet Customs security standards, the fees set forth in the schedule shall be comparable to fees charged for similar services in the area to be served by the CES;

(d) A detailed list of equipment showing that the applicant can make a diverse variety of cargo available for examination in an efficient and timely manner;

(e) A copy of an approved custodial bond on Customs Form 301. If the applicant does not possess such a bond, a completed Customs Form 301 must be included with the application for approval as a prerequisite to selection

(f) A list of all employees involved in the CES operation setting forth their names, dates of birth, and social security numbers. (Providing social security numbers is voluntary; however, failure to provide the number may hinder the investigation process.);

(g) Any information showing the applicant's experience in international cargo operations and knowledge of Customs procedures and regulations, or a commitment to acquire that knowledge; and

(h) Any other information to address any local criteria that the district director considers essential to the selection process based on port conditions.

§ 118.12 Action on application.

Following submission of all applications in accordance with §§ 118.2 and 118.11 of this part, the district director will advise the public of the applications received and invite comments thereon under the public notice and comment procedures set forth in § 118.2; with regard to each application, the notice will set forth the name of the applicant, the address of the facility proposed to be operated as the CES, the proposed fee schedule, the list of equipment at the facility, and the number of employees to be involved in the CES operation. The district director, based on a review of all applications under the criteria set forth in § 118.11 and any public comments submitted under § 118.2 or this section, shall determine whether a CES operator should be selected and, if a CES operator is to be selected, shall select the applicant that will best meet the examination needs of Customs and facilitate the movement of imported merchandise.

§ 118.13 Notification of selection or nonselection.

The applicant selected to operate a CES will be notified in writing by the district director of his tentative selection. The selection shall become final upon execution of the written agreement between Customs and the applicant under § 118.3 of this part, and the district director will advise the public of the final selection and of the date on which the CES will commence operation under the agreement in accordance with the notice procedures

set forth in § 118.2 of this part. Each applicant not selected to be a CES operator will be so notified in writing and with a statement of the reason of nonselection.

Subpart C—Terminations of a CES

§ 118.21 Revocation of selection and cancellation of agreement to operate a CES.

(a) *Immediate revocation and cancellation.* The district director shall immediately revoke a selection as operator and cancel an agreement to operate a CES if:

(1) The selection and agreement were obtained through fraud or the misstatement of a material fact; or

(2) The CES operator or an officer of a corporation which is a CES operator is convicted of, or has committed acts which would constitute, a felony or a misdemeanor involving theft, smuggling, or a theft-connected crime, and the conviction resulted from, or the subject acts were in fact committed as part of, his official duties or operator or corporate officer. Any change in the employment status of a corporate officer (for example, discharge, resignation, demotion, or promotion) prior to his conviction for a felony or misdemeanor involving theft, smuggling, or a theft-connected crime will not preclude application of this paragraph if the conviction resulted from an act or acts committed in his official capacity as corporate officer.

(b) *Proposed revocation and cancellation.* The district director may propose to revoke the selection as operator and cancel the agreement to operate a CES if:

(1) The CES operator refuses or otherwise fails to follow any proper order of a Customs officer or any Customs order, rule, or regulation relative to the operation of a CES, or fails to operate in accordance with the terms of his agreement or the provisions of § 118.4 of this part;

(2) The CES operator fails to retain merchandise which has been designated for examination;

(3) The CES operator does not provide secure facilities or properly safeguard merchandise within the CES;

(4) The CES operator fails to furnish a current list of names, addresses and other information required by § 118.4 of this part; or

(5) The custodial bond required by § 118.4 of this part is determined to be insufficient in amount or lacking sufficient sureties, and a satisfactory new bond with good and sufficient sureties is not furnished within a reasonable time.

§ 118.22 Notice of revocation and cancellation.

The district director shall immediately revoke the selection as operator and cancel the agreement to operate a CES, or propose to revoke such selection and cancel such agreement, by serving notice in writing on the operator. The notice shall be in the form of a statement specifically setting forth the grounds for immediate revocation and cancellation or proposed revocation and cancellation and shall inform the operator of his right to appeal.

§ 118.23 Appeal procedure.

An operator wishing to appeal an immediate revocation and cancellation or to show cause why a proposed revocation and cancellation should not occur may, within 10 calendar days of receipt of the written notice of the immediate or proposed action, file a written appeal with the Regional Commissioner having jurisdiction over the district director who signed the notice. A revocation and cancellation pursuant to § 118.21(a) of this part shall remain in effect during any appeal, but a revocation and cancellation pursuant to § 118.21(b) of this part shall not take effect until the appeal process under this paragraph and under § 118.24 of this part has been concluded with a decision adverse to the operator. The appeal shall be filed in duplicate and shall set forth the response of the CES operator to the statements of the district director. The Regional Commissioner shall render a written decision to the operator, stating the reasons for the decision, by letter mailed within 30 working days following receipt of the appeal unless the period for decision is extended with due notification to the operator.

§ 118.24 Appeal from the Regional Commissioner's decision.

Upon a decision by the Regional Commissioner affirming the immediate revocation of selection and cancellation of an agreement to operate a CES or agreeing that a proposed revocation and cancellation should take effect, the operator may file with the Commissioner of Customs a written appeal requesting such additional review as the Commissioner or his delegate deems appropriate. This request must be received by the Commissioner within 10 calendar days of the operator's receipt of the Regional Commissioner's decision. The Commissioner or his delegate shall render a written decision to the operator, stating the reasons for the decision, by letter mailed within 30 working days following receipt of the appeal unless the period for decision is extended with due notification to the operator.

PART 151—EXAMINATION, SAMPLING, AND TESTING OF MERCHANDISE

1. The authority citation for part 151 continues to read in part as follows:

Authority: 19 U.S.C. 66, 1202 (General Notes 8 and 9, Harmonized Tariff Schedule of the United States), 1624. Subpart A also issued under 19 U.S.C. 1499. * * *

* * * * *

2. Section 151.6 is amended by revising the first sentence to read as follows:

§ 151.6 Place of examination.

All merchandise will be examined at the place of arrival, unless examination at another place is required or authorized by the district director in accordance with § 151.7 or § 151.15 of this part.* * *

3. Section 151.7, introductory text, is amended by revising the first sentence to read as follows:

§ 151.7 Examination elsewhere than at place of arrival or public stores.

The district director may require or authorize examination at a place other than the place of arrival or the public stores, such as at the importer's premises or at a centralized examination station under § 151.15 of this part.
* * *

* * * * *

4. Section 151.15 is added to read as follows:

§ 151.15 Movement of merchandise to a centralized examination station.

(a) *Permission to transfer merchandise for examination.* When a shipment requires examination at a centralized examination station (CES), Customs Form 3461, or Customs Form 3461 (ALT) for land border cargo, or an attachment to either, may be used to request permission to transfer the merchandise to a CES. The entry filer must write, type or stamp the following lines on the form or attachment, and must supply the information called for on the first three lines:

Containers to be transferred: _____All or,
Container #'s _____, _____, _____
To CES_____
Approved by: U.S. Customs Inspector_____
Date_____

Unless the district director exercises his authority pursuant to paragraph (d) of this section, the reviewing inspector will initial and date the form or attachment being used, or stamp one

copy of the Customs Form 3461 or 3461 (ALT) if required by the district director. A copy of this document will act as notification and authorization to the entry filer that the merchandise must be transferred to the importer-designated CES unless another CES is designated by the district director under paragraph (d) of this section.

(b) *Assumption of liability during transfer.* Merchandise designated for examination may be transferred from the importing carrier's point of unlading or from a bonded facility, to a CES, only if the transfer takes place under bond. The entry filer shall select one of the following bonded movements for the transfer to the CES unless the type of bonded movement to be used is specified by the district director under paragraph (d) of this section:

(1) If the merchandise is tranferred directly to a CES by an importing carrier, the importing carrier shall remain liable under the terms of its international carrier bond for the proper safekeeping and delivery of the merc handise until it is receipted for by the CES operator.

(2) If the merchandise is transferred directly from a bonded carrier's facility to a CES or is delivered directly to the CES by a bonded carrier, the bonded carrier shall remain liable under the terms of its custodial bond for the proper safekeeping and delivery of the merchandise until it is receipted for by the CES operator.

(3) If containerized cargo, including excess loose cargo that is part of the containerized cargo, is transferred to a CES operator's own facility using his own vehicles, the CES operator shall be liable under the terms of his custodial bond for the proper safekeeping and delivery of the merchandise to the CES facility.

(4) If the importer or his agent acting as importer of record transfers the merchandise to a CES, that importer or agent shall assume liability under his importation and entry bond (see § 151.7(d) of this part) for the proper transfer of the merchandise until it is receipted for by the CES operator.

(c) *Annual blanket transfer.* District directors may institute an annual blanket transfer application procedure to facilitate any of the bonded movements described in paragraph (b) of this section.

(d) *Designation of bonded movement and CES to be used.* In the event the district director deems it necessary, he may direct the type of bonded movement to be used to transfer merchandise to a CES and may designate the CES at which examination must take place. In either case the district director's action will be noted on the Customs Form 3461 or 3461 (ALT) or attachment thereto.

PART 178—APPROVAL OF INFORMATION COLLECTION REQUIREMENTS

1. The authority citation for part 178 continues to read as follows:

Authority: 5 U.S.C. 301, 19 U.S.C. 1624, 44 U.S.C. 3501 *et seq.*

2. Section 178.2 is amended by inserting the following in the appropriate numerical sequence according to the section number under the column indicated:

19 CFR section	Description	OMB control No.
§ 118.11	Application to establish a centralized examination station.	1515–0183

Michael H. Lane,

Acting Commissioner of Customs.

Approved: December 8, 1992.

Peter K. Nunez,

Assistant Secretary of the Treasury.

[FR Doc. 93–1494 Filed 1–21–93; 8:45 am]

BILLING CODE 4820–02–M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

21 CFR Parts 510 and 520

Animal Drugs, Feeds, and Related Products; Change of Sponsor

AGENCY: Food and Drug Administration, HHS.

ACTION: Final rule.

SUMMARY: The Food and Drug Administration (FDA) is amending the animal drug regulations to reflect a change of sponsor for a new animal drug application (NADA) from Abbott Laboratories to Mid-Continent Agrimarketing, Inc.

EFFECTIVE DATE: January 22, 1993.

FOR FURTHER INFORMATION CONTACT: Benjamin Puyot, Center for Veterinary Medicine (HFV–130), Food and Drug Administration, 7500 Standish Pl., Rockville, MD 20855, 301–295–8646.

SUPPLEMENTARY INFORMATION: Abbott Laboratories, North Chicago, IL 60064, has informed FDA that it has transferred ownership of, and all rights and interests in, NADA 9–252 for Bicyclohexylammonium fumagillin to Mid-Continent Agrimarketing, Inc., 8833 Quivira Rd., Overland Park, KS 66214. Accordingly, the agency is amending the regulations in 21 CFR 510.600(c)(1) and (c)(2) and in 21 CFR 520.182(b) to reflect the change of sponsor.

List of Subjects

21 CFR Part 510

Administrative practice and procedure, Animal drugs, Labeling, Reporting and recordkeeping requirements.

21 CFR Part 520

Animal drugs.

Therefore, under the Federal Food, Drug, and Cosmetic Act and under authority delegated to the Commissioner of Food and Drugs and redelegated to the Center for Veterinary Medicine, 21 CFR parts 510 and 520 are amended as follows:

PART 510—NEW ANIMAL DRUGS

1. The authority citation for 21 CFR part 510 continues to read as follows:

Authority: Secs. 201, 301, 501, 502, 503, 512, 701, 706 of the Federal Food, Drug, and Cosmetic Act (21 U.S.C. 321, 331, 351, 352, 353, 360b, 371, 376).

2. Section 510.600 is amended in the table in paragraph (c)(1) by alphabetically adding a new entry for "Mid-Continent Agrimarketing, Inc.," and in the table in paragraph (c)(2) by numerically adding a new entry for "059620" to read as follows:

§ 510.600 Names, addresses, and drug labeler codes of sponsors of approved applications.

* * * * *

(c) * * *

(1) * * *

Drug labeler code	Firm name and address
•	• • • • •
059620	Mid-Continent Agrimarketing, Inc., 8833 Quivira Rd., Overland Park, KS 66214
•	• • • • •

(2) * * *

Drug labeler code	Firm name and address
•	• • • • •
059620	Mid-Continent Agrimarketing, Inc., 8833 Quivira Rd., Overland Park, KS 66214
•	• • • • •

PART 520—ORAL DOSAGE FORM NEW ANIMAL DRUGS

1. The authority citation for 21 CFR part 520 continues to read as follows:

Authority: Sec. 512 of the Federal Food, Drug, and Cosmetic Act (21 U.S.C. 360b).

§ 520.182 [Amended]

2. Section 520.182 *Bicyclohexylammonium fumagillin* is amended in paragraph (b) by removing "000074" and adding in its place "059620".

Dated: January 14, 1993.

Robert Furrow,

Deputy Director, Office of New Animal Drug Evaluation, Center for Veterinary Medicine.

[FR Doc. 93-1441 Filed 1-21-93; 8:45 am]

BILLING CODE 4160-01-F

21 CFR Part 520

Oral Dosage Form New Animal Drugs; Milbemycin Oxime

AGENCY: Food and Drug Administration, HHS.

ACTION: Final rule.

SUMMARY: The Food and Drug Administration (FDA) is amending the animal drug regulations to reflect approval of a supplemental new animal drug application (NADA) filed by Ciba-Geigy Animal Health, Ciba-Geigy Corp. The supplemental NADA provides for use of milbemycin oxime tablets in dogs for removal and control of adult roundworm and whipworm infections in addition to the existing approved use for prevention of heartworm disease and control of hookworm infections.

EFFECTIVE DATE: January 22, 1993.

FOR FURTHER INFORMATION CONTACT: Marcia K. Larkins, Center for Veterinary Medicine (HFV-112), Food and Drug Administration, 7500 Standish Pl., Rockville, MD 20855, 301-295-8614.

SUPPLEMENTARY INFORMATION: Ciba-Geigy Animal Health, Ciba-Geigy Corp., P.O. Box 18300, Greensboro, NC 27419-8300, filed supplemental NADA 140-915 which provides for use of 2.3-, 5.75-, 11.5-, and 23.0-milligram Interceptor® (milbemycin oxime) tablets for use as an anthelmintic in dogs. The supplemental NADA provides for use of the product for removal and control of adult *Toxocara canis* (roundworm) and *Trichuris vulpis* (whipworm) infections in dogs over 8 weeks of age. The product is currently approved for prevention of heartworm disease caused by *Dirofilaria immitis* and control of hookworm infections caused by *Ancylostoma caninum*. The supplemental NADA is approved as of December 29, 1992, and the regulations are amended by revising 21 CFR 520.1445(c)(2) to reflect the approval. The basis of approval is discussed in the freedom of information summary.

Under section 512(c)(2)(F)(iii) of the Federal Food, Drug, and Cosmetic Act (21 U.S.C. 360b(c)(2)(F)(iii)), this supplemental NADA approval qualifies for 3 years of marketing exclusivity for the new indications beginning December 29, 1992, because new clinical or field investigations (other than bioequivalence or residue studies) conducted by the sponsor were required for the approval.

In accordance with the freedom of information provisions of part 20 (21 CFR part 20) and § 514.11(e)(2)(ii) (21 CFR 514.11(e)(2)(ii)), a summary of safety and effectiveness data and information submitted to support approval of this application may be seen in the Dockets Management Branch (HFA-305), Food and Drug Administration, rm. 1-23, 12420 Parklawn Dr., Rockville, MD 20857, between 9 a.m. and 4 p.m., Monday through Friday.

The agency has carefully considered the potential environmental effects of this action. FDA has concluded that the action will not have a significant impact on the human environment, and that an environmental impact statement is not required. The agency's finding of no significant impact and the evidence supporting that finding, contained in an environmental assessment, may be seen in the Dockets Management Branch (address above) between 9 a.m. and 4 p.m., Monday through Friday.

List of Subjects in 21 CFR Part 520

Animal drugs.

Therefore, under the Federal Food, Drug, and Cosmetic Act and under authority delegated to the Commissioner of Food and Drugs and redelegated to the Center for Veterinary Medicine, 21 CFR part 520 is amended as follows:

PART 520—ORAL DOSAGE FORM NEW ANIMAL DRUGS

1. The authority citation for 21 CFR part 520 continues to read as follows:

Authority: Sec. 512 of the Federal Food, Drug, and Cosmetic Act (21 U.S.C. 360b).

2. Section 520.1445 is amended by revising paragraph (c)(2) to read as follows:

§ 520.1445 Milbemycin oxime tablets.

* * * * *

(c) * * *

(2) *Indications for use.* For prevention of heartworm disease caused by *Dirofilaria immitis*, control of hookworm infections caused by *Ancylostoma caninum*, and removal and control of adult roundworm infections caused by *Toxocara canis* and whipworm infections caused by *Trichuris vulpis* in dogs.

* * * * *

Dated: January 8, 1993.

Gerald B. Guest,

Director, Center for Veterinary Medicine.

[FR Doc. 93-1440 Filed 1-21-93; 8:45 am]

BILLING CODE 4160-01-F

DEPARTMENT OF THE TREASURY

Bureau of Alcohol, Tobacco and Firearms

27 CFR Part 4

[T.D. ATF-335; Ref: Notice Nos. 739, 744]

RIN 1512-AB09

Labeling of Bulk Process Sparkling Wine (90F167P)

AGENCY: Bureau of Alcohol, Tobacco and Firearms (ATF), Department of the Treasury.

ACTION: Treasury decision, final rule.

SUMMARY: The Bureau of Alcohol, Tobacco and Firearms (ATF) is amending the regulations in 27 CFR part 4 to permit the use of the phrases "fermented outside the bottle," "secondary fermentation outside the bottle," "secondary fermentation before bottling," "not fermented in the bottle," or "not bottle fermented," as alternatives to "bulk process" to further describe sparkling wine produced by fermentation in a large closed container. The Director may authorize the use of other or additional descriptive terms to further describe sparkling wine made by this process upon a determination by the Director that such term adequately informs the consumer about the method of production of the sparkling wine. The term "charmat method" or "charmat process" may be used as additional information. In addition, ATF is establishing guidelines with respect to legibility requirements applicable to the optional designation on sparkling wine labels.

EFFECTIVE DATE: July 22, 1993.

FOR FURTHER INFORMATION CONTACT: James P. Ficaretta, Wine and Beer Branch, Bureau of Alcohol, Tobacco and Firearms, 650 Massachusetts Avenue, NW., Washington, DC 20091 (202-927-8230).

SUPPLEMENTARY INFORMATION:

I. Background

Section 105(e) of the Federal Alcohol Administration Act (FAA Act), 27 U.S.C. 205(e), vests broad authority in the Director of ATF, as a delegate of the Secretary of the Treasury, to prescribe regulations intended to prevent deception of the consumer, and to

provide the consumer with adequate information as to the identity and quality of the product. The legislative history of the FAA Act shows that Congress intended to grant broad rulemaking authority to ensure that labels on alcoholic beverages provide consumers with adequate information about the product. In hearings before the House Ways and Means Committee on H.R. 8539, 74th Cong., 1st Sess., Joseph Choate, Director of the Federal Alcohol Control Administration, stated with respect to regulations to be promulgated.

> Those regulations were intended to insure that the purchaser should get what he thought he was getting, that representations both in labels and in advertising should be honest and straightforward and truthful. They should not be confined, as the pure-food regulations have been confined, to prohibitions of falsity, but they should also provide for the information of the consumer, that he should be told what was in the bottle, and all the important factors which were of interest to him about what was in the bottle. (Record of hearing, June 19 and 20, 1935, p. 10.)

Regulations which implement the provisions of section 105(e), as they relate to wine, are set forth in title 27, Code of Federal Regulations (CFR), part 4. Subpart C of part 4 sets forth the standards of identity for wine for labeling and advertising purposes. The current labeling regulations, 27 CFR 4.21(b)(2), provide that "champagne" is a type of sparkling light wine which derives its effervescence solely from the secondary fermentation of the wine in bottles of not greater than 1 gallon capacity, and which possesses the taste, aroma, and other characteristics attributed to champagne as made in the Champagne District of France. Pursuant to § 4.34(a), the type designation "champagne" may appear on the label in lieu of the class designation "sparkling wine."

Section 4.21(b)(3) provides that a sparkling light wine which derives its effervescence from the secondary fermentation of the wine in containers larger than a 1 gallon bottle, and having the taste, aroma, and characteristics generally attributed to champagne may, in addition to but not in lieu of the required class designation "sparkling wine," be further designated as "champagne style" or "champagne type" or "American (or New York State, California, etc.) champagne-bulk process." As further specified in the regulation:

> * * * all the words in such further designation shall appear in lettering of substantially the same size and such lettering shall not be substantially larger than the words "sparkling wine."

II. Amendment of § 4.21(b)(3)

As indicated, sparkling wines are made naturally effervescent by secondary fermentation in closed containers. "Champagne" is a type of sparkling wine that begins as a table wine to which yeast and sugar are added. This induces a secondary fermentation. The wine is then placed in bottles which are closed securely to withstand the pressure that develops as a result of the fermentation. This secondary fermentation accounts for the bubbles in the wine. In producing bulk process sparkling wine having the characteristics generally attributed to champagne, the secondary fermentation occurs in large (sometimes as much as 35,000 gallons) glass-lined containers instead of in individual bottles.

Historically, it has been ATF's position that there is a difference in identity between champagne produced by secondary fermentation within a bottle and sparkling wine having the characteristics generally attributed to champagne which has been produced by secondary fermentation in a container larger than a 1 gallon bottle. As such, ATF has required that the labels of these products make a distinction between the two methods of secondary fermentation. The most commonly used designation that is currently allowed in the regulations to describe the method by which sparkling wine is produced by fermentation in a large closed container is "bulk process."

Recently, several domestic producers of bulk process sparkling wines requested greater flexibility in the labeling of sparkling wines. ATF agrees that greater flexibility in the labeling of sparking wine where secondary fermentation occurs outside the bottle is appropriate. As previously mentioned, the purpose of the labeling provisions of the FAA Act is to provide the consumer with adequate information as to the identity and quality of the product. ATF believes that there are other terms which accurately describe and explain the production process to the consumer in language which is simple and easy to understand.

In addition, after reviewing numerous certificates of label approval for bulk process sparkling wines having the characteristics generally attributed to champagne, ATF had observed that on a number of labels the word "champagne" appeared more prominently and conspicuously than the words "bulk process" and the mandatory designation "sparkling wine." While these labels are in compliance with current regulations, since the word "champagne" is not substantially larger than the words "sparkling wine," there was concern that such labels could result in consumer confusion regarding the true identity of the product. Accordingly, ATF considered amending § 4.21(b)(3) in order to provide specific guidelines for placement and type size requirements applicable to the optional designation on bulk process sparkling wine labels.

III. Notice No. 739

On May 5, 1992, the Bureau published a notice in the **Federal Register** (Notice No. 739, 57 FR 19267) proposing to amend the wine regulations to permit the use of other phrases as alternatives to the phrase "bulk process" to further describe sparkling wine produced by fermentation in a large closed container. ATF also proposed to permit the use of the term "charmat method" as additional information to describe this process. The Bureau also proposed to establish specific standards with respect to placement and type size requirements applicable to the optional designation on sparkling wine labels. The specific proposals will be discussed below.

The comment period for Notice No. 739, initially scheduled to close on July 6, 1992, was extended until August 5, 1992, with the publication of Notice No. 744 (July 2, 1992, 57 FR 29456).

A. Wording and Placement

In Notice No. 739 ATF proposed to amend the regulations to permit bulk process sparkling wine having the characteristics generally attributed to champagne to be further designated as (1) "champagne style" or (2) "champagne type" or (3) "champagne," together with an appropriate appellation of origin disclosing the true place of origin of the wine, such as "American," "New York State," "Napa Valley," or "Chilean". Such further designation would be in addition to but not in lieu of the class designation "sparkling wine." The proposed regulations require that the appellation of origin immediately precede the word "champagne" on the same line or the immediately preceding line.

As it relates to the third further designation, (3) above, the proposed regulations required that one of the following terms appear together with the word "champagne:" "bulk process," "fermented outside the bottle," "secondary fermentation outside the bottle," "not fermented in the bottle," or "not bottle fermented." The term must immediately follow the word

"champagne" on the same line or the immediately following line.

In addition, in Notice No. 739 ATF proposed to allow the use of the term "charmat method" (named after the Frenchman who developed the bulk process technique in the early 1900s) as additional information to describe this process, provided it appears immediately before or after one of the previously mentioned phrases.

All the words in such further designation must appear together without any intervening graphics, words, etc. In the case of the third further designation, however, a mark of some sort (e.g., a dash) may appear between the word "champagne" and the remainder of the designation as, for example, "American champagne-fermented outside the bottle."

B. Size of Type

In reviewing approved labels for bulk process sparkling wines, ATF observed that the word "champagne" often appeared more prominently and conspicuously than the words "bulk process" and "sparkling wine." Initially, ATF was concerned that consumers may erroneously conclude that the product is bottle fermented "champagne," rather than sparkling wine having the characteristics generally attributed to champagne that has been fermented in a large closed container.

Section 4.21(b)(3) currently provides that all the words in the further designation must appear "in lettering of substantially the same size and such lettering shall not be substantially larger than the words 'sparkling wine.'" There seemed to be some confusion in the industry as to what is meant by the requirement that all of the words in the further designation must be of "substantially the same size." Similarly, the requirement that the further designation be in lettering not "substantially larger than the words 'sparkling wine'" appeared to be a less than adequate standard as to the differences in type sizes which are allowable. In order to address these problems, ATF proposed more specific guidelines for type size requirements.

Specifically, the Bureau proposed that on labels of bulk process sparkling wine, all the words in the further designation, including the appellation of origin, shall appear in lettering that is not smaller than the word "champagne" by more than 1 millimeter. In addition, the proposal provided that all the words in the further designation, including the word "champagne," as well as the optional term "charmat method," must appear in lettering that is not larger than the words "sparkling wine" by more than 1 millimeter.

C. Unqualified Use of the Word "Champagne"

In reviewing approved labels for bulk process sparkling wines, ATF also found that occasionally the unqualified word "champagne" appeared on the neck and back labels, while the entire optional designation set forth in the regulations appeared on the brand label. ATF saw the prominent display of the word "champagne," without any further qualification, as potentially misleading to the consumer as to the origin and method of production of the sparkling wine. On the other hand, the word "champagne" might be used as part of an explanatory text, usually on the back label, which is not misleading because of its context. For example, the explanatory text might not use the exact wording of the optional designation as set forth in the regulations, but it might set forth, in different language, the origin and method of production of the sparkling wine at issue.

Thus, ATF proposed that the word "champagne" could only appear on a label of bulk process sparkling wine where it was qualified by a further designation, in accordance with proposed § 4.21(b)(3) (i), (ii) and (iii), or where the word appeared as part of an explanatory text which the Director found was not misleading as to the origin or method of production of the sparkling wine. It was contemplated that this proposal would allow industry members to retain some flexibility in the use of the term "champagne" as part of an explanatory text given as additional information on the label, while ensuring that the consumer would not be misled as to the origin or method of production of the sparking wine.

D. Effective Date of Final Rule

Finally, in order to provide the industry with sufficient time to make label revisions, ATF proposed that any regulations issued pursuant to a final rule would become effective 1 year from the date of publication in the **Federal Register**.

IV. Analysis of Comments

In response to Notice Nos. 739 and 744, the Bureau received 60 comments. Most of the comments were submitted by industry members on behalf of producers of both bottle fermented and bulk fermented sparkling wines.

The majority of comments came from producers of bottle fermented sparkling wine. These comments were generally supportive of the four phrases proposed by the Bureau as alternatives to the phrase "bulk process" to further describe sparkling wine produced by fermentation in a large closed container. One commenter noted ATF's longstanding position that bottle fermented sparkling wine and bulk process sparkling wine are different products and that "the mandatory information on their labels should enable consumers to readily distinguish between the two."

In general, these comments also favored the proposal to establish specific placement and type size requirements for the further designation on labels of bulk process sparkling wines. However, many of the commenters believed that the proposal did not go far enough, and that the regulations should also require that all the words in the further designation, including the word "champagne," appear in the same style of type, in the same color, and on the same background. In addition, many of these commenters believed that the proposed phrase "charmat method" was misleading, in that consumers did not understand the term. Some concern was also expressed that consumers seeing a product labeled as "charmat" might be confused as to the origin of the sparkling wine. Finally, several comments suggested that the final rule should take effect within 6 months of publication.

ATF also received several comments from producers of bulk process sparkling wine. In general, these comments tended to be critical of the proposal. The comments objected to the proposed alternative phrases, as well as to the existing term "bulk process." The commenters stated that it was their belief that these terms conveyed negative connotations to the consumer. One commenter suggested an alternative phrase, "naturally fermented before bottling."

Furthermore, these commenters argued that most consumers are not interested in knowing about the production method used to make the sparkling wine, and that consumers perceive bulk process champagne to be "champagne"; therefore, sparkling wine produced by secondary fermentation in a large closed container should be entitled to use the term "champagne" without further qualifications. Assuming that a distinction on the label was required, these commenters favored using the phrase "charmat method" by itself on the label. They believe this term conveys accurate information about the production process, without any of the negative connotations of the phrases proposed in the notice.

Regarding the Bureau's proposals concerning type size and placement requirements for the further designation, one commenter stated that producers of bulk process sparkling wine should not be subject to extraordinary lettering size requirements or word placement restrictions. According to the commenter, such restrictions are unnecessary and would result in label clutter.

V. Discussion—Final Rule

ATF and its predecessor agencies have historically held that "champagne" is a type of sparkling wine produced by secondary fermentation within a bottle. This interpretation is based on traditional usage of the term. Extensive research indicates that the word "bottle" has been used to refer to glass containers of not greater than 1 gallon capacity.

Prior to enactment of the FAA Act, other Federal agencies had occasion to rule on the meaning of the term "champagne." In Food Inspection Decision (F.I.D.) 212, dated July 19, 1934, the Department of Agriculture ruled on use of the term "champagne" under the Federal Food and Drugs Act. As stated in the ruling, the term "champagne" could not be used on labels of sparkling wine unless the product was made by the same process as champagne made in the Champagne district of France. The Department referred to F.I.D. 212 in responding to an industry inquiry regarding the labeling of sparkling wine produced by secondary fermentation in large closed containers (vats). By letter dated January 14, 1935, the Department stated that the term " 'Champagne' * * * definitely implies that the secondary-fermentation has taken place in the bottle."

The same position was subsequently taken by the Federal Trade Commission (FTC) in a 1935 complaint filed against a domestic winery for misrepresenting their bulk process sparkling wines as "champagne." As stated in the FTC complaint,

> For a long period of time the term "champagne", when used in connection with wines has had and still has a definite significance and meaning * * * (wine) made sparkling by natural fermentation, which fermentation is completed in the bottle; * * *

On March 25, 1935, ATF's predecessor agency, the Federal Alcohol Control Administration (FACA), issued regulations providing that "champagne" was a type of sparkling wine produced by fermentation within a bottle (Misbranding Regulations, Series 6, Article II, Class 3(b)). The word "bottle," as defined in the regulations, referred to a container having a capacity not in excess of 1 gallon. Sparkling wine produced by secondary fermentation in a container larger than a bottle could be labeled as "champagne," provided the term was further qualified by the statement "Secondary Fermentation in Bulk."

After enactment of the FAA Act, the Federal Alcohol Administration (FAA) promulgated regulations containing standards of identity for wine. The issue of the labeling of champagne had been extensively discussed in the hearings held prior to the issuance of the regulations. In the press release announcing the promulgation of the regulations, the FAA stated that "(t)he testimony with respect to foreign and domestic champagne indicated that both from the point of view of the consumer and on the question of process a clear distinction was necessitated between sparkling wines produced by bottle fermentation and sparkling wines otherwise produced."

Consequently, the regulations issued in 1935 allowed the use of the term "champagne" on labels of sparkling wines produced by bottle fermentation, which had the taste, aroma, and other characteristics of champagne as produced in the champagne district of France. A sparkling wine not conforming to the prescribed standard for champagne, i.e., a wine produced by secondary fermentation in a large container, but having the taste, aroma, and characteristics generally attributed to champagne could be further designated as "Champagne style," "Champagne type," or "American (or New York State, California, etc.) Champagne—Bulk process." Such further designation would be in addition to but not in lieu of the class designation "Sparkling wine."

Thus, ATF and its predecessor agencies have consistently held that there is a difference in identity between champagne produced by secondary fermentation within the bottle and sparkling wine having the characteristics generally attributed to champagne which has been produced by secondary fermentation in a container larger than a 1 gallon bottle. This "difference" is not in reference to the taste, aroma, or other characteristics (e.g., stable foam, size of bubbles, etc.) of the finished product since, by regulation, both bottle and bulk fermented champagne must possess the taste, aroma, and other characteristics generally attributed to champagne as made in the champagne district of France. Rather, the "difference" is in regard to the standard of identity for "champagne," i.e., secondary fermentation must take place within a glass container of not greater than 1 gallon capacity. If the secondary fermentation is not within the bottle, the sparkling wine cannot be labeled as "champagne" without further qualification.

Thus, for more than 55 years ATF and its predecessor agencies have held that if the sparkling wine has the taste, aroma, and other characteristics generally attributed to champagne, but the secondary fermentation has taken place in a container larger than a 1 gallon bottle, the product may be labeled as "champagne," provided there appears along with it a qualifying statement which informs the consumer that the sparkling wine was not produced by secondary fermentation in a bottle.

A. Qualifying Statements

One comment submitted by several producers of bulk process sparkling wine challenged the basis for the longstanding distinction in the labeling of champagne, stating that technological advances since the 1930s had eliminated the need for distinguishing between bulk process and bottle fermented sparkling wines. As a result, "(c)hampagne makers using the charmat (bulk) process are today able to craft the characteristics they want in their champagne, including those commonly associated with bottle-fermented champagnes." The comment suggested that there was no chemical difference between the two products, and that consumers could not distinguish the products by taste. In support of that argument, a producer of bulk process sparkling wine submitted the results of a blind taste test in which consumers preferred a bulk process sparkling wine over two bottle fermented champagnes, and were unable to identify which sparkling wines were produced by which process.

The producers of bulk process sparkling wine also argued that consumers don't consider production process when buying champagne. In support of this argument, one commenter submitted the results of a consumer survey which indicated that very few consumers mentioned the method of production as an important factor in their purchase of champagne. More important factors were taste, price, and brand name. In regard to this last factor, when consumers were asked to name a brand of champagne, the brand most frequently named was one produced by the bulk process method. According to the commenter, this indicates that consumers perceive bulk process champagne as "champagne"

and, therefore, the need for a distinction in labeling between the two production processes no longer exists.

However, one commenter representing importers of bottle fermented sparkling wines also included the results of a consumer survey. The results of that survey indicated that nearly half the sparkling wine consumers could detect a difference in "mouth feel" between a bulk process and a bottle fermented sparkling wine, and the majority could correctly identify a bottle fermented product as being different from a bulk process product.

ATF finds that the consumer survey data presented by the two different commenters is conflicting and inconclusive. In any event, the basis for the regulation does not depend upon the proposition that bulk process sparkling wine tastes differently from bottle fermented champagne; as noted, the regulation requires that both types of wine possess the "taste, aroma, and other characteristics attributed to champagne as made in the champagne district of France."

Furthermore, ATF believes that, pursuant to its responsibilities under the FAA Act, a further qualification on the label is necessary to provide the consumer with information as to the identity of the product. That is, the consumer should be informed as to whether the product is "champagne" or a sparkling wine having the characteristics generally attributed to champagne. The additional qualifying statement is not intended to communicate any value judgment about the quality of the wine.

B. Wording

The majority of comments received in response to Notice No. 739 supported the Bureau's position that there is a difference in identity between champagne produced by secondary fermentation within a bottle and that produced by secondary fermentation in a closed container larger than a 1 gallon bottle. These commenters also supported the Bureau's proposed alternative phrases to "bulk process," as well as the proposal with respect to placement requirements applicable to the optional designation on sparkling wine labels.

As indicated, the producers of bulk process sparkling wines objected to the wording of the proposed alternative phrases. They believe that the phrases proposed by the Bureau would create a negative connotation in the minds of consumers, thus implying that a bulk process product is inferior in some way. In addition, these commenters believe that the proposed phrases do not accurately describe the method of production. Rather, they describe just one aspect of the process. On the other hand, the commenters believe that the term "charmat method" more accurately describes the complete production process.

The purpose of the labeling provisions of the FAA Act is to provide the consumer with adequate information as to the identity of the product. ATF believes that the alternative phrases proposed in Notice No. 739 alert consumers to the fact that the sparkling wine was not produced by bottle fermentation. Since this is the principal difference between bottle and bulk fermented champagne, ATF believes that it is appropriate to require a statement that focuses on this aspect of the production process. In addition, as one commenter pointed out:

> The label for virtually every bottle-fermented champagne (other than those produced in France currently on the market in the United States contains a reference to the fact that the product was 'bottle-fermented,' or made by the 'methode champenoise,' or 'fermented in this bottle.'

As can be seen, two of the three statements mentioned above are in reference to the container used for secondary fermentation. The term "methode champenoise" ("champagne method") also refers to the fact that the sparkling wine was produced by bottle fermentation. Since the proposed alternative phrases also refer to the type of container used for producing the sparkling wine, ATF believes that consumers will be adequately informed as to the identity of the product.

Furthermore, ATF does not believe that the proposed alternative phrases, or the existing term "bulk process," will have an adverse effect on the industry. As one commenter pointed out, "(t)oday, Charmat champagnes, * * * account for three-quarters of U.S. sparkling wine production and more than 50 percent of the sparkling wine market (including imports) in the United States." In addition, the Bureau would note that a qualifying descriptor has been required on labels of bulk process sparkling wines labeled as "champagne" since 1935.

Although it was suggested that the phrase "naturally fermented before bottling" be permitted as an alternative to the phrases proposed by the Bureau, ATF believes that the term "secondary fermentation before bottling" would be more informative to the consumer since it describes the method of production.

Therefore, as it relates to the wording of the further designation, upon the effective date of this final rule, bulk process sparkling wine having the characteristics generally attributed to champagne may, in addition to but not in lieu of the class designation "sparkling wine," be further designated as (1) "champagne style" or (2) "champagne type" or (3) "American (or New York State, Napa Valley, etc.) champagne," along with one of the following terms: "Bulk process," "fermented outside the bottle," "secondary fermentation outside the bottle," "secondary fermentation before bottling," "not fermented in the bottle," or "not bottle fermented."

ATF believes that there may be other terms which can be used as an appropriate description of sparkling wine produced by secondary fermentation outside the bottle. The purpose of the FAA Act is to ensure that the consumer is adequately informed about the identity of the product. Thus, this final rule also provides that the Director may authorize the use of additional terms on sparkling wine labels to further describe sparkling wine produced by fermentation in a large closed container, upon a determination by the Director that such terms adequately inform the consumer about the method of production of the sparkling wine. This issue will be discussed further in the section entitled *"Authorization of Alternative Terms."*

C. Placement and Size of Type

As it relates to the third further designation mentioned above, ATF proposed that the appellation of origin must immediately precede the word "champagne" on the same line or the immediately preceding line. In addition, the qualifying descriptor (e.g., "bulk process") must immediately follow the word "champagne" on the same line or the immediately following line. ATF also proposed that all the words in the further designation must appear together without any intervening graphics, words, etc.

Concerning type size requirements, the Bureau proposed that on labels of bulk process sparkling wine, all the words in the further designation, including the appellation of origin, shall appear in lettering that is not smaller than the word "champagne" by more than 1 millimeter. In addition, all the words in the further designation, as well as the optional term "charmat method," shall appear in lettering that is not larger than the words "sparkling wine" by more than 1 millimeter.

The proposals relative to type size and placement requirements for the optional designation were intended to provide industry members with specific guidelines concerning the labeling of

bulk process sparkling wine. The proposals were also intended to ensure that consumers were informed as to the true identity of the product. However, another goal of Notice No. 739 was to provide the industry with additional flexibility in the labeling of bulk process sparkling wines.

In general, the commenters representing importers and producers of bottle fermented sparking wines favored ATF's proposal to establish specific placement and type size requirements for the further designation. However, several commenters believed that the proposal did not go far enough, and that the regulations should also require that all the words in the further designation, including the word "champagne," appear in the same style of type, in the same color, and on the same background. These commenters were concerned that the restrictions on placement and type size did not go far enough in preventing labels which were misleading as to the method of production and origin of the wine.

On the other hand, concern was expressed that the Bureau's proposals with respect to type size and placement requirements applicable to the optional designation are overly restrictive, unnecessary, and would place an undue burden on the industry. As one commenter stated:

> (Production method information) should not be subject to extraordinary lettering size requirements or word placement restrictions. There is no need to clutter labels. If the goal of the mandatory labeling requirement is truly to inform, it is enough that the information be provided in a readable way * * * Charmat producers should not be handicapped by having to comply with label design restrictions that are not necessary in order to communicate information.

ATF did not receive any comments from consumers or consumer groups on this issue.

The purpose of the labeling provisions of the FAA Act is to provide the consumer with adequate information as to the identity of the product. In prescribing regulations ATF has the responsibility to ensure that the statutory goals are met, and that the consumer is "told (about) what was in the bottle." However, ATF does not believe that the regulations should be more restrictive on matters such as type size and placement than is necessary to meet the statutory goal. On the contrary, ATF believes that it should regulate only where necessary and to the extent necessary.

In the matter at hand, ATF's proposed amendment of the regulations was intended, in part, to provide the industry with additional flexibility in the labeling of bulk process sparkling wine. In addition, ATF proposed to establish specific guidelines with respect to placement and type size requirements with regard to the optional designation on sparkling wine labels to ensure that consumers were informed as to the identity of the sparkling wine product.

However, based on the comments received in response to Notice No. 739, ATF now believes that the proposed guidelines relative to type size and placement for the optional designation are too restrictive, and would place an undue burden on the industry. ATF agrees with the commenter who stated that "(i)f the goal of the mandatory labeling requirement is truly to inform, it is enough that the information be provided in a readable way."

On the other hand, ATF recognizes the concerns expressed by many of the commenters regarding the use of the word "champagne" on labels of bulk process sparkling wines. As mentioned, these commenters suggested that all the words in the further designation, including the word "champagne," should be required to appear in the same style of type, in the same color, and on the same background. While ATF believes that these factors should be considered in determining the acceptability of a label, the Bureau believes that a same style type, same color, and same background requirement is overly restrictive and unnecessary.

ATF believes that, for the most part, existing bulk process sparkling wine labels present the information required by the regulations in a way that is informative and not misleading. Rather than implement regulations which would require extensive changes in the labels for all of these products, ATF believes that it would be preferable to fashion a regulation which would prevent misleading labels, while still affording the industry flexibility in the matter of label design.

Therefore, this final rule provides that labels of bulk process sparkling wine shall be so designed that all the words in such further designation are readily legible under ordinary conditions and are on a contrasting background. In the case of the third further designation, ATF will consider whether the label as a whole provides the consumer with adequate information about the method of production and origin of the wine. In order to ensure that labels fairly provide the consumer with such relevant information, ATF will evaluate each label for legibility and clarity, based on such factors as type size and style for all components of the further designation and the optional term "charmat method," as well as the contrast between the lettering and its background, and the placement of information on the label. ATF will not approve any labels which depart from this purpose.

ATF believes that this regulation will provide the Bureau with adequate authority to prevent misleading sparkling wine labels, without mandating extensive and unnecessary changes in sparkling wine labels which are in compliance with the goals of the FAA Act.

D. Use of "Charmat Method"

In Notice No. 739 the Bureau proposed that the term "charmat method" (named after the Frenchman who developed the bulk process technique in the early 1900s) may be used as additional information to describe the bulk process, provided it appears immediately before or after one of the previously mentioned phrases.

Many commenters opposed the Bureau's proposal to allow the term "charmat method" as additional information on labels of bulk process sparkling wines. These commenters stated that the word "charmat" was meaningless to the consumer, and it could be easily confused with the term "champenoise," a word used by producers of bottle fermented sparkling wines to describe the method of production. On the other hand, several producers of bulk process sparkling wine argued that the term "charmat method" should be permitted on labels of bulk process sparkling wines as the sole descriptive qualifier of the term "champagne." It was also brought out in the comments that the term is broadly recognized in the technical literature as being an appropriate description of the bulk process.

ATF recognizes the historic usage of the term "charmat method" within the industry and in technical literature as an accurate description of sparkling wine produced by secondary fermentation in large closed container. One commenter provided several examples of the use of the term "charmat method" in wine textbooks, and other popular, professional, and technical wine literature. Because the term is recognized by wine experts as referring to secondary fermentation in bulk, ATF and its predecessor agencies have allowed the use of this term on sparkling wine labels for well over 35 years. However, the term has only been authorized as additional information to describe the method of production.

After considering the information provided in the comments, ATF has

concluded that the term "charmat method" should not be allowed as a sole descriptive qualifier of the word "champagne" on sparkling wine labels. While the comments provided evidence that the term was understood within the industry as referring to secondary fermentation in a tank, there was no evidence that the term had any widespread recognition among consumers. On the contrary, one commenter, representing the interests of importers of bottle fermented sparkling wines, submitted the results of a consumer survey which indicated that the opposite was true. Of the 482 consumers surveyed, 90 percent did not understand what the term "charmat method" meant. On the other hand, 77 percent of the consumers surveyed were able to correctly identify "bulk process" as a designation of sparkling wine fermented in a container and not in the bottle. Thus, the weight of the evidence supported the Bureau's conclusion that at this time, there is not enough consumer understanding of the term "charmat method" to justify allowing the term to appear on labels without qualification.

On the other hand, ATF does not agree that the use of the term "charmat method" as additional information on sparkling wine labels would be misleading as to the origin or identity of the wine. ATF believes that requiring one of the previously mentioned phrases to appear on the label, e.g., "fermented outside the bottle," will clarify the production process for consumers who might not be familiar with the meaning of the term "charmat method." Thus, the label will adequately inform the consumer that the sparkling wine was not produced by bottle fermentation. In addition, since an appellation of origin is required to appear on the label, ATF does not believe that there will be consumer confusion as to the origin of the wine. As such, ATF does not believe that it is necessary to require the term "charmat method" to appear immediately before or after one of the previously mentioned phrases. Such a requirement would be overly restrictive, and would place an undue hardship on the industry when designing their labels.

Thus, the final rule authorizes the use of the term "charmat method" as additional information on labels of bulk process sparkling wines. In addition, in re-examining certificates of label approval for these products, the Bureau has observed that the word "process" has been used as an alternative to the word "method," and the word "charmat" has often appeared together with the words "bulk process," as "charmat bulk process." Thus, in order to minimize the burden on the industry, this final rule also authorizes the use of the term "charmat process." In addition, the Bureau will continue to allow the word "charmat" to appear with the words "bulk process," as "charmat bulk process."

E. Authorization of Alternative Terms

When first requesting ATF approval for the use of alternative terms on sparkling wine labels, a major producer of sparkling wine made the argument that ATF should be able to issue an interpretive ruling authorizing the use of terms which were synonymous with the term "bulk process." The sparkling wine producer argued that such a result would be consistent with the intent of the regulations, and with ATF's statutory mandate to ensure that sparkling wine labels were informative to the consumer about the identity of the product. The existing regulations did not authorize ATF to allow the use of terms other than those specified in the regulations. Thus, rulemaking was initiated to authorize the use of certain alternate terms.

After considering the administrative record on this issue, ATF recognizes that, in addition to the five new terms authorized by this final rule, there may be other terms which can be used as an appropriate description of sparkling wine produced by secondary fermentation outside the bottle. Therefore, the final rule provides that the Director may authorize the use of additional terms on sparkling wine labels to further describe sparkling wine produced by fermentation in a large closed container, upon a determination by the Director that such terms adequately inform the consumer about the method of production of the sparkling wine. ATF believes that this provision will provide additional flexibility to sparkling wine producers, and will obviate the need for ATF to initiate rulemaking every time a winery wishes to use a new term to describe the method of production on a sparkling wine label.

Furthermore, after considering the comments submitted regarding the use of the term "charmat method," ATF has determined that while the current evidence does not support allowing this term as the sole descriptive qualifier of the word "champagne" on labels of bulk process sparkling wines, consumer understanding of winemaking terminology is not necessarily static. If it can be reasonably demonstrated that consumers recognize the term "charmat method," or any similar term, as referring to a sparkling wine produced by fermentation in a large closed container, and not in the bottle, then ATF shall open a rulemaking proceeding and consider such evidence as a primary factor in determining whether to specifically authorize the use of such terms as further designations on sparkling wine labels.

F. Unqualified Use of the Word "Champagne"

As stated previously, in reviewing approved labels for bulk process sparkling wines, ATF found that occasionally the unqualified word "champagne" appeared on the neck and back labels, while the entire optional designation set forth in the regulations appears on the brand label. ATF believed that the prominent display of the word "champagne," without any further qualification, could mislead the consumer as to the origin and method of production of the sparkling wine.

Thus, ATF proposed that the word "champagne" shall only appear on a label of bulk process sparkling wine where it is qualified by a further designation, or where the word appears as part of an explanatory text which the Director finds is not misleading as to the origin or method of production of the sparkling wine.

Many commenters supported the Bureau's proposal regarding the unqualified use of the word "champagne." However, in light of ATF's decision that the regulation does not need to prescribe the precise placement or type size of the further designation on the label, the Bureau believes that there is no longer a need to address this issue specifically in the regulation. The final rule gives ATF the authority to determine if the label as a whole is misleading, after considering factors such as the placement of information on the label. ATF would emphasize that if the word "champagne" is used on the label in such a manner that it tends to create a misleading or deceptive impression as to the actual identity of the product, the label will be rejected.

G. Effective Date of Final Rule

Several commenters suggested that the proposed year-long transition period for compliance with the final regulations was too long. ATF agrees with these comments, but wishes to ensure that the industry is provided with sufficient time to bring labels into compliance with this final rule. Therefore, the provisions of this Treasury decision will become effective 6 months from the date of publication in the **Federal Register**, and will apply

to sparkling wines bottled on or after that date.

Executive Order 12291

It has been determined that this document is not a major regulation as defined in E.O. 12291, and a regulatory impact analysis is not required because it will not have an annual effect on the economy of $100 million or more; it will not result in a major increase in costs or prices for consumers, individual industries, Federal, State, or local government agencies or geographical regions; and it will not have significant adverse affects on competition, employment, investment, productivity, innovation, or on the ability of United States-based enterprises to compete with foreign-based enterprises in domestic or export markets.

Regulatory Flexibility Act

It is hereby certified that this regulation will not have a significant economic impact on a substantial number of small entities. Any benefit derived by a small proprietor from the new options provided in this rule will be the result of the proprietor's own promotional efforts and consumer acceptance of the specific product. No new reporting or recordkeeping requirements are imposed by this rule. Accordingly, a regulatory flexibility analysis is not required because this final rule is not expected (1) to have secondary, or incidental effects on a substantial number of small entities; or (2) to impose, or otherwise cause a significant increase in the reporting, recordkeeping, or other compliance burdens on a substantial number of small entities.

Paperwork Reduction Act

The collection of information contained in this final regulation has been reviewed and approved by the Office of Management and Budget in accordance with the requirements of the Paperwork Reduction Act (44 U.S.C. 3504(h)) under control number 1512–0482. The estimated average burden associated with the collection of information in this final rule is 1 hour per respondent or recordkeeper.

Comments concerning the accuracy of this burden estimated should be directed to the Chief, Information Programs Branch, room 3110, Bureau of Alcohol, Tobacco and Firearms, 650 Massachusetts Avenue NW., Washington, DC 20226 and to the Office of Management and Budget, Paperwork Reduction Project 1512–0482, Washington, DC 20503.

Disclosure

Copies of the notice of proposed rulemaking, all written comments, and this final rule will be available for public inspection during normal business hours at: ATF Public Reading Room, room 6480, 650 Massachusetts Avenue NW., Washington, DC.

Drafting Information

The author of this document is James P. Ficaretta, Wine and Beer Branch, Bureau of Alcohol, Tobacco and Firearms.

List of Subjects in 27 CFR Part 4

Advertising, Consumer protection, Customs duties and inspection, Imports, Labeling, Packaging and containers, and Wine.

Authority and Issuance

27 CFR Part 4—Labeling and advertising of wine is amended as follows:

PART 4—[AMENDED]

Paragraph 1. The authority citation for 27 CFR Part 4 continues to read as follows:

Authority: 27 U.S.C. 205.

Par. 2. Section 4.21(b)(3) is revised to read as follows:

§ 4.21 The standards of identify.

* * * * *

(b) *Class 2; sparkling grape wine.*

* * *

(3)(i) A sparkling light wine having the taste, aroma, and characteristics generally attributed to champagne but not otherwise conforming to the standard for "champagne" may, in addition to but not in lieu of the class designation "sparkling wine," be further designated as:

(A) "Champagne style;" or

(B) "Champagne type;" or

(C) "American (or New York State, Napa Valley, etc.) champagne," along with one of the following terms: "Bulk process," "fermented outside the bottle," "secondary fermentation outside the bottle," "secondary fermentation before bottling," "not fermented in the bottle," or "not bottle fermented." The term "charmat method" or "charmat process" may be used as additional information.

(ii) Labels shall be so designed that all the words in such further designation are readily legible under ordinary conditions and are on a contrasting background. In the case of paragraph (b)(3)(i)(C) of this section, ATF will consider whether the label as a whole provides the consumer with adequate information about the method of production and origin of the wine. ATF will evaluate each label for legibility and clarity, based on such factors as type size and style for all components of the further designation and the optional term "charmat method" or "charmat process," as well as the contrast between the lettering and its background, and the placement of information on the label.

(iii) Notwithstanding the provisions of paragraphs (b)(3)(i)(A), (B) and (C) of this section, the Director may authorize the use of a term on sparkling wine labels, as an alternative to those terms authorized in paragraph (b)(3)(i) of this section, but not in lieu of the required class designation "sparkling wine," upon a finding that such term adequately informs the consumer about the method of production of the sparkling wine.

* * * * *

Signed: December 17, 1992.

Stephen E. Higgins,

Director.

Approved: January 13, 1993.

John P. Simpson,

Acting Assistant Secretary (Enforcement).

[FR Doc. 93–1386 Filed 1–21–93; 8:45 am]

BILLING CODE 4810–31–M

DEPARTMENT OF DEFENSE

Department of the Army

35 CFR Part 251

Panama Canal Employment System; Personnel Policy

AGENCY: Department of the Army, Defense.

ACTION: Final rule.

SUMMARY: This final rule amends part 251 of title 35, Code of Federal Regulations, to reflect changes to the Panama Canal Employment System (PCES). These changes will permit employees of non-Department of Defense (DOD) agencies attached to DOD agencies in the Republic of Panama, who have previously been ineligible to receive the recruitment and retention differential contained in the Panama Canal Act of 1979, to be eligible to receive such differential, provided such eligibility is agreed to between the employee's agency and DOD.

EFFECTIVE DATE: January 22, 1993.

FOR FURTHER INFORMATION CONTACT: Mr. Michael Rhode, Jr., Assistant to the Chairman and Secretary, Panama Canal Commission, 2000 L Street NW., Washington, DC 20036–4996 (Telephone: 202–634–6441); Colonel W.

L. Mayew, Executive Officer to the Assistant Secretary of the Army (Civil Works), room 2E–569 The Pentagon, Washington, DC (Telephone: 703–697–9809); or Mr. Robert H. Rupp, Executive Director, Panama Area Personnel Board, Unit 2300, APO AA 34011 (Telephone in Corozal, Republic of Panama: 011–507–52–7890).

SUPPLEMENTARY INFORMATION: The Panama Canal Employment System (PCES) was established in section 1212 of the Panama Canal Act of 1979, Public Law 96–70, 93 Stat 464, 22 U.S.C. 3652. The PCES covers employees of the Panama Canal Commission and Department of Defense member agencies. Pursuant to 22 U.S.C. 3652(c) and (d), the President may amend any provision of the PCES, may exclude any employee or position from PCES coverage and may extend to any employee the rights and privileges provided to employees in the competitive service. This authority has been delegated through the Secretary of Defense and the Secretary of the Army to the Chairman of the Panama Area Personnel Board. These regulations are promulgated pursuant to this authority. Issuance of a notice of proposed rulemaking under 5 U.S.C. 553 is not necessary because the final rule pertains only to personnel of agencies covered by these regulations.

The final rule addresses the applicability of the PCES to employees of non-Department of Defense (DOD) agencies attached to DOD agencies in the Republic of Panama for the limited purpose of obtaining eligibility for the recruitment and retention differential provided for in section 1217 of the Panama Canal Act (22 U.S.C. 3657), provided such eligibility is agreed to between the employee's agency and DOD. The provisions of 35 CFR 251.31 and 251.32 which fix the specific eligibility requirements of the differential may be also made applicable to these employees. Similarly, the provisions of section 1218 (22 U.S.C. 3658) and of 35 CFR 251.25, which define basic pay, may be also made applicable. Previously, employees serving in these positions were ineligible for the aforementioned differential. This amendment will now give the employee's agency and DOD the flexibility to make the differential applicable to these non DOD employees assigned to DOD agencies in Panama provided the two agencies agree to do so.

This provision of the final rule does not affect the limited quarters allowance provided in 22 U.S.C. 3657a. As provided in 22 U.S.C. 3657a(d), a qualifying emplcyee is eligible for the quarters allowance regardless of participation in the PCES by the employer agency.

This final rule is not a major rule as defined in Executive Order 12291 of February 17, 1981. As required by the Regulatory Flexibility Act, it is certified that this final rule will not have a significant economic impact on a substantial number of small business entities. I certify that these proposed changes in regulations meet the applicable standards provided in sections 2(a) and (b)(2) of Executive Order No. 12778.

List of Subjects in 35 CFR Part 251

Panama Canal Employment System, Army Secretary Regulations, Personnel Policy.

Accordingly, 35 CFR Part 251 is amended as follows:

PART 251—REGULATIONS OF THE SECRETARY OF THE ARMY (PANAMA CANAL EMPLOYMENT SYSTEM)—PERSONNEL POLICY

1. The authority citation for Part 251 continues to read as follows:

Authority: 22 U.S.C. 3541–3701, E.O. 12173, 12215.

2. Section 251.4(a) is amended by removing "(g)" after the word "through" and inserting "(i)" in its place.

3. Section 251.4 is amended by adding paragraph (i) as follows:

§ 251.4 Adoption of Panama Canal Employment System by Department of Defense.

* * * * *

(i) Officers and employees of non-Department of Defense (DOD) agencies attached to DOD agencies in Panama are excluded from all the provisions of subchapter II and the regulations contained in this part and part 253 of this chapter, except that such employees may be covered by the provisions of sections 1217, 1217a, and 1218 of subchapter II and the regulations in §§ 251.25, 251.31 and 251.32 of this chapter, if coverage by said provisions is agreed to by the employee's agency and DOD and such coverage does not result in a benefit greater than that provided to DOD employees.

Dated: January 10, 1993.

M.P.W. Stone,

Chairman, Panama Area Personnel Board.

[FR Doc. 93–1308 Filed 1–21–93; 8:45 am]

BILLING CODE 3710–02–P

COPYRIGHT ROYALTY TRIBUNAL

37 CFR Chapter III

[Docket No. CRT 93–2–RM]

Modification of Rules of Agency Organization

AGENCY: Copyright Royalty Tribunal.

ACTION: Final rule.

SUMMARY: The Copyright Royalty Tribunal is amending its rule addressing the Composition of the Tribunal. The amendment adopts the Senate's June 13, 1990 amendment of chapter 8 of title 17, United States Code, to reduce the number of Commissioners on the Copyright Royalty Tribunal, to provide for lapsed terms and for other purposes.

EFFECTIVE DATE: January 14, 1993.

FOR FURTHER INFORMATION CONTACT: Linda R. Bocchi, General Counsel, Copyright Royalty Tribunal, 1825 Connecticut Avenue NW., suite 918, Washington, DC 20009. (202) 606–4400.

SUPPLEMENTARY INFORMATION: On June 13, 1990, the Senate proceeded to consider the bill (S. 1272) to amend chapter 8 of title 17, United States Code, to reduce the number of Commissioners on the Copyright Royalty Tribunal, to provide for lapsed terms of such Commissions, and for other purposes, which had been reported from the Committee on the Judiciary.

In lieu of the fact that the revision is undertaken to incorporate a 1990 amendment by the Senate, the revised rule will become effective immediately.

Accordingly, § 301.3 of the Tribunal's Rules is amended in the manner set forth below:

List of Subjects in 37 CFR Part 301

Administrative practice and procedure, Freedom of Information Act, Sunshine Act.

PART 301—COPYRIGHT ROYALTY TRIBUNAL RULES OF PROCEDURE

1. The authority citation for part 301 continues to read as follows:

Authority: Chapter 8 of title 17, United States Code.

2. Section 301.3 is revised as follows:

§ 301.3 Composition of the Tribunal.

The Tribunal is composed of three Commissioners appointed by the President, by and with the advice and consent of the Senate. The term of office of any individual appointed as a Commissioner shall be seven years, except that a Commissioner may serve after the expiration of his or her term until a successor has taken office. Each Commissioner shall be compensated at

the rate of pay in effect for Level V of the Executive Schedule under section 5316 of title 5.

Dated: January 14, 1993.

Cindy Daub,

Chairman.

[FR Doc. 93–1354 Filed 1–21–93; 8:45 am]

BILLING CODE 1410–09–M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Office of Inspector General

42 CFR Parts 1001 and 1005

RIN 0991–AA75

Health Care Programs; Fraud and Abuse; Amendments to OIG Exclusion and CMP Authorities Resulting From Public Law 100–93

AGENCY: Office of Inspector General (OIG), HHS.

ACTION: Final rule and clarification.

SUMMARY: This final rule clarifies the scope and purpose of the exclusion authority provisions originally set forth in final rulemaking published in the Federal Register on January 29, 1992 (57 FR 3298). That final rule implemented the OIG sanction and civil money penalty (CMP) provisions established through section 2 and other conforming amendments in the Medicare and Medicaid Patient and Program Protection Act of 1987, and other statutory authorities. This clarifying document modifies the final rule to give greater clarity to the original scope of the authorities contained in 42 CFR part 1001. In addition, this rule is providing further clarification to the discovery provision set forth in part 1005 of the regulations.

EFFECTIVE DATE: This regulation is effective on January 22, 1993.

FOR FURTHER INFORMATION CONTACT: Joel Schaer, Office of Inspector General, (202) 619–3270.

SUPPLEMENTARY INFORMATION:

I. Background

On January 29, 1992, we published in the Federal Register a final rule to implement a variety of OIG sanction and civil money penalty provisions established through section 2 and other conforming amendments in the Medicare and Medicaid Patient and Program Protection Act of 1987, along with certain additional provisions contained in the Consolidated Budget Reconciliation Act of 1985, the Omnibus Budget Reconciliation Act (OBRA) of 1987, the Medicare Catastrophic Coverage Act of 1988, OBRA 1989, and OBRA 1990 (57 FR 3298). Those final regulations were designed to protect program beneficiaries from unfit health care practitioners, and otherwise to improve the anti-fraud provisions of the Department's health care programs under titles V, XVIII, XIX and XX of the Social Security Act.

As a result of that final rule, 42 CFR part 1001 was amended to specifically set forth each type of exclusion, the basis or activity that would justify the exclusion, and the considerations that would be used in determining the period of exclusion. (In addition, through the revision and recodification of existing regulations, a new 42 CFR part 1005 was added to address various procedures that govern administrative hearings and subsequent appeals for all OIG sanction cases.)

Since publication of the final rule, we have become aware that an uncertainty exists with regard to the scope and applicability of the exclusion authorities set forth in part 1001 of the regulations. This final rule gives clarity to the original intent of the scope and applicability of existing exclusion authorities.

II. Revisions to 42 CFR 1001.1 and 1005.4

We are clarifying § 1001.1, Scope and purpose, to explicitly indicate that the exclusion provisions in 42 CFR part 1001 apply to and bind (1) the OIG in imposing and proposing program exclusions, and (2) the administrative law judges (ALJs), the Departmental Appeals Board (DAB) and federal courts in reviewing the imposition of exclusions by the OIG (or, where applicable, in imposing exclusions proposed by the OIG).

It has always been implicit that the circumstances for each program exclusion and the specified length for each exclusion (including the mitigating and aggravating circumstances) set forth in 42 CFR part 1001 would bind the OIG, ALJs and the DAB in all their decision making. Following the publication of the revised exclusion regulations on January 29, 1992, however, it has been brought to our attention that it could be possible to interpret part 1001 as applying only to the imposition of exclusions by the OIG, and not to the review of exclusions by ALJs, the DAB and federal courts. This is not the result intended by the Secretary or these regulations, and is inconsistent with the application of the prior regulations codified at 42 CFR part 1001 to program exclusions.

The regulatory provisions in 42 CFR part 1001 were promulgated in large part to add consistency and predictability to the overall process of imposing program exclusions. Were the Secretary to have so limited the applicability of these highly specific, substantive provisions set forth in part 1001, the effect of the regulations would be virtually nullified if interpreted as binding the OIG to their requirements while, at the same time, providing the ALJs with total discretion to disregard the regulatory requirements and review the OIG's imposition of exclusions as if there were no applicable regulatory standards.

In addition, we are also making a related change to the ALJs' authority in § 1005.4(c) to make clear that ALJs do not have the authority to find invalid or refuse to follow Federal statutes, regulations or Secretarial delegations of authority.

III. Technical Clarification to Section 1005.7

In addition, we are revising paragraph (e)(1) of § 1005.7, Discovery, to clarify that parties are not required to file a motion for a protective order as a condition precedent for withholding documents under a claim of privilege. The revised § 1005.7(e)(1) also specifically states that the parties are allowed to have the opportunity to file a motion for a protective order at any time during discovery.

As revised, § 1005.7(e)(1) deletes the unrealistic time frame for filing a motion for a protective order. The revised section gives the parties the option of filing a motion for a protective order at any time during the discovery process.

IV. Regulatory Impact Statement

Executive Order 12291 requires us to prepare and publish a final regulatory impact analysis for any regulation that meets one of the Executive Order criteria for a "major rule." In addition, we generally prepare a regulatory flexibility analysis that is consistent with the Regulatory Flexibility Act (5 U.S.C. 601–612), unless the Secretary certifies that a final regulation would not have a significant economic impact on a substantial number of small entities.

As we indicated in the original final rule published on January 29, 1992, consistent with the intent of the statute, the amendments to 42 CFR chapter V, and this subsequent clarification, are designed to clarify departmental policy with respect to the imposition of exclusions, CMPs and assessments upon individuals and entities who violate the

statute. We continue to believe that the great majority of providers and practitioners do not engage in such prohibited activities and practices, and that the aggregate economic impact of these provisions should be minimal, affecting only those who have engaged in prohibited behavior in violation of statutory intent.

For this reason, we have determined that a regulatory impact analysis is not required. Further, we have determined, and the Secretary certifies, that this rule will not have a significant economic impact on a number of small business entities, and we have, therefore, not prepared a regulatory flexibility analysis.

V. Effective Date and Waiver of Proposed Rulemaking

Since this rulemaking is designed to clarify departmental policy already set forth in final regulations with respect to the imposition of exclusions, CMPs and assessments, we are waiving the proposed notice and public comment period in accordance with the exceptions to the Administrative Procedure Act (APA) set forth in 5 U.S.C. 553(b)(A). Specifically, 5 U.S.C. 553(b)(A) excepts "interpretative rules, general statements of policy or rules of agency organization, procedure or practice" from the notice and comment requirements under the APA. This regulation meets all three exceptions set forth in this section. It is an interpretative rule in that it interprets the application and scope of 42 CFR part 1001; it is a statement of Departmental policy with respect to the application of 42 CFR part 1001; and it is a rule of agency procedure in that it directs the ALJs and the DAB to apply 42 CFR part 1001 to their reviews of OIG exclusion decisions. Therefore, we believe that proposed notice and public comment for this rulemaking is unnecessary.

In addition, this document does not promulgate any substantive changes to the scope of the January 29, 1992 final rule, but rather seeks only to clarify the text of that rulemaking to better achieve our original intent. Since it is not substantive, we are issuing this clarifying regulation as a final rule to be effective immediately, rather than the usual 30-day delay required for substantive rules under 5 U.S.C. 553(d). This clarifying rule will apply to all pending and future cases under this authority.

List of Subjects

42 CFR Part 1001

Administrative practice and procedure, Fraud, Health facilities, Health professions, Medicaid, Medicare.

42 CFR Part 1005

Administrative practice and procedure, Fraud, Penalties.

42 CFR chapter V is amended as set forth below:

A. 42 CFR part 1001 is amended as set forth below:

PART 1001—PROGRAM INTEGRITY—MEDICARE AND STATE HEALTH CARE PROGRAMS

1. The authority citation for part 1001 continues to read as follows:

Authority: 42 U.S.C. 1302, 1320a–7, 1320a–7b, 1395u(j), 1395u(k), 1395y(d), 1395y(e), 1395cc(b)(2) (D), (E) and (F), and 1395hh, and section 14 of Public Law 100–93 (101 Stat. 697).

2. Section 1001.1 is amended by designating the existing paragraph as paragraph (a), and by adding a new paragraph (b) to read as follows:

§ 1001.1 Scope and purpose.

* * * * *

(b) The regulations in this part are applicable to and binding on the Office of Inspector General (OIG) in imposing and proposing exclusions, as well as to Administrative Law Judges (ALJs), the Departmental Appeals Board (DAB), and federal courts in reviewing the imposition of exclusions by the OIG (and, where applicable, in imposing exclusions proposed by the OIG).

B. 42 CFR part 1005 is amended as set forth below:

PART 1005—APPEALS OF EXCLUSIONS, CIVIL MONEY PENALTIES AND ASSESSMENTS

1. The authority citation for part 1005 continues to read as follows:

Authority: 42 U.S.C. 405(a), 405(b), 1302, 1320a–7, 1320a–7a and 1320c–5.

2. Section 1005.4 is amended by revising paragraph (c)(1) and republishing paragraph (c) introductory text to read as follows:

§ 1005.4 Authority of the ALJ.

* * * * *

(c) The ALJ does not have the authority to—

(1) Find invalid or refuse to follow Federal statutes or regulations or secretarial delegations of authority;

* * * * *

3. Section 1005.7 is amended by revising paragraph (e)(1) to read as follows:

§ 1005.7 Discovery.

* * * * *

(e)(1) After a party has been served with a request for production of documents, that party may file a motion for a protective order.

* * * * *

Dated: November 23, 1992.

Bryan B. Mitchell,

Principal Deputy Inspector General.

Approved: December 18, 1992.

Louis W. Sullivan,

Secretary.

[FR Doc. 93–1376 Filed 1–21–93; 8:45 am]

BILLING CODE 4150–04–M

FEDERAL MARITIME COMMISSION

46 CFR Parts 514, 580, 581 and 583

[Docket No. 92–37]

Financial Responsibility for Non-Vessel-Operating Common Carriers

AGENCY: Federal Maritime Commission.

ACTION: Final rule.

SUMMARY: The Federal Maritime Commission ("FMC" or "Commission") is amending its regulations governing the financial responsibility requirements of Non-Vessel-Operating Common Carriers ("NVOCCs") in response to the Non-Vessel-Operating Common Carrier Act of 1991 ("1991 Act"). The 1991 Act amended section 23 of the Shipping Act of 1984 ("1984 Act"), to permit the Commission to accept—in addition to bonds—insurance or other surety as proof of an NVOCC's financial responsibility. The 1991 Act also deleted the $50,000 minimum amount for a bond previously prescribed by section 23. The final rule: (1) Specifies the conditions for accepting insurance and guaranties as evidence of an NVOCC's financial responsibility; (2) provides forms and procedures for accepting insurance and guaranties as evidence of an NVOCC's financial responsibility; (3) specifies standards for the acceptability of insurance companies and guarantors; and (4) specifies the amount and method of coverage.

EFFECTIVE DATE: February 22, 1993.

FOR FURTHER INFORMATION CONTACT: Austin L. Schmitt, Director, Bureau of Trade Monitoring and Analysis, Federal Maritime Commission, 800 North Capitol Street NW., Washington, DC 20573–0001, (202) 523–5787.

SUPPLEMENTARY INFORMATION: The Commission initiated this proceeding by an Advance Notice of Proposed Rulemaking ("ANPR") published in the

Federal Register, 57 FR 27413 (June 19, 1992), requesting comment on implementing the 1991 Act. The ANPR requested comment on: (1) The appropriateness of accepting insurance and guaranties as evidence of an NVOCC's financial responsibility, as well as suggestions for other types of surety; (2) the development of forms and procedures for certain sureties; (3) guidelines for evaluating the acceptability of companies that issue sureties, other than bonds; and (4) the appropriate amount and possible methods of protection to cover an NVOCC's financial responsibilities under the 1991 Act.

Thirteen comments were received in response to the ANPR. Subsequently the Commission published a Notice of Proposed Rulemaking ("NPR") in the Federal Register, 57 FR 47589 (October 19, 1992). The proposed rule: (1) Specified the conditions for accepting insurance and guaranties as evidence of an NVOCC's financial responsibility; (2) provided forms and procedures for accepting insurance and guaranties as evidence of an NVOCC's financial responsibility; (3) specified guidelines for evaluating the acceptability of insurance companies and guarantors; and (4) specified the amount and method of coverage.

The Commission received eight comments in response to the NPR. Conference comments were submitted jointly by the Asia North America Eastbound Rate Agreement, "8900" Lines, South Europe/U.S.A. Freight Conference, and U.S. Atlantic & Gulf Western Mediterranean Rate Agreement ("ANERA *et al.*"). Shipping intermediary comments were received from the International Federation of Freight Forwarders Associations ("FIATA") and the National Customs Brokers and Forwarders Association of America, Inc. ("NCBFAA"). Insurance industry comments were received from the Underwriters at Lloyd's ("Lloyd's") and from two other insurers, Through Transport Mutual Insurance Association, Ltd., and the Norwich Union Fire Insurance Society, Ltd. ("Through Transport Mutual and Norwich Union Fire") filing jointly. Comments were also received from International Trade Tracking ("ITT"), a consulting and tariff publishing service for NVOCCs. The U.S. Department of Transportation ("DOT") and the U.S. Department of Defense ("DOD") also submitted comments.

Comments and Discussion

With the exception of ITT, all commenters generally support the proposed rule. NCBFAA comments that it fully supports the rule as proposed. DOT states that the rule is largely consistent with its suggestions set forth in its previous comments and urges its adoption. The remaining commenters, while generally supporting the proposed rule, raise specific issues of concern to their organizations. These are discussed below.

A. Suggested Rejection of Insurance as a Means to Meet NVOCC Financial Responsibility Requirements

ITT objects to insurance as a means for NVOCCs to meet their financial responsibility requirements. It claims that the shipping industry is not well served by the bonding of NVOCCs and that adding alternative methods of security will only add to the industry's confusion. According to ITT, the shipping industry appears to be confused as to what NVOCC activities are covered by the bond. It reports that claims against NVOCC bonds for services of all types including rent, drayage and office supplies are being placed against sureties.

The 1991 Act, among other things, specifically provides that the Commission may accept "proof of insurance" as an additional method for NVOCCs to evidence their financial responsibility. This legislation was enacted to allow flexibility to the NVOCC industry as long as the form of security obtained by an NVOCC provided no less protection for injured parties than surety bonds. ITT's objections to the extent they are directed to the statute itself are irrelevant here. The Commission also notes that an individual who is uncertain as to the extent of an NVOCC's financial coverage may directly contact the surety named in the NVOCC's tariff for verification.

B. Request for 30-Day Advance Notice of Impending Cancellation of NVOCC Surety Bond

ANERA *et al.* request that the final rule be clarified to require the Commission to notify the public by notice in the Federal Register of any impending cancellation of an NVOCC's bond, insurance or guaranty. ANERA *et al.* further request that the date of cancellation of an NVOCC's financial coverage be effective at least 30 days after publication in the Federal Register.

The Commission considered but did not adopt similar comments made in response to the ANPR. In addition to substantial publishing costs involved with each Federal Register submission, establishing a program to track the status of NVOCCs' coverage would result in significant administrative burdens without any benefits to the industry. For example, prior to the effective date of an impending cancellation, an NVOCC will frequently file replacement coverage with the Commission. Approximately ten percent of the bonds filed with the Commission since October 1991 have been replacement bonds. Thus, the accuracy and usefulness of a publication/notice program would be questionable. Moreover, the Commission sees no reason to extend the effective date of termination beyond the current requirement at 46 CFR 583.6, which states that termination shall become effective 30 days after receipt of written notice by the Commission.

The Commission believes that the information currently available, namely the bond number and the name and address of the surety providing coverage to an NVOCC published in the NVOCC's Tariff Rule 24, as well as the list maintained by the Commission of NVOCCs in substantial compliance with section 23 of the 1984 Act, is better suited to verify the status of an NVOCC's bond. The final rule provides that similar information for an NVOCC's insurer or guarantor also be published in its Tariff Rule 24. As already noted above, if there is reason to question the status of an NVOCC's financial coverage, individuals may directly contact the surety named in the NVOCC's tariff.

C. Section 583.3(c) Exemption for NVOCCs of Used Military Household Goods

DOD notes a change in the language of section 583.3(c) of the proposed rule concerning the transportation of used household goods and personal effects for the account of DOD, and requests that the Commission track the language used in Docket No. 91–1, Bonding of Non-Vessel-Operating Common Carriers, 56 FR 56322 (November 4, 1991) ("Docket No. 91–1").

Through an oversight, the NPR contained an incorrect version of proposed section 583.3(c). Section 583.3(c) presently provides that although persons that exclusively transport used household goods and personal effects for DOD are not subject to the requirements of 46 CFR part 583, they might nonetheless be subject to other requirements imposed by DOD, such as alternative surety bonds. It was not the intention of the Commission to alter its current regulations with respect to NVOCCs that provide transportation services for used military household goods for DOD and § 583.3(c) of the final rule is revised accordingly.

D. Uniform Insurance Policy

The NPR requested comment on whether the Commission should attempt to draft a uniform insurance policy to cover an NVOCC's financial responsibilities under the 1991 Act, and suggestions for developing such a policy. FIATA advises that there are many differences among insurance policies and asserts that the complex nature of these differences would make it difficult to draft a uniform policy.

The Commission believes that the regulations and forms contained in its NPR clearly detail the coverage to be provided by insurers to satisfy the requirements of the 1991 Act. Therefore, the Commission will not prescribe a uniform insurance policy at this time.

E. Insurance Form FMC–67

FIATA states that there is a potential problem with the Commission's proposed insurance form (FMC–67), in that it requires the insurer to remain legally liable for any damages, reparations or penalties against the insured after coverage has been terminated. In FIATA's opinion, insurance companies would not be willing to accept such open-ended responsibility for liability that may have been incurred during the effective period of coverage, but which may be claimed years later. Insurers would allegedly attempt to limit the time period for which claims could be made to coincide with the coverage period.

Section 23 of the 1984 Act requires that a bond, insurance or other surety shall be available to pay any: judgment for damages against an NVOCC arising from its transportation-related activities under the 1984 Act; reparations awarded by the Commission to a private complainant pursuant to section 11 of the 1984 Act; or any penalty assessed by the Commission pursuant to section 13 of the 1984 Act. Section 11(g) of the 1984 Act, 46 U.S.C. app. 1710(g), permits the filing of claims for reparations within three years after the cause of action accrued. Section 13(f)(2) of the 1984 Act, *id.* app. 1712(f)(2), permits the Commission to assess a civil penalty in a proceeding that is commenced within five years from the date the violation occurred. The effect of these provisions is that, even if coverage has been terminated, the surety remains responsible for claims made against an NVOCC, as long as the claims concern transportation-related activities under the 1984 Act occurring during the effective coverage period and the reparation or penalty proceeding is commenced within the statutory time period. However, the surety's potential liability is not open-ended, due to the existence of the statutory periods of limitation.

F. Request for Clarification of Section 583.4(d) and Proposed FMC Form 69

FIATA requests the Commission to confirm its intentions with respect to the types of coverage a group or association of NVOCCs may use to provide coverage, in whole or in part, to its individual NVOCC members. FIATA also requests confirmation as to a group or association's ability to use Form FMC–69 (Group Supplemental Coverage Bond) to establish its members' financial responsibility regardless of each individual member's existing coverage.

Section 583.4(d)(2) of the proposed rule requires each group or association of NVOCCs to provide the Commission with a certified list of those members for which it will provide financial coverage, in whole or in part, and the manner and amount of existing coverage each covered NVOCC may have. Proposed § 583.4(d)(6) specifies the types of coverage a group or association of NVOCCs may use to establish its members' financial responsibility, the guidelines for accepting the surety, insurer or guarantor and the use of required forms. To the extent a member NVOCC is not covered by its own individual financial coverage, a group or association of NVOCCs of which the NVOCC is a member may provide financial coverage, in whole or in part, by means of group bond, insurance or guaranty. Proposed Form FMD–69 specifies that the penalty amount of the bond shall be available to pay any judgment against the NVOCCs enumerated in appendix A of the bond for damages, reparations or penalties that are not covered by the identified NVOCCs' individual insurance policy(ies), guaranty(ies) or surety bond(s). Therefore, the use of the group bond is not restricted to just supplementing a member NVOCC's existing financial coverage but may be used to establish a member's entire financial responsibility for its transportation-related activities under the 1984 Act.

G. Standards for Acceptable Underwriters

Proposed paragraphs (b) and (c) of § 583.4 required that an acceptable insurer or guarantor have a financial rating of Class VIII or higher under the Financial Size Categories of A.M. Best & Company, or the equivalent from a comparable international rating organization. The A.M. Best categories measure an insurer's financial capacity to underwrite risks according to its reported adjusted policyholders' surplus. Class VIII requires a minimum surplus of $100 million.

Through Transport Mutual and Norwich Union Fire state that the availability of international ratings is limited, and that the proposed rule's exclusive reliance on such ratings might have the effect of disqualifying certain foreign insurers that otherwise might provide significant capacity for the risks that are the subject of this rulemaking. These commenters suggest that the Commission might find it helpful to examine how other federal agencies that administer financial responsibility regulations determine which foreign insurers are acceptable providers of financial responsibility. They cite DOT's regulations at 14 CFR 205.3(e), which sets forth DOT's standards for determining the acceptability of insurers offering air carrier liability insurance coverage for U.S. direct air carriers. That regulation provides, in part, that insurance coverage may be obtained from surplus lines insurers named on a current list of such insurers issued and approved by the insurance regulatory authority of any state, commonwealth, or territory of the United States or of the District of Columbia.

Through Transport Mutual and Norwich Union Fire state that, as a practical matter, many foreign insurers qualify to write aviation insurance under this DOT requirement. They explain that, although some states maintain lists of approved surplus lines insurers, the most commonly used list is one maintained by the Non-Admitted Insurers' Information Office ("NAIIO") of the National Association of Insurance Commissioners. They then advise:

> The NAIIO has primary responsibility for collecting and monitoring financial information on surplus lines insurers not licensed in any state. The NAIIO has established a comprehensive system for evaluating the financial stability and overall suitability of alien insurers that seek to write insurance on a non-admitted basis in the United States. Each quarter, the NAIIO publishes a list of insurers it deems to be of sufficient financial strength and integrity to write such insurance. This list is commonly known as the NAIIO "white list," and insurers who appear on it are permitted to write surplus lines coverage in a majority of states on a non-admitted basis.
>
> To be listed as an approved alien surplus lines carrier by the NAIIO, an insurer must meet more stringent requirements than they would to be licensed in most states. The NAIIO considers the [sic] three major factors in evaluating insurers for listing. First, listed insurers must possess and maintain minimum capital and/or surplus of $15 million and such additional amounts as the NAIIO may deem necessary. Second, the

insurer must maintain a trust fund in the United States for the exclusive benefit of the insurer's U.S. policyholders in the amount of at least $2.5 million, or a higher amount if the insurer's U.S. liabilities require greater security. Finally, the insurer must have established a reputation for financial integrity and satisfactory underwriting and claims practices, and must submit to annual review by the NAIIO to assure the [sic] each listed insurer continues to meet the applicable standards. The NAIIO's annual review process requires listed insurers to submit audited financial statements, actuarial certification as to the adequacy of loss reserves, extensive information about the insurer's reinsurance program, and updated biographical information as to officers and directors.

A listing on the NAIIO white list provides a firm basis upon which to conclude that the insurer will meet its obligations under the insurance policies it issues. The enviable record of NAIIO-approved alien insurers supports this conclusion. Since the NAIIO established its rigid standards for approval of alien surplus lines insurers in 1976, no insurer has become insolvent while on the NAIIO list.

The Commission sees considerable merit in the position taken by Through Transport Mutual and Norwich Union Fire. The financial responsibility requirements of section 23 of the 1984 Act, as amended by the 1991 Act, should be administered so as to allow NVOCCs a wide choice of competing underwriters, as long as underwriters participating in the program meet sufficient standards of financial soundness. We note that DOT's air carrier liability insurance regulations include bodily injury and death, as well as property damage, and impose minimum coverage limits that are far higher than those required for NVOCCs.[1] Insurers qualified under NAIIO "white list" standards to underwrite aircraft liability thus appear qualified to underwrite NVOCC financial risks. The Commission, therefore, will accept those surplus lines insurers named on a current NAIIO "white list" as participants in the Commission's NVOCC financial responsibility program. For the same reason, the Commission concludes that the qualifying standard under the A.M. Best Financial Size Categories should be lowered to Class V (minimum adjusted surplus of $10 million) to comport more closely with the most important part of the NAIIO standard, *i.e.*, that insurers must possess minimum capital and/or surplus of $15 million.

Lloyd's states that, because it is not an insurance company *per se* but a marketplace of approximately 20,000 underwriters who hold formal self-regulatory powers conferred by the British Parliament, it has not traditionally been the subject of a financial rating by A.M. Best & Company or any similar organization, and thus would not qualify under the Commission's proposed rule. Lloyd's points out, however, that it has been in operation for more than 300 years and is one of the world's leading markets for marine and aviation insurance. It states that its underwriters have never failed to pay a valid claim, maintain substantial assets in the United States in several trust funds, allow claims to be made in the United States, submit to annual audits and other extensive examination, and are licensed insurers in several states and territories of the United States.

Other federal agencies have recognized the unique structure and status of Lloyd's in administering financial responsibility programs. The Maritime Administration ("MARAD") of DOT has established rules for acceptance of hull insurance on vessels in which MARAD has a security interest. MARAD specifically designates Underwriters at Lloyd's as acceptable insurers "without further consideration." 46 CFR 249.5(b). The U.S. Department of Labor accepts Lloyd's in setting fidelity bond requirements for fiduciaries of plans under the Employee Retirement Income Security Act. 29 CFR 2580.412–25. Further, Lloyd's has submitted, as part of its comments in this proceeding, letters from the Military Traffic Management Command of the U.S. Department of Defense indicating that Lloyd's has been authorized to provide cargo insurance for shipments of household goods for military personnel. Given this wide acceptance of Lloyd's coverage by other federal agencies, which acknowledge the quality of Lloyd's security and claims-payment history, the Commission will similarly accept Lloyd's as a participant in the NVOCC financial responsibility program.

The Commission believes that these amendments to the proposed rule will permit a broader field of potential underwriters able to supply coverage for NVOCCs, while at the same time adequately ensure the acceptance of sufficiently qualified insurers and guarantors able to cover an NVOCC's financial responsibilities under the 1991 Act. Accordingly, the appropriate provisions of part 583 and the forms contained in the appendix thereto are amended to reflect these changes.

Appropriate provisions of part 583 and the forms contained in the appendix thereto also have been amended to reflect necessary technical modifications and clarifications with respect to the requirement that the insurer or guarantor certify that it has sufficient and acceptable assets located in the United States to cover all transportation-related liabilities of the covered NVOCC(s) as specified under the 1984 Act.

Section 583.4(d)(6) has also been amended to clarify that the Commission is not a depository or distributor to third parties of bond, guaranty, or insurance funds in the event of any claim, judgement, or order for reparations.

After the June 19, 1992, publication of the ANPR in this proceeding, an interim rule was published on August 12,1992 (57 FR 36248), in Docket No. 90–23, *Tariffs and Service Contracts* (46 CFR part 514), which implements the Commission's Automated Tariff Filing and Information System ("ATFI"). Accordingly, the appropriate provisions of part 514 are also amended herein in a manner similar to the changes to parts 580 and 581.

Although the Commission, as an independent regulatory agency, is not subject to Executive Order 12291, dated February 17, 1981, it nonetheless has reviewed the rule in terms of that Order and has determined that this rule is not a "major rule" as defined in the Order because it will not result in: (1) An annual effect on the economy of $100 million or more; (2) a major increase in costs or prices for consumers, individual industries, Federal, State, or local government agencies, or geographic regions; or (3) significant adverse effects on competition, employment, investment, productivity, innovations, or on the ability of United States-based enterprises to compete with foreign-based enterprises in domestic or export markets.

Pursuant to the Regulatory Flexibility Act, 5 U.S.C. 601 *et seq.*, the Commission certifies that the rule will not have a significant economic impact on a substantial number of small entities, including small businesses, small organizational units and small governmental jurisdictions. The rule will be less burdensome to the industry by allowing more flexibility in the types of financial security available to satisfy NVOCC responsibilities under the Shipping Act of 1984.

The collection of information requirements contained in this

[1] For example, 14 CFR 205.5(b) states in part:

Insurance meeting the requirements of this part for all U.S. or foreign direct air carriers shall be third-party aircraft accident liability coverage for bodily injury to or death of persons, including nonemployee cargo attendants, other than passengers, and for damage to property, with minimum limits of $300,000 for any one person in any one occurrence, and a total of $20,000,000 per involved aircraft for each occurrence. * * *

regulation have been approved by the Office of Management and Budget under the provisions of the Paperwork Reduction Act of 1980, as amended, and have been assigned OMB control number 3072–0053. Public reporting burden for this collection of information is estimated to take 42.75 hours per response for group supplemental coverage (32.5 hours to set up program, 1.75 hours to maintain current membership list, and 8.5 hours to establish resident agent, file replacement group coverage, and file cancellation notices as necessary); 12.5 hours per response for insurance coverage; and 12.5 hours per response for a guaranty. This collection of information includes the time for reviewing instructions, searching existing data needed, and completing and reviewing the collection of information. Send comments regarding this burden estimate, including suggestions for reducing this burden, to Norman W. Littlejohn, Director, Bureau of Administration, Federal Maritime Commission, Washington, DC, 20573; and to the Office of Information and Regulatory Affairs, Attention: Desk Officer for the Federal Maritime Commission, Office of Management and Budget, Washington, DC 20503.

List of Subjects

46 CFR Part 514

Barges, Cargo, Cargo vessels, Exports, Fees and user charges, Freight, Harbors, Imports, Maritime carriers, Motor carriers, Ports, Rates and fares, Reporting and recordkeeping requirements, Surety bonds, Trucks, Water carriers, Waterfront facilities, Water transportation.

46 CFR Part 580

Cargo, Cargo vessels, Exports, Freight, Harbors, Imports, Maritime carriers, Rates, Reporting and recordkeeping requirements, Surety bonds, Water carriers, Water transportation.

46 CFR Part 581

Freight, Maritime carriers, Rates, Reporting and recordkeeping requirements.

46 CFR Part 583

Freight, Maritime carriers, Rates, Reporting and recordkeeping requirements; surety bonds.

Therefore, pursuant to 5 U.S.C. 552 and 553; 31 U.S.C. 9701; 46 U.S.C. app. 804, 812, 814–817(a), 820, 833a, 841a, 843, 844, 845, 845a, 845b, 847, 1702–1712, 1714–1716, 1718, 1721 and 1722; and sec. 2(b) of Pub. L. 101–92, 103 Stat. 601, Parts 514, 580, 581 and 583 of Title 46, Code of Federal Regulations, are amended as follows.

PART 514—[AMENDED]

1. The authority citation for part 514 continues to read as follows:

Authority: 5 U.S.C. 552 and 553; 31 U.S.C. 9701; 46 U.S.C. app. 804, 812, 814–817(a), 820, 833a, 841a, 843, 844, 845, 845a, 845b, 847, 1702–1712, 1714–1716, 1718, 1721 and 1722; and sec. 2(b) of Pub. L. 101–92, 103 Stat. 601.

2. Paragraph (d) of section 514.7 is revised to read as follows:

§ 514.7 Service contracts in foreign commerce.

* * * * *

(d) *Service contracts with non-vessel-operating common carriers.* No ocean common carrier or conference may execute or file any service contract in which a contract party or an affiliate of such contract party or member of a shippers' association entitled to receive service under the contract is an NVOCC, unless such NVOCC has a tariff and proof of financial responsibility as required by sections 8 and 23 of the Shipping Act of 1984 and Commission regulations under this part and part 583 of this chapter.

* * * * *

3. Paragraphs (b)(24), initial paragraph, (b)(24)(i) and (b)(24)(ii) of § 514.15 are revised to read as follows:

§ 514.15 Tariff Rules.

* * * * *

(b) * * *

(24) *Financial responsibility for NVOCCs in foreign commerce and legal agent for service of process.* (i) Every non-vessel-operating common carrier ("NVOCC") shall state in Tariff Rule 24 of its tariffs on file with the Federal Maritime Commission that it has furnished the Commission proof of financial responsibility in the manner and amount required by 46 CFR 583.4 for the payment of any judgment for damages arising from its transportation-related activities under the Shipping Act of 1984, order for reparations issued pursuant to section 11 of the Shipping Act of 1984, or penalty assessed pursuant to section 13 of the Shipping Act of 1984. In Tariff Rule 24, the NVOCC shall state the manner of its financial responsibility; whether it is relying in whole or in part on coverage provided by a group or association of NVOCCs to which it is a member; the name(s) and address(es) of the surety company(ies), insurance company(ies) or guarantor(s) issuing the bond(s), insurance policy(ies) or guaranty(ies); the bond(s), insurance policy(ies) or guaranty(ies) number(s); and, where applicable, the name and address of the group or association of NVOCCs providing full or partial coverage.

(ii) Every NVOCC in foreign commerce which is not domiciled in the United States shall enter in the first address field provided in each of its Tariff Records under 46 CFR 514.11(b)(8)(ii) the name and address of a person in the United States designated under § 583.5 of this chapter as its legal agent for the service of judicial and administrative process, including subpoenas. Every NVOCC using a group or association of NVOCCs not domiciled in the United States for financial coverage, in whole or in part, pursuant to § 583.4 shall state in its tariff the name and address of the group or association's resident agent for service of judicial and administrative process, including subpoenas. The NVOCC also shall state in Tariff Rule 24 that, in any instance in which the designated legal agent(s) cannot be served because of death, disability or unavailability, the Secretary, Federal Maritime Commission will be deemed to be the NVOCC's legal agent for service of process.

* * * * *

PART 580—[AMENDED]

4. The authority citation for part 580 is revised to read as follows:

Authority: 5 U.S.C. 553; 46 U.S.C. app. 1702–1705, 1707, 1709, 1710–1712, 1714–1716, 1718, and 1721.

5. Paragraphs (d)(24) introductory text, (d)(24)(i), and (d)(24)(ii) of section 580.5 are revised to read as follows:

§ 580.5 Tariff contents.

* * * * *

(d) * * *

(24) *Financial responsibility for non-vessel-operating common carriers and legal agent for service of process.* (i) Every non-vessel-operating common carrier ("NVOCC") shall state in Tariff Rule 24 of its tariffs on file with the Federal Maritime Commission that it has furnished the Commission proof of financial responsibility in the manner and amount required by § 583.4 of this chapter for the payment of any judgment for damages arising from its transportation-related activities under the Shipping Act of 1984, order for reparations issued pursuant to section 11 of the Shipping Act of 1984, or penalty assessed pursuant to section 13 of the Shipping Act of 1984. In Tariff Rule 24, the NVOCC shall state the manner of its financial responsibility; whether it is relying in whole or in part on coverage provided by a group or

association of NVOCCs to which it is a member; the name(s) and address(es) of the surety company(ies), insurance company(ies) or guarantor(s) issuing the bond(s), insurance policy(ies) or guaranty(ies); the bond(s), insurance policy(ies) or guaranty(ies) number(s); and, where applicable, the name and address of the group or association of NVOCCs providing full or partial coverage.

(ii) Every NVOCC in foreign commerce which is not domiciled in the United States shall state in Tariff Rule 24 of its tariffs the name and address of a person in the United States designated under § 583.5 of this chapter as its legal agent for the service of judicial and administrative process, including subpoenas. Every NVOCC using a group or association of NVOCCs not domiciled in the United States for financial coverage, in whole or in part, pursuant to § 583.4 shall state in Tariff Rule 24 of its tariff the name and address of the group or association's resident agent for service of judicial and administrative process, including subpoenas. The NVOCC also shall state in Tariff Rule 24 that, in any instance in which the designated legal agent(s) cannot be served because of death, disability or unavailability, the Secretary, Federal Maritime Commission will be deemed to be the NVOCC's legal agent for service of process.

* * * * *

PART 581—[AMENDED]

6. The authority citation for part 581 is revised to read as follows:

Authority: 5 U.S.C. 553; 46 U.S.C. app. 1702, 1706, 1707, 1709, 1712, 1714–1716, 1718, and 1721.

7. Paragraph (e) of section 581.3 is revised to read as follows:

§ 581.3 Filing and maintenance of service contract materials.

* * * * *

(e) *Service contracts with non-vessel-operating common carriers.* No ocean common carrier or conference may execute or file any service contract in which a contract party or an affiliate of such contract party or member of a shippers' association entitled to receive service under the contract is an NVOCC, unless such NVOCC has a tariff and proof of financial responsibility as required by sections 8 and 23 of the Shipping Act of 1984 and Commission regulations under parts 580 and 583 of this chapter.

* * * * *

Part 583—[AMENDED]

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

Authority: 5 U.S.C. 553; 46 U.S.C. app. 1702, 1707, 1709, 1710–1712, 1716 and 1721.

9. Part 583 is amended by revising the part heading to read as follows:

PART 583—SURETY FOR NON-VESSEL-OPERATING COMMON CARRIERS

10. Part 583 table of contents is amended by adding Appendices B, C and D to read as follows:

Appendix B to Part 583—Non-Vessel-Operating Common Carrier (NVOCC) Insurance Form (FMC–67)

Appendix C to Part 583—Non-Vessel-Operating Common Carrier (NVOCC) Guaranty Form (FMC–68)

Appendix D to Part 583—Non-Vessel-Operating Common Carrier (NVOCC) Group Bond Form (FMC–69)

11. Section 583.2 is revised to read as follows:

§ 583.2 Scope.

This part implements the Non-Vessel-Operating Common Carrier Amendments of 1990, Public Law No. 101–595, section 710, and the Non-Vessel-Operating Common Carrier Act of 1991, Public Law No. 102–251, section 201 and applies to all NVOCCs operating in the waterborne foreign commerce of the United States.

12. Section 583.3 is revised to read as follows:

§ 583.3 Proof of financial responsibility, when required.

(a) Except as provided in paragraph (c) of this section, no person may provide transportation as a non-vessel-operating common carrier or obtain transportation for the account of such NVOCC unless a surety bond, insurance form, or guaranty form which demonstrates that such NVOCC is covered for any transportation-related liability under the Shipping Act of 1984 has been furnished to and accepted by the Commission. Where a group or association of NVOCCs accepts liability for all or part of an NVOCC's financial responsibilities for such NVOCC's transportation-related activities under the Shipping Act of 1984, the group or association of NVOCCs must file either a group supplemental coverage bond form, insurance form or guaranty form, clearly identifying each NVOCC covered, before a covered NVOCC may provide transportation as a non-vessel-operating common carrier or obtain transportation for the account of such NVOCC. An individual NVOCC's bond, insurance or guaranty coverage shall be for $50,000 except in the case where an individual NVOCC's responsibility is covered, in whole or in part, by a group or association's bond, insurance or guaranty. In such cases the group or association's coverage must be for $50,000 per covered member NVOCC, or $1,000,000 in aggregate.

(b) Where more than one entity operates under a common trade name, separate proof of financial responsibility is required covering each corporation or person separately providing transportation as a non-vessel-operating common carrier.

(c) Any person which exclusively transports used household goods and personal effects for the account of the Department of Defense is not subject to the requirements of this part, but may be subject to other requirements, such as alternative surety bonding, imposed by the Department of Defense.

13. Section 583.4 is revised to read as follows:

§ 583.4 Financial responsibility requirements.

Prior to the date it commences common carriage operation, every non-vessel-operating common carrier shall establish its financial responsibility for the purpose of this part by one of the following methods:

(a) Surety bond, by filing with the Commission, simultaneously with its tariff, a valid bond on Form FMC–48, in the amount of $50,000. Bonds must be issued by a surety company found acceptable by the Secretary of the Treasury.

(b) Insurance, by filing with the Commission, simultaneously with its tariff, evidence of insurance on Form FMC–67. The insurance must provide coverage for damages, reparations or penalties arising from any transportation-related activities under the Shipping Act of 1984 of the insured NVOCC and must be placed with:

(1) An Insurer having a financial rating of Class V or higher under the Financial Size Categories of A.M. Best & Company, or equivalent from an acceptable international rating organization;

(2) Underwriters at Lloyd's; or

(3) Surplus lines insurers named on a current "white list" issued by the Non-Admitted Insurers' Information Office of the National Association of Insurance Commissioners.

This evidence of financial responsibility shall be accompanied by: In the case of a financial rating, the Insurer's financial rating on the rating organization's letterhead or designated form; in the case of insurance provided by

Underwriters at Lloyd's, documentation verifying membership in Lloyd's; and in the case of insurance provided by surplus lines insurers, documentation verifying inclusion on a current "white list" issued by the Non-Admitted Insurers' Information Office of the National Association of Insurance Commissioners. The Insurer must certify that it has sufficient and acceptable assets located in the United States to cover all transaction-related liabilities of the Insured NVOCC as specified under the Shipping Act of 1984.

(c) Guaranty, by filing with the Commission, simultaneously with its tariff, evidence of guaranty on Form FMC–68. The guaranty must provide coverage for damages, reparations or penalties arising from any transportation-related activities under the Shipping Act of 1984 of the covered NVOCC and must be placed with:

(1) A Guarantor having a financial rating of Class V or higher under the Financial Size Categories of A.M. Best & Company, or equivalent from an acceptable international rating organization;

(2) Underwriters at Lloyd's; or

(3) Surplus lines insurers named on a current "white list" issued by the Non-Admitted Insurer's Information Office of the National Association of Insurance Commissioners.

This evidence of financial responsibility shall be accompanied by: In the case of a financial rating, the Guarantor's financial rating on the rating organization's letterhead or designated form; in the case of a guaranty provided by Underwriters at Lloyd's, documentation verifying membership in Lloyd's; and in the case of an guaranty provided by surplus lines insurers, documentation verifying inclusion on a current "white list" issued by the Non-Admitted Insurers' Information Office of the National Association of Insurance Commissions. The guarantor must certify that it has sufficient and acceptable assets located in the United States to cover all transportation-related liabilities of the covered NVOCC as specified under the Shipping Act of 1984.

(d) Evidence of financial responsibility of the type provided for in paragraphs (a), (b) and (c) of this section established through and filed with the Commission by a group or association of NVOCCs on behalf of its members, subject to the following conditions and procedures;

(1) Each group or association of NVOCCs shall notify the Commission of its intention to participate in such a program and furnish documentation as will demonstrate its authenticity and authority to represent its members, such as articles of incorporation, bylaws, etc.;

(2) Each group or association of NVOCCs shall provide the Commission with a list certified by its Chief Executive Officer containing the names of those NVOCCs to which it will provide coverage, in whole or in part; the manner and amount of existing coverage each covered NVOCC has; an indication that the existing coverage provided each NVOCC is provided by a surety bond issued by a surety company found acceptable to the Secretary of the Treasury, or by insurance or guaranty issued by a firm meeting the requirements of paragraphs (b) or (c) of this section with coverage limits of at least $50,000.00; and the name, address and facsimile number of each surety, insurer or guarantor providing coverage pursuant to this section. Each group or association of NVOCCs shall notify the Commission within thirty (30) days of any changes to its list.

(3) The group or association shall provide the Commission with a sample copy of each type of existing financial responsibility coverage used by member NVOCCs.

(4) Each group or association of NVOCCs shall be responsible for ensuring that each member's financial responsibility coverage allows for claims to be made in the United States against the Surety, Insurer or Guarantor for any judgment for damages against the NVOCC arising from its transportation-related activities under the Shipping Act of 1984, or order for reparations issued pursuant to section 11 of the Shipping Act of 1984, 46 U.S.C. app. 1710, or any penalty assessed against the NVOCC pursuant to section 13 of the Shipping Act of 1984, 46 U.S.C. app. 1712. Each group or association of NVOCCs shall be responsible for requiring each member NVOCC to provide it with valid proof of financial responsibility annually.

(5) Where the group or association of NVOCCs determines to secure on behalf of its members other forms of financial responsibility, as specified by this section, for damages, reparations or penalties not covered by a member's individual financial responsibility coverage, such additional coverage must:

(i) Allow claims to be made in the United States directly against the group or associations's Surety, Insurer or Guarantor for damages against each covered member NVOCC arising from each covered member NVOCC's transportation-related activities under the Shipping Act of 1984, or order for reparations issued pursuant to section 11 of the Shipping Act of 1984, 46 U.S.C. app. 1710, or any penalty assessed against each covered member NVOCC pursuant to section 13 of the Shipping Act of 1984, 47 U.S.C. app. 1712; and

(ii) Be for an amount up $50,000.00 for each covered member NVOCC up to a maximum of $1,000,000.00 for each group or association of NVOCCs.

(6) The coverage provided by the group or association of NVOCCs on behalf of its members, in whole or in part, shall be provided by:

(i) In the case of a surety bond, a surety company found acceptable to the Secretary of the Treasury and issued by such a surety company on Form FMC–69; and

(ii) In the case of insurance and guaranty, a firm having a financial rating of Class V or higher under the Financial Size Categories of A.M. Best & Company or equivalent from an acceptable international rating organization, Underwriters at Lloyd's, or surplus line insurers named on a current "white list" issued by the Non-Admitted Insurer's Information Office of the National Association of Insurance Commissioners and issued by such firms on Form FMC–67 and Form FMC–68, respectively.

All forms and documents for establishing financial responsibility of NVOCCs prescribed in this section shall be submitted to the Director, Bureau of Tariffs, Certification and Licensing, Federal Maritime Commission, Washington, DC 20573. The Federal Maritime Commission shall not serve as depository or distributor to third parties of bond, guaranty, or insurance funds in the event of any claim, judgment, or order for reparations. Such forms and documents must clearly identify the name; trade name, if any; the address; and effective January 1, 1994, the organization number as provided in 46 CFR 514.11(a) of each NVOCC. Copies of all forms may be obtained from the Commission's Bureau of Tariffs, Certification and Licensing at the address listed above, or from any other Commission's district offices located in New York, NY; New Orleans, LA; San Francisco, CA; Hato Rey, PR; Los Angeles, CA; Miami, FL; and Houston, TX.

14. Paragraphs (a) and (b) of § 583.5 are revised and § 583.5(e) is added to read as follows:

§ 583.5 Resident agent.

(a) Every non-vessel-operating common carrier not domiciled in the United States and every group or association of NVOCCs which provide,

in whole or in part, financial coverage for a member NVOCC's financial responsibilities pursuant to § 583.4 not domiciled in the United States shall designate and maintain a person in the United States as legal agent for the receipt of judicial and administrative process, including subpoenas.

(b) If the designated legal agent cannot be served because of death, disability, or unavailability, the Secretary, Federal Maritime Commission, will be deemed to be the legal agent for service of process. Any person serving the Secretary must also send to the NVOCC, group or association of NVOCCs by registered mail, return receipt requested, at its address published in its tariff on file with the Commission, a copy of each document served upon the Secretary, and shall attest to that mailing at the time service is made upon the Secretary.

(c) * * *

(d) * * *

(e) Every non-vessel-operating common carrier using a group of association of NVOCCs to cover all or part of its financial responsibility requirement under § 583.4 shall publish the name and address of the group or association's resident agent for receipt of judicial and administrative process, including subpoenas, in its tariff in accordance with § 514.15(b)(24)(ii) and § 580.5(d)(24)(ii) of this chapter.

15. Paragraph (a) of § 583.6 is revised to read as follows:

§ 583.6 Termination of financial responsibility or designation of resident agent.

(a) Upon receipt of notice of termination by a surety bond, group supplemental coverage bond, insurance coverage or guaranty, the Commission shall notify the NVOCC or group or association of NVOCCs by certified or registered mail at its address published in its tariff or on the list required of a group or association on file with the Commission, that the Commission shall, without hearing or other proceeding, suspend or cancel the tariff or tariffs of the NVOCC or NVOCCs as of the termination date of the bond, group supplemental coverage bond, insurance coverage or guaranty, unless the NVOCC, group or association of NVOCCs submits a valid replacement surety bond, group supplemental coverage bond, insurance coverage or guaranty before such termination date. Replacement surety bonds, group supplemental coverage bonds, insurance coverage or guaranties must bear an effective date no later than the termination date of the expiring bond, group supplemental coverage bond, insurance coverage or guaranty. The liability of the retiring surety, insurer or guarantor shall be considered as having terminated as of the effective date of the replacement surety bond, group supplemental coverage bond, insurance policy or guaranty.

* * * * *

16. Appendix B to Part 583 is added to read as follows:

Appendix B to Part 583—Non-Vessel-Operating Common Carrier (NVOCC) Insurance Form [FMC–67]

Form FMC–[67]

Federal Maritime Commission

Non-Vessel-Operating Common Carrier Insurance Form Furnished as Evidence of Financial Responsibility Under 46 U.S.C. app. 1721

This is to certify, that the

_____

(Name of Insurance Company) (hereinafter "Insurer") of

_____

(Home Office Address of Company) has issued to

_____

(Non-Vessel-Operating Common Carrier or Group or Association of NVOCCs) (hereinafter called "Insured") of

_____

(Address of Non-Vessel-Operating Common Carrier or Group or Association of NVOCCs)

a policy or policies of insurance for purposes of complying with the provisions of 46 U.S.C. app. 1721 and the rules and regulations, as amended, of the Federal Maritime Commission, which provide compensation for damages, reparations or penalties arising from the transportation-related activities of Insured, and made pursuant to the Shipping Act of 1984.

Whereas, the Insured is or may become a Non-Vessel-Operating Common Carrier ("NVOCC") subject to the Shipping Act of 1984, 46 U.S.C. app. 1701 *et seq.*, and the rules and regulations of the Federal Maritime Commission ("Commission"), or is or may become a group or association of NVOCCs, and desires to establish financial responsibility in accordance with section 23 of the Shipping 23 of 1984, has elected to file with the Commission this Insurance Form as evidence of its financial responsibility and evidence of a financial rating for the Insurer of Class V or higher under the Financial Size Categories of A.M. Best & Company or equivalent from an acceptable international rating organization on such organization's letterhead or designated form, or, in the case of insurance provided by Underwriters at Lloyd's, documentation verifying membership in Lloyd's, or, in the case of surplus lines insurers, documentation verifying inclusion on a current "white list" issued by the Non-Admitted Insurers' Information Office of the National Association of Insurance Commissioners.

Whereas, this Insurance is written to assure compliance by the Insured with section 23 of the Shipping Act of 1984, 46 U.S.C. app. 1721, and the rules and regulations of the Federal Maritime Commission relating to evidence of financial responsibility for non-vessel-operating common carriers, this Insurance shall be available to pay any and all claimants to whom the Insured may be legally liable for any damages against the Insured arising from the Insured's transportation-related activities under the Shipping Act of 1984, or order for reparations issued pursuant to section 11 of the Shipping Act of 1984, 46 U.S.C. app. 1710; or any penalty assessed against the Insured pursuant to section 13 of the Shipping Act of 1984, 46 U.S.C. app. 1712; provided, however, that Insurer's obligation for a group or association of NVOCCs shall extend only to such damages, reparations or penalties described herein as are not covered by another insurance policy, guaranty or surety bond held by the NVOCC(s) against which a claim or final judgment has been brought and that Insurer's total obligation hereunder shall not exceed Fifty Thousand Dollars ($50,000.00) per NVOCC, or One Million Dollars ($1,000,000.00) in aggregate, for a group or association of NVOCCs.

Whereas, the Insurer certifies that it has sufficient and acceptable assets located in the United States to cover all liabilities of Insured herein described, this Insurance shall inure to the benefit of any and all persons who have a bona fide claim against the Insured arising from its transportation-related activities under the Shipping Act of 1984, or order of reparation issued pursuant to section 11 of the Shipping Act of 1984, and to the benefit of the Federal Maritime Commission for any penalty assessed against the Insured pursuant to section 13 of the Shipping Act of 1984.

The Insurer consents to be sued directly in respect of any bona fide claim owed by Insured for damages, reparations or penalties arising from the transportation-related activities under the Shipping Act of 1984 of Insured in the event that such legal liability has not been discharged by the Insured within 30 days after a claimant has obtained a final judgment (after appeal, if any) against the Insured from a United States Federal or State Court of competent jurisdiction, the Federal Maritime Commission, or where all parties and claimants mutually consent, from a foreign court, or where such claimant has become entitled to payment of a specified sum by virtue of a compromise settlement agreement made with the Insured, whereby, upon payment of the agreed sum, the Insured is to be fully, irrevocably and unconditionally discharged from all further liability to such claimant; provided, however, that Insurer's total obligation hereunder shall not exceed Fifty Thousand Dollars ($50,000.00) per NVOCC, or One Million Dollars ($1,000,000,00) for a group or association of NVOCCs.

The liability of the Insurer shall not be discharged by any payment or succession of payments hereunder, unless and until such payment or payments shall aggregate the penalty of the Insurance or Fifty Thousand Dollars ($50,000.00) per NVOCC, or One Million Dollars ($1,000,000.00) for a group or association of NVOCCs, whichever comes first, regardless of the financial responsibility

or lack thereof, or the solvency or bankruptcy, of Insured.

The insurance evidenced by this undertaking shall be applicable only in relation to incidents occurring on or after the effective date and before the date termination of this undertaking becomes effective. The effective date of this undertaking shall be _____day of _____, 19_____, and shall continue in effect until discharged or terminated as herein provided. The Insured or the Insurer may at any time terminate the Insurance by filing a notice in writing with the Federal Maritime Commission at its office in Washington, DC. Such termination shall become effective thirty (30) days after receipt of said notice by the Commission. The Insurer shall not be liable for any transportation-related activities under the Shipping Act of 1984 of the Insured after the expiration of the thirty (30) day period but such termination shall not affect the liability of the Insured and Insurer for such activities occurring prior to the date when said termination becomes effective.

Insurer or Insured shall immediately give notice to the Federal Maritime Commission of all lawsuits filed, judgments rendered, and payments made under the insurance policy.

(Name of Agent) _____ domiciled in the United States, with offices located in the United States, at _____is hereby designated as the Insurer's agent for service of process for the purposes of enforcing the Insurance certified to herein.

If more than one insurer joins in executing this document, that action constitutes joint and several liability on the part of the insurers.

The Insurer will promptly notify the Director, Bureau of Tariffs, Certification and Licensing, Federal Maritime Commission, Washington, DC 20573, of any claim(s) against the Insurance.

Signed and sealed this _____day of _____, 19____.

_____

Signature of Official signing on behalf of Insurer

_____

Type Name and Title of signer

This Insurance Form has been filed with the Federal Maritime Commission.

17. Appendix C to Part 583 is added to read as follows:

Appendix C to Part 583—Non-Vessel-Operating Common Carrier (NVOCC) Guaranty Form [FMC–68]

Form FMC–[68]

Federal Maritime Commission

Guaranty in Respect of Non-Vessel-Operating Common Carrier Liability for Damages, Reparations or Penalties Arising From Transportation-Related Activities Under the Shipping Act of 1984

1. Whereas _____(Name of applicant) (Hereinafter referred to as the "Applicant") is or may become a Non-Vessel-Operating Common Carrier ("NVOCC") subject to the Shipping Act of 1984, 46 U.S.C. app. 1701 *et seq.*, and the rules and regulations of the Federal Maritime Commission ("FMC"), or is or may become a group or association of NVOCCs, and desires to establish its financial responsibility in accordance with section 23 of the 1984 Act, then, provided that the FMC shall have accepted, as sufficient for that purpose, the Applicant's application, supported by evidence of a financial rating for the Guarantor of Class V or higher under the Financial Size Categories of A.M. Best & Company or equivalent from an acceptable international rating organization on such rating organization's letterhead or designated form, or, in the case of Guaranty provided by Underwriters at Lloyd's, documentation verifying membership in Lloyd's, or, in the case of surplus lines insurers, documentation verifying inclusion on a current "white list" issued by the Non-Admitted Insurers' Information Office of the National Association of Insurance Commissioners, the undersigned Guarantor certifies that it has sufficient and acceptable assets located in the Untied States to cover all transportation-related liabilities of the covered NVOCC as specified under the Shipping Act of 1984, the undersigned Guarantor hereby guarantees to discharge the Applicant's legal liability to indemnify bona fide claimants for damages, reparations or penalties arising from Applicant's transportation-related activities under the Shipping Act of 1984 in the event that such legal liability has not been discharged by the Applicant within 30 days after any such claimant has obtained a final judgment (after appeal, if any) against the Applicant from a United States Federal or State Court of competent jurisdiction, the FMC, or where all parties and claimants mutually consent, from a foreign court, or where such claimant has become entitled to payment of a specified sum by virtue of a compromise settlement agreement made with the Applicant, with the approval of the Guarantor, whereby, upon payment of the agreed sum, the Applicant is to be fully, irrevocably and unconditionally discharged from all further liability to such claimant. In the case of a guaranty covering the liability of a group or association of NVOCCs, Guarantor's obligation extends only to such damages, reparations or penalties described herein as are not covered by another insurance policy, guaranty or surety bond held by the NVOCC(s) against which a claim or final judgment has been brought.

2. The Guarantor's liability under this Guaranty is respect to any claimant shall not exceed the amount due to such claimant; and the aggregate amount of the Guarantor's liability under this Guaranty shall not exceed Fifty Thousand Dollars ($50,000.00) per NVOCC, or One Million Dollars ($1,000,000.00) in aggregate, for each group or association of NVOCCs.

3. The Guarantor's liability under this Guaranty shall attach only in respect of such activities giving rise to a cause of action against the Applicant, in respect of any of its transportation-related activities under the Shipping Act of 1984, occurring after the Guaranty has become effective, and before the expiration date of this Guaranty, which shall be the date 30 days after the date of receipt by FMC of notice in writing that either Applicant or the Guarantor has elected to terminate this Guaranty. The Guarantor and/or Applicant specifically agree to file such written notice of cancellation.

4. Guarantor shall not be liable for payments of any of the damages, reparations or penalties hereinbefore described which arise as the result of any transportation-related activities of Applicant after the cancellation of the Guaranty, as herein provided, but such cancellation shall not affect the liability of the Guarantor for the payment of any such damages, reparations or penalties prior to the date such cancellation becomes effective.

5. Guarantor shall pay, subject up to limit of Fifty Thousand Dollars ($50,000.00), directly to a claimant any sum or sums which Guarantor, in good faith, determines that the Applicant has failed to pay and would be held legally liable by reason of Applicant's transportation-related activities, or its legal responsibilities under the Shipping Act of 1984 and the rules and regulations of the Federal Maritime Commission, made by Applicant while this agreement is in effect, regardless of the financial responsibility or lack thereof, or the solvency or bankruptcy, of Applicant.

6. Applicant or Guarantor shall immediately give written notice to the FMC of all lawsuits filed, judgments rendered, and payments made under the Guaranty.

7. Applicant and Guarantor agree to handle the processing and adjudication of claims by claimants under the Guaranty established herein in the United States, unless by mutual consent of all parties and claimants another country is agreed upon. Guarantor agrees to appoint an agent for service of process in the United States.

8. This Guaranty shall be governed by the laws in the State of _____to the extent not inconsistent with the rules and regulations of the FMC.

9. This Guaranty is effective the _____ day of _____, 19____, 12:01 a.m., standard time at the address of the Guarantor as stated herein and shall continue in force until terminated as herein provided.

10. The Guarantor hereby designates as the Guarantor's legal agent for service of process domiciled in the United States. _____, with offices located in the United States at _____, for the purposes of enforcing the Guaranty described herein.

_____

(Place and Date of Execution)

_____

(Type Name of Guarantor)

_____

(Type Address of Guarantor)

By _____

(Signature and Title)

18. Appendix D to part 583 is added to read as follows:

Appendix D to Part 583—Non-Vessel-Operating Common Carrier (NVOCC) Group Bond Form [FMC–69]

Form FMC—[69]

Federal Maritime Commission

Federal Maritime Commission Non-Vessel-Operating Common Carrier (NVOCC) Group Supplemental Coverage Bond Form (Section 23, Shipping Act of 1984)

_____, as Principal (hereinafter called Principal), and _____, as Surety (hereinafter called Surety) are held and firmly bound unto the United States of America in the sum of $_____for the payment of which sum we bind ourselves, our heirs, executors, administrators, successors and assigns, jointly and severally.

Whereas, (Principal) _____ operates as a group or association of non-vessel-operating common carriers in the waterborne foreign commerce of the United States and pursuant to section 23 of the Shipping Act of 1984 has elected to file this bond with the Federal Maritime Commission ("Commission");

Now, Therefore, the conditions of this obligation are that the penalty amount of this bond shall be available to pay any judgment against the NVOCCs enumerated in Appendix A of this bond for damages arising from any or all of the identified NVOCCs' transportation-related activities under the Shipping Act of 1984, 46 U.S.C. app. 1701 *et seq.*, or order for reparations issued pursuant to section 11 of the Shipping Act of 1984, 46 U.S.C. app. 1710, or any penalty assessed pursuant to section 13 of the Shipping Act of 1984, 46 U.S.C. app. 1712 that are not covered by the identified NVOCCs' individual insurance policy(ies), guaranty(ies) or surety bond(s).

This bond shall inure to the benefit of any and all persons who have obtained a judgment for damages against any or all of the NVOCCs identified in Appendix A not covered by said NVOCCs insurance policy(ies), guaranty(ies) or surety bond(s) arising from said NVOCCs transportation-related activities under the Shipping Act of 1984, or order for reparation issued pursuant to section 11 of the Shipping Act of 1984, and to the benefit of the Federal Maritime Commission for any penalty assessed against said NVOCCs pursuant to section 13 of the Shipping Act of 1984. However, this bond shall not apply to shipments of used military household goods and personal effects.

The liability of the Surety shall not be discharged by any payment or succession of payments hereunder, unless and until such payment or payments shall aggregate the penalty of this bond, and in no event shall the Surety's total obligation hereunder exceed Fifty Thousand Dollars ($50,000.00) per NVOCC identified in appendix A, or One Million Dollars ($1,000,000.00) regardless of the number of NVOCCs, claims or claimants.

This bond is effective the _____day of _____, 19____, and shall continue in effect until discharged or terminated as herein provided. The Principal or the Surety may at any time terminate this bond by written notice to the Federal Maritime Commission at its office in Washington, DC. Such termination shall become effective thirty (30) days after receipt of said notice by the Commission. The Surety shall not be liable for any transportation-related activities of the NVOCCs identified in appendix A as covered by the Principal after the expiration of the thirty (30) day period, but such termination shall not affect the liability of the Principal and Surety for any transportation-related activity occurring prior to the date when said termination becomes effective.

The Principal will promptly notify the underwriting Surety and the Director, Bureau of Tariffs, Certification and Licensing, Federal Maritime Commission, Washington, DC 20573, of any additions, deletions or changes to the NVOCCs enumerated in appendix A. In the event of additions to appendix A, coverage will be effective upon receipt of such notice, in writing, by the Commission at its office in Washington, DC. In the event of deletions to appendix A, termination of coverage for such NVOCC(s) shall become effective thirty (30) days after receipt of written notice by the Commission. Neither the Principal nor the Surety shall be liable for any transportation-related activities of the NVOCC(s) deleted from appendix A after the expiration of the thirty (30) day period, but such termination shall not affect the liability of the Principal and Surety for any transportation-related activity of said NVOCC(s) occurring prior to the date when said termination becomes effective.

The underwriting Surety will promptly notify the Director, Bureau of Tariffs, Certification and Licensing, Federal Maritime Commission, Washington, DC 20573, of any claim(s) against this bond.

Signed and sealed this _____day of, 19____ (Please type name of signer under each signature).

Individual Principal or Partner

Business Address

Individual Principal or Partner

Business Address

Individual Principal or Partner

Business Address

Trade Name, if Any

Corporate Principal

Place of Incorporation

Trade Name, If Any

Business Address (Affix Corporate Seal)

By

Title

Principal's Agent for Service of Process (Required if Principal is not a U.S. Corporation)

Agent's Address

Corporate Surety

Business Address (Affix Corporate Seal)

By

Title

By the Commission.

Joseph C. Polking,

Secretary.

[FR Doc. 93–1416 Filed 1–21–93; 8:45 am]

BILLING CODE 6730–01–M

46 CFR Parts 560 and 572

[Docket No. 92–33]

Marine Terminal Facilities Agreements—Exemption

AGENCY: Federal Maritime Commission.

ACTION: Final rule.

SUMMARY: In order to relieve the industry of administrative burden and associated costs, the Federal Maritime Commission unconditionally exempts marine terminal facilities agreements among marine terminal operators and between marine terminal operators and common carriers by water from the agreement filing and notice requirements of the Shipping Act, 1916 ("1916 Act") and the Shipping Act of 1984 ("1984 Act") and the Commission's implementing regulations thereunder, and establishes a new public availability requirement.

EFFECTIVE DATE: January 22, 1993.

FOR FURTHER INFORMATION CONTACT: Austin L. Schmitt, Director, Bureau of Trade Monitoring and Analysis, Federal Maritime Commission, 800 North Capitol Street, NW., Washington, DC 20573, (202) 523–5787.

SUPPLEMENTARY INFORMATION: The Federal Maritime Commission ("Commission" or "FMC"), in its notice of proposed rulemaking ("NPR") published in the **Federal Register** on June 10, 1992 (57 FR 24569), proposed to exempt marine terminal facilities agreements (leases, subleases, licenses, assignments, permits, etc., that convey the right to operate marine terminal facilities or property) from the current filing requirements contained in 46 CFR parts 560 and 572 under two conditions. First, information concerning the parties involved, the facilities covered, and the effective date of the agreement would have to be published in the marine terminal tariffs filed with the Commission. Second, parties to the exempt agreements would be required to make copies of their active facilities agreements available to interested parties at a nominal copying cost.

In its further notice of proposed rulemaking ("FNPR"), published in the **Federal Register** on November 3, 1992 (57 FR 49666), the Commission proposed to revise its NPR to exempt unconditionally terminal facilities agreements from current filing and notice requirements, while requiring marine terminal operators ("MTOs") that are subject to Commission regulation to make copies of their currently effective terminal facilities agreements available to any and all interested parties for a reasonable copying and mailing fee.

Comments

The Commission received eight comments on the revised proposed rule from the American Association of Port Authorities ("AAPA"), Master Contracting Stevedore Association of the Pacific Coast, Inc., National Association of Stevedores ("NAS"), the Port Authority of New York and New Jersey ("PANYNJ"), Puerto Rico Maritime Shipping Authority ("PRMSA"), Stevedoring Services of America, Inc. ("SSA"), Port of Tacoma ("Tacoma"),[1] and Tampa Port Authority ("Tampa").

Most commenters were generally supportive of an exemption for marine terminal facilities agreements. Of the comments received, three advised that the antitrust treatment in the revised proposed rule was inconsistent with past Commission actions, six suggested alternatives to the revised proposed rule's public availability requirement, and one requested that the Commission narrow the scope of the proposed rule to exclude agreements that could have an anti-competitive effect.

Discussion

The Commission has considered all of the comments received in response to the FNPR, and has determined to adopt the revised proposed rule as the final rule. Comments not expressly discussed either have been found to be supportive of the Commission's proposed rule or have been found to be beyond the scope of this proceeding. The discussion below presents key comments on the FNPR and addresses their relevance to the final rule.

A. The Effect of the Exemption on Antitrust Immunity

In the FNPR, the Commission stated that marine terminal facilities agreements pertaining to facilities that handle only foreign cargo can receive antitrust immunity under section 7(a)(1) of the 1984 Act, 46 U.S.C. app. 1706(a)(1), whether they are filed and become effective or are exempt from filing. However, because section 35 of the 1916 Act, *id.* app. 833a, does not similarly provide that exempted agreements are immune from the antitrust laws, marine terminal facilities agreements subject to the 1916 Act may obtain immunity only if they are filed optionally as provided by 46 CFR 560.301(b).[2] There is no dispute that this applies to terminal facilities agreements that handle only domestic cargo. However, the FNPR stated that, under the proposed exemption, marine terminal facilities agreements covering "mixed" facilities used for the handling of both foreign and domestic cargo would not obtain antitrust immunity for the domestic commerce portion, unless such agreements were filed optionally and subsequently approved by the Commission under the standards of the 1916 Act. The foreign portion of such agreements would obtain immunity pursuant to section 7(a)(1) of the 1984 Act. Marine facilities agreements that previously were filed with and approved by the Commission under the 1916 Act would continue to retain antitrust immunity under the proposed filing exemption.

Several commenters point out that the FNPR's analysis with respect to "mixed" facilities agreements conflicts with the Commission's conclusion in Docket 84–26, *Rules Governing Agreements by Ocean Common Carriers and Other Persons Subject to the Shipping Act of 1984*, 49 FR 22296 (May 29, 1984) (Interim Rules), 49 FR 45320 (November 15, 1984) (Final Rules). There the Commission stated: The Commission has given careful consideration to formulating an interpretation of the relationship between the scopes of the two Shipping Acts in a practical manner insofar as marine terminal operator agreements which involve both streams of commerce are concerned. Certainly the legislative history of the 1984 Act does not support a conclusion that Congress intended that marine terminal operator agreements which involve both streams of commerce be simultaneously subjected to the regulatory regimes of both the 1916 and 1984 Acts. Consequently, the Commission * * * interprets the 1984 Act as extending to marine terminal operator agreements which relate to marine terminal facilities and/or services which, either wholly or in part, handle or are held out to handle foreign commerce, either directly or by transshipment, including (1) agreements involving both foreign and interstate commerce * * *. 49 FR 22298.

PANYNJ and Tacoma assert that the FNPR ignores the realities of the marine terminal business. PANYNJ states that the focus of this proceeding should not be on the origin and destination of the cargo, but rather on the nature of a marine terminal facilities agreement. PANYNJ predicts that, if the revised proposed rule is adopted as a final rule, the rulemaking will not meet its goal of relieving the terminal industry of the administrative burden and associated costs of filing facilities agreements with the Commission because, PANYNJ states, most marine terminal operators will continue to file their agreements if there is any uncertainty as to whether an exempted agreement holds antitrust immunity. PANYNJ and Tacoma urge the Commission to reaffirm its statement in Docket 84–26 that the 1984 Act will apply to agreements governing "mixed" terminal facilities, that such agreements will therefore be immune from the antitrust laws as well as exempted from filing, and that the 1916 Act's filing and approval requirements for immunity will apply only where a facility is dedicated solely to domestic cargo.

The Commission is unable to accommodate the commenters on this point. In Docket No. 84–26, we concluded that processing "mixed" marine terminal facilities agreements only under the 1984 Act would be the most efficient and least burdensome method of administering the filing of such agreements. The question of the antitrust immunity conferred by such a filing was not specifically addressed. Upon review now of the relevant statutory language, we conclude that a "mixed" agreement filed only under the 1984 Act receives immunity only for the agreement's foreign portion and is otherwise subject to the separate requirements of the 1916 Act. Section 4(b) of the 1984 Act states that the Act applies to agreements among marine terminal operators, and to agreements among one or more marine terminal operators and one or more ocean common carriers, "*to the extent that* the agreements involve ocean transportation in the foreign commerce of the United States * * *." 46 U.S.C. app. 1703(b) (emphasis supplied). Congress has determined, therefore, that the 1984 Act's grant of antitrust immunity for exempted agreements is available for marine terminal facilities agreements

[1] Tacoma's submission has been considered by the Commission despite the fact it was received after the close of the comment period.

[2] The relevant subsection provides: that Notwithstanding any exemption from filing or approval or other requirements of the Act and this part, any party to an exempt agreement may file such an agreement with the Commission.

only "to the extent that" such agreements involve the foreign commerce of the United States. It follows that, "to the extent that" such agreements involve the domestic commerce of the United States, the 1916 Act governs rather than the 1984 Act, and Congress has not yet seen fit to grant antitrust immunity to agreements exempted from filing under the 1916 Act. The Commission is obliged to administer the antitrust immunity provisions of the 1984 Act within the statute's basic jurisdictional boundaries, considerations of administrative convenience notwithstanding. See, *e.g., Foreign-to-Foreign Agreements—Exemption*, 24 SRR 1448 (1988), *reconsideration denied*, 25 SRR 455 (1989), *aff'd sub nom. Transpacific Westbound Rate Agreement* v. *FMC*, 951 F.2d 950 (9th Cir. 1991).

B. Public Availability Requirements

In the FNPR, the Commission removed the NPR's tariff publication requirement, replacing it with an unconditional exemption from filing and notice requirements. A new public availability requirement was added, which requires that all MTOs make copies of their marine terminal facilities agreements available to any and all requesting parties for a reasonable copying and mailing fee.

AAPA, PANYNJ, Tacoma, and Tampa endorse the elimination of the requirement to publish the agreement information in the marine terminal tariffs, but believe that the public availability requirement is inadequate. AAPA contends that the requirement that agreements be made available upon request will be meaningless without an appropriate notification process. AAPA again suggests an information filing[3] with the Commission in lieu of the tariff publication requirement. PANYNJ, Tacoma, and Tampa suggest similar filing processes.

PRMSA opposes the FNPR's removal of the tariff publication requirement, but would accept as an alternative the information filing suggested by AAPA. PRMSA argues that without some publication of the agreement information, the public will not know of the existence of agreements and, contrary to the FMC's assertion, the agreements would be removed from regulatory oversight.

[3] In response to the NPR, AAPA suggested an information filing process which would require the parties to a marine terminal facilities agreement to submit the names and addresses of the parties to the agreement, the facilities covered by the agreement, and the effective date of the agreement to the Commission, which would in turn publish the information in the **Federal Register**.

AAPA and PANYNJ argue that such an information filing would aid the FMC in its enforcement responsibilities. AAPA states:

> The Commission is most likely to discover potential violations from parties at the receiving end of treatment alleged to be in violation of the Act, but only if they are aware of the existence of the agreement.

Comments at 3.

AAPA also states that public disclosure is essential to meeting the Commission's exemption standard, which requires a finding that an exemption will not substantially impair effective regulation by the Commission, be unjustly discriminatory, result in a substantial reduction in competition, or be detrimental to commerce.

Tampa contends that, while marine terminal facilities agreements may be subject to the disclosure requirements of public or quasi-public agencies (either local or state), such information is easily accessible to only those competitors in the local area. Tampa argues that, to be able to ensure access to agreements of interest, it will have to request all facilities agreements of competitive MTOs, and in doing so incur an undue burden.

NAS supports the revised rule but suggests that, rather than using the **Federal Register** for public notification, the Commission issue a press release or similar document, listing the marine terminal facilities agreements, by name of parties and the location, which have been filed each month. NAS advises that most marine terminal facilities agreements will continue to be filed with the FMC, especially those in which the parties contemplate handling any domestic cargo.

The Commission has determined to adopt the revised proposed rule's public availability requirement as a final rule. The FMC is sensitive to the concerns expressed by the commenters. However, we believe that the use of agency processes to gather and disseminate information—whether through **Federal Register** notices, tariff publication, or less formal mechanisms such as AAPA's information filing or NAS 's press release—and the imposition of those processes on the MTO industry should be limited as much as possible to information directly related to the FMC's regulatory oversight responsibilities under the Shipping Acts. The Commission's experience regulating the marine terminal industry persuades us that the facilities agreements exemption is unlikely to lead to attempts to violate the Shipping Acts. However, should such problems arise, the parties suffering injury due to actions alleged to be in violation of the Act most likely would be either private MTOs in the public port signatory to the agreement or competing ports in the same regional port range.[4] In such instances, the Commission believes that the local or state notice requirements should be fully adequate to maintain current levels of regulatory oversight. The Commission is also aware that, through participation in FMC-regulated regional port conferences, MTOs exchange information on leasing and other pricing/service activities. This exchange itself serves as an additional source of information for MTOs operating in the same coastal range.

Finally, in response to a concern expressed by AAPA, the public availability provision should not entail fees so high as to discourage the requesting party from obtaining the information. The rule contemplates only those costs directly related to the copying and mailing (*e.g.*, not inclusive of overhead costs) of the requested agreement.

C. Definition of Marine Terminal Facilities Agreement

In its comments on both the NPR and the FNPR, PRMSA notes that the scope of the proposed rule includes agreements that could have an anti-competitive effect in the domestic or foreign commerce of the United States. For example, PRMSA states that the proposed rule's definition of "marine terminal facilities agreement" would apply to an agreement whereby a terminal operator leases facilities to another competing terminal operator, and both operators agree within the context of that agreement to fix rates they charge their common carrier customers. PRMSA proposes that the rule be revised to apply only to "pure lease" marine terminal facilities agreements, and to exclude explicitly lease agreements that include price-fixing or other possibly anti-competitive provisions.

The exemption of such agreements from the filing and approval requirements of the 1916 Act and the filing and waiting period requirements of the 1984 Act does not mean that there is no way of controlling their economic consequences. A 1916 Act agreement will remain subject to that statute's approval standards or, if the parties have chosen to utilize the exemption, to the antitrust laws. A 1984 Act agreement will remain subject to the

[4] In the *Section 18 Report on the Shipping Act of 1984*, the Commission observed (at page 449) that competition in the MTO industry is primarily a rivalry between neighboring ports and/or ports within the same regional coastal range.

standards of section 6(g) of that statute, 46 U.S.C. app. 1705. That being the case, redefining the term "marine terminal facilities agreements" to exclude any agreement that could have an anti-competitive effect would serve no useful regulatory purpose.

Exemption Criteria

The Commission has concluded that the filing and notice exemption for terminal facilities agreements meets the exemption criteria of section 16 of the 1984 Act and section 35 of the 1916 Act, i.e., it should not substantially impair effective regulation, be unjustly discriminatory, be detrimental to commerce, or result in a substantial reduction in competition.

The exemption should not substantially impair effective regulation since the Commission retains its authority to adjudicate formal complaints and to investigate and take appropriate action to address any statutory violations occurring under arrangements that have been exempted from filing and notice requirements. Section 12 of the 1984 Act, 46 U.S.C. app. 1711, and section 27 of the 1916 Act, *id.* app. 826, confer the Commission with subpoena powers to obtain the information it may need for investigations and adjudicatory proceedings involving exempt activities. That authority and those powers should, in conjunction with the final rule's new public availability requirement, be sufficient to ensure that there will be no dimunition of the Commission's present degree of regulatory oversight. Additionally, the exemption applies only to filing and notice requirements, and does not relieve the parties to marine terminal facilities agreements from other requirements of the 1916 and 1984 Acts.

The exemption would not be unjustly discriminatory since it is available to all parties to marine terminal facilities agreements. MTOs are being required to make all current marine terminal facilities agreements available to the public, which should ensure that competing parties have access to information to which they properly are entitled. Therefore, the exemption should not adversely affect competition in the marine terminal industry or be detrimental to commerce.

Although the Commission, as an independent regulatory agency, is not subject to Executive Order 12291, dated February 17, 1981, it nonetheless has reviewed the rule in terms of the Order and has determined that this is not a "major rule" because it will not likely result in:

(1) An annual effect on the economy of $100 million or more;

(2) A major increase in costs or prices for consumers, individual industries, Federal, State, or local government agencies, or geographic regions; or

(3) Significant adverse effect on competition, employment, investment, productivity, innovation, or the ability of United States-based enterprises to compete with foreign-based enterprises in domestic or export markets.

This final rule concerns a filing and notice exemption that applies primarily to U.S. public port authorities and approximately twoscore private terminal operating companies. The minimal cost of the public availability requirement included in the final rule is expected, on average, to be offset by the savings that are anticipated from the filing and notice exemption. Therefore, the Commission certifies, pursuant to section 605(b) of the Regulatory Flexibility Act, 5 U.S.C. 605(b), that this rule will not have a significant economic impact on a substantial number of small entities, including small businesses, small organizational units and small government jurisdictions.

OMB CONTROL NUMBER: The collection of information requirements contained in this regulation were approved by the Office of Management and Budget under the provisions of the Paperwork Reduction Act of 1980, as amended, and have been assigned OMB control numbers 3072–0040 for part 560 and 3072–0045 for Part 572. Public reporting burdens for the collection of information were originally estimated to average 45 minutes per response for Part 560 and 45 minutes per response for part 572, including the time for reviewing instructions, searching existing data sources, gathering and maintaining data needed, and completing and reviewing the collection of information. However, because of the subsequent removal of the proposed requirement to publish information concerning terminal facilities agreements in MTO tariffs, the new public availability burdens for collection of information are estimated to average approximately 25 minutes per response for part 560 and 25 minutes per response for part 572. Comments regarding this burden estimate, including suggestions for reducing this burden, should be sent to Norman W. Littlejohn, Director, Bureau of Administration, Federal Maritime Commission, Washington, DC 20573, and to the Office of Information and Regulatory Affairs, Attention: Desk Officer for the Federal Maritime Commission, Office of Management and Budget, Washington, DC 20503.

List of Subjects

46 CFR Part 560

Administrative practice and procedure; Agreements; Antitrust; Freight; Maritime carriers; Penalties; Reporting and recordkeeping requirements.

46 CFR Part 572

Administrative practice and procedure; Agreements; Maritime carriers; Reporting and recordkeeping requirements.

Therefore, parts 560 and 572 of title 46, Code of Federal Regulations, are amended as follows:

PART 560—[AMENDED]

1. The authority citation for part 560 continues to read as follows:

Authority: 5 U.S.C. 553; 46 U.S.C. app. 814, 817(a), 820, 821, 833a and 841a.

2. Part 560 is amended by adding § 560.309 to subpart C to read as follows:

§ 560.309 Marine terminal facilities agreement-exemption.

(a) *Marine terminal facilities agreement* means any agreement between or among two or more marine terminal operators, or between one or more marine terminal operators and one or more common carriers by water, to the extent that the agreement involves ocean transportation in interstate commerce, which conveys to any of the involved parties any rights to operate any marine terminal facility by means of lease, license, permit, assignment, land rental, or other similar arrangement for the use of marine terminal facilities or property.

(b) All marine terminal facilities agreements as defined in § 560.309(a) are exempt from the filing and approval requirements of section 15 of the Shipping Act, 1916, and this part 560.

(c) Copies of any and all marine terminal facilities agreements currently in effect shall be provided, by parties to such agreements, to any requesting party for a reasonable copying and mailing fee.

3. In section 560.601 the introductory text is amended by revising the first sentence to read as follows:

§ 560.601 Federal Register notice.

With the exception of marine terminal facilities agreements, as defined in § 560.309(a), requests for approval which are not rejected pursuant to

§ 560.401 shall be noticed in the **Federal Register.** * * *

* * * * *

PART 572—[AMENDED]

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

Authority: 5 U.S.C. 553; 46 U.S.C. app. 1701–1707, 1709–1710, 1712 and 1714–1717.

5. Part 572 is amended by adding § 572.311 to subpart C to read as follows:

§ 572.311 Marine terminal facilities agreement-exemption.

(a) *Marine terminal facilities agreement* means any agreement between or among two or more marine terminal operators, or between one or more marine terminal operators and one or more ocean common carriers, to the extent that the agreement involves ocean transportation in the foreign commerce of the United States, which conveys to any of the involved parties any rights to operate any marine terminal facility by means of lease, license, permit, assignment, land rental, or other similar arrangement for the use of marine terminal facilities or property.

(b) All marine terminal facilities agreements as defined in § 572.311(a) are exempt from the filing and waiting period requirements of sections 5 and 6 of the Shipping Act of 1984 and this part 572.

(c) Copies of any and all marine terminal facilities agreements currently in effect shall be provided, by parties to such agreements, to any requesting party for a reasonable copying and mailing fee.

6. Section 572.602(a) is revised to read as follows:

§ 572.602 Federal Register notice.

(a) With the exception of marine terminal facilities agreements, as defined in § 572.311(a), a notice of any filed agreement which is not rejected pursuant to § 572.601 will be transmitted to the **Federal Register** within seven days of the date of filing.

* * * * *

By the Commission.

Joseph C. Polking,

Secretary.

[FR Doc. 93–1415 Filed 1–21–93; 8:45 am]

BILLING CODE 6730–01–M

DEPARTMENT OF TRANSPORTATION

Office of the Secretary

49 CFR Part 1

[OST Docket No. 1; Amdt. No. 1–255]

Organization and Delegation of Powers and Duties; Delegation to the Administrator, Research and Special Programs Administration

AGENCY: Office of the Secretary, (DOT).

ACTION: Final rule.

SUMMARY: This final rule delegates in part, and redelegates in part, to the Administrator of the Research and Special Programs Administration (RSPA), the authority of the Secretary of Transportation under the Federal Transit Act to issue and administer grants to institutions of higher learning for transportation research, education, and technology transfer. The redelegation is necessary because the functions and duties of the Secretary under section 11(b) of the Federal Transit Act, as amended (FTA), which had been delegated to the Assistant Secretary for Policy and International Affairs, have been carried out by the Administrator of RSPA (Administrator) since May 1991. The delegation is necessary to confer to the Administrator the authority contained in sections 6023 and 6024 of the Intermodal Surface Transportation Efficiency Act of 1991 (ISTEA). ISTEA amends section 11(b), and adds a new section 11(c), to the FTA. However, this document does not delegate sections 11(b)(8)(B) and 11(b)(10).

EFFECTIVE DATE: January 22, 1993.

FOR FURTHER INFORMATION CONTACT: Mr. Angelo Collaku, Office of the Chief Counsel, Research and Special Programs Administration, (202) 366–4400, Department of Transportation, 400 Seventh Street SW, Washington, DC 20590; or Mr. Steven Farbman, Office of the Assistant General Counsel for Regulation and Enforcement, C–50, (202) 366–9306, Department of Transportation, 400 Seventh Street SW., Washington, DC 20590.

SUPPLEMENTARY INFORMATION: Section 11 of the Federal Transit Act, as amended, 49 U.S.C. 1607c, provides the Secretary of Transportation with the authority to make grants to public and private nonprofit institutions of higher learning for research and education in the problems of transportation and for technology transfer. The program originally included the establishment of ten university transportation centers. By amending section 11(b) and adding new section 11(c), sections 6023 and 6024 of ISTEA expanded the program to include additional university transportation centers and university research institutes for the purpose of conducting research on transportation-related issues.

Prior to the enactment of ISTEA, all the functions and duties of the Secretary under section 11(b) had been delegated to the Assistant Secretary of Policy and International Affairs (49 CFR 1.56(k)). Since May 19, 1991, these functions and duties have been carried out by the Administrator with the Office of the Assistant Secretary for Policy and International Affairs retaining representation on the four-person board which supplies policy direction to the program. The authority contained in section 11(b), which had been delegated to the Assistant Secretary for policy and International Affairs, is being redelegated to the Administrator. Further, with the exception of sections 11(b)(8)(B) and 11(b)(10), which relate to construction grants, the authority contained in section 6023 of ISTEA, amending section 11(b), is delegated to the Administrator. Finally, the authority contained in section 6024 of ISTEA, adding a new section 11(c), is being delegated by the Secretary to the Administrator.

This amendment formally delegates in part, and redelegates in part, the necessary authority to carry out the administration of this program from the Office of the Secretary to the Administrator.

Since this amendment relates to departmental management, organization, procedures, and practice, notice and public comment are unnecessary, and it may be made effective in fewer than 30 days after publication in the **Federal Register.**

List of Subjects in 49 CFR Part 1

Authority delegations (Government agencies), Organization and functions (Government agencies).

In consideration of the foregoing, part 1 of title 49, Code of Federal Regulations, is amended to read as follows:

PART 1—[AMENDED]

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

Authority: 49 U.S.C. 322.

2. Section 1.53 is amended by adding a new paragraph (l) to read as follows:

§ 1.53 Delegations to the Administrator of the Research and Special Programs Administration.

* * * * *

(l) University Grants Program. Sections 11(b) and 11(c) of the Federal Transit Act, as amended, 49 U.S.C. App. 6207c(b) and 1607c(c), except for the provisions in sections 11(b)(8)(b) and 11(b)(10).

§ 1.56 [Removed]

3. Section 1.56(k) is removed.

Issued in Washington, DC, on December 10, 1992.

Andrew H. Card, Jr.,

Secretary of Transportation.

[FR Doc. 93–1508 Filed 1–21–93; 8:45 am]

BILLING CODE 4910–62–M

National Highway Traffic Safety Administration

49 CFR Part 571

[Docket No. 89–22; Notice 5]

RIN 2127–AD13

Federal Motor Vehicle Safety Standards; Roof Crush Resistance

AGENCY: National Highway Traffic Safety Administration (NHTSA), DOT.

ACTION: Final rule.

SUMMARY: This final rule delays for one year the effective date of a final rule amending Federal Motor Vehicle Safety Standard No. 216, *Roof Crush Resistance,* to extend its requirements to light trucks with a gross vehicle weight rating (GVWR) of 6,000 pounds or less. This delay will ease the economic burden of this regulation on the manufacturers of these vehicles, many of whom are small businesses, with minimal impact on occupant safety.

DATES: The amendments made in this rule are effective September 1, 1993.

Any petitions for reconsideration must be received by NHTSA no later than February 22, 1993.

ADDRESSES: Any petitions for reconsideration should refer to the docket and notice number of this notice and be submitted to: Docket Section, room 5109, National Highway Traffic Safety Administration, 400 Seventh Street, SW., Washington, DC 20590. (Docket Room hours are 9:30 a.m.–4 p.m., Monday through Friday.)

FOR FURTHER INFORMATION CONTACT: Mr. Christopher Flanigan, NRM–01.01, Special Projects Staff, Rulemaking, National Highway Traffic Safety Administration, 400 Seventh Street, SW., Washington, DC 20590. Telephone: (202) 366–4918.

SUPPLEMENTARY INFORMATION: On April 17, 1991, NHTSA published a final rule amending Federal Motor Vehicle Safety Standard No. 216, *Roof Crush Resistance,* to extend its requirements to multipurpose passenger vehicles, trucks, and buses with a gross vehicle weight rating (GVWR) of 6,000 pounds or less (hereinafter referred to as light trucks) (56 FR 15510). NHTSA extended Standard No. 216 to light trucks because of their increased use as passenger vehicles and the need to ensure that those vehicles offer safety protection comparable to that offered passenger car occupants. This final rule adopted the same test requirement and procedure as those for passenger cars, except that there is no 5,000 pound ceiling on the test force. This test force is applied to either side of the forward edge of the roof of the vehicle. The notice specified an effective date of September 1, 1993.

On August 25, 1992, NHTSA published a notice proposing to delay the effective date of the April 1991 final rule to September 1, 1994 (57 FR 38462). This rulemaking was undertaken in response to a variety of factors. One was the President's expression of concern about the regulatory burdens on small businesses at the time he established a regulatory moratorium in early 1992. Another was information which the agency had obtained during the earlier rulemaking proceeding leading to the April 1991 final rule. During that proceeding, NHTSA learned that many of the approximately 5 percent of the affected vehicles which did not already voluntarily comply with Standard No. 216 were multi-stage vehicles manufactured primarily by small businesses. Finally, there was a November 14, 1991 letter from the Recreation Vehicle Industry Association (RVIA). The letter informed the agency of the compliance difficulties which RVIA foresaw for some of its members. Most of them are small businesses engaged either in the manufacture of multi-stage vehicles or in the alteration of completed vehicles. NHTSA proposed to allow an additional year of leadtime for compliance to accommodate RVIA's concerns and the special needs of small businesses which have lesser financial resources. The notice of proposed rulemaking (NPRM) stated that NHTSA believed that the effective date could be extended without compromising safety, since there is already widespread voluntary compliance among single stage light truck manufacturers, which constitute approximately 95 percent of the population.

The agency received five comments on the August NPRM. Three of the five commenters—Chrysler Corporation (Chrysler), Ford Motor Company (Ford), and RVIA—supported the agency's proposal. Two commenters, Advocates for Highway and Auto Safety (Advocates) and the American Automobile Association (AAA), opposed the proposal.

Neither of the opponents believed the delay was justified by economic need. NHTSA disagrees. RVIA's November letter described specific difficulties its members were experiencing when attempting to certify vehicles, some of which have irregular roof configurations. An additional year would give the manufacturers more time to determine the most efficient method of compliance with the standard.

Advocates also disagreed with the NPRM's assertion that this delay would not compromise safety. Advocates expressed its concern that large single stage manufacturers would also delay implementation. NHTSA does not believe that there is basis for concern. As stated in the NPRM, approximately 95 percent of the affected vehicles already comply with this standard. In addition, Chrysler and Ford both stated that this extension would not delay their plans to implement the new requirements by the original effective date for the minority of their vehicles that are noncompliant.

In their comments, Ford and RVIA repeated previously expressed concerns regarding the applicability of the test procedure to vehicles with irregular roof configurations. However, the purpose of this rulemaking is to afford final stage manufacturers more time to assess how they will comply with the amendment, not to devise a new test procedure.

Advocates stated that NHTSA should limit the leadtime extension to vehicles manufactured by small businesses, as defined by the Small Business Act (15 U.S.C. 632). The National Traffic and Motor Vehicle Safety Act (15 U.S.C. 1381 *et seq.*) does not authorize this agency to issue standards based on the type or size of the manufacturer. Also, as stated previously, Chrysler and Ford indicated that this final rule will not affect their compliance plans.

This final rule does not have any retroactive effect. Under section 103(d) of the National Traffic and Motor Vehicle Safety Act (Safety Act; 15 U.S.C. 1392(d)), whenever a Federal motor vehicle safety standard is in effect, a State may not adopt or maintain a safety standard applicable to the same aspect of performance unless it is identical to the Federal standard, except to the extent that the state requirement imposes a higher level of performance and applies only to vehicles procured for the State's use. Section 105 of the Safety Act (15 U.S.C. 1394) sets forth a

procedure for judicial review of final rules establishing, amending or revoking Federal motor vehicle safety standards. That section does not require submission of a petition for reconsideration or other administrative proceedings before parties may file suit in court.

Rulemaking Analyses and Notices

Executive Order 12291 (Federal Regulation) and DOT Regulatory Policies and Procedures

NHTSA has examined the impact of this rulemaking action and determined that it is not "major" within the meaning of E.O. 12291. However, it is "significant" within the meaning of the Department of Transportation regulatory policies and procedures. Based on the April 1991 Final Regulatory Evaluation, the agency estimates that a delay of the effective date could result in a cost savings of $3–$32 million and that $1–$30 million of this would be associated with vehicles produced by multi-stage manufacturers. The agency also believes that this delay will not have a significant adverse impact on safety.

Regulatory Flexibility Act

NHTSA has also considered the impacts of this final rule under the Regulatory Flexibility Act. I hereby certify that this rule will not have a significant economic impact on a substantial number of small entities. As explained above, the agency does not anticipate a significant economic impact as a result of this final rule.

Paperwork Reduction Act

In accordance with the Paperwork Reduction Act of 1980 (P.L. 96–511), NHTSA notes that there are no requirements for information collection associated with this final rule.

National Environmental Policy Act

NHTSA has analyzed this final rule under the National Environmental Policy Act and determined that it will not have a significant impact on the human environment.

Executive Order 12612 (Federalism)

Finally, NHTSA has analyzed this proposal in accordance with the principles and criteria contained in E.O. 12612, and has determined that this rule will not have significant federalism implications to warrant the preparation of a Federalism Assessment.

List of Subjects in 49 CFR Part 571

Imports, Motor vehicle safety, Motor vehicles.

In consideration of the foregoing, 49 CFR Part 571 is amended as follows:

PART 571—FEDERAL MOTOR VEHICLE SAFETY STANDARDS

1. The authority citation for part 571 continues to read as follows:

Authority: 15 U.S.C. 1392, 1401, 1403, 1407, delegation of authority at 49 CFR 1.50.

2. Section 571.216 is amended by revising paragraphs S4(b) and S6.3(b) to read as follows:

§ 571.216 Standard No. 216; Roof crush resistance.

* * * * *

S4. *Requirements.*

* * * * *

(b) *Multipurpose passenger vehicles, trucks and buses with a GVWR of 6,000 pounds or less, manufactured on or after September 1, 1994.* For multipurpose passenger vehicles, trucks and buses with a GVWR of 6,000 pounds or less, manufactured on or after September 1, 1994, a test device as described in S5 shall not move more than 5 inches, measured in accordance with S6.4, when it is used to apply a force of 1½ times the unloaded vehicle weight of the vehicle to either side of the forward edge of a vehicle's roof in accordance with the procedures of S6.

* * * * *

S6.3 * * *

(b) *Multipurpose passenger vehicles, trucks and buses with a GVWR of 6,000 pounds or less, manufactured on or after September 1, 1994.* For multipurpose passenger vehicles, trucks and buses with a GVWR of 6,000 pounds or less, manufactured on or after September 1, 1994, apply force in a downward direction perpendicular to the lower surface of the test device at a rate of not more than one-half inch per second until reaching a force of 1½ times the unloaded vehicle weight of the test vehicle.

* * * * *

Issued on January 14, 1993.

Marion C. Blakey,

Administrator.

[FR Doc. 93–1413 Filed 1–21–93; 8:45 am]

BILLING CODE 4910–59–M

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49 CFR Part 571

[Docket No. 73–20; Notice 17]

RIN 2127–AD47

Federal Motor Vehicle Safety Standards; Fuel System Integrity; Alcohol Fuels

AGENCY: National Highway Traffic Safety Administration, DOT. (NHTSA), Department of Transportation (DOT).

ACTION: Final rule.

SUMMARY: This rule amends Federal Motor Vehicle Safety Standard No. 301, *Fuel System Integrity,* to establish anti-siphoning requirements for vehicles manufactured to operate on alcohol fuels. This rulemaking will reduce deaths and injuries by preventing the accidental ingestion of highly toxic alcohol fuel, especially methanol.

DATES: Effective Date: The amendment becomes effective September 1, 1993.

Petitions for reconsideration: Any petition for reconsideration of this rule must be received by NHTSA no later than February 22, 1993.

ADDRESSES: Any petition for reconsideration should refer to the docket and notice number set forth in the heading of this notice and be submitted to: Administrator, NHTSA, 400 Seventh Street SW., Washington, DC 20590.

FOR FURTHER INFORMATION CONTACT: Mr. Chris Flanigan, NRM–01.01, Special Projects Staff, National Highway Traffic Safety Administration, 400 Seventh Street, SW., Washington, DC 20590 (202–366–4918).

SUPPLEMENTARY INFORMATION:

I. Background

A. Current Standard

Federal Motor Vehicle Safety Standard No. 301 specifies requirements for the integrity of the entire motor vehicle fuel system which includes the fuel tanks, emission controls, lines and connections. The standard's purpose is to reduce the deaths and injuries from fires that result from fuel spillage during and after motor vehicle crashes. The standard applies to passenger cars, and to multipurpose passenger vehicles, trucks and buses that have a gross vehicle weight rating (GVWR) of 10,000 pounds or less. The standard also applies to all school buses, including those with a GVWR over 10,000 pounds. The standard applies to these vehicle types only if they use fuel with a boiling point above 32° Fahrenheit. Such fuels include gasoline, diesel fuel, and alcohol fuels such as methanol and ethanol.

Standard No. 301 specifies front, rear moving, and lateral moving barrier crash tests. Under the standard, fuel spillage in a fixed or barrier crash test cannot exceed one ounce of weight from impact until the vehicle's motion has ceased. Nor can spillage exceed five ounces by weight in five minutes following cessation of motion. In rollover tests, fuel spillage from the onset of rotational motion cannot exceed five ounces by weight for the first five minutes of testing. For the remaining testing

period, fuel spillage cannot exceed one ounce per weight during any one-minute interval. The standard also specifies a moving contoured barrier crash test for school buses with a GVWR over 10,000 pounds.

B. Use of Alcohol Fuels

The use of alcohol fuels in motor vehicles has received increasing attention in recent years. Under the Alternative Motor Fuels Act of 1988, the Department of Energy (DOE) has sponsored demonstration programs to encourage the use of vehicles fueled with natural gas, methanol and ethanol. In 1992, this program expanded significantly from the 65 vehicles acquired in 1991 to an anticipated total of 3,267 vehicles. In addition, DOT's Federal Transit Administration (FTA) is encouraging the use of alternative fuels by local transit authorities.

Fuel systems of vehicles that operate on alcohol fuels are similar to fuel systems of vehicles operating on conventional fuels (i.e., gasoline or diesel). Alcohol fuels, like conventional fuels, use the same method of onboard vehicle storage and are liquids at ambient temperature and pressure conditions.

Vehicles that are capable of using alcohol fuels include flexible fueled vehicles ("FFVs," which are also known as variable fueled-vehicles, "VFVs"), dual-fuel vehicles, and dedicated vehicles. FFVs or VFVs are capable of using methanol or ethanol, a conventional fuel, or any combination of a conventional and an alcohol fuel. Dual-fuel vehicles can operate on both alcohol or conventional fuel, but not various combinations of the two. Dedicated vehicles can operate on only one fuel or fuel blend. For example, a dedicated fuel vehicle may operate on solely neat methanol (100 percent methanol or M100), 85 percent methanol with 15 percent unleaded gasoline (M85), pure ethanol, or a particular ethanol and gasoline blend.

C. Advance Notice of Proposed Rulemaking

On October 12, 1990, NHTSA published an Advance Notice of Proposed Rulemaking (ANPRM) concerning the fuel system integrity of vehicles using methanol or ethanol fuels. (55 FR 41556). The ANPRM requested comments about whether Standard No. 301 should be amended to establish special requirements for vehicles using methanol or ethanol. Vehicles using such fuels are covered by Standard No. 301. However, prior to this rulemaking, the standard did not address those properties of alcohol fuels which differ from properties of gasoline and diesel fuel.

In the ANPRM, NHTSA requested comment on whether specialized requirements should be developed for alcohol fuels based on differences between those fuels and conventional fuels. Alcohol fuels issues addressed in the ANPRM were (1) their acute toxicity when ingested or absorbed through the skin, (2) their different flammability and explosive characteristics, (3) their flame luminosity, (4) their energy potential, and (5) their corrosiveness. NHTSA received 19 comments on the ANPRM from a variety of groups.

D. Notice of Proposed Rulemaking

Based on the comments to the ANPRM, NHTSA proposed amending Standard No. 301 to establish anti-siphoning requirements for vehicles manufactured to operate on alcohol fuels or fuel blends. (57 FR 1710, January 15, 1992). The proposed requirements were intended to prevent deaths and injuries caused by the accidental ingestion of highly toxic alcohol fuels. The usual fatal dose by ingestion in an adult is between 50 and 100 milliliters (ml) for methanol, 240 to 300 ml for ethanol, and 115 to 470 ml for gasoline.

The NPRM proposed applying the amended requirements to those vehicles in the following categories if they operate on alcohol fuels or alcohol fuel blends containing at least 20 percent alcohol: Passenger cars; multipurpose passenger vehicles, trucks, and buses with a gross vehicle weight rating (GVWR) under 10,000 pounds; and school buses regardless of weight. These include flexible fuel, variable fuel, dedicated, and dual fuel vehicles. The proposal specified that the amended requirements would not cover vehicles produced to operate on gasohol or oxygenated gasoline, which may contain less than 10 percent ethanol.

After describing the potential safety problems associated with the high toxicity of alcohol fuels, the NPRM proposed the following requirement to prevent the siphoning of fuel in an alcohol fueled vehicle: the vehicle shall have means that prevent a hose with a length of at least 120 centimeters (cm) (3.9 feet) and an outside diameter of 3.2 millimeters (mm) (0.125 inch) or more from contacting liquid fuel when the hose is inserted into the fuel tank filled to 90 to 95 percent of capacity. The agency anticipated that manufacturers could comply by installing a screen in the fuel tank filler neck to prevent a siphoning hose from being inserted in the fuel system.

In addition to setting forth the anti-siphoning proposal, the notice also explained the agency's decision not to proceed with rulemaking regarding other issues addressed in the ANPRM related to alcohol fueled vehicles.

II. Comments to the NPRM and the Agency's Response

A. General Considerations

In response to the NPRM, NHTSA received comments from five vehicle manufacturers, as well as from the Insurance Institute for Highway Safety (IIHS), and Atlantic Richfield (Arco). The agency has considered the points raised by the commenters in developing the final rule. The agency's discussion of the more significant comments and other relevant information is set forth below.

Of the seven commenters, six—Chrysler, Ford, General Motors (GM), IIHS, Arco, and Suzuki—supported the proposal to require anti-siphoning measures to protect against the ingestion of highly toxic alcohol fuels. Only Volkswagen opposed the proposal, claiming that an anti-siphoning device would have a limited safety benefit since methanol is expected to be used only in a small percentage of the vehicle fleet.

After considering the comments to the NPRM and other available information, NHTSA has decided to issue this rule adopting a requirement aimed at preventing the accidental ingestion of alcohol fuels. The agency disagrees with Volkswagen's comment about the lack of a safety need for the anti-siphoning requirement. NHTSA believes that the rulemaking is appropriate in view of the deaths and injuries that it will prevent. The agency anticipates the manufacture of alcohol fueled vehicles will increase, given the nation's and Congress's interest in developing alternatives to petroleum-based fuels. Accordingly, the amendment should facilitate the safe introduction of a vehicle type that will become increasingly available in the future.

Volkswagen further commented that the intentional consumption of methanol fuels is no more likely than that of gasoline because methanol fuels do not smell, taste, or look like drinkable alcohol. The agency notes that Volkswagen's comment is not on point since this rulemaking is intended to prevent the inadvertent ingestion of methanol during siphoning, not the intentional consumption of that fuel.

As discussed below, commenters addressed other matters in the proposed regulation, including the amount of alcohol content necessary for a vehicle

to be subject to the regulation, the test hose's diameter and length, the test hose's rigidity, and specification of a test force.

B. Applicability to Vehicles Operated With Certain Fuels

The NPRM proposed that the rule would apply only to vehicles manufactured to operate on alcohol fuels or alcohol fuel blends with at least 20 percent alcohol fuel content. Thus, the requirements would not be applicable to vehicles produced to operate on gasohol, which may contain about 10 percent ethanol, or oxygenated gasoline, which may contain only small amounts of ethanol. The notice explained the agency's tentative conclusion that fuel blends with less than 20 percent methanol content would not result in fatalities to persons during siphoning. The notice requested comment on what fuel types and what level of alcohol content should be covered by the proposed anti-siphoning requirements.

GM, Ford, Chrysler, and Volkswagen addressed the question of which fuels and fuel blends should be covered by the proposed amendment. The four commenters agreed that the requirement should apply to vehicles designed to operate on fuel blends with 20 percent or more alcohol content. GM commented that although methanol is more toxic than ethanol, the proposed requirement should apply to vehicles fueled by either because some vehicles could use both fuels. Volkswagen believed that the requirement should apply only to vehicles that operate on methanol (but not to those that operate on ethanol) because ethanol is much less toxic than methanol.

After reviewing the comments and other available information, NHTSA has decided to apply the anti-siphoning requirements to fuel blends with at least 20 percent alcohol, including both methanol and ethanol. The agency believes that the requirements should apply to methanol given that fuel's extremely high toxicity. Applying the anti-siphoning requirements to ethanol also is appropriate, even though that fuel has a lower level of toxicity. The agency believes that if all vehicles produced to operate on ethanol did so exclusively, then there would be no need to apply the requirement to them. However, GM has informed the agency that vehicles designed to operate on one alcohol fuel can operate on either methanol or ethanol with little or no change to the vehicle. Accordingly, given that a vehicle initially intended to be fueled by less toxic ethanol can readily be fueled with highly toxic methanol, the agency has decided to apply the final rule to vehicles that operate with either type of alcohol fuel.

In response to the NPRM's question on whether the anti-siphoning requirement should apply to conventional fuels such as gasoline or diesel fuel, GM, Ford, Chrysler, and Volkswagen commented that the requirement should not apply to these fuels. Ford stated that the proposed requirements should not apply to vehicles using gasohol or oxygenated gasoline since these fuels have been in widespread use without causing toxicity concerns. NHTSA agrees with the commenters that the anti-siphoning requirements should not apply to vehicles fueled with gasoline, diesel, gasohol, or oxygenated gasoline because these fuels have a relatively low level of toxicity.

C. Test Conditions

1. Test Hose Diameter and Length

In the NPRM, the agency proposed that compliance be determined using a hose with a length of 120 cm based on the belief that this length was the maximum distance between the filler neck opening and the area where liquid fuel is stored in vehicles covered by the propose rule. The agency specified a diameter of 3.2 mm based on the belief that this diameter was the smallest commercially available hose that likely would be used for siphoning. The NPRM requested comments on whether the hose length and diameter were appropriate.

With respect to the test hose's length, GM and Ford commented that the proposed length of 120 cm (3.9 ft) was appropriate. Ford stated that a four foot test hose should be long enough to demonstrate the presence of an effective anti-siphoning guard wherever such a guard may be located in the filler tube. Based on these comments and other available information, the agency has decided to specify that the test hose be 120 cm, as proposed.

With respect to the test hose's outer diameter, Ford, GM, Chrysler, and Suzuki commented that the proposed diameter of 3.2 mm (⅛ inch) was too small. Chrysler and GM stated that the outside diameter should be 6.3 mm (¼ inch), stating that this size represents the smallest commercially available hose on the market that would be usable as a siphon. Chrysler stated that it is unlikely that the proposed 3.2 mm test hose would be used to siphon because it would produce a very low flow rate and would not be readily available to purchase. Ford commented that the proposed outside hose diameter may be smaller than necessary, stating that the smallest commercially available siphoning hose of which it is aware has an outside diameter of 5.2 mm (13/64 inch). Accordingly, Ford believed that a 5.2 mm outside diameter test hose would be desirable and appropriate for use in demonstrating siphon guard effectiveness. Suzuki stated that a hose with an outside diameter of 7 mm (0.276 inch) would be best suited for anti-siphoning compliance purposes, claiming that the larger diameter test hose would permit the use of a larger screen mesh in the anti-siphoning device. Suzuki believed that a larger screen mesh would allow for increased fill rates, while not interfering with a "government proposed" minimum refueling rate requirement of ten gallons per minute.

After analyzing the comments and other available information, the agency has decided to specify that the test hose's outside diameter be 5.2 mm. In determining the appropriate outside diameter, the agency sought to specify a size that reflects the smallest commonly available hose produced for siphoning that produces an adequate flow rate. The agency agrees with the commenters that the proposed outside diameter of 3.2 mm would have produced an unrealistically low flow rate and is not commonly available. Nevertheless, the agency notes that the diameter sizes recommended by Suzuki, GM, and Chrysler did not represent siphoning hoses with smaller diameters than are available to the public. Such larger outside diameters would not have tested an anti-siphoning device as effectively. In discussions with the agency subsequent to their written comments, GM and Chrysler indicated that they could comply with a test requirement using a hose with an outside diameter of 5.2 mm.

As for Suzuki's comment that a larger screen mesh would allow for increased fill rates, while not interfering with a "government proposed" minimum refueling rate requirement of ten gallons per minute, NHTSA believes that Suzuki is referring to a requirement proposed by the Environmental Protection Agency (EPA) (55 FR 1914, January 19, 1990). However, the agency notes that the proposed EPA requirement is for a maximum fuel fill rate and not for a minimum one. Therefore, Suzuki's concern about the fuel fill rate is not relevant to the agency's assessment of whether it is necessary to require an anti-siphoning device. The environmental implications of this rulemaking are discussed in the section of this preamble titled "Environmental Impacts."

2. Test Hose Rigidity

The NPRM did not set forth a specific rigidity for the test hose. The proposal stated that agency's tentative belief that the wording of the proposed regulatory text made clear that the hose must be of adequate rigidity to be inserted into the fuel tank fill system. Nevertheless, the NPRM requested comment about specifying the hose's rigidity.

Chrysler, Ford, and GM addressed the issue of test hose rigidity. GM believed that a specification for hose rigidity was not appropriate, stating that someone planning to siphon fuel would select a flexible hose which would be easier to fit into a filler neck and then "snaked" into the fuel tank. GM also questioned how the "degree of rigidity" would be defined objectively. Ford commented that for the test hose, the properties of plastic vinyl tubing should be specified.

After reviewing the comments, NHTSA continues to believe that it is not necessary to specify the test hose's rigidity. The agency agrees with GM that a flexible hose will typically be used to "snake" down into the fuel tank. Therefore, specifying a particular rigidity would unnecessarily complicate the requirement without providing corresponding benefits.

3. Test Force

The NPRM did not set forth a specific degree of force with which the test hose would be inserted into the filler neck of the fuel system. Nevertheless, the notice requested comment about specifying the test force. Chrysler, Ford, and GM believed that specifying a test force was unnecessary.

After reviewing the comments and other available information, NHTSA has concluded that a test force should not be included in the requirement. The agency notes that the requirement's relevant consideration is to determine whether the hose contacts the fuel's surface in the fuel tank. Since this can be determined without referencing a test force, the agency has determined that a test force need not be specified.

4.Test Hose End Condition

Ford commented that the regulation should define the test hose's end condition because this could affect the anti-siphoning device's ability to demonstrate its effectiveness. Ford recommended that the test hose be cut perpendicular to its centerline and terminate in the square-end condition formed by such a cut. No other commenter addressed the test hose's end condition.

After reviewing Ford's comment, NHTSA has determined that it is unnecessary to specify the test hose's end condition. The agency notes that Ford's requested modification to the proposed requirement would not make the provision clearer or otherwise provide additional benefits. In addition, it would unnecessarily complicate a relatively straight-forward provision.

D. Effects of Anti-siphoning Device on Fill Rate

The NPRM explained that the agency was aware that an anti-siphoning device could slow the fuel fill rate of a vehicle and complicate the draining of the fuel tank prior to its removal. The agency requested comment on the consequences of a slower fill rate. Commenters were also requested to assess the fill rate's effect on repair and recycling motor vehicles, if these vehicles have fuel tanks that are more difficult to drain.

GM, Ford, Chrysler, and Suzuki addressed the issue of a slower fill rate. All four stated that when properly designed, an anti-siphoning device would not significantly slow the fill rate. Thus, this does not appear to be an issue.

Suzuki was concerned that the proposed test hose diameter of 3.2 mm would have necessitated adding a screen in the filler neck to prevent the hose from entering the fuel tank. As mentioned above, Suzuki was concerned that the mesh needed to accomplish this end would interfere with EPA's proposed minimum refueling flow rate of ten gallons per minute. As stated earlier, because EPA proposed a maximum and not a minimum fuel fill rate, the anti-siphoning requirement should not pose any compliance problems. More generally, the agency notes that the larger test hose diameter being adopted, 5.2 mm, allows for a mesh large enough not to significantly slow the fill rate.

GM, Ford, and Chrysler addressed whether a problem would exist with draining the fuel tank for servicing or recycling it. GM and Chrysler commented that the requirement would not hinder service procedures that involve draining the fuel tank because their vehicles are designed to be easily drained. Ford stated that it would have to redesign some of its vehicles, at a cost of $4.00 to $10.00 per tank to account for this type of procedure. Notwithstanding this cost, Ford supported the proposal. Based on the above comments, the agency believes that the regulation will only minimally affect draining fuel tanks for service and recycling procedures.

E. Vehicle Types

The NPRM requested comment on whether the proposed requirements should apply to all vehicle types that are currently subject to Standard No. 301 and that are produced to operate on fuel blends with at least 20 percent alcohol fuel content. The notice also asked whether some vehicles should be excluded from coverage entirely or be subject to different requirements.

Chrysler, Ford, and GM commented that it was appropriate to apply the proposed requirements to only those vehicle types that are currently subject to Standard No. 301 and that are designed to operate with at least 20 percent alcohol fuel content. Ford stated that it knew of no reason for excluding or applying different requirements to any of the vehicles included in the proposed coverage. Based on the available information, the agency has decided to apply the requirements to the proposed vehicle types.

F. Labeling and Owner's Manual Requirements

After explaining NHTSA's expectation that manufacturers of alternative fuel vehicles would include information about their vehicle's fuel in the owner's manual and possibly on labeling near the fuel tank filler neck, the NPRM requested comment about the need for the agency to require the disclosure of such information.

Chrysler, Ford, GM, and Volkswagen stated that requiring information in the owner's manual about a vehicle's alternative fuel capability is unnecessary. They each stated that the manufacturer will voluntarily provide this information. Chrysler, GM, and Ford commented that a labeling requirement was unnecessary. However, Volkswagen believed that the agency should require a label adjacent to the fuel filler opening on the fuel tank cap or on the fuel filler flap door. It claimed that such a requirement would standardize this information and provide appropriate information for compliance testing.

After reviewing the comments and other available information, NHTSA has decided not to require any labeling or other informational requirements. The agency agrees with Chrysler, GM, and Ford (the primary manufacturers of these vehicles) that such requirements are unnecessary and would not provide safety benefits. As these commenters stated, this information is being voluntarily provided by the manufacturers.

G. Multistage Manufacturers

The NPRM requested comment on whether manufacturers of multistage vehicles would encounter compliance problems with the proposed requirements. Chrysler and GM believed that manufacturers of multistage vehicles would not be affected by the proposed requirement. The agency received no comments from multistage manufacturers or trade associations representing multistage manufacturers. In view of this fact, NHTSA concludes that the effects on multistage manufacturers will be minimal.

H. Editorial Comments

Several commenters, including GM and Volkswagen, stated that the regulatory text would be improved by modifying certain provisions. GM recommended that the phrase "containing liquid fuel in vehicle's fuel tank" (see S6.6) be clarified because small amounts of liquid fuel could cling to the filler neck or anti-siphoning device surfaces even though the tank's fuel level is below these areas. Therefore, GM recommended that the regulatory text be modified to clarify that the relevant consideration is the level surface of the fuel in the tank. GM also recommended that section S6.6 be modified to indicate that the test be done with the filler neck attached to the tank. GM believed that this change would clarify that the siphoning hose be inserted into the normal fuel filler opening (filler neck) used for vehicle refueling. The agency agrees with these modifications, and has modified section S6.6 accordingly.

GM commented that a fluid such as water could be used in the demonstration test to show compliance with the requirement. This led GM to recommend that the following sentence be added to the end of S6.6: "Water or other suitable fluid may be used as a fuel substitute for this test." After reviewing GM's comment, NHTSA has decided not to amend section S6.6 to include this provision. The agency notes that under the framework established by Congress in the Vehicle Safety Act, a manufacturer is not necessarily compelled to follow the exact test procedure (e.g., the use of liquid fuel) in its attempt to establish a basis for certification.

Volkswagen requested that the word "alcohol" be replaced by the phrase "methanol or ethanol." The agency has decided not to adopt this requested change because the term "alcohol" best describes the types of fuels addressed in this rulemaking. The agency notes that although methanol and ethanol are the main alcohol fuels currently being used, new types of alcohol fuels to which these requirements should be applied could be formulated in the future. Volkswagen also recommended that the requirements not apply to ethanol. However, as explained above, the anti-siphoning requirements should apply to both fuels because a vehicle could be fueled by either ethanol or methanol.

Volkswagen commented that S6.6 would be clearer if it were changed to state "* * * with the fuel tank filled at any level up to 90 to 95 percent capacity" instead of "* * * with the fuel tank filled to any level from 90 to 95 percent of capacity." The agency has decided not to adopt Volkswagen's recommended change. The agency believes that notwithstanding this recommendation, Volkswagen's suggested wording would not make the provision clearer, especially given the second sentence in S7 stating that "Where the range is specified, the vehicle must be capable of meeting the requirements at all points within the range."

Volkswagen stated that the amended S7 does not include the proposed S6.6 in the list of requirements to which the general test conditions apply. Therefore, it commented that the test conditions specify S6.6, either directly or by reference. The agency has decided not to adopt Volkswagen's suggestion because specifying that the test condition be applicable to S6.6 would reduce the flexibility associated with testing.

After reviewing the proposed language, NHTSA has decided to clarify the regulatory text by adopting a few additional minor modifications. In the description in S6.6 of the test hose, the agency has decided to eliminate the word "minimum" used in reference to the outside diameter of the hose because use of this word could be misinterpreted to mean that a vehicle could be properly certified with a larger hose. The agency has also decided to add the phrase "or fuel system" immediately following "liquid in the vehicle's fuel tank" in S6.6 so that the requirement clearly prohibits the hose from contacting fuel in the filler neck in those vehicles in which fuel is present in the filler neck when the tank is filled to any level from 90 to 95 percent of capacity.

I. Miscellaneous Comments

As noted above, the ANPRM and NPRM addressed several other issues about the use of alcohol fuels. These include concerns about the explosiveness of alcohol fuels, their flame luminosity, their energy potential, and their corrosiveness. Commenters to the NPRM addressed issues such as the potential of alcohol fuels to cause blindness, their explosiveness and their flame luminosity.

Arco commented that the agency should have addressed the potential of methanol to cause blindness. The agency believes that the danger of blindness from fuel ingestion will be reduced because the requirement will prevent the ingestion of alcohol fuels by preventing siphoning.

IIHS felt the agency should regulate flame luminosity and the explosive potential of alcohol fuels. IIHS stated that it is necessary to regulate these factors to reduce the potential hazards associated with alcohol fuel vehicles. NHTSA notes that the NPRM explained at length the agency's decision not to regulate these characteristics of alcohol fuels and believes that discussion adequately presents the agency's rationale.

J. Effective Date

The NPRM proposed that the requirement become effective on September 1, 1993. The agency believed that it would be relatively simple for manufacturers to make the changes necessary to comply with the proposed requirements because the anti-siphoning devices were not complicated and were available.

Ford requested a September 1, 1995 effective date, stating that the proposed effective date of September 1, 1993 might not allow enough leadtime for changes in designs that manufacturers have already implemented to guard against siphoning. In a subsequent conversation with agency staff, Ford indicated that the suggested September 1, 1995 effective date was based on two factors: (1) Ford's concern that the agency might require a method of service draining of the fuel tanks; and (2) Ford's belief that it would need time to redesign the mesh on its already implemented anti-siphoning device to account for a small test hose diameter. As for the first concern, the agency has not proposed this type of requirement. The requirement being adopted should not pose a problem with respect to leadtime. As for the second concern, Ford indicated that its anti-siphoning devices are designed with a 6.3 mm mesh and that redesigning them to account for a smaller test hose diameter would take approximately six months. No other commenter addressed the issue of leadtime. After reviewing Ford's comment, the agency continues to believe that the September 1, 1993 effective date is appropriate. The agency notes that since there is no service draining requirement, Ford should have

adequate time to comply with the requirement related to the mesh on its anti-siphoning device.

This final rule does not have any retroactive effect. Under section 103(d) of the National Traffic and Motor Vehicle Safety Act (15 U.S.C. 1392(d)), whenever a Federal motor vehicle safety standard is in effect, a state may not adopt or maintain a safety standard applicable to the same aspect of performance which is not identical to the Federal standard. Section 105 of the Act (15 U.S.C. 1394) sets forth a procedure for judicial review of final rules establishing, amending or revoking Federal motor vehicle safety standards. That section does not require submission of a petition for reconsideration or other administrative proceedings before parties may file suit in court.

Regulatory Impacts

A. Executive Order 12291

NHTSA has analyzed this rulemaking and determined that it is not "major" within the meaning of Executive Order 12291. However, NHTSA has determined that the rulemaking is "significant" within the meaning of the Department of Transportation regulatory policies and procedures because of the significant public and Congressional interest in the rulemaking. NHTSA has estimated the costs of this amendment to Standard No. 301 in a Final Regulatory Evaluation which is included in the docket for this rulemaking. The agency estimates that the requirements will cost approximately $0.65 per vehicle. The maximum cost, assuming for the sake of this analysis that the entire fleet is made up of alcohol fuel vehicles, would be about $9.75 million per year.

As for the rulemaking's benefits, NHTSA estimates that without anti-siphoning requirements, a complete replacement of gasoline with methanol in motor vehicles would result in an increase of about 23 to 35 fatalities annually due to siphoning methanol fuel from vehicles. NHTSA believes that an anti-siphoning requirement would prevent 90 percent of these fatalities (21–32 per year). The more likely scenario of only partial replacement of gasoline vehicles with methanol vehicles would result in a proportionally lesser increase in fatalities.

B. Regulatory Flexibility Act

NHTSA has also considered the effects of this rulemaking under the Regulatory Flexibility Act. I hereby certify that this rule will not have a significant economic impact on a substantial number of small entities. The effect of this rulemaking on small manufacturers of vehicles will be minor. As discussed above, NHTSA believes that manufacturers could comply with the requirements by installing a screen device that will cost approximately $0.65 per vehicle. Therefore, the amendment will not have any significant effect on the price of those vehicles. Since the purchase price would be negligibly affected, there will not be any significant effect on small organizations or jurisdictions that purchase vehicles. Accordingly, NHTSA has not prepared a regulatory flexibility analysis.

C. Environmental Impacts

In accordance with the National Environmental Policy Act of 1969, NHTSA has considered the environmental impacts of this rule. The agency has determined that this rule will not have a significant impact on the quality of the human environment.

D. Federalism Assessment

This action has been analyzed in accordance with the principles and criteria contained in Executive Order 12612. NHTSA has determined that the rulemaking does not have sufficient federalism implications to warrant the preparation of a Federalism Assessment. No state laws will be affected.

List of Subjects in 49 CFR Part 571

Imports, Motor vehicle safety, Motor vehicles.

PART 571—[AMENDED]

In consideration of the foregoing, 49 CFR part 571 is amended as follows:

1. The authority citation for part 571 continues to read as follows:

Authority: 15 U.S.C. 1392, 1401, 1403, 1407; delegation of authority at 49 CFR 1.50.

2. In § 571.301, S2 is revised to read as follows:

§ 571.301 Standard No. 301; Fuel system integrity.

S2. *Purpose.* The purpose of this standard is to reduce deaths and injuries occurring from fires that result from fuel spillage during and after motor vehicle crashes, and resulting from ingestion of fuels during siphoning.

3. In § 571.301, a new S5.7 is added to read as follows:

S5.7. *Alcohol fuel vehicles.* Each vehicle manufactured to operate on an alcohol fuel (e.g., methanol, ethanol) or a fuel blend containing at least 20 percent alcohol fuel shall meet the requirements of S6.6.

4. In § 571.301, a new S6.6 is added to read as follows:

S6.6 *Anti-siphoning test for alcohol fuel vehicles.* Each vehicle shall have means that prevent a hose made of vinyl plastic or rubber, with a length of not less than 120 centimeters (cm) (47.2 inches) and an outside diameter of not more than 5.2 millimeters (mm) (0.20 inches), from contacting the level surface of the liquid fuel in the vehicle's fuel tank or fuel system, when the hose is inserted into the filler neck attached to the fuel tank with the fuel tank filled to any level from 90 to 95 percent of capacity.

5. In § 571.301, S7 introductory text is revised to read as follows:

S7. *Test conditions.* The requirements of S5.1 through S5.6 and S6.1 through S6.5 shall be met under the following conditions. Where a range is specified, the vehicle must be capable of meeting the requirements at all points within the range.

* * * * *

Issued on January 14, 1993.

Marion C. Blakey,

Administrator.

[FR Doc. 93–1336 Filed 1–21–93; 8:45 am]

BILLING CODE 4910–59–M

DEPARTMENT OF THE INTERIOR

Fish and Wildlife Service

50 CFR Part 17

RIN 1018–AB75

Endangered and Threatened Wildlife and Plants; Determination of Endangered Status for the Northern Riffleshell Mussel (Epioblasma torulosa rangiana) and the Clubshell Mussel (Pleurobema clava)

AGENCY: Fish and Wildlife Service, Interior.

ACTION: Final rule.

SUMMARY: The Service determines the mussels, the northern riffleshell (*Epioblasma torulosa rangiana*) and the clubshell (*Pleurobema clava*) to be endangered species. The northern riffleshell is known historically from the tributaries of the Ohio River, western Lake Erie, and the St. Clair and Detroit Rivers. It occurs today in relatively short reaches of six streams in Kentucky, Michigan, Ohio, and Pennsylvania. The clubshell historically was widespread in the Ohio River basin and tributaries of western Lake Erie in nine states; today it is known from relatively short reaches of 12 streams in Indiana, Kentucky, Michigan, Ohio, Pennsylvania, and West Virginia.

Both of these species have experienced greater than a 95 percent range reduction. In over half of the stream reaches where the mussels are presumed extant, biologists have located only a few dead shells in the last five years. Causes of the drastically reduced ranges of these two species include: channelization, streambank clearing, agriculture, and chemical and wastewater runoff. This rule implements the protection provided by the Endangered Species Act of 1973, as amended, for *Epioblasma torulosa rangiana* and *Pleurobema clava.*

EFFECTIVE DATE: February 22, 1993.

ADDRESSES: The complete files for these species are available for inspection, by appointment, during normal business hours at the U.S. Fish and Wildlife Service, Post Office Box 1278, Elkins, West Virginia 26241.

FOR FURTHER INFORMATION CONTACT: William A. Tolin at the above address or by telephone (304/636–6586).

SUPPLEMENTARY INFORMATION:

Background

The northern riffleshell (*Epioblasma torulosa rangiana*) was described by Lea in 1839. This freshwater mussel occurs in a wide variety of streams, large and small, preferring runs with a bottom composed of firmly packed sand and fine to coarse gravel (Stansbery *et al.* 1982).

The northern riffleshell is a small to medium size mussel, up to three inches (7.6 cm) long. The species expresses sexual dimorphism. The male is irregular ovate in outline, with a wide shallow sulcus just anterior to the posterior ridge. The female is obovate in outline, greatly expanded postventrally. This post-ventral expansion is very broadly rounded. The shell exterior is brownish yellow to yellowish green with fine green rays. The inside of the shell is normally white, rarely pink (Stansbery *et al.* 1982).

The clubshell (*Pleurobema clava*) was described by Lamarck in 1819. The species occurs in clean swept sand and gravel in medium to small rivers and streams (Stansbery *et al.* 1982). Thomas Watters (Ecological Specialists Inc., pers. comm., 1991) has found the clubshell to bury in clean loose sand to a depth of two to four inches.

The clubshell is also small to medium size, up to three inches (7.6 cm) long. The outline of the shell is wedge-shaped and solid. The umbos are pointed and fairly high. The exterior of the shell is bright yellow to brown with bright green blotchy rays. The inside of the shell is white (Stansbery, *et al.* 1982).

Like other freshwater mussels, the northern riffleshell and the clubshell feed and respire by filtering macroscopic food particles and oxygen from the water column. Their complicated reproductive cycle includes one or more species of fish where a larval form of the mussel, known as a glochidium, attaches to the gills, fins, or skin of the fish and is nourished for a short time period. This relationship is generally species-specific. Many aspects of the life history of these mussels are not known.

The historic ranges of the northern riffleshell and the clubshell mussels overlapped, but the clubshell was more widely distributed. Both species were known from Illinois, Indiana, Kentucky, Michigan, Ohio, Pennsylvania, and West Virginia. The range of the clubshell extended farther south in Tennessee and Alabama in the Tennessee River Basin while the northern riffleshell extended north into western Ontario. Both were widespread in the Ohio River basin in rivers such as the Ohio, Allegheny, Scioto, Kanawha, Little Kanawha, Licking, Kentucky, Wabash, White, Vermillion, Mississinewa, Tippecanoe, Tennessee, Green, and Salt Rivers. They were also located in the Maumee River basin and tributaries of western Lake Erie such as the Huron River and the River Raison. The northern riffleshell also occurred in southern Michigan and western Ontario in streams such as the St. Clair, Black, Ausable, and Sydenham Rivers (Stansbery *et al.* 1982).

Presently, the two species co-occur in portions of four streams in two states. They are found in the Green River, Edmonson and Hart Counties, Kentucky. In Pennsylvania, they occur in French Creek, Crawford, Venango, and Mercer Counties; LeBoeuf Creek, Erie County, and the Allegheny River, Warren and Forest Counties.

The northern riffleshell is also found in the upper 2.0 miles of the Detroit River from Lake St. Clair to Belle Isle, Wayne County, Michigan and in Big Darby Creek, Pickaway County, Ohio. Of the six total locations for this species, only two, those in the Detroit River (Michigan) and French Creek (Pennsylvania) show evidence of recent reproduction.

The clubshell retains a wider distribution than the northern riffleshell. However, this species was also historically wider spread and locally very abundant. The clubshell presently occurs in 12 streams: the Tippecanoe River, Kosciusko, Fulton, Pulaskia, and Tippecanoe Counties, Indiana; Fish Creek of the St. Josephs River, Williams County, Ohio, and DeKalb County, Indiana; West Branch of the St. Josephs River, Williams County, Ohio, and Hillsdale County, Michigan; Walhonding River, Coshocton County, Ohio; East Fork of the West Branch of the St. Josephs River, Hillsdale County, Michigan; Little Darby Creek, Madison County, Ohio; Conneautee Creek of French Creek, Crawford County, Pennsylvania; and Elk River, Braxton and Clay Counties, West Virginia.

The clubshell was first recognized by the Service in the May 22, 1984 **Federal Register** (49 FR 21664). That notice, which covered invertebrate wildlife under consideration for endangered or threatened status, included the clubshell as a Category 2 species. Category 2 includes those taxa for which proposing to list as endangered or threatened is possibly appropriate, but for which substantial data on biological vulnerability and threats are not currently available to support proposed rules. In the **Federal Register** Animal Notice of Review published on January 6, 1989 (54 FR 554), the clubshell was retained as a Category 2 species and the northern riffleshell was added in the same category.

During 1989 and early 1990, the Service sent more than 80 requests for information about these two species to State and Federal resource agencies, private organizations, and knowledgeable individuals. On the basis of responses received, the Service moved both species to Category 1 in the Animal Notice of Review published in the November 21, 1991 **Federal Register** (56 FR 58804). Category 1 includes species for which the Service now possesses sufficient information to support a listing as threatened or endangered. In the June 18, 1992 **Federal Register**, the Service published a proposed rule to list *Epioblasma torulosa rangiana* and *Pleurobema clava* as endangered species.

Summary of Comments and Recommendations

In the June 18, 1992, proposed rule and associated notifications, all interested parties were requested to submit factual information that might contribute to the development of a final rule. Appropriate State resource agencies, county governments, Federal agencies, scientific organizations, and other interested parties were contacted and requested to comment. Twenty-seven notices inviting public comment were published in newspapers of general circulation in each area where *Epioblasma torulosa rangiana* and *Pleurobema clava* are known to occur. Nine written comments were received; all supported the proposed listing and

none recommended changes in the data presented in the proposed rule.

Summary of Factors Affecting the Species

Section 4(a)(1) of the Endangered Species Act (16 U.S.C. 1531 *et seq.*) and regulations (50 CFR part 424) promulgated to implement the listing provisions of the Act set forth the procedures for adding species to the Federal lists. A species may be determined to be an endangered or threatened species due to one or more of the five factors described in section 4(a)(1). These factors and their application to the northern riffleshell and the clubshell are as follows:

A. The Present or Threatened Destruction, Modification, or Curtailment of its Habitat Range

The northern riffleshell and the clubshell mussels were once widespread through the Ohio River watershed with the highest concentrations occurring in the northern portion of the basin and western Lake Erie drainages. Communication with knowledgeable experts (Ronald Cicerello, Kentucky Nature Preserves Commission, 1991; Steven Ahlstedt, Tennessee Valley Authority, 1991; Thomas Watters, Ecological Specialists, Inc., 1991; Charles Bier, Western Pennsylvania Chapter of The Nature Conservancy, 1990; Arthur Bogan, Philadelphia Academy of Natural Science, 1990; David Stansbery, Ohio State University, 1991; Arthur Clarke, Ecosearch, Inc., 1991; Kevin Cummings, Illinois Natural History Survey, 1990; Thomas Frietag, U.S. Army Corps of Engineers, 1991; Randy Hoeh, University of Michigan, 1990; Leni Wilsman, Michigan Natural Features Inventory, 1990; Richard Trdan, Saginaw Valley State College, 1991; Bill Kovalak, Detroit Edison, 1991; Mike Hoggarth, Ohio Department of Transportation, 1991; and Bob Anderson, Indiana Department of Natural Resources) and a review of the current literature (Cicerello and Hannan 1990, Watters 1986 and 1988, Cummings et al. 1987) reveal that both the northern riffleshell and the clubshell have undergone a greater than 95 percent range reduction.

Since mussels are sedentary, they are extremely susceptible to environmental degradation. The range reductions of both these mussels are attributed to physical loss of habitat and degraded water quality related primarily to water impoundments, channelization, streambank clearing, and agriculture. Impacts associated with run-off from human waste, chemical outfalls, and coal mining have also affected many tributaries. Increased turbidity and suspended sediments can result in increased water temperature, decreased oxygen levels, and siltation. Smothering from siltation, in turn, decreases or eliminates the mussels' ability to breathe, feed, and reproduce. Impacts to the fish species composition can also affect reproduction since a fish host is an integral component of the mussel's reproduction cycle. These factors continue to threaten the remaining habitats and populations of these species.

The northern riffleshell has been extirpated from Illinois, Indiana, West Virginia, and Ontario. Most recent population losses include the Black River, Sanilac County, Michigan, as a result of channelization and draining for agriculture, which occurred in 1989 (Kovalak, pers. comm., 1991). In 1991, the Service became aware that the Sydenham River northern riffleshell population had been extirpated because of siltation, most likely a result of intense farming (Clarke, pers. comm., 1991). Loss, probably due to siltation, of a riffleshell population in Fish Creek of the St. Josephs River was also documented in 1991 (Kovalak, pers. comm., 1991). Surveys conducted during 1991 failed to find the riffleshell in its former locations in the Elk River, West Virginia (J. Clayton, West Virginia Division of Natural Resources, pers. comm., 1991), and the Tippecanoe River, Indiana (Watters, pers. comm., 1991).

The clubshell has been extirpated from Alabama, Illinois, and Tennessee, and is no longer found in many streams elsewhere in its former range. Domestic and industrial waste and navigation developments have eliminated or reduced populations of the clubshell on the upper Ohio and Wabash River watersheds (Watters, pers. comm., 1991). The newly rediscovered Elk River population of the clubshell in West Virginia could be affected by plans for deep coal mining in the watershed, which might create sedimentation, heavy metal leaching, and acidification of the water.

B. Over-utilization for Commercial, Recreational, Scientific, or Educational Purposes

Neither of these species are commercially valuable. However, small size and number of remaining populations increase their vulnerability to over-zealous scientific collecting or educational programs. Federal protection would help control the take of individuals by requiring Federal endangered species collecting permits.

C. Disease or Predation

Predation on mussels is a natural occurrence. Predators, such as freshwater drum, river otter, and muskrats, are known to feed on mussels. In a time when these mussels were widespread and abundant, the impact of this predation was insignificant. However, at the present time, their greatly reduced distribution and populations have made them susceptible to predators, especially muskrats (Neves, pers. comm., 1991). Watters (pers. comm., 1991) stated that during a 1988 survey of the French Creek, Pennsylvania population, he observed at least 200 northern riffleshells that had been harvested by muskrats. Watters also noted that the clubshell is less susceptible to mammalian predators because of its burying behavior.

Although extensive, unexplained, die-offs have occurred in the past in the Mississippi River drainage, these were for the most part restricted to large rivers. The rivers and streams preferred by the clubshell are medium to small rivers and streams, and disease has not been documented as a factor affecting its population dynamics. A portion of the northern riffleshell's historic range included large rivers, and die-offs may have played a role in the species' decline.

D. The Inadequacy of Existing Regulatory Mechanisms

All States throughout the range of the northern riffleshell and the clubshell prohibit taking fish and wildlife, including freshwater mussels, for scientific purposes without a State collecting permit. Ohio, Michigan, and Indiana have endangered species legislation, which protects the clubshell and northern riffleshell from other types of unauthorized take. The Michigan Endangered Species Act of 1974 also regulates take that may occur as a result of development and construction projects; however, this State law did not avert the recent loss of the northern riffleshell population in the Black River. Ohio and Indiana endangered species laws do not provide protection to species from habitat loss or degradation, although the Indiana Flood Control law allows that State to "remove or eliminate any structure, obstruction, deposit, or excavation in any floodway which, * * * is unreasonably detrimental to fish, wildlife, or botanical resources (Indiana 13–2–22–13)." Except for requiring a permit for scientific collecting, Pennsylvania, West Virginia, and Kentucky provide no protection to these species or their

habitats. Federal listing will provide additional protection under the Endangered Species Act by requiring Federal permits to take the clubshell and the northern riffleshell for any purpose throughout their range and by requiring Federal agencies to consult with the Service when projects they fund, authorize, or carry out may affect these species.

E. Other Natural or Man-Made Factors Affecting its Continued Existence.

The exotic, prolific zebra mussel (*Dreissena polymorpha*), accidentally introduced to North America in the mid-1980's, poses a severe threat to all native mussel fauna through the competition for space, food, and survival of glochidia. Presently, the zebra mussel, which was conveyed to the area through ship ballast water from interior European ports, is abundant in the lower Great Lakes. During the fall of 1992, biologists determined that zebra mussel infestation posed such a severe threat to the northern riffleshell in the Detroit River that they initiated efforts to salvage as many of the native species as possible and move them to captivity. The zebra mussel also poses an immediate threat to the populations of the northern riffleshell in the St. Clair River and to populations of both these rare species in the Maumee and Black River drainages. As it continues its rapid range expansion, the zebra mussel may threaten the continued existence of all native freshwater mussels in the Mississippi and Great Lakes drainages.

The high potential of a toxic chemical spill from a ship or factory in the Detroit and St. Clair Rivers threaten the northern riffleshell populations in the these rivers. A number of toxic spills have occurred in the "Chemical Valley" near Sarnia, Ontario.

The Service has carefully assessed the best scientific and commercial information available regarding the past, present, and future threats faced by this species in adopting this final rule. Based on this evaluation, the preferred action is to list the northern riffleshell mussel and the clubshell mussel as endangered. Historically, these species were widely distributed throughout the Ohio River and western Lake Erie drainages. The radically reduced distribution of these species and their continued vulnerability to loss of habitat and water quality deterioration constitute severe threats to their continued existence, and therefore, endangered status appears to be the most appropriate classification.

Critical Habitat

Section 4(a)(3) of the Act as amended, requires that, to the maximum extent prudent and determinable, the Secretary propose critical habitat at the time a species is proposed for listing as endangered or threatened. Section 3 of the Act defines critical habitat as, "(i) The specific areas within the geographical area occupied by a species, at the time it is listed in accordance with the Act, on which are found those physical or biological features (I) essential to the conservation of the species and (II) that may require special management considerations or protection, and (ii) specific areas outside the geographical area occupied by a species at the time it is listed, upon determination that such areas are essential for the conservation of the species." Designation of critical habitat is prudent unless: (1) The species is threatened by taking or other human activity, and identification of critical habitat can be expected to increase the degree of threat to the species, or (2) such designation of critical habitat would not be beneficial to the species (50 CFR 424.12(a)(1)). Designation of critical habitat is determinable unless: (1) Information sufficient to perform the required analyses of the impacts of the designation is lacking, or (2) the biological needs of the species are not sufficiently well known to permit identification of an area as critical habitat (50 CFR 424.12(a)(2)).

The Service finds that designation of critical habitat for these two mussels is not prudent. Because of their sedentary nature and susceptibility to a wide variety of changes in water quality, mussels are highly vulnerable to vandalism. Due to the low number of reproducing populations of these species, even a single such incident could be catastrophic. The publication of critical habitat maps could increase this risk.

The Service also finds that designation of critical habitat for the northern riffleshell and the clubshell mussels is not presently determinable. Most existing populations of these mussles are located in widely scattered streams of declining suitability. The number and location of stream habitats required to provide for the long-term survival of existing populations have not been identified. In addition, information needed to analyze the impacts of critical habitat designation is unavailable at this time.

Available Conservation Measures

Conservation measures provided to species listed as endangered or threatened under the Endangered Species Act include recognition, recovery actions, requirements for Federal protection, and prohibitions against certain practices. Recognition through listing encourages and results in conservation actions by Federal, State, and private agencies, groups, and individuals. The Act provides for possible land acquisition and cooperation with the States and requires that recovery actions be carried out for all listed species. The protection required of Federal agencies and the prohibitions against taking and harm are discussed, in part, below.

Section 7(a) of the Act requires Federal agencies to evaluate their actions with respect to any species that is proposed or listed as endangered or threatened and with respect to its critical habitat, if any is being designated. Regulations implementing this interagency cooperation provision of the Act are codified at 50 CFR part 402. Section 7(a)(2) requires Federal agencies to insure that activities they authorize, fund, or carry out are not likely to jeopardize the continued existence of such a species or to destroy or adversely modify its critical habitat. If a Federal action may affect a listed species or its critical habitat, the responsible Federal agency must enter into formal consultation with the Service.

The Service has notified Federal agencies having programs that may affect the northern riffleshell and the clubshell mussels. Federal activities that could occur and impact the species, either directly through funding and development, or through issuance of permits or licenses, include dredge and fill, flood protection, water impoundments and channelization, hydroelectric projects, powerline and highway construction, railroads, industrial and domestic wastewater discharge projects, commercial and recreational development, and mining. For example, the recently rediscovered populations of the clubshell in the Elk River in West Virginia is threatened by the acceleration of coal mining in the watershed; potential Federal involvement in such coal mining operations includes permitting by the Office of Surface Mining and the U.S. Army Corps of Engineers. In addition, reconstruction and operation of a railroad along the Elk River to carry coal will require approvals from the Interstate Commerce Commission.

The Act and implementing regulations found at 50 CFR 17.21 set forth a series of general prohibitions and exceptions that apply to all endangered wildlife. These prohibitions, in part, make it illegal for any subject to the jurisdiction of the United States to take any listed species, import or export it, ship it in interstate commerce in the

course of commercial activity, or sell it or offer it for sale in interstate or foreign commerce. It is also illegal to possess, sell, deliver, carry, transport, or ship any such wildlife that has been taken illegally. Certain exceptions would apply to agents of the Service and State conservation agencies.

Permits may be issued to carry out otherwise prohibited activities involving endangered wildlife species under certain circumstances. Regulations governing permits are at 50 CFR 17.22 and 17.23. Such permits are available for propagation or survival of the species and/or for incidental take in connection with otherwise lawful activities.

National Environmental Policy Act

The Fish and Wildlife Service has determined that an Environmental Assessment, as defined under the authority of the National Environmental Policy Act of 1969, need not be prepared in connection with regulations adopted pursuant to section 4(a) of the Endangered Species Act of 1973, as amended. A notice outlining the Service's reasons for this determination was published in the **Federal Register** on October 25, 1983 (48 FR 49244).

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Watters, G.T. 1988. A survey of the freshwater mussels of the St. Josephs River system with emphasis on the federally endangered white cat's paw pearly mussel. Unpublished. Indiana Department of Natural Resources. 127 pp.

Author

The primary author of this rule is William A. Tolin, U.S. Fish and Wildlife Service, West Virginia Field Office, Post Office Box 1278, Elkins, West Virginia 26241 (304/636–6586).

List of Subjects in 50 CFR Part 17

Endangered and threatened wildlife, Exports, Imports, Reporting and record keeping requirements, and Transportation.

Regulation Promulgation

PART 17—[AMENDED]

Accordingly, part 17, subchapter B of chapter I, title 50 of the Code of Federal Regulations is amended, as set forth below:

1. The authority citation for part 17 continues to read as follows:

Authority: 16 U.S.C. 1361–1407; 16 U.S.C. 1531–1544; 16 U.S.C. 4201–4245; Pub. L. 99–625, 100 Stat. 3500; unless otherwise noted.

§ 17.11 [Amended]

2. Amend 17.11(h) by adding the following, in alphabetical order under CLAMS, to the List of Endangered and Threatened Wildlife.

§ 17.11 Endangered and threatened wildlife.

* * * * *

(h) * * *

Species		Historic range	Vertebrate population where endangered or threatened	Status	When listed	Critical habitat	Special rules
Common name	Scientific name						
Clams							
*	*	*	*	*	*	*	
Riffleshell, Northern	*Epioblasma torulosa rangiana*	U.S.A. (IL, IN, KY, MI, OH, PA, WV, Canada (Ont.)).	NA	E	488	NA	NA
Clubshell	*Pleurobema cava*	U.S.A. (AL, IL, IN, KY, MI, OH, PA, TN, WV).	NA	E	488	NA	NA
*	*	*	*	*	*	*	

Dated: December 31, 1992.

Richard N. Smith,

Acting Director, Fish and Wildlife Service.

[FR Doc. 93–1372 Filed 1–21–93; 8:45 am]

BILLING CODE 4310–55–M

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

50 CFR Part 227

[Docket No. 920937–2237]

Threatened Fish and Wildlife; Steller Sea Lions; Exemption to Buffer Zones

AGENCY: National Marine Fisheries Service (NMFS), NOAA, Commerce.

ACTION: Notice of exemption; extension of period of effectiveness.

SUMMARY: On October 15, 1992, NMFS published a notice authorizing, until February 1, 1993, the transit of vessels through the Steller sea lion rookery buffer zones at Cape Morgan, Akutan Island, and at Clubbing Rocks, in Alaska. On November 9, 1992, NMFS published a proposed rule to make this exemption to the restrictions, if promulgated, permanent. As it is unlikely that the final rule can be

published prior to the expiration of the period of effectiveness, NMFS hereby extends by 60 days the period of effectiveness of the October 15, 1992 notice.

EFFECTIVE DATE: The effective date of the notice of exemption published at 57 FR 47276 is extended from February 1, 1993, through April 2, 1993, unless superseded through notice in the Federal Register.

FOR FURTHER INFORMATION CONTACT: Susan Mello, NMFS Alaska Region, Protected Resources Management Division, (907) 586–7235.

SUPPLEMENTARY INFORMATION: Regulations promulgated at 50 CFR 227.12(b)(5) allow the Director, Alaska Region, NMFS, to grant exemptions for activities that will not have a significant adverse effect on Steller sea lions (*Eumetopias jubatus*), have been conducted historically or traditionally in the buffer zones, and for which there are no readily available or acceptable alternatives to, or site for, the activity.

On October 15, 1992 (57 FR 47276), NMFS published a notice authorizing, until February 1, 1993, the transit of vessels through the Steller sea lion rookery buffer zones at Cape Morgan, Akutan Island, and at Clubbing Rocks, in Alaska. On November 9, 1992 (57 FR 53312), NMFS published a proposed rule to make this exemption to the restrictions, if promulgated, permanent. The comment period on the proposed rule expired on December 24, 1992. Readers are encouraged to refer to those earlier documents for additional information on the proposal.

As it is unlikely that NMFS can complete its review of the comments and publish a final rule prior to the expiration of the period of effectiveness, NMFS hereby extends by 60 days the period of effectiveness of the October 15, 1992 notice.

List of Subjects in 50 CFR Part 227

Endangered and threatened species, Exports, Imports, Marine mammals, Transportation.

Dated: January 12, 1993.

Nancy Foster,

Acting Deputy Assistant Administrator for Fisheries.

[FR Doc. 93–1452 Filed 1–21–93; 8:45 am]

BILLING CODE 3510–22–M

DEPARTMENT OF THE INTERIOR

Fish and Wildlife Service

50 CFR Part 17

RIN 1018–AB74

Endangered and Threatened Wildlife and Plants; Emergency Rule To Establish Additional Manatee Protection Areas in Kings Bay, Crystal River, Florida

AGENCY: Fish and Wildlife Service, Interior.

ACTION: Emergency Rule.

SUMMARY: This emergency rule, in conjunction with other required actions, establishes, for the second year, three additional manatee (*Trichechus manatus*) sanctuaries and expands an existing sanctuary in Kings Bay, Crystal River, Florida. This action prohibits all waterborne activities and prevents the "taking" of manatees by harassment resulting from such activities in the protected areas during the winter months. The number of sanctuaries in Kings Bay is expanded from three (10.7 acres) to six (39.0 acres) to accommodate an increasing number of manatees using the area each winter, and to offset the harassment from increasing public use. The emergency action provides protection for the manatees for 120 days. A proposed rule to provide permanent sanctuaries will be published and will provide an opportunity for public comment. This action is taken under the authority of the Endangered Species Act of 1973, as amended, and the Marine Mammal Protection Act of 1972.

In accordance with 50 CFR 17.106, the effective date for this action was established through a legal notice published in the "Citrus County Chronical" on November 14, 1992.

EFFECTIVE DATE: November 15, 1992 through March 15, 1993.

ADDRESSES: The complete file for this rule is available for inspection, by appointment, during normal business hours at the Jacksonville Field Office, U.S. Fish and Wildlife Service, 3100 University Blvd. South, suite 120, Jacksonville, Florida 32216.

FOR FURTHER INFORMATION CONTACT: Robert O. Turner at above address (902/232–2580) or Vance Eaddy, Senior Resident Agent, U.S. Fish and Wildlife Service, 9721 Executive Center Dr., suite 206, St. Petersburg, Florida 33702, 813/893–3651.

SUPPLEMENTARY INFORMATION: Crystal River is a short tidal river on the west coast of Florida. Forming the headwaters of Crystal River is Kings Bay, a lake-like body of water fed by many freshwater springs. These springs, because of their year-round temperature of over 74° F, provide an essential warm-water wintering area for West Indian manatees (*Trichechus manatus*), a federally listed endangered species.

During cold weather, many of the manatees wintering in Kings Bay congregate in an area known as the main spring or Kings Spring, located just south of Banana Island. This location is also a favorite site for skin and scuba divers, who come to Kings Bay for the clear, calm conditions favorable for learning diving techniques, coupled with the opportunity to "swim with the manatees". Diver use of this area is especially heavy during the cold winter months when diving is impractical through most of the northern states, and when the opportunity for manatee encounters is greatest.

The concurrent use of the main spring area by divers and manatees during cold weather creates a problem for manatees. Manatees are shy, harmless creatures that are easily driven away from warm springs by human activity (Buckingham 1990).

A limited number of manatees (about 15) used the springs in the 1970's prior to the establishment of the Banana Island Sanctuary. They seemed to tolerate and even enjoy some human contact. These "tame" manatees readily approached divers and allowed themselves to be petted and lightly scratched (Hartman 1979, Powell and Rathbun 1984). By 1980, when the first permanent manatee sanctuaries were established, the number of manatees wintering in the bay had increased to just over 100. This increase was greater than could be accounted for by reproduction, so it was apparent that some manatees were immigrating from other areas (Powell and Rathbun 1984). The number of manatees that chose to interact with the public increased only slightly.

Manatee use of Kings Bay now exceeds 240 animals (FWS unpublished data). A majority of manatees currently using the spring do not tolerate close human contact, and leave the warmer spring waters when humans approach too closely. They disproportionately spend their time in the existing sanctuaries regardless of weather conditions, in direct relationship to the number of boats present (Buckingham 1990).

Efforts have been made to make divers, snorkelers, and boaters aware of the manatee harassment problem. Visitors have been instructed through posters, brochures, and dive shop

personnel that they should not aggressively pursue manatees or drive them from the springs. As a group, most people have been very cooperative in this regard. Though most conscientiously try to avoid harassing manatees, they seek the animals out and approach them to observe them and a few consistently pet them. Although a few manatees tolerate and occasionally invite attention, most manatees appear to find the situation intolerable, and they alter their behavior accordingly. At times, the sheer number of humans concentrated in a relatively confined area forces all the manatees to seek less disturbing conditions.

The largest numbers of manatees are found at the main spring at night or during the early morning. After sunrise, when the divers begin arriving at the spring, those manatees least able to tolerate human crowding begin leaving the spring. As greater numbers of divers arrive, more manatees leave (FWS unpublished data). On days when the temperatures of the surrounding waters are not excessively cold, this may not be critical, although it still alters the manatee's natural behavior. On days when surrounding water temperatures are below 68 °F, manatees may begin to show some signs of cold water stress such as reduced metabolic rate and cessation of feeding. If cold stress continues long enough, manatees will die.

Research shows that the presence of waterborne users causes manatees to leave the spring heads in favor of the protected sanctuaries regardless of weather conditions. On days when there is low diver turnout, a greater proportion of manatees remain in the springs (Buckingham 1990). Observations of other wintering areas, such as Blue Spring State Park, show that, left to their own devices, most manatees will remain in warm water throughout the day during cold weather periods. Activities that cause manatees to leave can, therefore, be considered "harassment" which interferes with normal "sheltering" habits of the animal. Harassment is a violation of both the Endangered Species Act, as amended, and the Marine Mammal Protection Act.

Currently, manatees are able to escape divers, swimmers, and boaters by moving into three sanctuaries established in 1980—Banana Island, Sunset Shores, and Magnolia Springs. The Banana Island sanctuary is located near the main spring, Kings Spring, and is relatively warm in relation to surrounding waters. Sunset Shores sanctuary is still within the southern part of the bay and provides a feeding and resting area in fairly warm water. The Magnolia Springs sanctuary is located in a canal development adjacent to Kings Bay and contains a smaller spring. The number of manatees using Kings Bay has increased from 100 in 1980 to 246 in 1990. Although it might appear from the increasing numbers of manatees that additional protection is not needed, this is not the case. Manatees are losing habitat elsewhere, and Kings Bay is becoming more and more essential as one of the last natural warm water areas with abundant food resources. Additional sanctuaries are essential to insure adequate undisturbed natural areas in Kings Bay where manatees may meet most of their needs, including warm water, food, and areas for resting and socializing.

The economic importance of Kings Bay, and especially the main spring, to Crystal River and Citrus County centers around the sports or SCUBA diving, snorkeling, and boating. The area is internationally known as a desirable location for winter diving. The presence of manatees creates a special attraction which dive shop owners exploit by advertising their facilities as a place where one can, "swim with the manatees". The tourism industry created by divers coming to Crystal River is significant and total sales at five dive shops and three motels more than doubled between 1980 and 1986, with the "manatee season" accounting for 28 to 53 percent of their sales for the entire year (Milon in prep.). Due in part to national publicity manatees have recently received, the number of divers visiting Kings Bay increased to about 60,000–80,000 in the winter of 1990–91, double the number in 1980 (FWS unpublished data). This rapid increase in popularity is likely to continue, significantly affecting manatees.

The Service intends to provide manatees needed winter protection without adversely affecting diving and other waterborne activities so important to Crystal River. Aerial survey data available on manatee distribution within Kings Bay suggest that strategically placed manatee sanctuaries could provide manatees warm water refugia and feeding and resting areas free from harassment without causing a major disruption of current recreational patterns (Kochman et al. 1985, Buckingham 1990).

Therefore, the Service is creating additional sanctuaries in Kings Bay to provide manatees relatively undisturbed habitat during the cold weather months. These sanctuaries exclude all waterborne activities by humans from November 15 through March 31. The chosen sanctuary areas have been carefully selected to avoid excluding divers from their favorite sites. The Service believes that, given these added refugia, manatees will not be forced to leave the warm water necessary for their survival and will be able to feed, rest, and socialize without being harassed.

Reasons for Emergency Determination

In deciding to implement this rule, the Service has carefully assessed the best scientific and commercial information available regarding the past, present, and future threats faced by this species. Based on this evaluation, the preferred action is to establish additional sanctuaries in Kings Bay, Crystal River, Florida on an emergency basis. Since the number of manatees using the area has more than doubled in the last 10 years, and since there has been a large increase in the number of visitors, the existing sanctuaries are insufficient to shelter the current manatee population. Without sufficient space, food, rest, and freedom from harassment, a significant proportion of the remaining population of Florida manatees could be at considerable risk if upcoming cold temperatures confine them to Kings Bay for any length of time. To protect manatees until the Proposed Rule and Final Rule are completed, the Service believes it is critical to establish additional manatee sanctuaries on an emergency basis.

The authority to establish emergency manatee protection areas is provided by the Endangered Species Act of 1973, as amended, and the Marine Mammal Protection Act, and is codified at 50 CFR, Part 17, Subpart J. Under these regulations the Director may establish, manatee protection areas whenever there is substantial evidence of imminent danger of a taking (including harassment) of one or more manatees, and when such establishment is necessary to prevent such a taking.

The sanctuary addition at Magnolia Springs in Paradise Isle expands the current Magnolia Springs Sanctuary by 1.7 acres. This short, horseshoe-shaped section of canal joins Kings Bay and is fed by auxiliary springs. The sanctuary will provide good protection for a small number of manatees which currently use the area for giving birth, resting, and as a warm water refuge.

The sanctuary on the north and east sides of Buzzard Island creates an 18.0-acre sanctuary along the northwestern edge and down the length of the east side of Buzzard Island. This sanctuary is primarily used by manatees as a feeding area, since it has limited warm water input but contains abundant vegetation.

The sanctuary at Tarpon Springs creates a 4.6-acre sanctuary along the

northwestern side of Banana Island. It contains a small spring and is used as a warm water, feeding, and resting area.

The 4.0-acre sanctuary on the north side of Warden Key is used primarily as a feeding area.

A standard survey of the sanctuary areas has been performed. All of the sanctuary areas are delineated with buoys.

Public Comments Solicited

The service intends that any final action be as effective as possible. Therefore, the opportunity for the public, other concerned governmental agencies, the scientific community, industry, or any other interested party to provide comments or suggestions concerning the rule will be solicited in conjunction with the proposed rule.

Final promulgation of the rule will take into consideration all comments and any additional information received by the Service.

National Environmental Policy Act

An Environmental Assessment has been prepared in conjunction with this rule. It is on file in the Service's Jacksonville Field Office, 3100 University Blvd. South, suite 120, Jacksonville, Florida 32216 and may be examined by appointment during regular business hours. This assessment forms the basis for a decision that this is not a major Federal action which would significantly affect the quality of the human environment within the meaning of section 102(2)(C) of the National Environmental Policy Act of 1969.

References Cited

Buckingham, C.A. 1990. Manatee response to boating activity in a thermal refuge. MS Thesis. University of Florida, Gainesville, Fla.

Kochman, H.I., G.B. Rathbun, and J.A. Powell. 1985. Temporal and spatial distribution of manatees in Kings Bay, Crystal River, Florida, J. Wildl. Manage. 49(4):921–924.

Hartman, D.S. 1979. Ecology and behavior of the manatee (*Trichechus manatus*) in Florida. Am. Soc. Mamm. Special Publ. No. 5. 153 pp.

Milton, W. In prep. Economic activity associated with recreational diving in Kings Bay, Crystal River, Florida.

Powell, J.A., and G.B. Rathbun, 1984. Distribution and abundance of manatees along the northern coast of the Gulf of Mexico. Northeast Gulf Sci. 7:1–28.

Author

The primary author of this emergency rule is Robert O. Turner, Manatee Coordinator (see Addresses section above).

List of Subjects in 50 CFR Part 17

Endangered and threatened species, Exports, Imports, Reporting and recordkeeping requirements, and Transportation.

Regulation Promulgation

PART 17—[AMENDED]

Subpart J of part 17, subchapter B of chapter I, title 50 of the Code of Federal Regulations, is amended as set forth below:

1. The authority citation of part 17 continues to read as follows:

Authority: 16 U.S.C. 1361–1407; 16 U.S.C. 1531–1544; 16 U.S.C. 4201–4245; Pub. L. 99–625, 100 Stat. 3500; unless otherwise noted.

2. Section 17.108 is amended by revising paragraph (a)(3), adding paragraphs (a)(4), (a)(5), and (a)(6), and revising the map at the end of this section to read as follows:

§ 17.108 List of designated manatee protection areas.

(a) * * *

(3) A tract of submerged land, lying in Sections 21 and 28, Township 18 South, Range 17 East in Citrus County, Florida, more particularly described as follows: All of the submerged land lying within the mean high water line of a canal bordering the western, northern, and eastern sides of Paradise Isle Subdivision, as recorded in Plat Book 3, Page 88 of the Public Records of Citrus County, Florida; bounded at the western exit by a line drawn between the southwestern corner of Lot 7 of said Paradise Isle Subdivision and the southeastern corner of Lot 22 of Springs O'Paradise Subdivision, Unit No. 3, as recorded in Plat Book 3, Page 70 of said Public Records; and bounded at the eastern exit by an easterly extension of the south boundary of said Paradise Isle Subdivision; Containing 3.4 acres, more or less.

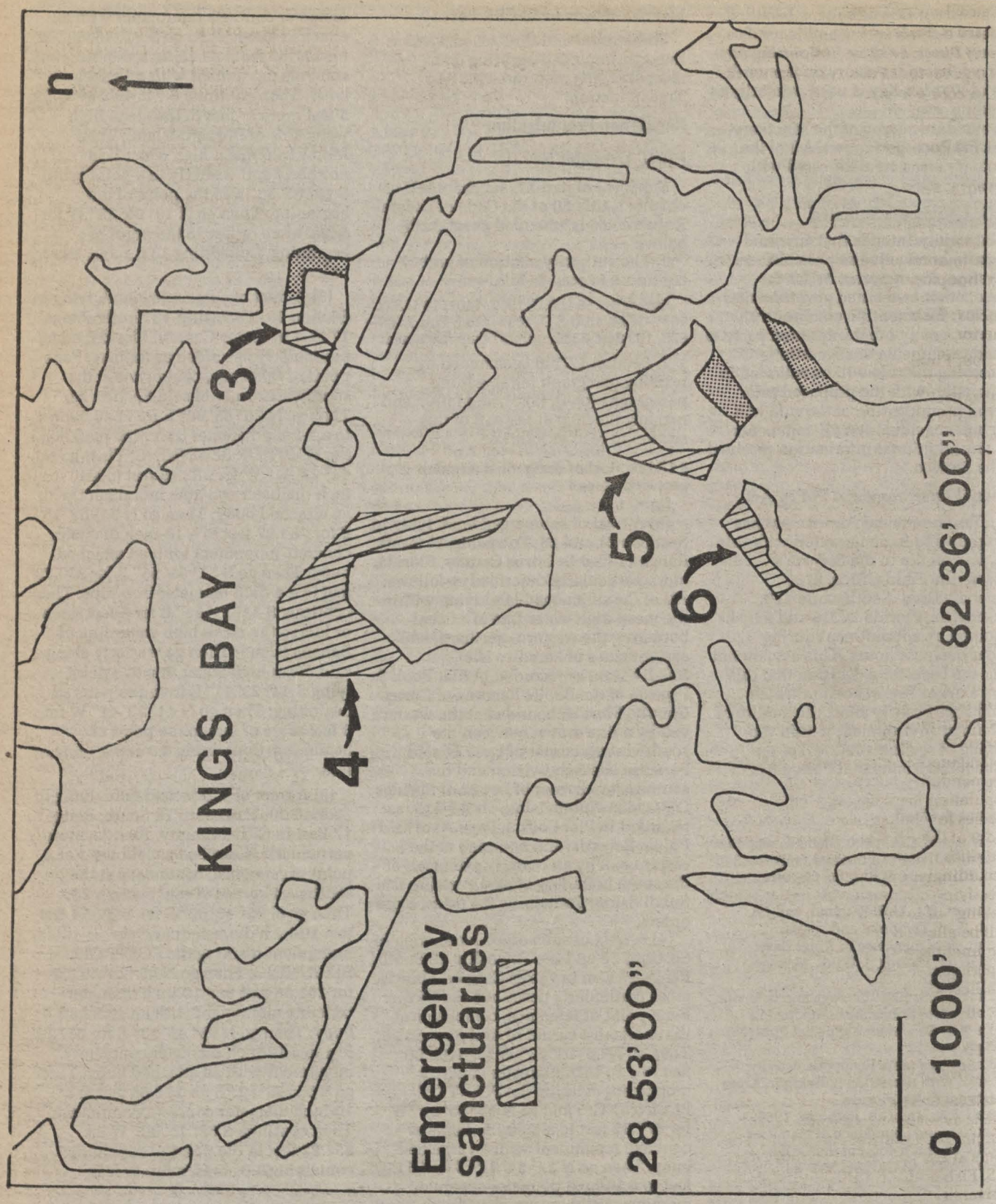
(4) A tract of submerged land, lying in Sections 28 and 29, Township 18 South, Range 17 East in Citrus County, Florida, more particularly described as follows: For a point of reference, commence at the southwest corner of said Section 28; Then go N 06° 01′ 23″ W for 4466.90 feet to a 10-inch diameter concrete monument marking the POINT OF BEGINNING; Then go N 10° 05′ 38″ W for 477.32 feet to a 10-inch diameter concrete monument with an attached buoy; Then go N 37° 34′ 41″ E for 651.07 feet to a 10-inch diameter concrete monument with an attached buoy; Then go S 73° 26′ 46″ E for 634.10 feet to a 10-inch diameter concrete monument with an attached buoy; Then go S 17° 50′ 16″ E for 1691.53 feet to a 10-inch diameter concrete monument with an attached buoy; Then go S 71° 48′ 58″ W for 117.87 feet to a 10-inch diameter concrete monument with an attached buoy; Then continue S 71° 48′ 58″ W for 5 feet more or less to the mean high water line of Buzzard Island; Then follow said mean high water line northerly and westerly to a point lying S 10° 05′ 38″ E of the point of the beginning; Then go N 10° 05′ 38″ W for 5 feet more or less to the point of beginning; Containing 18.0 acres, more or less.

(5) A tract of submerged land, lying in Section 28, Township 18 South, Range 17 East in Citrus County, Florida, more particularly described as follows: For a point of reference, commence at the southwest corner of said Section 28; Then go N 28° 55′ 06″ E for 2546.59 feet to a 4-inch diameter iron pipe marking the POINT OF BEGINNING; Then go N 44° 23′ 41″ W for 282.45 feet to a 10-inch diameter concrete monument with an attached buoy; Then go N 33° 53′ 16″ E for 764.07 feet to a 10-inch diameter concrete monument with an attached buoy; Then go S 31° 51′ 55″ E for 333.22 feet to a 4-inch diameter iron pipe; Then continue S 31° 51′ 55″ E for 5 feet more or less to the mean high water line of Banana Island; Then go westerly along said mean high water line to a point lying S 44° 23′ 41″ E from the point of beginning; Then go N 44° 23′ 41″ W for 5 feet more or less to the point of beginning; Containing 4.6 acres, more or less.

(6) A tract of submerged land, lying in Section 28, Township 18 South, Range 17 East in Citrus County, Florida, more particularly described as follows: For a point of reference, commence at the southwest corner of said Section 28; Then go N 06° 43′ 00″ E for 1477.54 feet to a 10-inch diameter concrete monument marking the POINT OF BEGINNING; Then go N 06° 24′ 59″ W for 251.66 feet to a 10-inch diameter concrete monument with an attached buoy; Then go N 65° 41′ 12″ E for 637.83 feet to a 10-inch diameter concrete monument with an attached buoy; Then go S 55° 40′ 52″ E for 272.86 feet to a 10-inch diameter concrete monument; Then continue S 65° 15′ 06″ W for 857.22 feet to the point of beginning; containing 4.0 acres, more or less.

* * * * *

BILLING CODE 4310–55–M



BILLING CODE 4310-55-C

Dated: January 7, 1993.

Richard N. Smith,

Deputy Director, Fish and Wildlife Service.

[FR Doc. 93–1371 Filed 1–21–93; 8:45 am]

BILLING CODE 4310–55–M

50 CFR Part 17

RIN 1018–AB85

Endangered and Threatened Wildlife and Plants; Establishment of an Experimental Nonessential Population of Whooping Cranes in Florida

AGENCY: Fish and Wildlife Service, Interior.

ACTION: Final rule.

SUMMARY: The Service determines that it will reintroduce whooping cranes (*Grus americana*) in central Florida in the Kissimmee Prairie area. The reintroduction will implement a primary recovery action for a federally listed endangered species, obtain data for further assessing the suitability of Kissimmee Prairie of south central Florida as whooping crane habitat, and evaluate the merit of releasing captive-reared whooping cranes, conditioned for wild release, as a technique for establishing a self-sustaining, nonmigratory population.

The Service determines that this reintroduced population is designated a nonessential experimental population according to section 10(j) of the Endangered Species Act of 1973 (ESA), as amended. An experimental population is treated as a threatened species for the purposes of section 4(d) and 9 of the ESA, which prohibit certain activities involving listed species. Accordingly, a special rule for specifying circumstances under which "taking" of introduced whooping cranes will be allowed is being promulgated in conjunction with the nonessential, experimental population rule. No conflicts are envisioned between the whooping crane's reintroduction and any existing or anticipated Federal agency actions.

EFFECTIVE DATE: January 22, 1993.

ADDRESSES: The complete file for this rule is available for inspection, by appointment, during normal business hours at the Jacksonville Field Office, U.S. Fish and Wildlife Service, 3100 University Boulevard, South, Suite 120, Jacksonville, Florida 32216.

FOR FURTHER INFORMATION CONTACT: David J. Wesley at the above address (telephone 904/232–2580).

SUPPLEMENTARY INFORMATION

Effective Date

For this rule the Service waives for good cause the usual 30-day delay between publication of a final rule and its effective date, as provided by the Administrative Procedure Act (5 U.S.C. 553(d)(3)). The prompt release of the currently available captive-produced birds is desirable because (1) facilities being used at the northern propagation sites were not designed for holding these birds over winter and (2) young birds become less adaptable to the wild if they are held in captivity too long. Therefore, good cause exists for this rule to be effective immediately upon publication.

Background

1. Legislative

The ESA Amendments of 1982, Public Law No. 97–304, created a new section 10(j), providing for the designation of specific introduced populations of listed species as "experimental populations." Under previous authorities in the ESA, the Service was permitted to reintroduce populations into unoccupied portions of the historic range of a listed species when it would foster the conservation and recovery of the species. Local opposition to reintroduction efforts, however, stemming from concerns about the restrictions and prohibitions on private and Federal activities contained in sections 7 and 9 of the ESA, severely handicapped the effectiveness of this as a management tool.

Under section 10(j), past and future reintroduced populations established outside the current range, but within the species' historic range, may now be designated, at the discretion of the Service, as "experimental." Such designations will increase the Service's flexibility to manage these reintroduced populations because such experimental populations may be treated as threatened species. The Service has more discretion in devising management programs for threatened species than for endangered species, especially on matters regarding incidental or regulated takings. Moreover, experimental populations found to be "nonessential" to the continued existence of the species in question are to be treated as if they were only proposed for listing for purposes of section 7 of the ESA, except as noted below.

A "nonessential" experimental population is not subject to the formal consultation requirement of section 7(a)(2) of the ESA, except that the full protection of section 7 applies to individuals of the experimental population found on a National Wildlife Refuge or National Park. Section 7(a)(1) of the ESA, requiring Federal agencies to carry out programs to conserve listed species, applies to all experimental populations. Individuals to comprise a designated experimental population can be removed from an existing source or donor population only after determining that such removal is not likely to jeopardize the continued existence of the species and issuance of a permit in accordance with 50 CFR 17.22.

2. Biological

The species included in this rule is the whooping crane (*Grus americana*), listed as an endangered species on March 11, 1967 (32 FR 4001). The whooping crane is classified in the family Gruidae, Order Gruiformes. It is the tallest bird in North America; males approach 1.5 m. In captivity adult males average 7.3 kg and females 6.4 kg. Adult plumage is snowy white except for black primaries, black or grayish alulae, sparse black bristly feather on the carmine crown and malar region, and a dark gray-black wedge-shaped patch on the nape. The bill is dark olive-gray which becomes lighter during the breeding season. The iris of the eye is yellow; legs and feet are gray-black.

Adults are potentially long-lived. Current estimates suggest a maximum longevity in the wild of 22 to 24 years (Binkley and Miller 1980). Captive individuals are known to have survived 27 to 40 years (McNulty 1966, Moody 1931). Mating is characterized by monogamous life-long pair bonds. Individuals remate following death of their mate. Fertile eggs are occasionally produced at age 3 years but more typically at age 4 (pers. comm., Ernie Kuyt 1991). Experienced pairs may not breed every year, especially when habitat conditions are poor. Whooping cranes ordinarily lay two eggs. They will renest if their first clutch is destroyed or lost before mid-incubation (Erickson and Derrickson 1981, Kuyt 1981).

Although two eggs are laid, whooping cranes infrequently fledge two chicks. Only about one of every four hatched chicks survives to reach the wintering grounds (U.S. Fish and Wildlife Service 1986).

The whooping crane first appeared in fossil records from the early Pleistocene (Allen 1952) and probably was most abundant during that two-million-year epoch. They once occurred from the Arctic Sea to the high plateau of central Mexico, and from Utah east to New Jersey, South Carolina, and Florida

(Allen 1952, Nesbitt 1982). In the 19th century, the principal breeding range extended from central Illinois northwest through northern Iowa, western Minnesota, northeastern North Dakota, southern Manitoba, and Saskatchewan to the vicinity of Edmonton, Alberta. A nonmigratory breeding population still existed in southwestern Louisiana in the early 1940's (Allen 1952, Craft 1991).

Through the use of two independent techniques of population estimation, Banks (1978) derived estimates of 500 to 700 whooping cranes in 1870. By 1941, the migratory population contained only 16 individuals. The whooping crane population decline in the 19th and early 20th century was a consequence of hunting and specimen collection, human disturbance, and conversion of the primary nesting habitat to hay, pastureland, and grain production.

Allen (1952) described several historical migration routes. One of the most important led from the principal nesting grounds in Iowa, Illinois, Minnesota, North Dakota, and Manitoba to coastal Louisiana. Another went from Texas and the Rio Grande Delta region of Mexico northward to nesting grounds in North Dakota and the Canadian Provinces. A route through west Texas into Mexico probably followed the route still used by sandhill cranes. These whooping cranes wintered in the interior tablelands of western Texas and the high plateau of central Mexico.

Another migration route crossed the Appalachians to the Atlantic Coast. These birds apparently nested in the Hudson Bay area of Canada. Coastal areas of New Jersey, South Carolina, and river deltas farther south were the wintering grounds. The latest specimen records or sighting reports for some eastern locations are Alabama, 1899; Arkansas, 1889; Florida, 1927 or 1928; Georgia, 1885; Illinois, 1891; Indiana, 1881; Kentucky, 1886; Manitoba, 1948; Michigan, 1882; Minnesota, 1917; Mississippi, 1902; Missouri, 1884; New Jersey, 1857; Ohio, 1902; Ontario, 1895; South Carolina, 1850; and Wisconsin, 1878; (Allen 1952, Burleigh 1944, Hallman 1965, Sprunt and Chamberlain 1949).

Atlantic coast locations used by whooping cranes include the Cape May area and Beesley's Point at Great Egg Bay in New Jersey; the Waccamaw River in South Carolina; the deltas of the Savannah and Altamaha rivers, and St. Simon's Island in Georgia; and the St. Augustine area of Florida. Gulf coast locations include Mobile Bay, Alabama; Bay St. Louis in Mississippi; and numerous records from southwestern Louisiana, where the last bird was captured in 1949. Coastal Louisiana contained both a nonmigratory flock and wintering migrants (Allen 1952).

"There is evidence to suggest that whooping cranes occurred in Florida, perhaps well into the 20th century" (Nesbitt 1982). Nesbitt described various sighting reports including one by O. E. Baynard, a respected field naturalist, who stated that the last flock of whooping cranes (14 birds) he saw in Florida was in 1911 near Micanopy, southern Alachua County. Two whooping cranes were reported east of the Kissimmee River on January 1936 and a whooping crane was shot (and photographed) north of St. Augustine, St. Johns County, in 1927 or 1928 (Nesbitt 1982).

Records from more interior areas of the Southeast include the Montgomery, Alabama, area; Crocketts Bluff on the White River, and near Corning in Arkansas; in Missouri in Jackson County near Kansas City, near Corning, in Lawrence County southwest of Springfield, in Audrain County, and near St. Louis; and in Kentucky near Louisville and Hickman. It is unknown whether these records represent wintering locations, remnants of a nonmigratory population, or wandering birds.

Whooping cranes currently exist in two wild populations and at three captive locations. The one self-sustaining natural wild population nests in the Northwest Territories and adjacent areas of Alberta, Canada, primarily within the boundaries of Wood Buffalo National Park. These birds winter along the central Texas Gulf of Mexico coast at Aransas National Wildlife Refuge and adjacent areas. Forty pairs nested in 1992 and the October 1992 population is estimated at 140. The flock recovered from a population low of 16 birds in 1941. This population is hereafter referred to as the Aransas/Wood Buffalo National Park population (AWP).

The second wild flock consists of 12 individuals reared by wild sandhill cranes (termed cross-fostered because they are foster-reared by another species) in an effort to establish a migratory, self-sustaining population in the Rocky Mountains. The project began in 1975 with the transfer of wild whooping crane eggs from nests in Wood Buffalo National Park to the nests of greater sandhill cranes (*Grus canadensis tabida*) at Grays Lake National Wildlife Refuge in southeastern Idaho. The sandhill cranes became the foster parents to the whooping crane chicks and taught them the migration route which the parents traditionally followed. These birds spend the summer in Idaho, western Wyoming, and southwestern Montana and winter in New Mexico and hereafter are referred to as the Rocky Mountain population (RMP). From 1975 through 1988, 289 eggs were transferred (including 73 eggs from the captive flock at the Patuxent Wildlife Research Center), 210 hatched, and 85 chicks fledged. The RMP population peaked at 33 birds in 1985 and has declined since then to 10 birds.

Dr. Edward O. Garton, biometrician at the University of Idaho, working with Dr. Rod Drewien the leader of the cross-fostering project (Garton et al. 1989), modelled the cross-fostered population to predict when it might become self-sustaining. In the model they assumed: (1) The cross-fostered females would be breeding at the same rate as the females in Canada; and (2) survival of birds in their first year would be similar to that of first year birds in Canada (Garton et al. 1989). Despite these optimistic and unrealized assumptions, with the future transfer of 30 eggs per year, the population would only reach 6 breeding pairs after 50 years. "It is obvious from all scenarios modelled that egg transplants of less than 30 eggs per year will not suffice to establish a self-sustaining population in a reasonable period of time. Natural breeding will be essential to establish a self-sustaining population" (Garton et al. 1989).

By 1989, biologists were beginning to suspect the absence of pairing might be due in part to improper sexual imprinting, particularly by the female whooping cranes. Sexual imprinting of a foster-reared species on the foster-parent species had already been confirmed in foster-reared raptors, waterfowl, gulls, finches, and gallinaceous birds (Bird et al. 1985, Immelmann 1972). One test of the imprinting problem occurred at International Crane Foundation where sandhill cranes were foster-reared by red-crowned cranes (sample n=1), white-naped cranes (n=2), and Siberian cranes (n=1). When given a choice the cross-fostered sandhill cranes socialized more with the foster species than with their own species. The two foster-reared females showed a stronger preference for the foster species than did the two foster-reared males (Mahan and Simmers 1992). By fall of 1992, cross-fostered adult female whooping cranes of ages 4 through 12 years passed through a nesting season on 34 occasions without pairing. Whooping cranes at Wood Buffalo National Park begin egg production at an average age of 4 years (E. Kuyt, pers. comm., 1991). In the summer of 1992, a male whooping crane paired with a female sandhill crane and produced a chick.

This provided further evidence that the cross-fostering was leading to improper sexual imprinting.

The Idaho cross-fostering project is being phased out because these birds have never paired (perhaps due to improper sexual imprinting) and the mortality rate in this population has become too high to justify continuing egg transfer. Fieldwork in the project ended in summer 1991, and project personnel are concentrating on finishing their final contract report. The Service and Canadian Wildlife Service are currently evaluating a proposal for future use and experimentation with these RMP birds.

The largest captive population of 38 birds greater than 1 year of age, including 8 productive pairs, is located at the Patuxent Wildlife Research Center (Patuxent) near Laurel, Maryland. Another 7 pairs at Patuxent should begin producing eggs in 1 to 5 years. This site is directly administered by the Service. A second captive flock containing 27 birds greater than 1 year of age is maintained at Service cost at International Crane Foundation (ICF), a private foundation, near Baraboo, Wisconsin. The Wisconsin flock contains three experienced breeding pairs and another seven pairs which should enter production over the next one to five years. A subadult pair is maintained at the San Antonio Zoo in San Antonio, Texas. These birds are maintained at the expense of the zoo under supervision of the Service. An additional captive site has been constructed in Calgary, Alberta, Canada at the Calgary Zoo. This flock is being developed under the oversight of the Canadian Wildlife Service. The Calgary Zoo staff received training at ICF and Patuxent in 1991 and 1992. They will receive two pairs of whooping cranes in November/December of 1992, additional birds from the U.S. captive flocks in 1993, and eggs from the wild flock in 1994. The goal for this flock is 10 breeding pairs.

Whooping cranes adhere to ancestral breeding areas, migratory routes, and wintering grounds, leaving little possibility of pioneering into new regions. The only self-sustaining wild breeding population can be expected to continue utilizing its current nesting location with little likelihood of expansion except on a local geographic scale. This population remains vulnerable to destruction through a natural catastrophe (hurricane), a red tide outbreak, or contaminant spill, due primarily to its limited wintering distribution along the intracoastal waterway of the Texas coast. The Gulf Intracoastal Water Way (GIWW) experiences some of the heaviest barge traffic of any waterway in the world. Much of the shipping tonnage is petrochemical products. An accidental spill could destroy whooping cranes and/or their food resources. With the only breeding wild population so vulnerable, it is urgent that additional wild self-sustaining populations be established as soon as practical.

3. Recovery Efforts

The first recovery plan developed by the U.S. Whooping Crane Recovery Team (Team) was approved January 23, 1980. It was revised December 23, 1986. The short-term goal is to downlist the whooping crane from the endangered category to the threatened category. The criteria for attaining this downlisting goal is achieving a population level of 40 pairs in the AWP and establishing two additional, separate and self-sustaining, populations consisting of 25 nesting pairs each. The recovery plan recommends these goals should be attained for 10 consecutive years before the species is reclassified to threatened. These new populations may be migratory or nonmigratory. The recovery plan is being revised to reflect the recent progress towards creating the captive flock in Calgary, the Florida reintroduction, and plans for the RMP birds.

In 1985, the Director-General of the Canadian Wildlife Service and the Director of the U.S. Fish and Wildlife Service signed a memorandum of understanding (MOU) entitled "Conservation of the Whooping Crane Related to Coordinated Management Activities." The MOU was revised and signed in 1990. It discusses disposition of birds and eggs, postmortem analysis, population restoration and objectives, new population sites, international management, recovery plans, and consultation and coordination. All captive whooping cranes and their future progeny are jointly owned by the U.S. Fish and Wildlife Service and the Canadian Wildlife Service. Consequently, both nations are involved in recovery decisions.

4. Reintroduction Methodology and Site Selection Process

In early 1984, pursuant to the recovery plan goals and the recommendation of the recovery team, potential whooping crane release areas were selected in the eastern United States. At that time the prognosis was favorable for successfully establishing a western population by use of the cross-fostering technique. Consequently, key considerations in selecting areas to evaluate for the eastern release were (1) large areas of potentially suitable wetland habitat; (2) a healthy sandhill crane population sufficient to support recovery using the cross-fostering technique; (3) public and State agency support for such a recovery effort in the release locale; (4) low-to-moderate levels of avian disease pathogens, environmental contaminants, and power lines; and (5) the potential of the habitats to simultaneously support whooping cranes and sandhill cranes.

The areas selected were the upper peninsula of Michigan and adjacent areas of Ontario, the Okefenokee Swamp in southern Georgia, and three sites in Florida. The Michigan site would potentially support a migratory population. The Georgia and three Florida sites would each support a nonmigratory population. The Michigan/Ontario wetlands are occupied by greater sandhill cranes that winter in Florida and the Okefenokee Swamp of Georgia. The wetlands in Georgia and Florida are occupied by the nonmigratory Florida sandhill crane (*G. c. pratensis*) and in winter by greater sandhill cranes which primarily nest in southern Ontario, Michigan, eastern Minnesota, and Wisconsin. Three-year studies were initiated at each site in October 1984 to evaluate their respective suitabilities.

Results of the studies were presented in written final reports to the U.S. Whooping Crane Recovery Team in fall 1987 (Bennett and Bennett 1987, Bishop 1988, McMillan 1987, Nesbitt 1988) and in verbal reports in February 1988. By 1988, the Team recognized that cross-fostering was not working to establish a migratory population in the West. The possibility of inappropriate sexual imprinting associated with cross-fostering, and the lack of a proven technique for establishing a migratory flock, influenced the team to favor establishing a nonmigratory flock. A nonmigratory population has several features which make it easier to achieve success: (1) Released birds do not face the hazards of migration (over one half of the losses of fledged, cross-fostered birds occurs during migration); and (2) released birds inhabit a more geographically limited area year-round than do migratory cranes, which increases the opportunity for birds to find a compatible mate.

Studies of whooping cranes (Drewien and Bizeau 1977) and greater sandhill cranes (Nesbitt 1988) have shown that migration in these cranes is learned rather than innate behavior. Captive-reared whooping cranes released in Florida are expected to develop a sedentary population.

In summer 1988 the Team selected Kissimmee Prairie as the area most suitable for the next experiment to establish a self-sustaining population. A suitable technique for release of whooping cranes in Kissimmee Prairie is the gentle release of captive-reared birds conditioned for wild release. Cranes are conditioned for wild release by being reared in isolation from humans, by use of conspecific role models, puppets, and exercised by animal care personnel in bird costumes to avoid imprinting on humans. This technique has been successful in supplementing the population of endangered nonmigratory Mississippi sandhill cranes (*G. c. pulla*) (Zwank and Wilson 1987, Ellis et al. 1992). The term gentle release refers to retaining captive-reared birds in open-topped enclosures (conditioning pens) at the release site as they gradually adjust to their new surroundings. The enclosures contain some natural foods and water. Commercial foods are provided *ad libitum*. While in the conditioning pens, flight is restricted by the use of plastic brailes which preclude full wing extension. After several weeks the brailes are removed and the birds are allowed to fly from the pen. While the birds acclimate to their new freedom, commercial foods are continued in the pens for their use as needed.

The Service will gentle release 9 to 12 juvenile whooping cranes on Kissimmee Prairie, in early 1993. These birds have been captive-reared at Patuxent Wildlife Research Center in Laurel, Maryland, and the International Crane Foundation in Baraboo, Wisconsin. They were conditioned for wild release to increase post-release survival and their ability to adjust to wild foods. Birds will be double radio tagged and monitored for 2 years after release to discern movements, habitat use, other behavior, and survival. If results of this initial release are favorable, the releases will be resumed later in 1994 with the goal of releasing 20 birds annually for about 10 years.

The reintroduction will: (1) Implement a primary recovery action for a federally listed endangered species; (2) obtain data for further assessing the suitability of Kissimmee Prairie of south central Florida as whooping crane habitat; and (3) evaluate the suitability of releasing captive-reared whooping cranes, conditioned for wild release, as a technique for establishing a self-sustaining, nonmigratory population. Information on survival of released birds, movements, behavior, causes of losses, reproductive success, and other data will be gathered throughout the project. Project progress will be evaluated annually.

The likelihood of the releases resulting in a self-sustaining population is believed to be good (60 to 80 percent). Whooping cranes historically occurred in Florida and the release area habitat is similar to that which supported nesting whooping cranes in a nonmigratory population in Louisiana into the 1940's. The minimum goal for numbers of cranes to be released annually is based on the research of Griffith et al. (1989). As captive production increases, annual release numbers will be increased and, for a long-lived species like the whooping crane, continuing releases for a number of years increases the likelihood of reaching a population level which can sustain stochastic events.

The rearing and release techniques have proven successful in building the wild population of the endangered Mississippi sandhill cranes (*G. c. pulla*). If breeding and mortality rates at Kissimmee Prairie mirror those observed in the AWP flock, the suggested rate of release is adequate to assure establishment, with a minimal probability of failure to establish a population (Mirande et al. 1992). If breeding is delayed until 6 or 7 years of age, population growth would be slower, the population would be less stable, and there would be some probability of failure of the introduction. If a non-migratory flock in Florida experiences birth and death rates more similar to the sandhill cranes in Florida, establishment is still likely (Mirande et al. 1992).

Status of Reintroduced Population

The whooping crane population of Florida is designated a nonessential experimental population according to the provisions of section 10(j) of the ESA.

Being authorized for release as an "experimental population" means the reintroduced population will be treated as a threatened species rather than an endangered species. This designation enables the Service to develop special regulations for population management that are less restrictive than the mandatory prohibitions. Such special regulations can provide management flexibility when needed to make a reintroduction compatible with current or planned human activities in the release area. Per section 4(d) of the ESA, these special regulations must be "necessary and advisable" to provide for the conservation of the whooping crane.

"Nonessential" experimental populations are not essential to the continued existence of the species. For purposes of section 7 of ESA, they are treated as though they were only proposed for listing, except when occurring in an area of the National Wildlife Refuge System or the National Park System. This experimental population qualifies as being nonessential to the continued existence of the whooping crane because:

1. With approximately 90 whooping cranes in captivity at four discrete locations and about 150 whooping cranes in the wild it is evident the Florida population will not be essential to the continued existence of the species. If the definition of nonessential is further narrowed to consider only the existence of the species in the wild, the population is still nonessential. The two extant, discrete wild populations contain about 10 and 140 individuals. A catastrophic event is unlikely to simultaneously strike both populations nor is it likely to destroy all individuals in the larger population. With the existing captive flocks the Service also has the capability to introduce additional birds (by captive-produced eggs) back into the wild. Therefore, whooping cranes are not in imminent danger of becoming extinct in the wild nor will designation of the Florida population as nonessential be likely to "* * * appreciably reduce the likelihood of survival of that species in the wild."

2. For the time being, the AWP and the captive populations will be the primary species population. This species has been protected against the threat of extinction from a single catastrophic event by gradual recovery of the AWP and by increase and management of the cranes at three captive sites. Loss of the experimental population would not jeopardize species' survival.

3. For the time being, the primary repository of genetic diversity for the species will be the approximately 200 wild and captive whooping cranes in the locations mentioned in (1) above. The birds selected for reintroduction will be as genetically redundant as possible with the captive population, hence any loss of reintroduced animals in this experiment will not significantly impact the goal of preserving maximum genetic diversity in the species.

4. Any birds lost during the reintroduction attempt can be replaced through captive breeding or by transfer of eggs from the AWP. Eggs have been transferred to captivity from the AWP population for recovery purposes (building the captive flocks and the experimental wild cross-fostered population) since 1967. The AWP has

continued to grow during this interval despite the egg transfers. Since 1985, biologists involved in the egg transfer have endeavored to ensure that one viable egg remains in each nest. Such egg switching within the Park provides infertile pairs the opportunity to raise a chick. These egg switches have increased flock growth and the potential for species recovery. In 1992 at least 40 wild pairs nested in Canada, an increase from 33 in 1991. Egg and chick production doubled in the captive flocks in 1992. Within the captive population there also are a number of young pairs (16) expected to enter the breeding component of the population over the next 5 years. Such wild and captive flock increases illustrate the potential of the species to replace individual birds released in the reintroduction effort in Florida.

The reintroduction will further the conservation of the species. There are uncertainties in the reintroduction experiment, but a decision not to attempt to establish a second wild self-sustaining population would be more hazardous to survival of the species in the wild. The present tenuous status of the AWP, which could be decimated by catastrophic events such as a Gulf coast hurricane or a contaminants spill on the wintering grounds, necessitate management efforts to establish an additional wild population. The Service believes three self-sustaining wild populations should be in existence before the whooping crane can be downlisted to threatened status. Such a downlisting requirement is identified in the U.S. Whooping Crane Recovery plan and in the newly drafted Canadian "National Recovery Plan For The Whooping Crane." The nonmigratory Florida population would potentially be the second such population. The site for the third population will be selected at a future date and, in part, will depend on the success of the Florida experiment. If the reintroduction effort at Kissimmee Prairie is successful, the conservation of the species will have been furthered considerably by not only establishing a second self-sustaining population, but by confirming that captive reared birds can be used to establish a nonmigratory wild population. A successful reintroduction into Florida will set the stage for the next major recovery action, establishing a second self-sustaining migratory population. It will provide the public support for the additional recovery efforts necessary for downlisting the species from Endangered to Threatened.

The area currently supports one of the largest and most consistently productive populations of Florida sandhill cranes in the State. The Florida sandhill crane is currently listed as threatened by the State (Florida Game and Fresh Water Fish Commission 1991). Additionally, the area supports populations of eastern indigo snake (*Drymarchon corais couperi*), bald eagle (*Haliaeetus leucocephalus*), snail kite (*Rostrhamus sociabilis*), red-cockaded woodpecker (*Picoides borealis*), American alligator (*Alligator mississippiensis*), Florida panther (*Felis concolor coryi*), and Florida grasshopper sparrow (*Ammodramus savannarum floridanus*), all of which are federally listed as endangered or threatened species. The whooping crane was designated as a Species Of Special Concern in Florida by action of the Florida Game and Fresh Water Fish Commission in September 1992.

Location Of Reintroduced Population

The Kissimmee Prairie consists of approximately 2,000 square kilometers of flat, open palmetto prairie interspersed with shallow wetlands and lakes. On private ranch lands much of the prairie has been converted to improved pasture. Land ownership includes eight large private ranches totaling 82,200 hectares (ha) and seven public ownerships totaling 104,953 ha. Large private holdings range from 2,700 ha to 42,500 ha. Public lands range from 2,955 ha to 43,300 ha and include the Three Lakes Wildlife Management Area (WMA) (22,400 ha), National Audubon Society Kissimmee Prairie Sanctuary (2,955 ha), Kicco WMA (3,100 ha), Bull Creek WMA (8,425 ha), Upper St. John's River WMA (24,800 ha), and Avon Park Bombing Range (43,300 ha).

Seventy percent of the primary release site, Three Lakes WMA, is suitable crane habitat. Twenty-seven percent of this habitat is shallow wetlands characterized by pickerel weed (*Pontederia* spp.), nuphar (*Nuphar luteum*), and maiden cane (*Panicum hemitomon*). Fifty-five percent of the area consists of dry prairie and flatwoods with saw palmetto (*Serenoa repens*), various grasses, and scattered slash pine (*Pinus elliottii*) the characteristic vegetation. Lakes Kissimmee, Marion, and Jackson bound the Three Lakes WMA and each has an extensive wetland edge. Scattered strands of cypress (*Taxodium* spp.) are associated with these and several smaller lakes in the area.

The principal private land use is livestock grazing and sod farming. Habitat is maintained in a subclimax state through controlled burning, primarily in winter and early spring. Areas are burned on a 2 to 3 year rotation. The public lands are managed for wildlife values, water conservation, and to maintain natural habitat conditions. Compared to other release areas in Florida, the Kissimmee Prairie has experienced the least pressures associated with human population growth over the past 30 years due to its distance from major population centers and the presence of large private and public land holdings.

Management

1. Monitoring

Whooping cranes will be intensively monitored by the Florida Game and Fresh Water Fish Commission (Commission) prior to and after release. The birds will be observed daily while they are in the conditioning pen and on-site security will be provided by a resident caretaker. During the pre-release conditioning period, at least nine 30-minute time budgets will be collected on each individual (three from dawn to 1000 hours, three from 1000 to 1500 hours, and three from 1600 hours to dusk). Facilities for captive maintenance of the birds are modeled after facilities at the Service's Patuxent Wildlife Research Center and the International Crane Foundation. They conform to standards set forth in the Animal Welfare Act and Florida Wildlife Code (Title 39.6 F.A.C.). To further ensure the well-being of birds in captivity and their suitability for release to the wild, facilities will incorporate features of their natural environment (e.g., feeding, loafing, and roosting habitat) to the extent possible. The conditioning pens are similar to those being used successfully to release Mississippi sandhill cranes.

To ensure contact with the released birds, each crane will be equipped with two legband-mounted radio telemetry transmitters. Subsequent to gentle-release, the birds will be monitored daily to assess movements and dispersal from the area of the release pen. The cranes will be checked daily for mortality or indications of disease (listlessness, social exclusion, flightlessness, or obvious weakness, etc.). Social behavior (e.g., pair formation, dominance, cohort loyalty) will also be evaluated.

A voucher blood serum sample will be taken for each bird before its shipment to Florida. A second sample will be taken just prior to release. Any time a bird is handled after release a blood sample will be taken to monitor disease exposure, physiological condition, etc. One year after release all surviving birds will be captured and an evaluation made of their exposure to disease/parasites through blood, fecal,

and other sampling regimens. Monitoring will continue for a second year and exposure to disease/parasites reevaluated at the end of the second year. Healthy birds still in the wild at the end of the second year will remain in the area. Additional releases will begin late in 1994 or 1995, if conditions appear suitable for successful establishment. The releases would then be continued annually with the goal of releasing 20 birds per year for about 10 years and annually evaluating the progress of the recovery effort.

2. Disease/Parasite Considerations

Both sandhill and whooping cranes are known to be vulnerable, in part or all of their natural range, to avian herpes (inclusion body disease), avian cholera, acute and chronic mycotoxicosis, Eastern equine encephalitis (EEE), and avian tuberculosis. Additionally, *Eimeria* spp., *Haemoproteus* spp., *Leucocytozoon* spp., avian pox, lead poisoning, and *Hexamita* sp. have been identified as debilitating or lethal factors in wild or pre-release, captive populations.

A group of crane veterinarians and disease specialists developed protocols for pre-release and pre-transfer health screening for birds selected for release to prevent introduction of diseases and parasites into Florida. Exposure to disease and parasites will be evaluated through blood, serum, and fecal analysis of any individual crane handled post release or at the regular monitoring intervals. Remedial action will be taken to return to good health any sick individuals taken into captivity. Sick birds will be held in specially built facilities and their health and treatment monitored. Special attention will be given to EEE because an outbreak at Patuxent Wildlife Research Center (Center) in 1984 killed 7 of 39 whooping cranes present at the Center. After the outbreak a vaccine was developed for use on captive cranes. In 1989, EEE was documented in sentinel bobwhite quail and sandhill cranes at the Center. No whooping cranes became ill and it appears the vaccine may provide protection. EEE is present in Florida so the birds will be vaccinated in the initial release. Other strains of encephalitis (St. Louis, Everglades) also occur in Florida. The vaccine for EEE may also provide protection against these arboviruses.

When appropriate, chickens or other avian species may be used to assess the prevalence of certain disease factors. This could mean using sentinel species for ascertaining exposure probability to encephalitis or evaluating a species with similar food habits for susceptibility to chronic mycotoxicosis.

3. Genetic Considerations

The ultimate genetic goal of the reintroduction program is to establish wild reintroduced populations that embody the maximum level of genetic diversity available from the captive population. Early reintroductions will likely consist of a biased sample of the genetic diversity of the captive gene pool. This bias will be corrected at a later date by selecting and reestablishing breeding whooping cranes that theoretically compensate for any genetic biases in earlier releases.

4. Mortality

Although efforts will be made to reduce mortality, some will inevitably occur as captive-reared birds adapt to the wild. Collision with power lines and fences are known hazards to wild whooping cranes. There are no major power lines crossing the release site. Three- and four-strand barbed wire fencing is used in conjunction with cattle ranching in the Kissimmee area and presents some collision hazard. If whooping cranes begin regular use of areas traversed by power lines or fences, the Service and Commission, in consultation with the corporation or individual owning the line or fence, will consider placing markers on the obstacles to reduce the probability of collisions.

Bobcats are known predators of adult sandhill cranes and, along with Florida panther and alligators, would be potential predators of adult whooping cranes. Bald eagles, gray fox, bobcats, alligators, panthers, owls, and raccoons are potential predators of young cranes. Natural mortality from predators, fluctuating food availability, disease, wild feeding inexperience, etc., will be reduced through predator management, vaccination, soft release, supplemental feeding for a post-release period, and pre-release conditioning. Human-caused mortality will be reduced by information and education efforts directed at landowners and landusers, and review and management of human activities in the area.

A low level of incidental take as a result of otherwise lawful human activities occurring in the area may occur, such as whooping cranes being flushed into fences by land use activities of farming, grazing, recreation, etc., collisions with vehicles, depredation and harassment from cats and dogs and other take from land use activities.

Injuries or mortalities will be required to be reported immediately to the Service. If it is determined that a whooping crane injury or mortality was unavoidable, unintentional, and did not result from negligent conduct lacking reasonable due care, then the Service will not seek prosecution. Knowing or willful take will be referred to the appropriate authorities for possible prosecution.

5. Special Handling

Under the special regulation, promulgated under authority of section 4(d) of the Act, that will accompany the experimental population designation, Service and Commission employees and agents would be authorized to relocate whooping cranes to avoid conflict with human activities; relocate whooping cranes that have moved outside the appropriate release area when removal is necessary or requested; relocate whooping cranes within the experimental population area to improve survival and recovery prospects; and aid animals which are sick, injured or otherwise in need of special care. If a whooping crane is determined to be unfit to remain in the wild, it would be returned to captivity. Service and Commission employees would be authorized to salvage or dispose of dead whooping cranes.

6. Coordination With Landowners and Land Management Agencies

The action is being coordinated with potentially affected State and Federal agencies, private landowners, and the general public. As previously noted, the Kissimmee Prairie includes 82,200 ha in private ownership and 104,953 ha in public lands. The primary release area is 22,400 ha of public land. Private land managers were contacted and concur with or do not oppose the action provided it does not interfere with existing lifestyles and current and potential income. The Commission manages wildlife management areas in the Prairie, has been actively involved as a cooperator in pre-release studies, and has actively endorsed the project. A Memorandum of Understanding on cooperative recovery actions to be undertaken in Florida has been signed by Regions 2 and 4 of the Service and the Commission. The Commission has stated whooping cranes will receive priority management decisions on Three Lakes WMA. Service and Commission personnel have developed a management plan which describes management activities after the cranes are released. The Director General of the Canadian Wildlife Service, a partner with the U.S. Fish and Wildlife Service as noted in the Memorandum of Understanding, has approved the

project. Florida Department of Natural Resources (Division of State Parks), National Audubon Society (Kissimmee Prairie Sanctuary), the Department of Defense (Avon Park Bombing Range), St. Johns Water Management District, and other entities have been informed of the release and are aware of the possibility that whooping cranes may be introduced on or move to their project area.

7. Potential Conflicts

Conflicts have resulted when migratory birds have been hunted in areas utilized by whooping cranes. These have resulted from the hunting of sandhill cranes and snow geese (*Chen cerulescens*) which to novice hunters may appear similar to whooping cranes. At least two whooping cranes have been killed when they were mistaken for snow geese, and other whooping cranes have been wounded or shot at in areas where snow geese and sandhill cranes were being hunted. Sandhill cranes and snow geese are not hunted in this area of Florida. No conflicts with migratory bird hunting activities are anticipated.

Traditional hunting in the release area has been for deer (*Odocoileus virginianus*), turkey (*Meleagris gallopavo*), and small game. Conflict with traditional hunting in the release area is not anticipated. Access to some areas where whooping cranes might be particularly vulnerable to human disturbance (i.e., occupied nesting areas, conditioning pens, and critical feeding areas) will be prohibited at times, but such closures will be of short duration and they are not viewed as a source of conflict.

The principal activities on the private property adjacent to the release area are grazing and sod production. Use of these private properties by whooping cranes should not preclude such uses. Coordination with land managers may be necessary to accommodate certain land use activities (i.e., pesticide applications) and use by whooping cranes.

Requests by the public for an opportunity to view whooping cranes, a high profile endangered species, might create conflict on private land when whooping cranes are present. Commission personnel assigned to the Kissimmee Prairie area will be alert to activities of the public attempting to observe whooping cranes on private lands. If such activities begin to infringe on or become a nuisance to the rights of private property owners, the Commission and Service will take action to correct the situation. Commission plans to provide opportunity for the public to view whooping cranes on public property, away from sensitive areas, should reduce or eliminate this potential source of conflict.

Released whooping cranes might wander or migrate from the release site, moving into other states or other locations within Florida. The Service believes such movements are unlikely to occur outside Florida for the reasons mentioned below, but if they do, the bird(s) will be recaptured and returned to the release site or to captivity. Likewise, any whooping cranes that wander to locations not conducive to the bird's health or safety will also be captured and moved. Studies of whooping cranes and greater sandhill cranes have shown that migration in these cranes is learned rather than innate behavior.

The cross-fostered whooping cranes in Idaho learned the migration route and wintering site preferences from their foster parents. An experiment in Florida tested whether captive-reared cranes, with an innate tendency to migrate, would migrate or remain sedentary when released in association with cranes that migrate. Greater sandhill cranes that nest in the Great Lakes States migrate to Florida for the winter. Eggs removed from this wild population were hatched and reared in captivity. The birds were released in Florida where they associated with wild nonmigratory Florida sandhill cranes and with wintering, migratory, greater sandhill cranes. The released birds noticeably expanded their localized movements during subsequent migration periods but remained year-round in the Florida release area. Captive-reared whooping cranes released in Florida are expected to develop a sedentary population.

As noted previously, in 1992 a male cross-fostered whooping crane and female sandhill crane paired and produced an intercross chick in the Rocky Mountain population. This pairing is believed to be a consequence of improper sexual imprinting which resulted from the cross-fostering process. This is the first known instance of natural pairing of these species despite frequent association of the two in the wild. Whooping cranes being prepared for release in Florida are reared in association with conspecific role models and are expected to be sexually imprinted on their own species. Sandhill cranes and whooping cranes cross-breeding is not expected to occur as a consequence of the reintroductions in Florida.

8. Protection

Recently released whooping cranes will need protection from natural sources of mortality (predators, disease, inadequate foods, etc.) and from human-caused sources of mortality. Natural mortality will be reduced through pre-release conditioning, gentle release, vaccination, predator control, etc. Human-caused mortality will be minimized by placing whooping cranes in an area with low human population density and relatively low development; by working with and educating landowners, land managers, developers, and recreationists to develop means for conducting their existing and planned activities in a manner that is compatible with whooping crane recovery; and by conferring with developers on proposed actions and providing recommendations that will reduce any likely adverse impacts to the cranes.

The whooping crane was designated a Species of Special Concern in Florida by action of the Florida Game and Fresh Water Fish Commission in September, 1992 (Rule 39–27.005 Florida Wildlife Code). With the protection provided by this State law no person may kill, capture, buy, sell, or possess a whooping crane without an appropriate permit.

A biological opinion on the reintroduction, and designation as experimental nonessential, concluded that the action will not jeopardize the species.

9. Public Awareness and Cooperation

An extensive sharing of information about the program and the species, via educational efforts targeted toward the public in the region and nationally, will enhance public awareness of this species and its reintroduction. The public will be encouraged to cooperate with the Service and the Commission in attempts to maintain whooping cranes in the release area.

Summary of Comments and Recommendations

In the September 29, 1992, proposed rule (57 FR 44721) the Service requested comments or recommendations concerning any aspect of the proposal that might contribute to the development of a final decision on the proposed rule. A 30-day comment period was provided. Large local ranch owners, county commissioners, water management districts, Department of Defense, Florida Power and Light Company, Edison Electric Institute, U.S. Corps of Engineers, neighboring states, National Audubon Society, Whooping Crane Conservation Association,

National Wildlife Federation, Central Flyway Technical Committee, Florida Department of Transportation, and others were sent a copy of the rule and invited to provide comments. An announcement of the proposed rule was published in the legal advertisements of the Orlando Sentinel. Twelve hundred newspapers, other media, and environmental interest groups were sent a Service media release announcing publication of the rule and the invitation to comment. The Tampa Tribune and Orlando Sentinel printed articles on the proposed release of whooping cranes. Thirteen letters were received requesting copies of the rule. A total of 24 comment letters and one phone call were received including comments from groups with memberships totaling over 208,000 individuals. One letter opposed the release, 18 letters strongly supported the proposed rule, another letter stated they had no objection to the proposed reintroduction, one oral (telephone) comment expressed concern about wording in the rule, one letter posed questions about future management of the whooping cranes but expressed no opinion about the rule, one letter expressed neither support nor opposition but said if the Service plans to put whooping cranes in the Kissimmee Prairie then airboat traffic must be stopped, and one letter mentioned some historical events about whooping cranes but did not express an opinion about the proposed rule. Three letters supporting the reintroduction expressed concerns about wording of the original rule. Specific issues raised by those commenting and the Service's responses are presented below.

1. General Comments of Support

Eighteen letters of support were received from individuals or groups. Groups responding included The Nature Conservancy, Edison Electric Institute, South Florida Water Management District, the President of the Lake Region Audubon Society speaking for their 800 members, Sierra Club—The Florida Chapter, the Fund For Animals, Inc. with 200,000 members, Wildlife Conservation International, and Levy County Development Authority. Reasons given for the support included it will be beneficial for Florida's wildlife to include the whooping crane once again; the nonmigratory flock would not have to face the hazards of migration each year; the designation as an experimental nonessential population; the necessity of establishing other populations of whooping cranes is evident because of the vulnerability of the only self-sustaining wild population; the project is in harmony with the mission to preserve and enhance biological diversity through protection of natural communities and native plants and animals; ecotourism provides an opportunity to instill a conservation ethic in visitors who have a close encounter with natural Florida and applauded the plans to provide access and viewing on public property away from sensitive areas; controlled access provides an economically beneficial tourism lure which creates jobs for people; the project appears to be very well-researched and has the potential to benefit whooping cranes and other species; and the establishment of whooping cranes in south-central Florida would be added protection for the species in the event a disease or natural disaster overtook the Texas flock.

Response: The Service agrees with the reasons for supporting the reintroduction and addresses them in this final rule and the final environmental assessment and ESA Section 7 biological opinion. The efforts of individuals in support of the project are appreciated.

2. Opposition To The Reintroduction.

One respondent opposed the introduction. A 9-year-old girl requested that the whooping cranes not be released from captivity, stating "I do not want them to get killd" (sic).

Response: The Service understands the desire to protect the captive whooping cranes from the dangers they will face in the wild. However, for the betterment of the species as a whole, the Service believes it is appropriate to risk some individuals with the hope that chances for survival of the species will be increased by the reintroduction.

3. Intentional Take

A Federal law enforcement agent and the Fund For Animals, Inc. expressed concern about wording in the special rule specifying circumstances under which "taking" of introduced whooping cranes will be allowed. Item 3(h)(2) said "No person may intentionally take this species in the wild * * * except as provided * * *". The respondents believed the word "intentional" would make conviction of violators impossible because those in violation could claim the take was not intentional.

Response: The Service agrees that proving that certain takings were intentional is problematic and has deleted the word "intentional" in 3(h)(2) of the final rule. However, the Service has added a new paragraph (5) which allows incidental take of whooping cranes within the experimental population area. Incidental take is any take that is incidental to, and not the purpose of, the carrying out of an otherwise lawful activity. A low level of incidental take may occur in the area, such as may occur as a result of collisions with power lines, being flushed into fences by land use activities of farming, grazing, or recreation. The Service will work with landowners and landusers to ensure that incidental take is minimized. All incidental take mortalities must be reported to the Service and will be investigated.

4. Control of Airboat Traffic

One respondent said if whooping cranes are released in the Kissimmee Prairie, airboat traffic must be stopped because it has driven away the cranes, snipes, ducks, and curlews.

Response: The writer was not specific about where in the Prairie this activity occurred and provided no factual documentation. The Service and Commission will be alert for the problems described by the writer.

5. Change To Essential Experimental Population in the Final Rule

The Fund For Animals, Inc. strongly supported the reintroduction but opposed the nonessential experimental designation. They noted that reintroduction is clearly essential for continued existence of the species. In order for a population to be designated as nonessential experimental, the population must not be "essential to the continued existence of an endangered species * * *" 16 U.S.C. 1539(j)(2)(B). They further referred to a House Conference Report which provides additional interpretation regarding the meaning of nonessential: "* * * the Secretary shall consider whether the loss of the experimental population would be likely to appreciably reduce the likelihood of survival of that species in the wild. If the Secretary determines that it would, the populations will be considered essential to the continued existence of the species." (House Conf. Rep. No. 97–835, 1982 U.S. Code Cong. & Admin. News 2860, 2874–2875). The Notice (proposed rule) clearly recognizes the essential nature of this reintroduction effort to the continued existence of the species in the wild by noting the Aransas population "could be annihilated by catastrophic events such as a Gulf coast hurricane or a contaminants spill * * *".

Response: The principal basis for the nonessential finding is the definition stated in the Endangered Species Act which says "* * * the Secretary shall * * * determine * * * whether or not

such population is essential to the continued existence of an endangered species * * *" (16 U.S.C. 1539(j)(2)(B)). With approximately 90 whooping cranes in captivity at four discrete locations and about 150 whooping cranes in the wild at two separate locations, it is evident the Florida population is not essential to the continued existence of whooping cranes as a species. If the definition is further narrowed to consider only the existence of the species in the wild, the Service still concludes that the population is nonessential. The Service believes the Florida population is essential to further recovery of the species and to reach the goal of downlisting, but being essential for recovery is not synonymous with being essential for existence in the wild. The two extant, discrete wild populations contain about 10 and 140 individuals. A catastrophic event is unlikely to simultaneously strike both populations nor is it likely to destroy all individuals in the larger population. With the existing captive flocks, the Service also has the capability to introduce additional birds back into the wild. Therefore, the Service does not believe whooping cranes are in imminent danger of becoming extinct in the wild nor will designation of the Florida population as nonessential be likely to "* * * appreciably reduce the likelihood of survival of that species in the wild".

6. Change of Nonessential Designation in the Future

One local rancher said "We have no problem with your experimental release of whooping cranes in Florida * * *". He then expressed a concern that, after the cranes were established, the birds might be designated "endangered" and that would cause problems for landowners. Sierra Club—The Florida Chapter strongly supported the reintroduction but reluctantly accepted the need for the nonessential designation while the project is getting started. The Sierra Club requested that after a period of time the designation should be reconsidered.

Response: The Service proposed the nonessential experimental designation for the reasons stated in this final rule. The designation alleviated local concerns about constraints on land management options of local landowners. The Service believes the whooping cranes will be adequately protected despite the absence of the usual section 7 requirements. Changing the experimental nonessential designation at a later date would most likely alienate some local landowners who now strongly support the reintroduction and provide research personnel access to their properties. Such an action would be counter-productive. In response to the rancher concerned that the experimental nonessential designation would be dropped when the birds became established, the Service states there are no plans to change the designation. As this nonmigratory population becomes self-sustaining, and other recovery goals for whooping cranes are met, there will be less justification, not more, for viewing the Florida population as essential to the survival of the species.

7. Unilateral Marking of Transmission Lines

Letters from Edison Electric Institute and Florida Power and Light Company expressed concern about the wording in the Mortality section of the proposed rule (page 44726). The statement of concern said "if whooping cranes begin regular use of areas traversed by power line or fences, the Service and Commission will consider placing markers on the obstacles to reduce the probability of collisions." The respondents interpreted this to mean the Service and the Commission would confer with the owners of such obstacles and consider the merits of marking the obstacles. However, the wording could be interpreted to mean the Service and Commission would unilaterally mark the obstacles and such action would not be acceptable to the utilities involved.

Response: The intended meaning of the wording was that the Service and Commission would consult together and evaluate whether the situation warranted marking of obstacles. The Service did not explain the next step, that if marking seemed warranted, the Service would work with the appropriate owner of the obstacle to encourage cooperative marking to protect the cranes. The Service hopes the wording in this final rule better reflects the original intent.

8. Concern About Inability To Reproduce

One woman supported the release and said she hoped these male birds know how to dance—apparently in reference to the absence of pairing and breeding in the cross-fostered whooping cranes of the Rocky Mountain population.

Response: Males in the captive populations do know how to dance and breed naturally. There is no basis for believing that the birds released in Florida will be any less capable of dancing and breeding.

9. Full Section 7 Protection on State and Federal Lands

Sierra Club—The Florida Chapter recommended that full protection under section 7 of the Endangered Species Act should apply to National Forests, other Federal lands, and State lands, just as it does for experimental populations on National Parks and National Wildlife Refuges.

Response: The designation of experimental nonessential provides full protection, under section 7 of The Endangered Species Act, only to National Wildlife Refuges and National Park lands. Extending full protection to State lands and other Federal lands would require an amendment to the Endangered Species Act and is not a prerogative of the Service.

10. Exceptions to the Take Prohibition Should Be More Narrowly Defined

The Fund For Animals, Inc. suggested that exceptions to take prohibitions are open ended and susceptible to virtually any interpretation. Take exceptions should be more narrowly restricted to instances where such removal is clearly related to advancing the conservation of the species. Otherwise, they fear, every time a crane happens to land on the property of a landowner who does not recognize the value of a whooping crane, a request will be made to relocate the crane.

Response: The Service agrees that a situation could arise of a crane landing on private property where it is not welcome, and the Service being requested to remove it. If the existence of a whooping crane on the property may require the individual to modify his activities in order to avoid taking the bird, and if the party were to request its removal, the Service would assess the particular circumstances and determine whether removal would be appropriate. If it appears the crane's existence on the property would truly conflict with the landowner's activities, the Service would work with the affected party in an attempt to reduce, minimize or delay impacts. If necessary, the Service may determine that it is in the best interest of the whooping crane and the reintroduction effort to remove the bird.

The obvious purpose of establishing the experimental population is to further the conservation of the species and advance its recovery to the point where downlisting or eventual delisting is appropriate. All Service decisions pertaining to this project will be directed at accomplishing that goal. The consent, support and cooperation of agencies and persons holding any interest in land which may be affected

by the establishment of the population is a critical factor in accomplishing a successful reintroduction. In determining whether relocation of a whooping crane is appropriate, the nature of the circumstances will be weighed against the potential impacts to the species, and a decision made on a case-by-case basis. The Service believes this flexibility is critical to a successful reintroduction.

This experimental population has broad support in the release area. The Service does not expect that capricious requests to remove whooping cranes will be a significant problem.

11. General Questions About the Proposal

A letter from a Water Management District asked four questions about the proposal. These are listed below and the Service response follows each.

1. Will There Be Changes in the Burning Regime To Benefit Cranes?

Response: The Service and the Commission have developed a management plan identifying prescribed burning and other management practices. The current 2- or 3-year burn cycle is adequate. There may be an expansion of burning into some areas not currently "prescribe burned" but no decision has been made on such specifics.

2. Will There Be an Attempt To Increase Crane Habitat at Three Lakes Wildlife Management Area?

Response: There may be an effort to improve the quality of crane habitat at Three Lakes Wildlife Management Area. There presently are no plans to actively increase the crane habitat acreages. However, the Service does not anticipate that such will occur as a consequence of restoration of original drainage patterns and increased use of the prairie as a water conservation area. These changes are not a consequence of Service management actions.

3. How are Whooping Cranes Expected to Interact With Sandhill Cranes? Will There Be Competition for Food or Nest sites?

Response: The two cranes are members of the same genus. They associate together in the Great Plains and Rocky Mountains in feeding, roosting, and migrating flocks. The whooping crane, being larger, tends to dominate. Their foods are similar in the uplands but whooping cranes are more aquatic in their diet in wetlands. There do not appear to be food shortages so the Service does not anticipate competition for food. The whooping crane may displace sandhill cranes from some nest sites.

4. How Will the Water Management District be Informed of any Movement of Whooping Cranes into District-owned Lands?

Response: The Water Management District will be notified by phone, and if desirable, by letter.

National Environmental Policy Act

An Environmental Assessment prepared under the authority of the National Environmental Policy Act of 1969 is available to the public at the Service Office identified in the "ADDRESSES" section. It has been determined that this action is not a major Federal action that would significantly affect the quality of the human environment within the meaning of section 102(2)(C) of the National Environmental Policy Act (implemented at 40 CFR parts 1500–1508).

Required Determinations

The Service has determined that this is not a major rule as defined by Executive Order 12291 and that the rule will not have a significant economic effect on a substantial number of small entities as described in the Regulatory Flexibility Act (Pub. L. 96–354). The rule does not contain any information collection or record keeping requirements as defined in the Paperwork Reduction Act of 1980 (Pub. L. 96–511). The Service has also determined that this action would not involve any taking of constitutionally protected property rights that require preparation of a takings implication assessment under Executive Order 12630. The rule does not require a Federalism assessment under Executive Order 12612 because it would not have any significant federalism effects as described in the order.

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Authors

The principal authors of this rule are Dr. James Lewis, Fish and Wildlife Enhancement, U.S. Fish and Wildlife Service, Albuquerque, New Mexico (Phone: 505/766–2914); and Linda Finger, Fish and Wildlife Enhancement, U.S. Fish and Wildlife Service, Jacksonville, Florida (Phone: 904/232–2580). The Service also acknowledges the contribution of Steve Nesbitt, Biological Administrator I, Florida Game and Fresh Water Fish Commission, Gainesville, Florida, to the development of this rule.

List of Subjects in 50 CFR Part 17

Endangered and threatened species, Exports, Imports, Reporting and recordkeeping requirements, and Transportation.

Regulation Promulgation

PART 17—[AMENDED]

Accordingly, part 17, subchapter B of chapter I, title 50 of the Code of Federal Regulations is hereby amended as set forth below:

1. The authority citation for part 17 continues to read as follows:

Authority: 16 U.S.C. 1361–1407; 16 U.S.C. 1531–1544; 16 U.S.C. 4201–4245; Pub. L. 99–625, 100 Stat. 3500; unless otherwise noted.

2. Section 17.11(h) is amended by revising the entry for "Crane, whooping" under BIRDS to read as follows:

§ 17.11 Endangered and threatened wildlife.

* * * * *

(h) * * *

Species		Historic range	Vertebrate population where endangered or threatened	Status	When listed	Critical habitat	Special rules
Common name	Scientific name						
*	*	*	*	*		*	
BIRDS							
*	*	*	*	*		*	
Crane, whooping ...	*Grus americana*	Canada, U.S.A. (Rocky Mountains east to Carolinas) Mexico.	Entire, except where listed as an experimental population.	E	1,3	17.95(b)	NA
Do	.....do	.....do	U.S.A. (FL)	XN	487	NA	17.84(h)
*	*	*	*	*		*	

3. 50 CFR 17.84 is amended by adding a new paragraph (h) as follows:

§ 17.84 Special rules—vertebrates.

* * * * *

(h) Whooping crane (*Grus americana*). (1) The whooping crane population identified in paragraph (h)(8) of this section is a nonessential experimental population.

(2) No person may take this species in the wild in the experimental population area except when such take is accidental, unavoidable, and not the purpose of the carrying out of an otherwise lawful activity, or as provided in paragraphs (h) (3) and (4) of this section.

(3) Any person with a valid permit issued by the Fish and Wildlife Service (Service) under § 17.32 may take whooping cranes in the wild in the experimental population area.

(4) Any employee or agent of the Service or State wildlife agency who is designated for such purposes, when acting in the course of official duties, may take a whooping crane in the wild in the experimental population area if such action is necessary to:

(i) Relocate a whooping crane to avoid conflict with human activities;

(ii) Relocate a whooping crane that has moved outside the Kissimmee Prairie when removal is necessary or requested;

(iii) Relocate whooping cranes within the experimental population area to improve survival and recovery prospects;

(iv) Relocate whooping cranes from the experimental population area into captivity;

(v) Aid a sick, injured, or orphaned specimen; or

(vi) Dispose of a dead specimen, or salvage a dead specimen which may be useful for scientific study.

(5) Any taking pursuant to paragraphs (h) (3) and (4) of this section must be immediately reported to the National Whooping Crane Coordinator, U.S. Fish and Wildlife Service, P.O. Box 1306, Albuquerque, New Mexico 87103 (Phone: 505/766–2904), who, in conjunction with his counterpart in the Canadian Wildlife Service, will determine the disposition of any live or dead specimens.

(6) No person shall possess, sell, deliver, carry, transport, ship, import, or export by any means whatsoever, any such species from the experimental population taken in violation of these regulations or in violation of applicable State fish and wildlife laws or regulations or the Endangered Species Act.

(7) It is unlawful for any person to attempt to commit, solicit another to commit, or cause to be committed, any offense defined in paragraphs (h) (2) through (6) of this section.

(8) The geographic area that the nonessential experimental population may inhabit will include the entire State of Florida. The reintroduction site will be the Kissimmee Prairie portions of Polk, Osceola, Highlands, and Okeechobee counties. Current information indicates that the Kissimmee Prairie is within the historic range of the whooping crane in Florida. There are no other extant populations of whooping cranes that could come into contact with the experimental

population. The only two extant populations occur well west of the Mississippi River. The Aransas/Wood Buffalo National Park population nests in the Northwest Territories and adjacent areas of Alberta, Canada, primarily within the boundaries of the Wood Buffalo National Park, and winters along the Central Texas Gulf of Mexico coast at Aransas National Wildlife Refuge. The other population, which was cross-fostered by wild sandhill cranes but has failed to reproduce, summers in Idaho, western Wyoming and southwestern Montana and winters in New Mexico. Whooping cranes adhere to ancestral breeding areas, migratory routes, and wintering grounds leaving little possibility that individuals from the two extant populations will stray into Florida. Studies of whooping cranes have shown that migration is learned rather than innate behavior. The experimental population released at Kissimmee Prairie is expected to remain within the prairie region of central Florida.

(9) The reintroduced population will be closely monitored during the duration of the projects by the use of radio telemetry. Any animal which is determined to be sick, injured, or otherwise in need of special care would be immediately recaptured by Service or State wildlife personnel or their designated agent and given appropriate care. Such animals will be released back to the wild as soon as possible, unless physical or behavioral problems make it necessary to return them to a captive breeding facility.

(10) The status of the experimental population will be reevaluated periodically to determine future management needs. This review will take into account the reproductive success and movement patterns of the individuals released on the area.

Dated: December 28, 1992.

Richard N. Smith,

Acting Director, Fish and Wildlife Service.

[FR Doc. 93–1373 Filed 1–21–93; 8:45 am]

BILLING CODE 4310–55–M

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

50 CFR Part 625

[Docket No. 921230–3020]

Summer Flounder Fishery

AGENCY: National Marine Fisheries Service (NMFS), NOAA, Commerce.

ACTION: Final specifications for the 1993 summer flounder fishery.

SUMMARY: NMFS issues this notification of final specifications to implement the 1993 catch quotas for the summer flounder fishery. Regulations governing this fishery require the Secretary of Commerce (Secretary) to publish specifications for the upcoming fishing year. This action is intended to fulfill this requirement and, thereby, prevent overfishing of the summer flounder resource.

EFFECTIVE DATE: January 1, 1993.

ADDRESSES: The environmental impact statement and analyses for Amendment 2 to the Fishery Management Plan for the Summer Flounder Fishery (FMP) are available from John C. Bryson, Executive Director, Mid-Atlantic Fishery Management Council, room 2115, Federal Building, 300 South New Street, Dover, DE 19901.

FOR FURTHER INFORMATION CONTACT: Kathi Rodrigues, 508–281–9324.

SUPPLEMENTARY INFORMATION: Regulations implementing Amendment 2 to the FMP are found at 50 CFR part 625 and were published on December 4, 1992 (57 FR 57358). The Amendment established several conservation and management measures including: A moratorium on new entrants into the commercial fishery, an annual commercial quota, minimum mesh and fish sizes, seasons, bag limits, etc. The process to set the annual commercial quota and, if necessary, adjust some of the fishing restrictions is described in § 625.20. The purpose of this notification is to specify the annual coastwide and individual commercial quotas and other fishing restrictions for the upcoming summer flounder fishing year.

Annual Review Process

The Summer Flounder Monitoring Committee (Committee), made up of representatives from the Atlantic States Marine Fisheries Commission, the Mid-Atlantic Fishery Management Council (Council), the New England Fishery Management Council and NMFS, is required to review, on an annual basis, scientific and other relevant information and recommend catch quotas and other restrictions necessary to result in a fishing mortality rate of 0.53 for the years 1993–1995, and 0.23 in 1996 and thereafter. The schedule of fishing mortality rates is mandated by Amendment 2 to the FMP and is necessary to prevent overfishing of the summer flounder resource.

The scientific and statistical information that are to be reviewed annually by the Committee are listed in § 625.20(a). The measures that require consideration by the Committee and that may be adjusted are found in § 625.20(b).

The Committee's annual review for the 1993 fishing year resulted in a recommendation to set the 1993 coastwide commercial quota equal to 12.35 million pounds (5.6 million kg) and the recreational target quota at 4.36 million fish estimated to be 8.38 million pounds (3.8 million kg). No further recommendations for adjustments to existing fishing restrictions were made and, therefore, all other measures (e.g., commercial minimum fish size and net minimum mesh size; recreational minimum fish size, possession limit and season) remain as established by Amendment 2. The commercial quota represents the level of allowable coastwide commercial landings necessary to achieve a 0.53 fishing mortality rate in the commercial sector of the fishery. It is calculated based on a simulation of the effects of the existing minimum fish and mesh sizes on landings, utilizing the most currently available estimates of stock size and an assumption that recruitment will be at average levels.

The recreational sector of the fishery is also constrained to the schedule of fishing mortality rates, and for 1993, the rate is also 0.53. The FMP utilizes a different approach to achieve this rate in the recreational sector consisting of a combination of bag, season and size limits rather than state quotas and closures. The "target" level of recreational landings for the 1993 fishing year that will result in a fishing mortality rate of 0.53 is estimated to be 8.38 million pounds (3.8 million kg) or 4.36 million fish.

Based on an analysis of the factors listed in § 625.20(a), the Committee determined that the measures currently in place for the recreational fishery are sufficient to remain within the recreational target quota.

The Committee's recommendation was subsequently forwarded to the Council's Demersal Species Committee, which reviewed the basis for the recommendation and made the identical recommendation to the full Council. After conducting its own review, including consideration of any public comments, the Council voted to adopt this recommendation and forward it to the Regional Director, Northeast Region. This recommendation was approved by the Regional Director for publication in the **Federal Register** as a notification of proposed specifications. All of the steps above were conducted in accordance

with the Annual Review Process described in § 625.20 of the regulations.

The Council also requested that final implementation of the annual quota be expedited so as to correspond with the beginning of the fishing year on January 1, 1993. This is because all sources of mortality that occur during 1993, including any landings, must be accounted for and applied to the quota to achieve the 0.53 fishing mortality rate prescribed by the FMP.

The notification of proposed specifications containing the annual coastwide commercial quota recommendation of 12.35 million pounds (5.6 million kg) and state quotas was filed for public inspection by the Office of the Federal Register on December 21, 1992 and published on December 24, 1992 (57 FR 61389). The public comment period ended on January 5, 1993. This notification of final specifications does not contain any changes from the proposed specifications.

Comments and Responses

Comments were received from: a law firm representing the Southern New England Fishermen's and Lobstermen's Association; the Commissioner of the Connecticut Dept. of Environmental Protection; Congressman Sam Gejdenson, Senator Christopher Dodd and Senator Joseph I. Lieberman, all from Connecticut.

Comment: A commenter objects to the short comment period, contending that it was unreasonably short and included two national holidays.

Response: The comment period was necessary as requested by the Council, to expedite the final quota specification due to the imminent start of the fishing year. NMFS points out, however, that throughout the annual review process beginning in August, 1992, the quota recommended by the ASMFC committee, the Council's Demersal Committee and, eventually, the full Council was well known to the public and opportunities for public input were provided during Council meetings.

Comment: The specifications are "major" under Executive Order (E.O.) 12291 because they significantly impact Connecticut fishermen.

Response: Because fishing mortality rates were well above the level necessary to prevent overfishing the summer flounder resource, Amendment 2 to the FMP implemented a 5-year schedule of reductions to begin to restore the resource. Amendment 2 was approved by the Secretary and published on December 4, 1992. A determination was made that the rule was not a "major rule" under E.O. 12291, based on the regulatory impact review which analyzes the impact across the entire fishery. However, it was also determined that Amendment 2 may have a significant effect on a substantial number of small entities and an analysis was prepared. The analysis concluded that the long-term benefit to the summer flounder stock and the fishery is expected to greatly outweigh the short-term costs to small entities. This final notification merely specifies the allowable quota that can be taken to achieve the 0.53 fishing mortality rate, mandated by the approved Amendment.

Comment: The quota violates national standard 2 because it is based on unsound, inappropriate and unrealistic data rather than the best scientific information available. Landings in Connecticut were inadequately recorded until 1987. The ten-year period upon which the quota is based (1980–1989) results in a Connecticut quota of approximately 118,000 lbs (52,679 kg). This represents a 71 percent reduction from Connecticut's 1991 landings and may result in a closure in February forcing Connecticut vessels to land in Rhode Island or New York. In addition, the ten-year average does not adequately reflect the recent increases in the size and productivity of the Stonington fleet which creates bias against Connecticut in favor of other States.

Response: NMFS is unaware of any additional landings data that may be used to calculate the quotas. The ASMFC Committee and Council Demersal Species Committee used all available landings data. Therefore, the quota is based on the best scientific information available. As a member of ASMFC, Connecticut was able to present its concerns throughout the development of Amendment 2.

Similar comments were made in conjunction with approval of Amendment 2 from fishermen of other states. They believed the quota was biased against them because of their states' earlier conservation actions, such as trawling prohibitions and minimum sizes, that affected landings during the period. The ASMFC recognized there were many circumstances that could result in claims of bias; however, in adopting the Amendment the states decided to put these concerns aside to achieve the long-term conservation benefits and potential increases in yield.

The percent of the quota allocated to each state is based on each state's historical landing levels over the 10-year period selected. All member states of the ASMFC, including Connecticut, agreed to this time period and the manner of distributing the annual quota on a state-by-state basis. Although Connecticut's fleet may have increased greatly in size and productivity in recent years, it may not have done so relative to the other states. Regardless, the quota is not based on the size of the fleet but rather, the size of the resource and the yield that can be produced on a sustainable basis.

Finally, these regulations do not preclude the option of Connecticut vessels to land in other states such as NY or RI, provided those states have quota remaining. This can occur even if Connecticut's fishery is closed. Connecticut dealers may also purchase summer flounder that was landed in any state that has quota remaining.

Comment: The 12.35 million pound quota (5.6 million kg) discriminates against Connecticut fishermen and dealers, contrary to national standard 4. Connecticut dealers are particularly discriminated against because they will not be able to purchase summer flounder after a closure occurs.

Response: Connecticut is not being discriminated against because all states must abide by their assigned quota and close their respective fisheries once a quota is achieved. All of the states agreed to the mortality reductions and the process to achieve them. The annual quota is simply a manifestation of the agreement. In addition, Connecticut dealers may purchase summer flounder landed in any state that has quota available.

Comment: The Regional Director is requested to use his authority to adjust Connecticut's share to roughly 280,000 lbs (125,000 kg) or take immediate action to stop implementation of the quota.

Response: The Regional Director does not have the authority to adjust Connecticut's quota or to stop implementation. The percent of the quota apportioned to each state is set by the regulations implementing the FMP and can only be changed by FMP amendment. Any amendment to the FMP would likely be initiated by the Council and the ASMFC, mirroring the same procedure required for original implementation.

Comment: A commenter supports efforts to prevent overfishing.

Response: NMFS believes that full implementation of the state quota system is necessary to prevent overfishing the summer flounder resource.

1993 State Quotas

This notification of final specifications sets forth the determination of Regional Director, Northeast Region, to implement a coastwide commercial quota equal to

12.35 million pounds (5.6 million kg). The following table presents the final 1993 coastwide commercial quota apportioned among each state according to the percent shares specified by Amendment 2 to the FMP.

State	Share (percent)	1993 Quota (pounds)
ME	0.0482	5,956
NH	0.0005	62
MA	6.9111	853,521
RI	15.8914	1,962,588
CT	0.9532	117,720
NY	7.7486	956,952
NJ	16.9473	2,092,992
DE	0.0180	2,223
MD	2.0662	255,176
VA	21.6001	2,667,612
NC	27.8155	3,435,214

Classification

This action is authorized by 50 CFR part 625 and complies with Executive Order 12291 and the National Environmental Policy Act.

The Regional Director has determined that this action is necessary for the conservation and management of the summer flounder fishery and is consistent with Amendment 2 to the FMP.

These final specifications do not contain a collection-of-information requirement subject to the Paperwork Reduction Act.

A final environmental impact statement (FEIS) was prepared for Amendment 2 and subjected to public comment. The FEIS concluded that the preferred alternative which included the method for determination of annual commercial and recreational quotas based on a specified fishing mortality rate was environmentally preferable compared to the status quo. The measures contained in these final specifications are within the scope of analysis of the FEIS for Amendment 2; therefore no supplemental EIS or environmental assessment is necessary for this action.

These final specifications do not alter the impacts analyzed within the regulatory impact review (RIR) for Amendment 2. On the basis of the RIR, these final specifications are determined not to be a major rule under E.O. 12291.

Previously, a determination was made that Amendment 2 may have a significant effect on a substantial number of small entities and a RIR/final regulatory flexibility analysis was prepared. That analysis was in large part based on the commercial and recreational quotas for 1993 needing to attain a fishing mortality rate of 0.53, the same fishing mortality rate that these final specifications would obtain. The long-term benefit to the summer flounder stock and the fishery is expected to greatly outweigh short-term costs to small entities managed under quota restrictions.

These final specifications do not contain policies with federalism implications sufficient to warrant preparation of a federalism assessment under E.O. 12612.

The most recent biological opinion on the impacts of the summer flounder fishery on threatened and endangered species concluded that the fishery may jeopardize the Kemp's ridley sea turtle, and certain reasonable and prudent alternatives were suggested. Management measures for Amendment 2 were determined to be consistent with those suggestions; therefore, these final specifications are also consistent with those suggestions.

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

List of Subjects in 50 CFR Part 625

Fisheries, Reporting and recordkeeping requirements.

Dated: January 15, 1993.

William W. Fox, Jr.,

Acting Assistant Administrator for Fisheries, National Marine Fisheries Service.

[FR Doc. 93–1479 Filed 1–15–93; 1:40 pm]

BILLING CODE 3510–22–M

National Oceanic and Atmospheric Administration (NOAA)

50 CFR Parts 672 and 675

[Docket No. 921108–3008]

RIN 0648–AF24

Groundfish of the Gulf of Alaska, and Groundfish Fishery of the Bering Sea and Aleutian Islands Area

AGENCY: National Marine Fisheries Service (NMFS), NOAA, Commerce.

ACTION: Final rule.

SUMMARY: NMFS issues regulations to establish two trawl test areas in the Gulf of Alaska (GOA) and one trawl test area in the Bering Sea and Aleutian Islands (BSAI) area where pelagic and bottom trawl fishermen could test their trawl fishing gear when the GOA or BSAI otherwise would be closed to trawling. This rule is necessary to reduce lost fishing time from gear problems, thereby reducing economic costs. It is intended to promote the goals and objectives of the North Pacific Fishery Management Council (Council) with respect to groundfish management off Alaska.

EFFECTIVE DATE: January 15, 1993.

ADDRESSES: Individual copies of the environmental assessment/regulatory impact review/final regulatory flexibility analysis (EA/RIR/FRFA) may be obtained from the Fisheries Management Division, Alaska Region, National Marine Fisheries Service, P.O. Box 21668, Juneau, AK 99802.

FOR FURTHER INFORMATION CONTACT: David C. Ham, Fisheries Management Biologist, NMFS, 907–586–7229.

SUPPLEMENTARY INFORMATION:

Background

The domestic and foreign groundfish fisheries in the exclusive economic zone of the GOA and BSAI are managed by the Secretary of Commerce (Secretary) under the Fishery Management Plan (FMP) for Groundfish of the GOA and the FMP for the Groundfish Fishery of the BSAI area. These FMPs were prepared by the Council under the Magnuson Fishery Conservation and Management Act (Magnuson Act) and are implemented by regulations for the foreign fishery at 50 CFR part 611 and for the U.S. fishery at 50 CFR parts 672 and 675, respectively. General regulations that also pertain to U.S. fisheries appear at 50 CFR part 620.

Amendment 27 to the GOA FMP and Amendment 22 to the BSAI FMP were approved by the Secretary on December 14, 1992. These amendments provide NMFS with the authority to establish trawl test areas. Under this authority, a regulatory amendment (57 FR 59702, December 14, 1992) was proposed to establish two areas in the GOA and one area in the BSAI area where pelagic and bottom trawl fishermen could test their trawl fishing gear when the GOA or BSAI otherwise is closed to trawling. A full description of the trawl test area program was published on December 14, 1992, in the preamble to the proposed rule. Additional information is contained in the preamble to the proposed rule as well as in the EA/RIR/FRFA, which is available (see **ADDRESSES**).

The Assistant Administrator for Fisheries, NOAA (Assistant Administrator), has reviewed the reasons for this rule and the comments received. He has determined that this rule is necessary for conservation and management of the groundfish fisheries and, therefore, has approved it.

Changes in the Final Rule From the Proposed Rule

No changes from the proposed rule are contained in the final rule.

Response to Comments on the Proposed Rule

Two letters were received during the public comment period. Of these letters,

one had no comment, and one was in favor of implementing the trawl test areas. The comment in favor is summarized as follows:

Comment: The final rule implementing trawl test areas should be made effective by January 14, 1993, so that vessels will be able to use the trawl test areas before the start of the 1993 fishing season. Trawl test areas are important, because if vessels do not test their trawl gear and associated electronic gear before the start of the season, they risk losing the whole fishing period if problems occur. Trawl testing minimizes the possibility of higher bycatch rates and maximizes the efficiency of the fishing operations. Trawl testing maximizes the value of the fishery because it lowers bycatch rates, which provides more harvesting days for the trawl fleet. Vessels that have wintered in Seattle are able to test their nets in Washington State's Puget Sound test area before travelling to Alaska, but vessels wintering in Alaska do not have that same opportunity.

Response: NMFS notes the comment. The rule will be effective as soon as possible.

Classification

The Assistant Administrator has determined that this final rule is necessary for the conservation and management of the groundfish fishery off Alaska and that it is consistent with the Magnuson Act and other applicable law.

The Alaska Region, NMFS, prepared an environmental assessment (EA) for this final rule that discusses the impacts on the environment as a result of this rule. The Assistant Administrator concluded that no significant impact on the human environment will result from its implementation. The public may obtain a copy (see **ADDRESSES**).

The Assistant Administrator determined that this rule is not a major rule requiring a regulatory impact analysis under Executive Order 12291. Based on the socio-economic impacts discussed in the EA/RIR/FRFA prepared by the Alaska Region, NMFS has concluded that none of the measures in this rule would cause impacts considered major for purposes of E.O. 12291.

The final regulatory flexibility analysis (FRFA) prepared as part of the ER/RIR/FRFA concludes that this rule would have significant effects on small entities. More than 2,000 vessels may fish for groundfish off Alaska in 1993 and future years. This rule is expected to have positive economic benefits by reducing lost fishing time due to inoperative fishing gear by allowing vessel operators to test their gear before the beginning of the trawl season. A copy of this document may be obtained (see **ADDRESSES**).

An informal consultation under the Endangered Species Act was concluded for this rule on June 11, 1992. As a result of the informal consultation, the Regional Director determined that the fisheries managed under 50 CFR parts 672 and 675 and as revised under this rule are not likely to adversely affect endangered or threatened species or critical habitat. Therefore, formal consultation pursuant to section 7 of the Endangered Species Act is not required for adoption of this rule.

This rule does not contain a collection of information requirement for purposes of the Paperwork Reduction Act.

NMFS has determined that this rule will be implemented in a manner that is consistent to the maximum extent practicable with the approved coastal management program of the State of Alaska. This determination has been submitted for review by the responsible State agency under section 307 of the Coastal Zone Management Act. Consistency is inferred because the appropriate State agency did not reply within the statutory time period.

This rule does not contain policies with federalism implications sufficient to warrant preparation of a Federalism Assessment under Executive Order 12612.

The 30-day period of delayed effectiveness is waived under section 553(d)(1) of the Administrative Procedure Act. This determination was reached because a delay in the effectiveness of this rule is not necessary since it relieves a restriction on the trawl fleet. Immediate effectiveness of the rule would allow the trawl fleet to test their trawl gear prior to the opening of the trawl season on January 20, 1993. The inability to test trawl gear is a burden on the industry and results in a loss of fishing efficiency and increased costs.

List of Subjects in 50 CFR Parts 672 and 675

Fisheries, Reporting and recordkeeping.

Dated: January 15, 1993.

William W. Fox, Jr.,

Acting Assistant Administrator for Fisheries, National Marine Fisheries Service.

For the reasons set out in the preamble, 50 CFR parts 672 and 675 are amended as follows:

PART 672—GROUNDFISH OF THE GULF OF ALASKA

1. The authority citation for part 672 continues to read as follows:

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

2. In § 672.24, paragraph (f) is added to read as follows:

§ 672.24 Gear limitations.

* * * * *

(f) *Trawl Gear Test Areas*—(1) *General.* For purposes of allowing pelagic and bottom trawl fishermen to test trawl fishing gear, NMFS may establish, after consulting with the Council, locations for the testing of trawl fishing gear in areas that would otherwise be closed to trawling.

(2) For the purposes of this section, "trawl gear testing" means deploying trawl gear in areas designated in this paragraph under the following conditions:

(i) The cod end shall be unzipped while trawl gear testing;

(ii) Groundfish shall not be possessed on board when trawl gear testing; and

(iii) Observers on board vessels during the time spent trawl gear testing shall not fulfill observer requirements at § 672.27.

(3) The establishment of test areas must comply with the following five criteria:

(i) Depth and bottom type must be suitable for testing the particular gear type.

(ii) The areas must be outside State waters.

(iii) The areas must be in locations not normally closed to fishing with that gear type.

(iv) The areas must be in locations that are not usually fished heavily by that gear type.

(v) The areas must not be within a designated Steller sea lion protection area at any time of the year.

(4) *Kodiak Test Area.* Trawl gear testing is allowed in an area bounded by straight lines connecting the following coordinates in the order listed at times when fishing with trawl gear is prohibited in statistical area 63 as defined in § 672.2:

W. longitude	*N. latitude*
152°02′	57°37′
151°25′	57°37′
151°25′	57°23′
152°02′	57°23′
152°02′	57°37′

(5) *Sand Point Test Area.* Trawl gear testing is allowed in an area bounded by straight lines connecting the following coordinates in the order listed at times when fishing with trawl gear is prohibited in statistical area 61 as defined in § 672.2:

W. longitude	N. latitude
161°00′	54°50′
160°30′	54°50′
160°30′	54°35′
161°00′	54°35′
161°00′	54°50′

PART 675—GROUNDFISH OF THE BERING SEA AND ALEUTIAN ISLANDS AREA

3. The authority citation for part 675 continues to read as follows:

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

4. In § 675.24, paragraph (g) is added to read as follows:

§ 675.24 Gear limitations.

* * * * *

(g) *Trawl Gear Test Areas*—(1) *General.* For purposes of allowing pelagic and bottom trawl fishermen to test trawl fishing gear, NMFS may establish, after consulting with the Council, locations for the testing of trawl fishing gear in areas that would otherwise be closed to trawling.

(2) For the purposes of this section, "trawl gear testing" means deploying trawl gear in areas designated in this paragraph under the following conditions:

(i) The cod end shall be unzipped while trawl gear testing;

(ii) Groundfish shall not be possessed on board when trawl gear testing; and

(iii) Observers on board vessels during the time spent trawl gear testing shall not fulfill observer requirements at Section 675.25 of this part.

(3) The establishment of test areas must comply with the following five criteria:

(i) Depth and bottom type must be suitable for testing the particular gear type.

(ii) The areas must be outside State waters.

(iii) The areas must be in locations not normally closed to fishing with that gear type.

(iv) The areas must be in locations that are not usually fished heavily by that gear type.

(v) The areas must not be within a designated Steller sea lion protection area at any time of the year.

(4) *Bering Sea Testing Area.* Trawl gear testing is allowed in an area bounded by straight lines connecting the following coordinates in the order listed at times when fishing with trawl gear is prohibited in the Bering Sea and Aleutian Islands Management Area as defined in § 675.2:

W. longitude	N. latitude
167°00′	55°00′
166°00′	55°00′
166°00′	54°40′
167°00′	54°40′
167°00′	55°00′

[FR Doc. 93–1497 Filed 1–15–93; 2:55 pm]

BILLING CODE 3510–22–M

50 CFR Part 675

[Docket No. 921185–2285]

Groundfish of the Bering Sea and Aleutian Islands Area

AGENCY: National Marine Fisheries Service (NMFS), NOAA, Commerce.

ACTION: Closures to directed fishing.

SUMMARY: NMFS is closing directed fishing for the "other rockfish" species group in the Bering Sea subarea (BS), pollock in the Bogoslof subarea; and sablefish by vessels using trawl gear in the BS and the Aleutian Islands (AI) subarea. This action is necessary to prevent exceeding the interim harvest amounts for these species or species groups.

EFFECTIVE DATES: 12 noon, Alaska local time (A.l.t.), January 20, 1993, until 12 midnight, A.l.t., December 31, 1993.

FOR FURTHER INFORMATION CONTACT: Andrew N. Smoker, Resource Management Specialist, Fisheries Management Division, NMFS, (907) 586–7228.

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

In accordance with § 675.20(a)(7)(i), the interim harvest amounts for these species or species groups were established by the notice of proposed specifications (57 FR 57718, December 7, 1992) as follows: 85 metric tons (mt) for the "other rockfish" species group in the BS, 340 mt for pollock in the Bogoslof subarea; 149 mt for sablefish by vessels using trawl gear in the BS and 159 mt in the AI.

The Director of the Alaska Region, NMFS (Regional Director), has determined, in accordance with § 675.20(a)(8), that the interim harvest amounts for these species or species groups will be necessary as bycatch to support other anticipated groundfish fisheries. Therefore, NMFS is prohibiting directed fishing for the "other rockfish" species group in the BS, for pollock in the Bogoslof subarea; and for sablefish by vessels using trawl gear in the BS and the AI, effective from 12 noon, A.l.t., January 20, 1993, through 12 midnight, A.l.t., December 31, 1993.

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

Classification

This action is taken under 50 CFR 675.20, and is in compliance with E.O. 12291.

List of Subjects in 50 CFR Part 675

Fisheries, Reporting and recordkeeping requirements.

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

Dated: January 15, 1993.

Richard H. Schaefer,

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

[FR Doc. 93–1477 Filed 1–15–93; 1:40 pm]

BILLING CODE 3510–22–M

Proposed Rules

Federal Register
Vol. 58, No. 13
Friday, January 22, 1993

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.

NATIONAL CREDIT UNION ADMINISTRATION

12 CFR Part 748

Report of Crime or Catastrophic Act and Bank Secrecy Act Compliance

AGENCY: National Credit Union Administration (NCUA).

ACTION: Proposed rule.

SUMMARY: An interagency task force has designed a uniform multi-agency criminal referral form in order to facilitate compliance with financial institutions' criminal activity reporting requirements, to enhance law enforcement agencies' ability to investigate and prosecute the matters reported in the criminal referrals, and to develop and maintain a new interagency database. This uniform criminal referral form will replace the various criminal referral forms that are currently being used by Federal bank, thrift and credit union regulatory agencies and by financial institutions. The purpose of the proposed amendment is to conform NCUA's regulations to the new procedures for completion and submission of the uniform criminal referral form. This action is intended to improve reporting of crimes relating to financial institutions and to establish a standardized form which can be entered into the new interagency computer data base.

DATES: Comments must be submitted within 30 days after publication in the Federal Register.

ADDRESSES: Send comments to Becky Baker, Secretary of the Board, National Credit Union Administration, 1776 G Street, NW., Washington, DC 20456.

FOR FURTHER INFORMATION CONTACT: John Ianno or Jon Canerday, Office of General Counsel, at the above address or telephone: (202) 682–9630.

SUPPLEMENTARY INFORMATION:

Discussion

The Federal financial institutions regulatory agencies are the Office of the Comptroller of the Currency ("OCC"), the Board of Governors of the Federal Reserve System ("Board"), the Federal Deposit Insurance Corporation ("FDIC"), the Office of Thrift Supervision ("OTS"), and the National Credit Union Administration ("NCUA"). These agencies are responsible for safeguarding the safety and soundness of financial institutions with operations in the United States, including national banks, savings associations, state-chartered banks, bank and thrift holding companies and their nonbank subsidiaries, Edge and Agreement corporations, all U.S. offices of foreign banks and federally-insured credit unions.

Pursuant to their respective enabling statues, these agencies are responsible for ensuring that financial institutions apprise Federal law enforcement authorities of any violation or suspected violation of a criminal statute. Fraud, abusive insider transactions, check kiting schemes, money laundering and other crimes can pose serious threats to a financial institution's continued viability and, if unchecked, may undermine the public confidence in the financial services industry. The law enforcement community needs to receive timely information regarding criminal and suspected criminal activity that is sufficiently detailed to determine whether investigations and prosecutions are warranted.

An Interagency Bank Fraud Working Group ("Working Group") was formed in 1984 to address problems and to promote cooperation toward the goal of improving the Federal government's response to white collar crime in financial institutions. The Working Group now consists of representatives from twelve Federal agencies, including NCUA, the other Federal financial institution regulatory agencies, the Federal Bureau of Investigation, the Secret Service, the Department of Justice, and the Treasury Department.

A subcommittee of the Working Group studied the criminal referral process and developed a single, uniform criminal referral form. The new criminal referral form will standardize criminal referral data and facilitate its automation. The new form will replace the existing NCUA Form 2362, but, in substance, will require the same information.

The information contained in the criminal referral forms and in the regulatory agencies' existing computer systems will serve as the data base for a new computer system to be developed and maintained by the Financial Criminal Enforcement Network ("FinCEN") within the Department of the Treasury. It is anticipated that the resulting interagency criminal referral data base will provide information to, *inter alia*, the OCC, the Board, the FDIC, the OTS, the NCUA, the Department of Justice and the Department of the Treasury.

NCUA and the other Federal financial regulatory agencies have adopted uniform reporting and filing requirements for suspected criminal activity. The revised uniform criminal referral form will be used for making these reports. The revised form has been designed so that the information collected can be readily entered into the new FinCEN criminal referral data base. This system will enhance the regulatory and law enforcement agencies ability to track information pertaining to criminal referrals made to law enforcement agencies as well as administrative actions taken by the Federal financial regulatory agencies. Copies of the revised form will be distributed to all federally-insured credit unions.

The proposed rule lengthens the time federally-insured credit unions have to file a criminal referral from seven (7) business days under the present regulation to thirty (30) calendar days. The regulation requires retention of a copy of the referral form and any original attachments to the referral for a period of ten (10) years from the date the form is filed. This is necessary because the statute of limitations for banking related offenses has been increased to ten (10) years. In order to prosecute these offenses criminal investigatory agencies must have the documents supporting the offense available to them.

The regulation has been modified to expressly state that failure to comply with its requirements could result in an administrative action by the NCUA. This codifies the current state of the law.

Comments are sought on all provisions contained in the regulation.

Regulatory Flexibility Act

The NCUA Board certifies that this proposed rule will not have a significant

financial impact on a substantial number of small credit unions or other small entities. The proposed regulation simply repeats, in slightly modified form, the pre-existing requirement of federally-insured credit unions to file criminal referrals pertaining to known and suspected crimes. Accordingly, the NCUA Board has determined that a regulatory flexibility analysis is not required.

Paperwork Reduction Act

The NCUA Board has determined that the proposed regulation does not significantly increase the burden of the reporting institutions. The estimated average burden associated with the collection of information contained in a criminal referral form is approximately .6 hour per respondent. The burden per respondent will vary depending on the nature of the criminal activity being reported.

Comments concerning the accuracy of this burden estimate should be directed to the Office of General Counsel, National Credit Union Administration, 1776 G Street, NW., Washington, DC 20456.

Executive Order 12612

This proposed regulation applies to all federally-insured credit unions. However, it makes no substantive changes and imposes no significant additional burdens on federally-insured credit unions than those under the present rule. The proposed rule lengthens the time federally-insured credit unions have to file a criminal referral form from seven (7) business days under the present regulation to thirty (30) calendar days. The regulation requires retention of a copy of the referral form and any original attachments to the referral for a period of ten (10) years from the date the form is filed. The NCUA Board has determined that this amendment is not likely to have any direct effect on states, on the relationship between the states, or on the distribution of power and responsibilities among the various levels of government because federally-insured credit unions are currently required to report crimes or suspected crimes which occur at their office.

List of Subjects in 12 CFR Part 748

Security program, Filing of reports, Bank Secrecy Act compliance programs and procedure.

By the National Credit Union Administration Board on January 14, 1993.

Becky Baker,

Secretary of the Board.

Accordingly, NCUA proposes to amend its regulations as follows:

PART 748—[AMENDED]

1. The authority citation for part 748 continues to read as follows:

Authority: 12 U.S.C. 1766(a); 12 U.S.C. 1786(q); 31 U.S.C. § 5311.

2. Section 748.1(c) is revised to read as follows:

§ 748.1 Filing of reports.

* * * * *

(c) *Criminal Referral Form.* (1) Each federally-insured credit union will report any crime or suspected crime that occurs at its office(s), utilizing NCUA Form 2362, Interagency Criminal Referral Form, within thirty calendar days after discovery. Each federally-insured credit union must follow the instructions and reporting requirements accompanying the Interagency Criminal Referral Form. Copies of the Interagency Criminal Referral Form may be obtained from the appropriate NCUA Regional Office.

(2) Each federally-insured credit union shall maintain a copy of any Interagency Criminal Referral Form that it files and the original of all attachments to the form for a period of ten years from the date of the report.

(3) Failure to file Interagency Criminal Referral Forms in accordance with the instructions accompanying the Form may subject the federally-insured credit union, its officer, directors, agents or other institution-affiliated parties to the assessment of civil money penalties or other administrative actions.

(4) Filing of Interagency Criminal Referral Forms will ensure that law enforcement agencies and NCUA are promptly notified of actual or suspected crimes. Information contained in Interagency Criminal Referral Forms will be entered into an interagency database and will assist the Federal government in taking appropriate action.

[FR Doc. 93–1396 Filed 1–21–93; 8:45 am]

BILLING CODE 7535–01–M

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12 CFR Part 703

Investment and Deposit Authority

AGENCY: National Credit Union Administration (NCUA).

ACTION: Proposed rule.

SUMMARY: The proposed rule would revise NCUA's high-risk test for Collateralized Mortgage Obligations (CMOs) and Real Estate Mortgage Investment Conduits (REMICs). Under the current rule, CMOs and REMICs are presently subject to an average life sensitivity test. Under the proposed rule, CMOs and REMICs would be subject to an average life test, an average life sensitivity test, and a price sensitivity test. The revised test would be consistent with the Federal Financial Institution Examination Council's (FFIEC's) High Risk Securities Test (HRST) for mortgage derivatives, which applies to other depository institutions.

DATES: Comments are due March 23, 1993.

ADDRESSES: Send comments to Becky Backer, Secretary, National Credit Union Administration Board, 1776 G Street, NW., Washington, DC 20456.

FOR FURTHER INFORMATION CONTACT: Lisa Henderson, Staff Attorney, Office of General Counsel (202–682–9630), or Charles Felker, Investment Officer, Office of Examination and Insurance (202–682–9640), at the above address.

SUPPLEMENTARY INFORMATION:

Request for Comments

The NCUA Board is seeking comments on the proposed change to part 703 of the NCUA Rules and Regulations. The NCUA Board is not seeking comments on those portions of the regulation which would not be affected by this proposal.

Background and Discussion

On December 3, 1991, the FFIEC, which has as its members the Office of the Comptroller of the Currency, the Office of Thrift Supervision, the Federal Deposit Insurance Corporation, the Federal Reserve Board, and NCUA, approved a policy statement on securities activities entitled Supervisory Policy Statement on Securities Activities. The policy statement was issued to update and revise the FFIEC's Policy Statement on the Selection of Securities Dealers and Unsuitable Investment Practices, which was approved by the FFIEC in April 1988 and subsequently adopted by the NCUA Board as NCUA Interpretive Ruling and Policy Statement No. 88–1 (53 FR 18268, May 23, 1988).

The revised policy statement is divided into three sections. Section I addresses the selection of securities dealers. Section II addresses securities portfolio policies and strategies and unsuitable investment practices. Section III addresses mortgage derivatives, other asset-backed products, and zero coupon

bonds. Section III of the policy statement contains the FFIEC's High Risk Securities Test (HRST) for mortgage derivatives, which includes Stripped Mortgage-Backed Securities (SMBSs), CMOs and REMICs, and CMO residuals. Under the FFIEC's HRST, a mortgage derivative is considered "high risk" if it meets any one of the following tests at the time of purchase or on a subsequent testing date:

1. Average Life Test

The mortgage derivative has an expected weighted average life greater than 10 years.

2. Average Life Sensitivity Test

The expected weighted average life of the mortgage derivative would:

a. Extend by more than 4 years, assuming an immediate and sustained parallel shift in the yield curve of 300 basis points, or

b. Shorten by more than 6 years, assuming an immediate and sustained parallel shift in the yield curve of 300 basis points.

3. Price Sensitivity Test

The estimated change in price of the mortgage derivative is more than 17 percent, due to an immediate and sustained parallel shift in the yield curve of 300 basis points.

A floating or variable rate CMO/REMIC is not subject to the average life and average life sensitivity tests described above if it bears a rate of interest that, at the time of purchase or on a subsequent testing date, is below the contractual cap on the instrument. For purposes of the policy statement, a CMO/REMIC floating rate debt class is a debt class whose rate adjusts at least annually on a one-for-one basis with the related index. The index must be a conventional, widely-used market interest rate index such as the London Interbank Offered Rate (LIBOR). Inverse floating rate debt classes are not included in the definition of a floating rate debt class.

Generally, a mortgage derivative which meets any of the above tests may only be acquired to reduce interest rate risk, and must be reported as a trading asset at market value or as a held for sale asset at the lower of cost or market.

NCUA Interpretive Ruling and Policy Statement No. 92–1; Supervisory Policy Statement on Securities Activities, (57 FR 22157, May 27, 1992), implements the FFIEC's policy statement for Federal credit unions. Under Interpretive Ruling and Policy Statement No. 92–1, Federal credit unions, are required to comply with Sections I and II of the FFIEC's policy statement, but are not required to comply with Section III, on the rationale that mortgage derivatives, zero coupon bonds, and asset-backed securities are already comprehensively regulated by part 703 of this chapter. Federal credit union investments in mortgage derivatives and zero coupon bonds, therefore, continue to be subject to Part 703 rather than the FFIEC's policy statement.

Under part 703, SMBSs, CMO residuals, and certain CMOs and REMICs are considered to be "high risk" derivatives. CMOs and REMICs are subject to the average life sensitivity test contained in § 703.5(g). Pursuant to § 703.5(g), a CMO or REMIC is considered "high risk" if its average life would lengthen or shorten by more than 6 years assuming an immediate increase or decrease of 300 basis points in mortgage commitment rates. SMBSs, CMO residuals, and high risk CMOs and REMICs may only be acquired to reduce interest rate risk and must be reported as trading assets at market value or held for sale assets at the lower of cost or market.

Part 703 also differs from the FFIEC policy statement with respect to floating or variable rate CMOs and REMICs. Under § 703.5(j), a floating or variable rate CMO or REMIC is permanently exempt from NCUA's high risk test if at the time of purchase it meets all of the following conditions:

1. The interest rate resets at least annually.

2. The interest rate is at least 300 basis points below the contractual cap of the instrument.

3. The interest rate adjusts on a one for one basis with the related index.

4. The interest rate varies directly (not inversely) with the related instrument.

Because the FFIEC HRST is different from NCUA's high-risk test, it is possible for Federal credit unions to acquire CMOs and REMICs which pass NCUA's high-risk test (or are exempt from it) and yet fail the FFIEC's HRST, meaning that the security could only be acquired by other depository institutions to reduce interest rate risk. This inconsistency has caused confusion in the marketplace and could limit the marketability of the security if it suddenly needed to be sold. Under the proposed rule, Federal credit unions would be required to apply the same tests as other depository institutions when purchasing or re-testing fixed or floating rate CMOs and REMICs, thus eliminating the inconsistency between NCUA's high-risk test for CMOs and REMICs and the FFIEC's HRST.

It is to be emphasized that the proposed rule would not apply to investments in SMBSs or CMO residuals. As indicated above, SMBSs and CMO residuals are prohibited for Federal credit unions unless the security is acquired solely to reduce interest rate risk.

Federal credit unions would be permitted to use standard industry calculators (Bloomberg etc.) to perform the three tests contained in the proposed rule. In performing any of the three tests, all of the underlying assumptions, including prepayment assumptions for the underlying collateral, would need to be reasonable and supportable. The assumptions would also need to be documented in the credit union's records and be available for examiner review.

Federal credit unions should be aware that different securities dealers may provide different prepayment estimates for the same mortgage collateral; hence, not all prepayment assumptions will produce the same results. It is therefore advisable for Federal credit unions to obtain prepayment estimates from several major securities dealers when testing or re-testing a CMO or REMIC. A conservative approach would be to rely on the prepayment estimates which show the greatest degree of average life or price volatility if interest rates change.

Under the current rule, it has been NCUA's policy to seek the disposal of a CMO or REMIC which fails the average life sensitivity test on a subsequent review date. NCUA would continue to pursue this policy with respect to a CMO or REMIC which fails any of the three tests contained in the revised rule on a subsequent review date. As with the current rule, NCUA intends to address these situations on a case-by-case basis under existing supervisory policies and procedures. Generally, existing supervisory policies and procedures would permit NCUA and the affected credit union to develop a liquidation plan appropriate to the circumstances of the case, taking into account all relevant factors, including the dollar amount of the investment, the remaining time to maturity, the likelihood that the security may again pass the three tests on a future testing date, and the credit union's earnings and capital position where the sale of the security would result in a significant loss to the credit union. In accordance with generally accepted accounting principles (GAAP), a CMO or REMIC which fails any one of the three tests on a subsequent testing date must be reported at the lower of cost or market or market value until it matures, is sold in the secondary market, or passes all of the tests again on a subsequent testing date.

Preexisting Investments

CMOs and REMICs purchased in accordance with the current rule, but which would not comply with the proposed rule, would be "grandfathered" under the proposed rule. That is, Federal credit unions would not be required to liquidate such investments. Also, Federal credit unions would have the option of re-testing these investments in accordance with the requirements of the current rule rather than the standards contained in the proposed rule. The NCUA Board wishes to note, however, that NCUA examiners would continue to have the authority to seek the orderly disposal of any CMO or REMIC investment where, in their opinion, the investment constitutes a significant threat to the continued sound operation of a Federal credit union.

Regulatory Procedures

Regulatory Flexibility Act

The Regulatory Flexibility Act requires NCUA to prepare an analysis to describe any significant economic impact any proposed regulation may have on a substantial number of small credit unions (primarily those under $1 million in assets). Based on the experience of NCUA examiners, few small credit unions are engaging in the investment practices that are the subject of the proposed rule. Furthermore, since existing investments will be grandfathered and the proposed high-risk security test is similar to the existing test, it is not expected that the proposed regulation will have a significant economic impact on any credit unions. Finally, it is hoped that the proposed regulation will benefit credit unions by making securities they have purchased more marketable. Accordingly, the NCUA Board determines and certifies that the proposed rule, if adopted, will not have a significant economic impact on a substantial number of small credit unions and that a Regulatory Flexibility Act analysis is not required.

Paperwork Reduction Act

The proposed rule does not impose any new paperwork requirements.

Executive Order 12612

Executive Order 12612 requires NCUA to consider the effect of its actions on state interests. Currently, part 703 directly applies only to federally chartered credit unions, and the proposed rule makes no change in its application. Although part 703 indirectly applies to federally insured state chartered credit unions through the insurance requirements at 12 CFR 741.9 (a)(3) and (b)(3), the Board has determined that the proposed rule will not have a substantial direct effect on the states, on the relationship of the national government and the states, or on the distribution of power and responsibilities among the various levels of government. Further, the proposed rule will not preempt provisions of state law or regulations.

List of Subjects in 12 CFR Part 703

Credit unions, Investments.

By the National Credit Union Administration Board on January 14, 1993.

Becky Baker,

Secretary of the Board.

Accordingly, NCUA proposes to amend its regulation as follows:

PART 703—[AMENDED]

1. The authority citation for part 703 continues to read as follows:

Authority: 12 U.S.C. 1757(7), 1757(8), 1757(15), 1766(a), 1789(11).

§ 703.5 Prohibited Activities.

2.a. Section 703.5 introductory text is revised to read as follows:

The prohibitions contained in paragraphs (f), (h), and (k) of this section shall not apply to securities purchased prior to December 2, 1991. The prohibition contained in paragraph (g) of this section shall not apply to securities purchased prior to the effective date of this rule.

* * * * *

b. Section 703.5(g) is revised to read as follows:

* * * * *

(g) Except as provided in paragraph (i) of this section, a federal credit union may not purchase a CMO or REMIC which meets any of the following three tests:

(1) *Average Life Test.* The CMO or REMIC has an expected average life greater than 10 years.

(2) *Average Life Sensitivity Test.* The average life of the CMO or REMIC: (i) Extends by more than 4 years, assuming an immediate and sustained parallel shift in the yield curve of plus 300 basis points, or

(ii) Shortens by more than 6 years, assuming an immediate and sustained parallel shift in the yield curve of minus 300 basis points.

(3) *Price Sensitivity Test.* The estimated change in the price of the CMO or REMIC is more than 17 percent, due to an immediate and sustained parallel shift in the yield curve of plus or minus 300 basis points.

The three tests contained in this subsection shall apply at the time of purchase and on any subsequent testing date, assuming market interest rates and prepayment speeds at the time that the tests are applied.

* * * * *

c. Section 703.5(j) is revised to read as follows:

* * * * *

(j) The average life and average life sensitivity tests contained in paragraph (g) of this section shall not apply to a floating or adjustable rate CMO/REMIC that has all of the following characteristics at the time of purchase or on a subsequent testing date, irrespective of whether or not it has been purchased to reduce interest rate risk:

(1) The interest rate of the instrument is reset at least annually.

(2) The interest rate of the instrument, at the time of purchase or at a subsequent testing date, is below the contractual cap of the instrument.

(3) The index upon which the interest rate is based is a conventional widely-used market interest rate index such as the London Interbank Offered Rate (LIBOR).

(4) The interest rate of the instrument varies directly (not inversely) with the index upon which it is based and is not reset as a multiple of the change in the related index.

* * * * *

[FR Doc. 93–1488 Filed 1–21–93; 8:45 am]

BILLING CODE 7535–01–M

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Parts 21 and 27

[Docket No. 93–ASW–2; Notice No. SC–93–2–SW]

Special Conditions: Eurocopter Germany Model BO–108 (EG135) Helicopter, Engine Full Authority Digital Electronic Control

AGENCY: Federal Aviation Administration, DOT.

ACTION: Notice of proposed special condition.

SUMMARY: This notice proposes a special condition for the Eurocopter Germany Model BO108 (EC135) helicopter. This helicopter will have a novel or unusual design feature associated with the Turbomeca TM 319B or United Technologies Pratt & Whitney PW 206B engines with a full authority digital electronic control system. The

applicable airworthiness regulations do not contain adequate or appropriate safety standards for the protection of these critical function systems from the effects of external high intensity radiated fields (HIRF). This notice contains the additional safety standards that the Administrator considers necessary to establish a level of safety equivalent to that established by the airworthiness standards of part 27 of the Federal Aviation Regulations (FAR).

DATES: Comments must be received on or before February 22, 1993.

ADDRESSES: Comments on this proposal may be mailed in duplicate to: Federal Aviation Administration, Office of the Assistant Chief Counsel, Attn: Rules Docket No. 93–ASW–2, Fort Worth, Texas 76193–0007, or delivered in duplicate to the Office of the Assistant Chief Counsel, Building 3B, room 158, 4400 Blue Mound Road, Fort Worth, Texas. Comments must be marked Docket No. 91–ASW–2. Comments may be inspected in the Rules Docket weekdays, except Federal holiday between 9 a.m. and 3 p.m.

FOR FURTHER INFORMATION CONTACT: Mr. Robert McCallister, FAA, Rotorcraft Standards Staff, Regulations Group, Forth Worth, Texas 76193–0112; telephone (817) 624–5121.

SUPPLEMENTARY INFORMATION:

Comments Invited

Interested persons are invited to participate in the making of the proposed special condition by submitting such written data, views, or arguments as they may desire. Communications should identify the regulatory docket number and be submitted in duplicate to the address specified above. All communications received on or before the closing date for comments will be considered by the Administrator before taking action on this proposal. The Special condition proposed in this notice may be changed in light of comments received. All comments received will be available in the Rules Docket for examination by interested persons, both before and after the closing date for comments. A report summarizing each substantive public contact with Federal Aviation Administration (FAA) personnel concerning this rulemaking will be filed in the docket. Persons wishing the FAA to acknowledge receipt of their comments submitted in response to this must submit with those comments a self-addressed, stamped postcard on which the following statement is made: "Comments to Docket No. 93–ASW–2." The post card will be date/time stamped and returned to the commenter.

Background

On October 31, 1990, Eurocopter Munich, Germany, submitted an application for a Type Certificate for the Model BO–108 (EC135) helicopter to the FAA Brussels Certification Office through the German Luftfahrt-Bundesamt Authorities (LEA) authorities. The Model BO–108 (EC135) is a 6–8 passenger, two engine, 5512-pound maximum take-off, normal category helicopter. This Model helicopter may be equipped with either (1) the Turbomeca TM 319B or (2) the United Technologies Pratt & Whitney PW 206B engines. Both of these type engines utilize a full authority digital electronic control (FADEC) system.

Type Certificate Basis

The certification basis established for the Model BO–108 (EC135) includes FAR 21.29 and 27 effective February 1, 1965, including Amendments 21–68 and 27–1 through 27–27; any FAA compliance findings of equivalent safety; any LBA Special Conditions; FAR 36 Noise Standards amended by Amendments 36–1 through the latest amendment adopted and in effect when noise tests or analysis are completed; and International Civil Aviation Organization (ICAO) Annex 16.

If the Administrator finds that the applicable airworthiness regulations do not contain adequate or appropriate safety standards for the Model BO–108 (EC135) helicopter because of a novel or unusual design feature, special conditions are prescribed under the provisions of § 21.16 to establish a level of safety equivalent to that established in the regulations.

Special conditions, as appropriate, are issued in accordance with § 11.49 of the FAR after public notice, as required by §§ 11.28 and 11.29(b) and became a part of the type certification basis, as provided by § 21.101(b)(2). In addition to the applicable airworthiness regulations and special conditions, the Model BO–108 (EC135) helicopter must comply with the noise certification requirements of part 36 and the engine emission requirements of Special Federal Aviation Regulation (SFAR) 27.

Discussion

The Eurocopter Germany Model BO–108 (EC135) helicopter, at the time of application, was identified as incorporating one and possibly more electrical/electronic systems that will perform functions critical to the continued safe flight and landing of the helicopter. FADEC is an electronic device that performs the critical functions of engine control. The control of the engines is critical to the continued safe flight and landing of the helicopter during visual flight rules (VFR) and instrument flight rules (IFR) operations in instrument meteorological conditions. After the design is finalized, Eurocopter Germany will provide the FAA with a preliminary hazard analysis that will identify any other critical functions performed by the electrical/electronic systems.

Recent advances in technology have prompted the design of aircraft that include advanced electrical/electronic systems that perform functions required for continued safe flight and landing. However, these advanced systems respond to the transient effects of induced electrical current and voltage caused by the high intensity radiated fields (HIRF) incident on the external surface of the helicopter. These included transient currents and voltages can degrade the performance of the electrical/electronic systems by damaging the components or by upsetting the systems' functions.

Furthermore, the electromagnetic environment has undergone a transformation not envisioned by the current application of FAR § 29.1309(a). Higher energy levels radiate from operational transmitters currently used for radar, radio, and television; and the number of transmitters has increased significantly.

Existing aircraft certification requirements are inappropriate in view of these technological advances. In addition, the FAA has received reports of some significant safety incidents and accidents involving military aircraft equipped with advanced electrical/electronic systems when they were exposed to electromagnetic radiation.

The combined effects of technological advances in helicopter design and the changing environment have resulted in an increased level of vulnerability of the electrical/electronic systems required for the continued safe flight and landing of the helicopter. Effective measures to protect these helicopters against the adverse effects of exposure to HIRF will be provided by the design and installation of these systems. The following are primary factors that contributed to the current conditions:

(1) Increased use of sensitive electronics that perform critical functions,

(2) Reduced electromagnetic shielding afforded helicopter systems by advanced technology airframe materials,

(3) Adverse service experience of military aircraft using these technologies, and

(4) Increase in the number and power of radio frequency emitters and the expected increase in the future.

The FAA recognizes the need for aircraft certification standards to keep pace with technological developments and a changing environment. In 1986 it initiated a high priority program to:

(1) Determine and define electromagnetic energy levels;

(2) Develop guidance material for design, test, and analysis; and

(3) Prescribe and promulgate regulatory standards. The FAA participated with industry and foreign airworthiness authorities to develop internationally recognized standards for certification.

The FAA and foreign airworthiness authorities have identified a level of HIRF environment that a helicopter could be exposed to during IFR operations.

While the HIRF requirements are being finalized, the FAA is adopting a special condition for the certification of aircraft that employ electrical/electronic systems performing critical functions. The accepted maximum energy levels that civilian helicopter system installations must withstand for safe operation are based on surveys and analysis of existing radio frequency emitters. This special condition will require the helicopter's electrical/electronic systems and associated wiring to be protected from these energy levels. These external threat levels are believed to represent the worst-case exposure for a helicopter operating under IFR.

The HIRF environment specified in this proposed special condition is based on many critical assumptions. With the exception of takeoff and landing at an airport, one of these assumptions is the aircraft would be not less than 500 feet above ground level (AGL). Helicopters operating under VFR routinely operate at less than 500 feet AGL and perform takeoffs and landings at locations other than controlled airports. Therefore, it would be expected that the HIRF environment experienced by a helicopter operating VFR may exceed the defined environment by 100 percent or more.

This special condition will require the systems that perform critical functions, as installed in the aircraft, to meet certain standards based on either a defined HIRF environment or a fixed value using laboratory tests.

The applicant may demonstrate that the operation and operational capability of the installed electrical/electronic systems that perform critical functions are not adversely affected when the aircraft is exposed to the defined HIRF environment. The FAA has determined that the environment defined in Table 1 is acceptable for critical functions in helicopters operating at or above 500 feet AGL. For critical functions of helicopters operating at less than 500 feet AGL, additional considerations must be given.

The applicant may also demonstrate, by a laboratory test, that the electrical/electronic systems that perform critical functions can withstand a peak electromagnetic field strength in a frequency range of 10 kHz to 18 GHz. If a laboratory test is used to show compliance with the defined HIRF environment, no credit will be given for signal attenuation due to installation. A level of 100 v/m and other considerations, such as an alternate technology backup immune to HIRF, are appropriate for critical functions during IFR operations. A level of 200 v/m and further considerations, such as an alternate technology backup that is immune to HIRF, are more appropriate for critical functions during VFR operations.

Applicants for FAA approval under this special condition must perform a preliminary hazard analysis to identify electrical/electronic systems that perform critical functions. The term "critical" means those functions whose failure would contribute to or cause a failure condition that would prevent the continued safe flight and landing of the helicopter. The systems identified by the hazard analysis as performing critical functions are required to have HIRF protection.

A system may perform both critical and noncritical functions. Primary electronic flight display systems and their associated components perform critical functions such as attitude, altitude, and airspeed indications. HIRF requirements would apply only to the systems that perform critical functions.

Compliance with HIRF requirements will be demonstrated by tests, analysis, models, similarity with existing systems, or a combination of these methods. Service experience alone will not be acceptable since such experience in normal flight operations may not include an exposure to HIRF. Reliance on a system with similar design features for redundancy, as a means of protection against the effects of external HIRF, is generally insufficient because all elements of a redundant system are likely to be concurrently exposed to the fields.

The modulation that represents the signal most likely to disrupt the operation of the system under test, based on its design characteristics, should be selected. For example, flight control systems may be susceptible to 3 Hz square wave modulation while the video signals for electronic display systems may be susceptible to 400 Hz sinusoidal modulation. If the worst-case modulation is unknown or cannot be determined, default modulation may be used. Suggested default values are a 1 KHz sine wave with 80 percent depth of modulation in the frequency range from 10 KHz to 400 MHz and 1 KHz square wave with greater than 90 percent depth of modulation from 400 MHz to 18 GHz. For frequencies where the unmodulated signal would cause deviations from normal operation, several different modulating signals with various waveforms and frequencies should be applied.

Acceptable system performance would be attained by demonstrating that the critical function components of the system under consideration continue to perform their intended function during and after exposure to required electromagnetic fields. Deviations from system specifications may be acceptable but must be independently assessed by the FAA on a case by case basis.

TABLE 1.—FIELD STRENGTH VOLTS/METER

Frequency	Peak	Average
10–100 kHz	50	50
100–500	60	60
500–2000	70	70
2–30 MHz	200	200
30–100	30	30
100–200	150	33
200–400	70	70
400–700	4020	935
700–1000	1700	170
1–2 GHz	5000	990
2–4	6680	840
4–6	6850	310
6–8	3600	670
8–12	3500	1270
12–18	3500	360
18–40	2100	750

Conclusion

This action affects only certain unusual or novel design features on one series of helicopters. It is not a rule of general applicability and affects only applicants who applied to the FAA for approval of these features on the affected helicopter.

List of Subjects in 14 CFR Parts 21 and 27:

Aircraft, Air transportation, Aviation safety, Rotorcraft, Safety.

The authority citation for this special condition is as follows:

Authority: 49 U.S.C. 1344, 1348(c), 1352, 1354(a), 1355, 1421 through 1431, 1502, 1651(b)(2); 42 U.S.C. 1857f-10, 4321 et seq.; E.O. 11514; 49 U.S.C. 106(g).

The Proposed Special Condition

Accordingly, the Federal Aviation Administration (FAA) proposes the following special condition as a part of the type certification basis for the Eurocopter Germany Model BO-108 (EC135) helicopter.

Protection for Electrical/Electronic Systems From High Intensity Radiated Fields

Each system that performs critical functions must be designed and installed to ensure that the operation and operational capabilities of these critical functions are not adversely affected when the helicopter is exposed to high intensity radiated fields external to the helicopter.

Issued in Forth Worth, Texas, on January 7, 1993.

Michele M. Owsley,

Acting Manager, Rotorcraft Directorate Aircraft Certification Service.

[FR Doc. 93-1447 Filed 1-21-93; 8:45 am]

BILLING CODE 4910-13-M

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14 CFR Parts 21 and 29

[Docket No. 93-ASW-3; Notice No. SC-93-3-SW]

Special Condition: Bell Helicopter Textron Model 230 Helicopter, Electronic Flight Instrument System

AGENCY: Federal Aviation Administration, DOT.

ACTION: Notice of proposed special condition.

SUMMARY: This notice proposes a special condition for the Bell Helicopter Textron Model 230 helicopter modified by King Radio Corporation. This helicopter will have a novel or unusual design feature associated with the electronic flight instrument system. The applicable airworthiness regulations do not contain adequate or appropriate safety standards for the protection of these critical function systems from the effects of external high intensity radiated fields (HIRF). This notice contains the additional safety standards that the Administrator considers necessary to establish a level of safety equivalent to that established by the airworthiness standards or part 29 of the Federal Aviation Regulations (FAR).

DATES: Comments must be received on or before February 22, 1993.

ADDRESSES: Comments on this proposal may be mailed in duplicate to: Federal Aviation Administration, Office of the Assistant Chief Counsel, Attention: Rules Docket No. 93-ASW-3, Forth Worth, Texas 76193-0007, or delivered in duplicate to the Office of the Assistant Chief Counsel, Building 3B, room 158, 4400 Blue Mound Road, Forth Worth, Texas. Comments must be marked Docket No. 93-ASW-3.

Comments may be inspected in the Rules docket weekdays, except Federal holidays, between 9 a.m. and 3 p.m.

FOR FURTHER INFORMATION CONTACT: Mr. Robert McCallister, FAA, Rotorcraft Standards Staff, Regulations Group, Forth Worth, Texas 76193-0111; telephone (817) 624-5121.

SUPPLEMENTARY INFORMATION:

Comments Invited

Interested persons are invited to participate in the making of the proposed special condition by submitting such written data, views, or arguments as they may desire. Communications should identify the regulatory docket number and be submitted in duplicate to the address above. All communications received on or before the closing date for comments will be considered by the Administrator before taking action on this proposal. The special condition proposed in this notice may be changed in light of comments received. All comments received will be available in the Rules Docket for examination by interested persons, both before and after the closing date for comments. A report summarizing each substantive public contact with FAA personnel concerning this rulemaking will be filed in the docket. Persons wishing the FAA to acknowledge receipt of their comments submitted in response to this notice must submit with those comments a self-addressed, stamped postcard on which the following statement is made: "Comments to Docket No. 93-ASW-3." The postcard will be date/time stamped and returned to the commenter.

Background

On August 14, 1992, King Radio Corporation, Olathe, Kansas, applied for a Supplemental Type Certificate for installation of an electronic flight instrument system and flight management system in the Bell Helicopter Textron (BHTI) Model 230 helicopter. This model helicopter is a 10-passenger, two-engine, 8,400-pound transport category helicopter.

Type Certification Basis

The certification basis established for the BHTI Model 230 helicopter includes: FAR 21.29 and 29 effective February 1, 1965, Amendments 29-1 through 29-9; § 29.997, Amendment 29-10; § 29.1401, Amendment 29-11; §§ 29.25(c), 29.801, 29.865, 29.1555(c), 29.1557(c), Amendment 29-12; § 29.927(b)(2), Amendment 29-17; instrument flight rules (IFR) requirements dated December 15, 1978; FAA Exemption No. 2789, FAR 29.811(f)(1); FAA Exemption No. 4395, FAR 29.855(a); the selected sections of FAR 29 up to and including Amendment 29-26 as follows: §§ 29.1, 29.21 thru 29.175, 29.231 thru 29.235, 29.251 thru 29.361, 29.411, 29.471 thru 29.493, 29.501, 29.547 thru 29.549, 29.561 and 29.603, 29.607 thru 29.609, 29.611 thru 29.629, 29.683, 29.723 and 29.727, 29.731, 29.735, 29.771 thru 29.775, 29.785, 29.831, 29.855, 29.861 thru 29.863, 29.873 thru 29.917, 29.931, 29.939 thru 29.953, 29.955, 29.961, 29.933 thru 29.997, 29.1011 thru 29.1023, 29.1027 thru 29.1105, 29.1121 thru 29.1123, 29.1141, 29.1143 thru 29.1145, 29.1163 thru 29.1307, 29.1321 thru 29.1322, 29.1327, 29.1331 thru 29.1333, 29.1337, 29.1359 thru 29.1381, 29.1401, 29.1431, 29.1461 thru 29.1505, 29.1517 thru 29.1521, 29.1527, 29.1541 thru 29.1543, 29.1549 thru 29.1551, 29.1555 thru 29.1559, 29.1581 thru 29.1587, Appendix B; the noise standards of FAR 36 and International Civil Aviation Organization (ICAO) Annex 16; and Canadian Airworthiness Manual 529: 529.1301-1, 529.1557(c)(3), 529.581, 529.1093(b)(1)(ii).

If the Administrator finds that the applicable airworthiness regulations do not contain adequate or appropriate safety standards for the BHTI Model 230 helicopter because of a novel or unusual design feature, special conditions are prescribed under the provisions of § 21.16 to establish a level of safety equivalent to that established in the regulations.

Special conditions, as appropriate, are issued in accordance with § 11.49 after public notice, as required by §§ 11.28 and 11.29(b), and become a part of the type certification basis in accordance with § 21.101(b)(2). In addition to the applicable airworthiness regulations and special conditions, the BHTI Model 230 helicopter must comply with the noise certification requirements of part 36 and the engine emission requirements of Special Federal Aviation Regulation (SFAR) 27.

Discussion

The BHTI Model 230 helicopter, at the time of the application for modification by King Radio Corporation, was identified as incorporating one and possibly more electrical/electronic systems that will perform functions critical to the continued safe flight and landing of the helicopter. The electronic flight instrument system performs the attitude display function. The display of

attitude, altitude, and airspeed is critical to the continued safe flight and landing of the helicopter for IFR operations in instrument meteorological conditions. After the design is finalized, King Radio Corporation will provide the FAA with a preliminary hazard analysis that will identify any other critical functions performed by the electrical/electronic systems.

Recent advances in technology have prompted the design of aircraft that include advanced electrical/electronic systems that perform functions required for continued safe flight and landing. However, these advanced systems respond to the transient effects of induced electrical current and voltage caused by the high intensity radiated fields (HIRF) incident on the external surface of the helicopter. These induced transient currents and voltages can degrade the performance of the electrical/electronic systems by damaging the components or by upsetting the systems' functions.

Furthermore, the electromagnetic environment has undergone a transformation not envisioned by the current application of FAR § 29.1309(a). Higher energy levels radiate from operational transmitters currently used for radar, radio, and television; and the number of transmitters has increased significantly.

Existing aircraft certification requirements are inappropriate in view of these technological advances. In addition, the FAA has received reports of some significant safety incidents and accidents involving military aircraft equipped with advanced electrical/electronic systems when they were exposed to electromagnetic radiation.

The combined effects of technological advances in helicopter design and the changing environment have resulted in an increased level of vulnerability of the electrical/electronic systems required for the continued safe flight and landing of the helicopter. Effective measures to protect these helicopters against the adverse effects of exposure to HIRF will be provided by the design and installation of these systems. The following are primary factors that contributed to the current conditions: (1) Increased use of sensitive electronics that perform critical functions, (2) reduced electromagnetic shielding afforded helicopter systems by advanced technology airframe materials, (3) adverse service experience of military aircraft using these technologies, and (4) increase in the number and power of radio frequency emitters and the expected increase in the future.

The FAA recognizes the need for aircraft certification standards to keep pace with technological developments and a changing environment. In 1986 it initiated a high priority program to (1) determine and define electromagnetic energy levels; (2) develop guidance material for design, test, and analysis; and (3) prescribe and promulgate regulatory standards. The FAA participated with industry and foreign airworthiness authorities to develop internationally recognized standards for certification.

The FAA and foreign airworthiness authorities have identified a level of HIRF environment that a helicopter could be exposed to during IFR operations.

While the HIRF requirements are being finalized, the FAA is adopting a special condition for the certification of aircraft that employ electrical/electronic systems performing critical functions. The accepted maximum energy levels that civilian helicopter system installations must withstand for safe operation are based on surveys and analysis of existing radio frequency emitters. This special condition will require the helicopter's electrical/electronic systems and associated wiring to be protected from these energy levels. These external threat levels are believed to represent the worst-case exposure for a helicopter operating under IFR.

The HIRF environment specified in this proposed special condition is based on many critical assumptions. With the exception of takeoff and landing at an airport, one of these assumptions is the aircraft would be not less than 500 feet above ground level (AGL). Helicopters operating under visual flight rules (VFR) routinely operate at less than 500 feet AGL and perform takeoffs and landings at locations other than controlled airports. Therefore, it would be expected that the HIRF environment experienced by a helicopter operating VFR may exceed the defined environment by 100 percent or more.

This special condition will require the systems that perform critical functions, as installed in the aircraft, to meet certain standards based on either a defined HIRF environment or a fixed value using laboratory tests.

The applicant may demonstrate that the operation and operational capability of the installed electrical/electronic systems that perform critical functions are not adversely affected when the aircraft is exposed to the defined HIRF environment. The FAA has determined that the environment defined in Table 1 is acceptable for critical functions in helicopters operating at or above 500 feet AGL. For critical functions of helicopters operating at less than 500 feet AGL, additional considerations must be given.

The applicant may also demonstrate, by a laboratory test, that the electrical/electronic systems that perform critical functions can withstand a peak electromagnetic field strength in a frequency range of 10 kHz to 18 GHz. If a laboratory test is used to show compliance with the defined HIRF environment, no credit will be given for signal attenuation due to installation. A level of 100 v/m and other considerations, such as an alternate technology backup that is immune to HIRF, are appropriate for critical functions during IFR operations. A level of 200 v/m and further considerations, such as an alternate technology backup that is immune to HIRF, are more appropriate for critical functions during VFR operations.

Applicants for FAA approval under this special condition must perform a preliminary hazard analysis to identify electrical/electronic systems that perform critical functions. The term "critical" means those functions whose failure would contribute to or cause a failure condition that would prevent the continued safe flight and landing of the helicopter. The systems identified by the hazard analysis as performing critical functions are required to have HIRF protection.

A system may perform both critical and noncritical functions. Primary electronic flight display systems and their associated components perform critical functions such as attitude, altitude, and airspeed indications. HIRF requirements would apply only to the systems that perform critical functions.

Compliance with HIRF requirements will be demonstrated by tests, analysis, models, similarity with existing systems, or a combination of these methods. Service experience alone will not be acceptable since such experience in normal flight operations may not include an exposure to the HIRF. Reliance on a system with similar design features for redundancy, as a means of protection against the effects of external HIRF, is generally insufficient because all elements of a redundant system are likely to be concurrently exposed to the fields.

The modulation that represents the signal most likely to disrupt the operation of the system under test, based on its design characteristics, should be selected. For example, flight control systems may be susceptible to 3 Hz square wave modulation while the video signals for electronic display systems may be susceptible to 400 H_z

sinusoidal modulation. If the worst-case modulation is unknown or cannot be determined, default modulations may be used. Suggested default values are a 1 kHz sine wave with 80 percent depth of modulation in the frequency range from 10 kHz to 400 MHz and 1 kHz square wave with greater than 90 percent depth of modulation from 400 MHz to 18 GHz. For frequencies where the unmodulated signal would cause deviations from normal operation, several different modulating signals with various waveforms and frequencies should be applied.

Acceptable system performance would be attained by demonstrating that the critical function components of the system under consideration continue to perform their intended function during and after exposure to required electromagnetic fields. Deviations from system specifications may be acceptable but must be independently assessed by the FAA on a case by case basis.

TABLE 1.—FIELD STRENGTH VOLTS/METER

Frequency	Peak	Average
10–100 kHz	50	50
100–500	60	60
500–2000	70	70
2–30 MHz	200	200
30–100	30	30
100–200	150	33
200–400	70	70
400–700	4020	935
700–1000	1700	170
1–2 GHz	5000	990
2–4	6680	840
4–6	6850	310
6–8	3600	670
8–12	3500	1270
12–18	3500	360
18–40	2100	750

Conclusion

This action affects only certain unusual or novel design features on one series of helicopters. It it not a rule of general applicability and affects only applicants who applied to the FAA for approval of those features on the affected helicopter.

List of Subjects in 14 CFR Parts 21 and 29

Aircraft, Air transportation, Aviation safety, Rotorcraft, Safety.

The authority citation for this special condition is as follows:

Authority: 49 U.S.C. 1344, 1348(c), 1352, 1354(a), 1355, 1421 through 1431, 1502, 1651(b)(2); 42 U.S.C. 1857f–10, 4321 et seq.; E.O. 11541; 49 U.S.C. 106(g).

The Proposed Special Condition

Accordingly, the Federal Aviation Administration (FAA) proposes the following special condition as a part of the type certification basis for the Bell Helicopter Textron Model 230 helicopter.

Protection for Electrical/Electronic Systems From High Intensity Radiated Fields

Each system that performs critical functions must be designed and installed to ensure that the operation and operational capabilities of these critical functions are not adversely affected when the helicopter is exposed to high intensity radiated fields external to the helicopter.

Issued in Fort Worth, Texas, on January 7, 1993.

Michele M. Owsley,

Acting Manager, Rotorcraft Directorate, Aircraft Certification Service.

[FR Doc. 93–1446 Filed 1–21–93; 8:45 am]

BILLING CODE 4910–13–M

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14 CFR Part 39

[Docket No. 92–NM–232–AD]

Airworthiness Directives; de Havilland, Inc., Model DHC–8–100 and –300 Series Airplanes

AGENCY: Federal Aviation Administration, DOT.

ACTION: Notice of proposed rulemaking (NPRM).

SUMMARY: This document proposes the adoption of a new airworthiness directive (AD) that is applicable to certain de Havilland Model DHC–8–100 and –300 series airplanes. This proposal would require removing all aluminum washers that are installed at the connection of the DC feeder cable to the bus bar, and replacing them with steel washers. This proposal is prompted by reports that the DC feeder cables are loosening and corroding at the point where they connect to the bus bar. The actions specified by the proposed AD are intended to prevent loss of conductivity, which could lead to overheat damage to wiring or connectors.

DATES: Comments must be received by March 17, 1993.

ADDRESSES: Submit comments in triplicate to the Federal Aviation Administration (FAA), Transport Airplane Directorate, ANM–103, Attention: Rules Docket No. 92–NM–232–AD, 1601 Lind Avenue, SW., Renton, Washington 98055–4056. Comments may be inspected at this location between 9 a.m. and 3 p.m., Monday through Friday, except Federal holidays.

The service information referenced in the proposed rule may be obtained from de Havilland, Inc., Garratt Boulevard, Downsview, Ontario M3K 1Y5, Canada. This information may be examined at the FAA, Transport Airplane Directorate, 1601 Lind Avenue, SW., Renton, Washington; or at the FAA, Engine and Propeller Directorate, New York Aircraft Certification Office, 181 South Franklin Avenue, room 202, Valley Stream, New York.

FOR FURTHER INFORMATION CONTACT: Peter Cuneo, Systems and Equipment Branch, ANE–173, New York Aircraft Certification Office, FAA, Engine and Propeller Directorate, 181 South Franklin Avenue, room 202, Valley Stream, New York 11581; telephone (516) 791–6427; fax (516) 791–9024.

SUPPLEMENTARY INFORMATION:

Comments Invited

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

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

Commenters wishing the FAA to acknowledge receipt of their comments submitted in response to this notice must submit a self-addressed, stamped postcard on which the following statement is made: "Comments to Docket Number 92–NM–232–AD." The postcard will be date stamped and returned to the commenter.

Availability of NPRMs

Any person may obtain a copy of this NPRM by submitting a request to the FAA, Transport Airplane Directorate, ANM–103, Attention: Rules Docket No. 92–NM–232–AD, 1601 Lind Avenue, SW., Renton, Washington 98055–4056.

Discussion

Transport Canada Aviation, which is the airworthiness authority for Canada,

recently notified the FAA that an unsafe condition may exist on certain de Havilland Model DHC–8–100 and –300 series airplanes. Transport Canada Aviation advises that reports indicate that DC feeder cables are loosening and corroding at the point where the feeder cables connect to the bus bar on certain de Havilland Model DHC–8 series airplanes. The cause is attributed to the use of aluminum washers where the feeder cables connect to the bus bar. Corrosion is caused by the use of dissimilar metals, such as aluminum and steel, at the bus bar connection. This condition, if not corrected, could cause loss of conductivity, which could lead to overheat damage to wiring or connectors.

De Havilland has issued Alert Service Bulletin S.B. A8–24–44, dated October 23, 1992, which describes procedures for removing aluminum washers that are installed at the point where the feeder cables are connected to the bus bar, and replacing them with steel washers. Transport Canada Aviation classified this service bulletin as mandatory and issued Canadian Airworthiness Directive CF–92–20, dated November 6, 1992, in order to assure the continued airworthiness of these airplanes in Canada.

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

Since an unsafe condition has been identified that is likely to exist or develop on other airplanes of the same type design registered in the United States, the proposed AD would require replacement of currently-installed aluminum washers with steel washers at the DC feeder cable-to-bus bar connection. The actions would be required to be accomplished in accordance with the service bulletin described previously.

The FAA estimates that 108 airplanes of U.S. registry would be affected by this proposed AD, that it would take approximately 5 work hours per airplane to accomplish the proposed actions, and that the average labor rate is $55 per work hour. Required parts would cost approximately $285 per airplane. Based on these figures, the total cost impact of the proposed AD on U.S. operators is estimated to be $60,480, or $560 per airplane. This total cost figure assumes that no operator has yet accomplished the proposed requirements of this AD action.

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

For the reasons discussed above, I certify that this proposed regulation (1) is not a "major rule" under Executive Order 12291; (2) is not a "significant rule" under the DOT Regulatory Policies and Procedures (44 FR 11034, February 26, 1979); and (3) if promulgated, will not have a significant economic impact, positive or negative, on a substantial number of small entities under the criteria of the Regulatory Flexibility Act. A copy of the draft regulatory evaluation prepared for this action is contained in the Rules Docket. A copy of it may be obtained by contacting the Rules Docket at the location provided under the caption "ADDRESSES."

List of Subjects in 14 CFR Part 39

Air transportation, Aircraft, Aviation safety, Safety.

The Proposed Amendment

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

PART 39—AIRWORTHINESS DIRECTIVES

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

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

§ 39.13 [Amended]

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

De Havilland, Inc.: Docket 92–NM–232–AD.

Applicability: Model DHC–8–100 and –300 series airplanes on which Modification 8/1970 has not been accomplished; certificated in any category.

Compliance: Required as indicated, unless accomplished previously.

To prevent loss of conductivity, which could lead to overheat damage to wiring or connectors, accomplish the following:

(a) Within 60 days after the effective date of this AD, replace aluminum washers installed at the bus bar connections with steel washers, in accordance with de Havilland Alert Service Bulletin S.B. A8–24–44, dated October 23, 1992.

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

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

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

Issued in Renton, Washington, on January 14, 1993.

Darrell M. Pederson,

Acting Manager, Transport Airplane Directorate, Aircraft Certification Service.

[FR Doc. 93–1544 Filed 1–21–93; 8:45 am]

BILLING CODE 4910–13–U

DEPARTMENT OF COMMERCE

United States Travel and Tourism Administration

15 CFR Part 1200

[Docket No. 921243–2343]

RIN 0644–AA02

Financial Assistance to Cooperative Tourism Marketing Programs for International Tourism Trade Development

AGENCY: United States Travel and Tourism Administration, Commerce.

ACTION: Notice of proposed rulemaking.

SUMMARY: The United States Travel and Tourism Administration (USTTA) intends to delete existing regulations and substitute in their place regulations to guide administration of the matching grant program outlined in the Tourism Policy and Export Promotion Act of 1992. In this regard, the USTTA is requesting public comments on proposed rules and guidelines to provide financial assistance to Cooperative Tourism Marketing Programs (CTMPs) for International Tourism Trade Development.

This financial assistance will support increased and more effective investment in international tourism trade

development and promotion by states, local governments, and cooperative tourism marketing programs. Projects funded under the program will increase international visitation and contribute to the economic well-being of the various regions of the United States.

DATES: Comments on proposed rules and guidelines must be submitted on or before February 15, 1993.

ADDRESSES: Comments should be forwarded in triplicate to: Mrs. Karen M. Cardran, Director, Marketing Programs, Office of Tourism Marketing, United States Travel and Tourism Administration, U.S. Department of Commerce, room 1860, Washington, DC 20230.

FOR FURTHER INFORMATION CONTACT: Mrs. Karen M. Cardran, Director, Marketing Programs, Office of Tourism Marketing, United States Travel and Tourism Administration, U.S. Department of Commerce, room 1860, Washington, DC 20230. (202) 482–1904.

SUPPLEMENTARY INFORMATION: Interested parties are invited to submit written views or arguments as they may desire. Communications should be submitted in triplicate. All communications received on or before the closing date for comment will be considered before action is taken to finalize rules and regulations. The proposed rules and regulations contained in this notice may be changed in light of the comments.

Authority to Issue Regulations

Authority to issue regulations is contained in Section 203 (22 U.S.C. 2123a) of the International Travel Act of 1961, as amended by the Tourism Policy and Export Promotion Act, Public Law No. 102–372.

Background

The Tourism Policy and Export Promotion Act of 1992 amended section 203 of the International Travel Act and called for development of a program of matching grants to promote tourism from abroad. This is to be accomplished through increased and more effective investment in international tourism by states, local governments, and non-profit organizations established (for the purpose of this program) into cooperative tourism marketing programs. The 1992 Act further called for the publication of draft rules on administration of the program for public comment. When finalized, the rules will be published in the **Federal Register** and described in the Catalog of Domestic Financial Assistance under No. 11.952.

Under Executive Order (E.O.) 12291, the Department must determine whether a regulation is a "major" rule within the meaning of section 1 of E.O. 12991 and therefore subject to the requirements that a Regulatory Impact Analysis be performed. This regulation is not a major rule because they are not likely to result in:

(1) An annual effect on the economy of $100 million or more;

(2) A major increase in costs or prices for consumers, individual industries, Federal, State, or local government agencies, or geographic regions; and

(3) Significant adverse effects on competition, employment, investment, productivity, innovation, or on the ability of the United States-based enterprises to compete with foreign-based enterprises in domestic or export markets.

Therefore, preparation of a Regulatory Impact Analysis is not required and neither a preliminary nor final Analysis has been or will be prepared.

A Regulatory Analysis as required by the Regulatory Flexibility Act (5 U.S.C. 601–611) will not be conducted because it has been determined that given the vast universe of small businesses involved in travel and tourism the annual authorized level of funding under this program will not allow significant impact to a substantial number of organizations in any of the three categories cited. Therefore, preparation of a Regulatory Flexibility Analysis is not required.

This proposed rule does not contain policies with Federalism implications sufficient to warrant preparation of a Federalism assessment under Executive Order 12612.

The Department has determined that this proposed rule will not sufficiently affect the quality of the human environment. Therefore, no draft of final Environmental Impact Statement has or will be prepared.

Office of Management and Budget review and approval may be necessary regarding the information collection requirements contained in this rule pursuant to the provisions of the Paperwork Reduction Act (44 U.S.C. 3501, et seq.).

List of Subjects in 15 CFR Part 1200

Administrative practice and procedure, Grants programs—travel, tourism, international tourism marketing, cooperative tourism marketing programs.

Dated: December 29, 1992.

Linda Mysliwy,

Assistant Secretary for Tourism Marketing.

For the reasons set out above, it is proposed to revise 15 CFR part 1200 to read as follows:

Part 1200—International Tourism Trade Development Assistance

Subpart A—General—Cooperative Tourism Marketing Programs

Sec.
1200.1 Background and purpose.
1200.2 Definitions.
1200.3 Secretarial selection of markets.
1200.4 Notice of availability of funds.
1200.5 Programs eligible for assistance.
1200.6 Eligibility of applicants.
1200.7 Application requirements.
1200.8 Criteria for selection.
1200.9 Limitations on assistance.
1200.10 Matching requirement.
1200.11 Subrecipient agreements.

Subpart B—Administrative Requirements

Sec.
1200.20 Coordination among joint recipients.
1200.21 Designation of primary recipients.
1200.22 Responsibility of joint recipients.
1200.23 Coordination/cooperation with other federal agencies.
1200.24 Recordkeeping and reporting requirements.
1200.25 Use of award funds for promotional purposes.
1200.26 Indirect costs.
1200.27 Unspent balances of federal funds.
1200.28 Use of funded project research models and promotional strategies as demonstration projects.
1200.29 Audit and examination of recipient records.

Subpart C—Development of National Programs

Sec.
1200.30 Establishment of national fund pool.
1200.31 Recipient committee.
1200.32 National program categories.
1200.33 Administration of national funds.

Authority: Sections 202 and 203 (22 U.S.C. 2123, 2123a) of the International Travel Act as amended by the Tourism Policy and Export Promotion Act, Pub. L. No. 102–372.

Subpart A—General-Cooperative Tourism Marketing Programs

§ 1200.1 Background and purpose.

(a) The regulations in this part are issued under the authority of the International Travel Act of 1961, as amended by the Tourism Policy and Export Promotion Act, Public Law No. 102–373. Public Law No. 102–372 established a new matching grant program entitled the International Tourism Trade Development Program, which replaced existing authority under 22 U.S.C. 2123a.

(b) The purpose of the International Tourism Trade Development Program is to promote international tourism through increased and more effective investment in international tourism by states, local governments, and non-profit organizations through provision

of Financial Assistance to Cooperative Tourism Marketing Programs (hereinafter referred to as CTMP(s)).

(c) Financial assistance may be provided to applicants meeting the eligibility requirements set forth in Section 1200.6, if the applicant for assistance demonstrates to the satisfaction of the Under Secretary of Commerce for Travel and Tourism that the assistance will be used for programs that:

(1) Increase international visitation to the applicant's region;

(2) Include advertising, publication of promotional materials, or other promotional or market research activities designed to increase the number of international visitors to the region; and, further that—

(i) Said program will increase the travel of international visitors to the region for which the assistance is sought;

(ii) Such program will contribute to the economic well-being of the region;

(iii) Such region is developing or has developed a regional transportation system that will enhance travel to the facilities and attractions in such region; and

(iv) Such program will focus its efforts on the countries in the markets selected by the Secretary of Commerce as an appropriate focus of tourism development efforts.

(d) Financial assistance provided under this program may be used for the purpose of—

(1) Promoting or marketing to international visitors or potential international visitors the tourism and recreational opportunities in the region for which such financial assistance is sought;

(2) Targeting international visitors to develop or enhance their interest in tourism and recreational opportunities in such region;

(3) Encouraging the development by such cooperative tourism marketing programs of regional strategies for international tourism promotion and marketing; or

(4) Developing and implementing tourism trade development programs applicable to the market(s) identified by the Secretary of Commerce.

(e) These rules prescribe policies and procedures for the award of grants and cooperative agreements under the International Tourism Trade Development Assistance program, in order to assure the fair, equitable and uniform treatment of all proposals for assistance under this program. These rules address only the award of grants and cooperative agreements under the International Tourism Trade Development Program.

§ 1200.2 Definitions.

(a) The term "award" includes grants and cooperative agreements.

(b) The term "Cooperative Tourism Marketing Programs" (CTMP) refers to eligible applicants as defined in subpart A, section 1200.6 Eligibility of Applicants as well as to those selected for funding under the program.

(c) The terms "joint applicants" and "joint recipients" refer to those CTMP collective entities that apply for or are awarded funds. Upon award, each member of the CTMP will be considered a recipient (1200.7(g) and 1200.9(i)).

(d) The term "primary recipient" refers to that entity identified by the joint applicants/joint recipients under a CTMP as the party responsible for acting on their behalf to administer receipt, distribution and collection of funds and reporting.

(e) The term "national program" means tourism trade development programs designed to promote travel and tourism in the United States generally without promotion of a particular area of the United States. This, however, will not restrict development of programs featuring the regional concept of travel by international travelers.

(f) The term "private and public non-profit organizations or associations" means an institution, organization or association, either private or public, which has tax exempt status as defined in section 501(a) of the Internal Revenue Code.

(g) The terms "state," "states," and "United States" are defined to include the 50 States of the United States, the District of Columbia, the Commonwealth of Puerto Rico, and U.S. Virgin Islands, and the Trust Territories of the Pacific Islands.

(h) The term "subrecipients" includes individuals and private profit and nonprofit businesses and organizations with whom joint recipients enter into agreements.

(i) The term "indirect costs" means those costs that are incurred for common or joint objectives and cannot be readily identified with a particular final cost objective. Typical examples of indirect costs for many organizations may include depreciation or use allowances on buildings and equipment, the costs of operating and maintaining facilities, and general administration and general expenses, such as salaries and expenses of executive officers, personnel administration, and accounting (1200.26).

(j) "Matching funds" are those funds provided by the recipient in an amount equal to not less than 25 percent of the total federal funds provided to the recipient under the award. These matching funds shall consist of actual dollar expenditures on the program and may not include in-kind contributions. Matching funds used for this purpose may come from sources other than the applicants excluding other Federal Government funds, but must be substantiated by confirming documentation indicating source, amount, and method for transfer of funds to recipient.

(k) The term "pooled funds" refer to those funds equal to 50 percent of the amount awarded to recipients which are set aside to finance tourism trade development programs designed to promote travel and tourism to the United States generally without promotion of a particular area of the United States.

(l) The term "Secretary" means Secretary of Commerce.

(m) The terms "Agency" or "USTTA" mean United States Travel and Tourism Administration.

(n) The term "Program" means the International Tourism Trade Development Assistance Program.

(o) The term "Act" refers to the International Travel Act as amended by the Tourism Policy and Export Promotion Act of 1992 (Pub. L. 102–372 (22 U.S.C. 2123).

(p) The term "Under Secretary" means the Under Secretary of Commerce for Travel and Tourism, who has delegated authority to act on behalf of the Secretary of Commerce.

§ 1200.3 Secretarial selection of markets.

(a) In accordance with section 202 of the Tourism Policy and Export Promotion Act (22 U.S.C. 2123), by October 1 of each year the Under Secretary shall publish a notice in the **Federal Register** soliciting comments from persons interested in tourism trade, concerning markets that would be an appropriate focus of tourism trade development efforts. These efforts would be carried out in the twelve-month period that begins twelve months after the notice is published.

(b) Within three months after the notice is published, the Under Secretary shall select the markets that are determined to be an appropriate focus of tourism trade development efforts to be carried out in the twelve-month period described above. The selection of markets shall be published in the **Federal Register**.

(c) At the same time the Under Secretary announces the selection of

markets, he or she shall issue a request for proposals from CTMPs to develop and implement tourism trade development programs applicable to the market(s) selected. All financial assistance applications, shall be directed at the market(s) selected by the Under Secretary to be an appropriate focus of tourism trade development efforts.

§ 1200.4 Notice of availability of funds.

(a) The Program shall periodically, and not less than on an annual basis, publish a notice in the **Federal Register** inviting interested parties meeting the qualification criteria to submit proposals for funding under the Program. Applications will be considered for funding only when submitted in a timely manner in response to a specific notice in the **Federal Register** inviting applications for funding.

(b) All notices published in the **Federal Register** in accord with this section shall include basic information about the amount of funds available; the closing date for application; the market(s) selected by the Under Secretary pursuant to section 202 (22 U.S.C. 2123) as appropriate for international tourism trade development; the name, address and telephone number of the contact person; the specific forms to be completed and filed to apply for funds; and other appropriate guidance.

(c) Notices under this section shall also state that awards under the Program shall be administered in accordance with and subject to all Federal Government-wide and Department of Commerce regulations, policies, and procedures applicable to financial assistance awards and to the limitations and criteria set forth in this part.

§ 1200.5 Programs eligible for assistance.

(a) Product Development—projects designed to encourage the development by cooperative tourism marketing programs of regional strategies for international tourism promotion and marketing;

(b) Media Product Information—projects that encourage positive media coverage of the region, which may include the development of journalist familiarization tours and dissemination of product information on the destination;

(c) Market Development—projects designed to increase travel to the region from international markets of opportunity identified by the Secretary i.e., Receptive Operator/Wholesaler Inspection Tours, Tour Package Development, Consumer Travel Shows;

(d) Advertising;

(e) Trade Development—trade-oriented travel missions, on-site training workshops/seminars, international retail agent familiarization tours, in-country training workshops/seminars, and participation in international travel trade shows;

(f) Consumer and Trade Literature; and

(g) Market Research.

§ 1200.6 Eligibility of applicants.

(a) The program will provide funds to entities identified as Cooperative Tourism Marketing Programs. Financial assistance will be awarded only to Cooperative Tourism Marketing Programs which shall at a minimum—

(1) Involve the participation of

(i) Two or more States;

(ii) One or more States and one or more political subdivisions of States; or

(iii) One or more States and one or more nonprofit organizations;

(2) Be established for the purpose of increasing the number of international visitors to the region in which such States or local governments are located; and

(3) Have a written regional tourism marketing plan which includes advertising, publication of promotional materials, or other promotional or market research activities designed to increase the number of international visitors to such region, in accordance with the criteria outlined above.

§ 1200.7 Application requirements.

(a) Financial assistance will be awarded only to CTMPs meeting the eligibility criteria cited in § 1200.6.

(b) Each Application must target only one country, to be selected from the list of markets identified by the Secretary as appropriate for international tourism trade development purposes. However, applicants may submit multiple applications applying for funds to target additional countries from the list of selected markets, within the maximum funding limitations cited in paragraph (1) of this section.

(c) The application must include a marketing plan that contains clearly stated objectives covering an appropriate period of time. The marketing plan must be targeted and integrated (in terms of multiple activities) with a cohesive approach. The marketing plan must contain procedures for credible evaluation and tracking.

(d) The marketing plan cited above should cover only those expenditures that will focus on promoting the region, i.e. 50% of the Federal award and the region's 25% matching share. The remaining 50% of the Federal funds will be set aside for national programs.

(e) Application must disclose any agreements, in connection with financial assistance provided, that a cooperative tourism marketing program has entered into with individuals and private profit or nonprofit businesses and organizations who will assist in carrying out the purposes for which the financial assistance is provided. Such agreements are subject to approval by the Under Secretary and will be approved only if the Under Secretary finds that such agreement meets all applicable legal requirements and is consistent with the purposes of the International Travel Act of 1961, as amended.

(f) Any recipient of financial assistance under the program shall provide matching funds consisting of actual dollar expenditures (in-kind match is not authorized), on the program for which financial assistance is provided, equal to at least 25 percent of total financial assistance provided. The application must document evidence of availability of matching funds equal to at least 25 percent of the total financial assistance requested.

(g) Joint applicants must designate one of their members as the primary recipient and/or administrator for purposes of receiving Federal funds, collecting matching funds from all participants, distributing funds to the other eligible participants, managing the project, and submitting financial and program performance reports. However, all participants shall be jointly and severally liable to the Government under the terms and conditions of the financial assistance agreement, and each recipient is responsible for complying with other applicable financial assistance regulations and OMB Circulars.

(h) Applicant program strategy must be developed with the intent of achieving one or more of the objectives cited below, and the application must include the following productivity estimates and demonstrate method to account for these actions for the duration of the program:

(1) The number of written or telephone inquiries regarding the possibility of international travel to the United States expected to be generated by the requested financial assistance;

(2) The number of tour packages for international visitors to the United States expected to be sold in connection with this financial assistance;

(3) The number of tourists from the targeted market expected to visit the region being promoted in connection with this financial assistance; and

(4) The actions recommended to eliminate acts, policies, and practices of the targeted foreign country, or other markets identified by the Secretary as appropriate for tourism development, that constitute significant barriers to or distortions or United States travel and tourism exports.

(i) The application must include a detailed budget covering all elements of the program. The budget should reflect cost estimates under each budgetary line item reflected on the application form, with further breakdown by program category. Individual breakdown's for Federal and non-Federal fund expenditures must be shown. Matching funds must be actual dollar expenditures on the program for which financial assistance is provided. (No in-kind contributions are allowed.)

(j) Application must include components of two or more of the following international tourism trade development initiatives:

(1) Product Development;
(2) Media Product Information;
(3) Market Development;
(4) Cooperative Advertising;
(5) Trade Development;
(6) Consumer and Trade Literature; and,
(7) Market Research.

(k) Applications must target only one country, selected from the list of international market(s) identified by the Secretary of Commerce as appropriate for travel trade development. Further, using credible market research, the application must document the potential of the selected international market for generating tourism to the applicant's region.

(l) The maximum amount for which joint applicants within one state may apply is $100,000; entities within two states, $225,000; entities within three states, $350,000; entities within four states, $500,000; and entities with five or more states, $625,000. The maximum amount of any award will be $625,000. The minimum amount for which an applicant may apply is $50,000. Financial assistance provided to any State in a single fiscal year cannot exceed an aggregate of $337,500 for all recipients. For purposes of determining state maximums for annual award purposes, amount of awards will be pro-rated equally among collective recipients.

§ 1200.8 Criteria for selection.

(a) Each application for financial assistance, received by the deadline for application, will be reviewed for completeness upon receipt. At the agency's discretion, the applicant may be contacted for additional information if the application is deemed incomplete. If the required information is not received within 10 working days from the date of notification, the application will not be considered further.

(b) Each application will be reviewed and judged independently from all other applications by each of four qualified individuals acting without consultation between themselves. Selection for an award will be based on total final evaluation score. Only applications with a final evaluation score of 80 or greater shall be eligible for an award. Such applications will be awarded financial assistance, subject to the availability of funds, in descending order starting with the application with the highest final evaluation score above 80.

(c)(1) The final evaluation score for each application will be calculated by combining the scores from the two evaluation criteria:

(i) General evaluation criteria; and
(ii) Project evaluation criteria.

(2) General evaluation comprises 50 per cent of the total score; 50 per cent is allocated to project evaluation.

(d) Elements in each individual category are listed in descending order of importance from greater to lesser. Items of equal importance are listed sequentially in descending order.

(1) GENERAL EVALUATION CRITERIA (assigned weight—0.50). Paragraphs (d)(1)(i) and (d)(1)(ii) of this section are of greatest and equal importance, paragraph (d)(1)(iii) listed in descending order is of lesser value, while paragraphs (d)(1)(iv, v, and vi) are of less and equal value, paragraph (d)(1)(vii) is of least value and paragraph (d)(1)(viii) although not designated a numerical weight, is a requirement. Application demonstrates to the satisfaction of the Secretary that—

(i) Such cooperative tourism marketing program for which the financial assistance is requested has the potential to increase the travel of international visitors to the region for which the assistance is sought;

(ii) Clear, achievable and measurable objectives have been established to be carried out over an appropriate length of time, and that program will contribute to the economic well-being of the region;

(iii) The program focuses its efforts on an international market selected by the Under Secretary as an appropriate focus of tourism trade development efforts, and credible market research demonstrates that this market has the greatest potential for generating visitors to the region;

(iv) The project is fully integrated (in terms of multiple activities) with a cohesive approach;

(v) The CTMP's written plan reflects a cohesive effort by the joint applicants, and indicates cooperation and coordination with local tourism industry constituencies in the region;

(vi) The joint applicants have the organizational capacity and competence to effectively carry out the project. The application must include an organizational chart and a biographical sketch of the program director with the following information: Name, address, phone number, background and other qualifying experience for the project; a list of other key personnel, consultants, or advisors engaged in the project, which includes names, training and background. Applications by non-profit organizations must include a copy of the articles of incorporation, charter, trust statement, or other similar document which sets forth the authorizing powers and purposes of the organization, together with bylaws or other code of regulations; a brief description of organizational arrangements for fiscal and managerial control, including the extent to which these overlap or are integrated with other organizations; a copy of a current financial statement of the organization; and a copy of the current Internal Revenue Service tax exemption letter which certifies the organization's not-for-profit status;

(vii) The region is developing or has developed a regional transportation system that will enhance travel to the facilities and attractions in such region.

(vii) Those individuals and private profit and nonprofit businesses and organizations with whom the applicant proposes entering into an agreement to carry out the purposes for which financial assistance is requested, provide evidence of a strong commitment to compete and, if appropriate, provide support for the continuation of the program beyond the period of federal funding. The application must include a description of the organizational arrangements for fiscal and managerial control and other appropriate documentation as set forth in paragraph (d)(1)(vi) of this section; and

(2) PROJECT EVALUATION CRITERIA (assigned weight—0.50). Applications must include two or more of the following tourism trade development initiatives as defined below. The project evaluation component score will be determined by adding the score of each of the relevant project areas set forth below and dividing by the number of relevant project areas.

(i) PRODUCT DEVELOPMENT—Product Development relates to those projects designed to encourage the

development by such cooperative tourism marketing programs of regional strategies for international tourism promotion and marketing.

(A) Regional International Marketing Training Forum. These are conferences and meetings held in region to guide development of strategies and encourage cooperation. Paragraph (d)(2)(i)(A)(*1*) of this section is of greatest importance; Paragraphs (d)(2)(i)(A)(*2*) and (*3*) of this section are of lesser and equal importance; Paragraph (d)(2)(i)(A)(*4*) of this section, is of the least importance.

(*1*) Follow-up activities designed to encourage development of cooperative strategies for international promotion.

(*2*). Preliminary identification of instructors and topics to be covered in training.

(*3*) Identification of audience for forum.

(*4*) Description of training materials to be provided to attendees.

(B) {Reserved}

(ii) MEDIA PRODUCT INFORMATION—Media product information projects are those that include the development of journalist familiarization tours and dissemination of product information on the destination. Paragraph (d)(2)(ii)(A) of this section is of the greatest importance; Paragraphs (d)(2)(ii)(B) and (C) of this section are of lesser and equal importance; Paragraph (d)(2)(ii)(D) of this section is of the lesser importance. The applicable criteria are:

(A) Correlation of media programs with applicant's overall international tourism marketing strategy.

(B) Program timing and content, and potential acceptance by the target media.

(C) Measurement plan to assess program effectiveness, i.e. methodology to track readership or viewer response.

(D) Project cost versus value of media space/time return (a minimum 10 to 1 return on investment is suggested).

(iii) MARKET DEVELOPMENT—Market development projects are designed to increase travel to the region from international markets of opportunity identified by the Under Secretary. Criteria are set forth for the following three types of such projects:

(A) Receptive Operator/Wholesaler Familiarization Tours—Paragraphs (d)(2)(iii)(A) (*1*), (*2*) (*2*) and (*3*) of this section are listed in descending order of importance.

(*1*) Plans for subsequent follow-up with familiarization tour program participants to ensure continuity of interest in and support for sale of product.

(*2*) Preliminary planning and arrangement of the familiarization tour(s) to cities, States or regions for tour operators/wholesalers to inspect or introduce the touristic product for marketing to the international retailers from other countries.

(*3*) Measurement plan to assess project return versus outlay. For familiarization tours in support of a tour package, the application must include an estimate of the number of tour packages expected to be sold as a result of this initiative.

(B) Tour Package Development—Paragraph (d)(2)(iii) (B) (*1*) of this section is of greatest importance; Paragraph (d)(2)(iii) (B) (*2*) and (*3*) of this section are of lesser and equal importance; Paragraph (d)(2)(iii)(B)(*4*) of this section is of lesser importance.

(*1*) Preliminary planning for and packaging of tour development program, *i.e.*, assessment and selection of target market and package components.

(*2*) Plans for subsequent placement/publication of the program in conjunction with tour wholesalers, etc.

(*3*) Measurement to assess program effectiveness. Application must include an estimate of the number of tour packages expected to be placed in catalogs and sold under this project.

(*4*) Identification of prospective receptive operator(s) and/or international wholesaler(s) to package tour.

(C) Consumer Travel Shows—Paragraph (d)(2)(iii)(C) (*1*), (*2*) and (*3*) of this section are listed in descending order of importance.

(*1*) Plans for subsequent follow-up with contacts and implementation of the project.

(*2*) Description of preliminary planning and packaging of product primarily in support of market development efforts in foreign markets.

(*3*) Measurement of project effectiveness, to include the estimated number of consumer contacts this activity will generate.

(iv) ADVERTISING—Applications for advertising projects should include a planned campaign outline, including the message to be conveyed, description of proposed layouts, copy and specific media plans. If a complete media schedule is not available at the time application is made, an outline of media plans will be accepted, provided that specific campaign details are forwarded to the USTTA prior to the actual placement of the advertising in the media. Paragraph (d)(2)(iv)(A), (B) and (C) of this section are of greatest and equal importance; Paragraph (d)(2)(iv)(D) and (E) of this section are of lesser and equal importance; Paragraph (d)(2)(iv)(F) of this section is of the least important. The applicable criteria are:

(A) Basic approach and objectives.

(B) Correlation with existing national (pooled fund) strategy in this marketplace. (not applicable in fiscal year 1994)

(C) Creative interpretation of this strategy.

(D) Expected reach of the advertising campaign in relation to its cost and short-term impact on the market.

(E) Measurement plan to assess program cost/return effectiveness. Application must include an estimate of the number of written or telephone inquiries expected to be generated by the project.

(F) Evidence that economic, marketing and statistical data necessary to develop marketing and advertising strategy was used.

(v) TRADE DEVELOPMENT—Trade development projects are those which complement ongoing VISIT USA marketing programs directed toward the members of the international travel trade in those foreign markets selected by the Secretary of Commerce as being appropriate for tourism trade development activities. For application purposes, trade development projects are not concerned with the development of tour packages (which is covered separately under Market Development).

(A) Such projects may include: Trade-oriented travel missions, on-site training workshops/seminars, in-country training workshops/seminars, familiarization tours for foreign retail travel agents, and participation in foreign travel trade shows. Paragraph (d)(2)(v)(A)(*1*) of this section is of greatest importance; Paragraphs (d)(2)(v)(A)(*2*) and

(*3*) of this section are of lesser and equal importance; Paragraphs (d)(2)(v)(A)(*4*) and (*5*) of this section are listed in descending order of importance. The applicable criteria are:

(*1*) Relevance of established goals of project.

(*2*) Methods used to measure program results.

(*3*) Techniques used to create an awareness and encourage selling of the destination by the foreign travel trade.

(*4*) Appropriateness of timing in terms of both implementation date and preparation time.

(*5*) Anticipated project benefits derived after grant expiration.

(B) [Reserved]

(vi) CONSUMER AND TRADE LITERATURE—Consumer and trade literature must be designed specifically for use in foreign countries. Special attention should be devoted to designing literature to meet the needs of

the target market. Paragraphs (d)(2)(vi)(A) and (B) of this section are of greatest and equal importance; Paragraph (d)(2)(vi)(C) of this section is of lesser importance; Paragraphs (d)(2)(vi)(D) and (E) of this section are of least and equal importance. The applicable criteria are:

(A) Correlation between literature program and overall marketing plan.

(B) Strategy for distribution of literature.

(C) Measurement plan to assess program effectiveness. The application must include an estimate of the number of written and telephone inquiries regarding the possibility of foreign travel to the United States expected to be generated by this project.

(D) Preliminary planning for design and content of brochures.

(E) Evidence that market planning research has been utilized to identify visitor preferences and information needs.

(vii) RESEARCH—Paragraphs (d)(2)(vii)(A), (B) and (C) of this section are of greatest and equal importance; Paragraph (d)(2)(vii)(D) of this section of lesser importance; Paragraphs (d)(2)(vii)(E), and (F) of this section of lesser and equal value; and Paragraphs (d)(2)(vii)(G) and (H) of this section of lesser and equal value. Applications for research grants will be evaluated according to the following:

(A) Definition of research objectives and demonstration of need for this type of research.

(B) Value of the project in terms of increasing the overall information base on international travelers to and within the region and/or the United States.

(C) Quality and validity of data-gathering techniques to be utilized.

(D) Compatibility with existing national and international tourism data bases.

(E) Potential for increasing tourism development intelligence in applicant's area.

(F) Involvement and coordination of the project with other organizations in the region.

(G) Compatibility of the project with the total economic development plan of the area.

(H) Value of the project in terms of its contribution and usefulness as a model for others to use in their research efforts.

§ 1200.9 Limitations on assistance.

(a) The total amount of financial assistance that may be provided under the program shall, in each of the fiscal years 1994, 1995, 1996, be not less than 25 percent of the amount appropriated to the USTTA under Section 304 (22 U.S.C. 2126).

(b) Not more than 50 percent of the financial assistance provided under the program in any fiscal year may be used for tourism trade development designed to promote travel and tourism in the United States generally, without promotion of a particular area of the United States. CTMPs receiving financial assistance under the program shall pool 50 percent of their financial assistance for such general tourism trade development in each market selected by the Secretary as appropriate for tourism trade development programs. National programs will fall under the broad categories of: Product Development, Market Research; Media Product Information; Market Development; Trade Development; Cooperative Advertising; and Consumer and Trade Literature. The USTTA, in concert with an ad hoc committee comprised of recipient representatives from up to two states, two cities, two regions, and two nonprofit organizations providing for broad geographic coverage, will coordinate the development and implementation of the national program. For purposes of administration, funds will be deposited into a USTTA trust account for disbursement for national programs. By signature acceptance of the award instrument, each recipient agrees to this transfer and management of funds.

(c) Financial assistance will be awarded on a one-year basis for programs to be carried out in the twelve-month period that begins twelve months after the Under Secretary publishes a notice in the **Federal Register** soliciting comment concerning appropriate tourism trade development markets.

(d) No award of Federal funds will be made to an applicant who has an outstanding delinquent Federal debt until either:

(1) The delinquent account is paid in full,

(2) A negotiated repayment schedule is established and at least one payment is received, or

(3) Other arrangements satisfactory to Department of Commerce are made.

(e) All private profit or nonprofit applicants are subject to a name check review. Name checks are intended to reveal whether any key individuals associated with the applicant have been convicted of, or are presently facing, criminal charges such as fraud, theft, perjury, or other matters which significantly reflect on the applicant's management honesty and financial integrity.

(f) Where it is anticipated that the USTTA will be substantially involved in the implementation of the international tourism trade development project for which an award is to be made, the funding instrument will be a cooperative agreement.

§ 1200.10 Matching requirement.

Any recipient of financial assistance under the program shall provide matching funds consisting of actual dollar expenditures (in-kind contributions are not allowable), on the program for which financial assistance is provided, equal to at least 25 percent of total Federal funds provided under the award.

§ 1200.11 Subrecipient agreements.

(a) In connection with financial assistance programs, CTMPs may enter into agreements with individuals and private profit and nonprofit businesses and organizations who will assist in carrying out the purposes for which such financial assistance is provided. Any such agreements shall be disclosed in the application for financial assistance and will be approved by the Secretary only if the Secretary finds that the agreement meets all applicable legal requirements and is consistent with the purposes of the Tourism Policy and Export Promotion Act, Public Law No. 102–372.

(b) Upon approval of agreements, the individuals and private profit and nonprofit businesses and organizations will be deemed subrecipients, and will be held responsible for adhering to all Federal assistance rules and regulations pertaining to such organizations.

Subpart B—Administrative Requirements

§ 1200.20 Coordination among joint recipients.

Joint applicants, which submit proposals for funding as CTMPs, must join in this program for the purpose of increasing visitation to the region as a tourist destination. To ensure the orderly growth and development of tourism regionally and to encourage the development of the tourism industry in rural communities, the CTMP's written plan must reflect a cohesive effort by the joint applicants, and indicate cooperation and coordination with local tourism industry constituencies in the region.

§ 1200.21 Designation of primary recipient.

Joint applicants must designate one of the joint applicants as the primary recipient and/or administrator for purposes of receiving Federal funds, collecting matching funds from all participants, distributing funds to the other eligible participants, managing the project, and submitting financial and program progress reports.

§ 1200.22 Responsibility of joint recipients.

All joint recipients, including individuals and private profit or nonprofit businesses or organizations entering into agreements with CTMPs, shall be jointly and severally liable to the Government under the terms and conditions of the financial assistance agreement, and each recipient is responsible for complying with separate financial assistance regulations and OMB Circulars applying to their entity.

§ 1200.23 Coordination/cooperation with other federal agencies.

So as to avoid any unnecessary duplication of effort and to increase the possibility of joint funding of projects of common interest with other agencies, the Secretary intends to coordinate with other agencies as appropriate, but particularly where the Under Secretary determines that the subject is of substantial interest to another agency. Therefore, applicants are encouraged to consult with local representatives of interested Federal agencies to assure that their international tourism development interests are considered and/or incorporated into the plan. However, Federal funds from other Government agencies cannot be co-mingled with funds provided under this program, and may not be used as part of the required local matching share.

§ 1200.24 Recordkeeping and reporting requirements.

(a) Each award under the program shall contain procedures regarding financial reporting and auditing to ensure that awards are used for the purposes specified in these regulations, and are in accordance with sound accounting practices.

(b) Recipients will be required to submit financial and performance (technical) reports on a quarterly basis in accordance with the schedule indicated in the financial assistance award.

(c) Interim (quarterly) reports should document progress as it relates to the original proposal, register any minor diversions from the original plan (significant changes must be approved in advance), relay any success stories, and record progress toward any established quantifiable objectives.

(d) Recipients will be required to maintain consistent records and include in their final report the following productivity results to measure success against estimates provided in application:

(1) The number of written or telephone inquiries regarding the possibility of international travel to the United States expected to be generated by the requested financial assistance;

(2) The number of tour packages for international visitors to the United States expected to be sold in connection with this financial assistance;

(3) The number of tourists from the targeted market expected to visit the region being promoted in connection with this financial assistance; and

(4) The actions recommended to eliminate acts, policies, and practices of the targeted or identified foreign country(ies), that constitute significant barriers to or distortions of United States travel and tourism exports.

§ 1200.25 Use of award funds for promotional purposes.

Use of Award funds for promotional purposes, to include items normally termed "entertainment," can only be authorized when such events include presentations, speeches, working seminars or business sessions to acquaint the travel trade or consumer with the product. In such instances, expenditures must be consistent with applicable Comptroller General opinions in that the costs must be justified as necessary to carry out the purposes of the approved program and, further, that these events must be identified in official documentation according to the business activity that will be taking place. Funds may not be expended for entertainment where the activity is solely for amusement, diversion, or social purposes.

§ 1200.26 Indirect costs.

(a) Indirect costs are those costs proposed for *common* or *joint* objectives and which cannot be readily identified with a particular cost objective (OMB Circulars A–21, A–87 and A–122). Organizations with established indirect cost rates must submit the indirect cost agreement negotiated with the cognizant Federal agency or department. Organizations with indirect costs that do not have an established indirect cost rate negotiated and approved by a cognizant Federal agency may still propose indirect costs. For the recipient to recover indirect costs, however, the proposed budget must include a line item for such costs. Also the recipient must prepare and submit a cost allocation plan and indirect cost rate proposal as required by applicable OMB circulars. The allocation plan and the rate proposal must be submitted to the applicant's cognizant agency for review and approval within 90 days from the effective date of the proposed award.

(b) Department of Commerce policy is that total indirect costs shall not exceed total direct costs. In cases where an applicant presents a negotiated and approved indirect cost rate by a cognizant agency which exceeds 100 percent of direct costs, the Departmental policy on indirect costs prevails.

§ 1200.27 Unspent balances of federal funds.

If a CTMP receiving funds under these procedures fails to expend all funds before the completion of the period for which an award has been made, after all allowable costs have been paid and appropriate audits conducted, the unobligated balance of the Federal funds shall revert to the Program.

§ 1200.28 Use of funded project research models and promotional Strategies as Demonstration Projects.

All awarded applications become the property of the Federal Government and, except for financial and confidential applicant information, may be utilized as research models or examples of marketing strategy demonstration projects by the United States in its programs to provide technical guidance and assistance in the development and positioning of U.S. tourism products in the international marketplace. Further, any statistical data that are developed as a result of Federal assistance may be used by USTTA, at no cost to the Government, in the formulation of reports relating to the measurement of travel or identification of travelers to and within the United States.

§ 1200.29 Audit and examination of recipient records.

Each joint recipient and subrecipient of the CTMP shall be subject to audit requirements specified in the applicable OMB Circulars and Departmental regulations. It is the responsibility of each recipient to ensure that the required audits are performed in a timely fashion. Audits of cost accounting systems, indirect cost rates, or other periodic reviews shall be conducted as deemed necessary by the Government. All joint recipients and all subrecipients receiving Federal funds directly or indirectly shall be responsible for the retention and custody of records supporting the expenditure of those funds.

Subpart C—Development of National Programs

§ 1200.30 Establishment of national fund pool.

(a) In accordance with Section 203 (22 U.S.C. 2123a) 50 percent of the Federal financial assistance awarded to recipients under the program will be set aside for tourism trade development

designed to promote travel and tourism in the United States generally, without promotion of a particular area of the United States. CTMPs receiving financial assistance under the program shall be required to pool 50 percent of their financial assistance for such general tourism trade development in each market selected by the Secretary as appropriate for tourism trade development programs.

(b) By signature acceptance of the award instrument each joint recipient agrees to the transfer of those funds (50 percent of the award), to be set aside for national programs, to the USTTA separate account, and authorizes USTTA to select an ad hoc recipient committee, who will have the recipients' power of attorney and constitute a representative body of the recipients, for the purpose of developing and administering the national program.

(c) For purposes of financial administration, funds will be deposited into a USTTA separate account for disbursement for national programs.

§ 1200.31 Recipient committee.

To ensure that the desires of the recipients are considered in the development of national program strategies to be conducted with the International Tourism Trade Development pooled funds, the United States Travel and Tourism Administration will select from among the recipients of funds, a Recipient ad hoc committee (who will constitute a representative body of the recipients) comprised of recipient representatives from two states, two cities, two regions, and two nonprofit organizations providing for broad geographic coverage. The recipient body, with the guidance and under the coordination of USTTA, will guide development and implementation of the national program strategy.

§ 1200.32 National program categories.

National programs will fall under the broad categories of: Market Research; Media Product Information; Market Development; Trade Development; Cooperative Advertising; Visitor Services; and Consumer and Trade Literature.

§ 1200.33 Administration of national funds.

The United States Travel and Tourism Administration, in concert with an ad hoc recipient committee providing for broad geographic coverage (who will constitute a representative body of the recipients), will coordinate such efforts.

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DEPARTMENT OF THE TREASURY

Customs Service

19 CFR Part 113

Automated Surety Interface

AGENCY: U.S. Customs Service, Treasury.

ACTION: Proposed rule; solicitation of comments.

SUMMARY: This document proposes to amend the Customs Regulations to provide for an automated system, the Automated Surety Interface (ASI), through which participating sureties will electronically provide to Customs acknowledgment that they are liable for transactions identified under their bonds. Through ASI, Customs will be able to systemically establish and verify that a surety has recognized its bond liability under an identified bond and participating sureties will be provided certain capabilities to obtain timely information regarding the status of individual transactions for which they have a recognized liability. ASI will effectively increase the integrity of Customs bond liability recordkeeping and improve Customs ability to receive timely and immediate satisfaction of reported outstanding indebtedness. The creation of ASI reflects Customs significant advances in automation and its continuing commitment to increase the scope of electronic processing and to reduce reliance on paper documentation, thereby resulting in lowered costs, and increased efficiency.

DATES: Comments must be received on or before March 23, 1993.

ADDRESSES: Comments (preferably in triplicate) may be addressed to the Regulations Branch, U.S. Customs Service, Franklin Court, 1301 Constitution Avenue, NW., Washington, DC 20229 and inspected at Franklin Court, 1099 14th Street, NW., suite 4000, Washington, DC.

FOR FURTHER INFORMATION CONTACT: Diane Hundertmark, Office of Automated Commercial Systems (202-927-0355).

SUPPLEMENTARY INFORMATION:

Background

Generally, most bonds are issued by brokers who are designated as agents of sureties. Therefore, many times a corporate surety is unaware that it is liable on a particular entry for a particular importer. In these situations, when Customs bills a corporate surety for payment on a bond, the surety, to verify its liability, frequently requests copies of the bond and entry documents from Customs. Also, in some instances, it is discovered that what was thought to be the obligation of one corporate surety is in fact the obligation of a different corporate surety. These situations cause significant delays in Customs receiving payment of the outstanding liabilities.

To resolve this critical problem, Customs is developing as part of its Automated Commercial System (ACS) a module, the Automated Surety Interface (ASI), which will allow Customs to systemically establish and verify that a participating surety has previously acknowledged liability under the identified bond and will provide the participating sureties with a method to regularly obtain timely information regarding the status of individual transactions for which they have a recognized liability. ASI will protect the revenue by securing recognition by sureties of their established bond liability.

Additionally, the establishment of this automated environment should place Customs in a position to eliminate the need for submission of paper documents once enabling legislation is passed.

How ASI Works

Single Entry Bonds

Brokers and importers who are participants in the Automated Broker Interface (ABI) will transmit entry and bond identifying information to Customs for single entry bonds prior to the release of cargo pursuant to procedures set forth in § 143.31 *et seq.*, Customs Regulations (19 CFR 143.31 *et seq.*) and Customs Publication #552, "CATAIR". If the entry and bond identifying information is found to be error-free, a single entry bond record associated with a particular entry will be created in ACS. This record would contain all information including any changes and the responses from the ASI surety.

Customs will submit the transmitted entry and bond identifying information or, in the case of non-ABI transactions, that information input by Customs, electronically through the interface to the appropriate ASI surety for verification. An affirmative or negative response will be required from the ASI surety within a maximum of 15 minutes from the time the request for verification of the entry and bond identifying information was made available. If the entry and bond identifying information is not verified or no response is received from the ASI surety within the 15 minutes time frame, an appropriate message will be sent to the entry filer.

The verification of the single entry bond by the ASI surety will become the key for all ACS processing. If there is a negative response or no response from the ASI surety, the cargo will not be released until such time as a bond (single entry or continuous) can be produced to satisfy Customs bonding requirements.

The single entry bond information provided by either the ABI filer or Customs input at entry/cargo release will be compared to the bond information provided at entry summary. If the single entry bond information has changed, a new verification would be required from the ASI surety involved.

Continuous Bonds

Currently, continuous bonds are filed with Customs along with a letter of application pursuant to § 113.12(b). Under the procedure proposed in this document, this practice will continue; applications will be transmitted whenever continuous bonds are transmitted.

Brokers and importers who are participants in the Automated Broker Interface (ABI) and sureties who are participating in the Automated Surety Interface (ASI) will be able to transmit applications for continuous bonds and continuous bonds, make changes and updates and notify Customs of their request for termination of continuous bonds electronically through the interface pursuant to procedures set forth in the Customs Regulations and Customs Publication #552, "CATAIR".

When continuous bond and application information is transmitted to Customs by an ABI filer or, as in the case of non-ABI transactions, is input by Customs, Customs will transmit to the appropriate ASI surety certain information, as identified in Customs Publication #552, with a request for verification from the surety that the surety is accepting liability under that continuous bond. The ASI surety must electronically respond to Customs with an affirmative response before the continuous bond will be approved by Customs.

If the surety transmits an acceptance of liability, Customs will notify the ABI filer by electronic message of approval or rejection of the bond pursuant to § 113.92, Customs Regulations. If no response is received or a negative response is received from the surety, Customs shall provide an appropriate electronic message to the ABI filer.

If the continuous bond/application information is transmitted by the ASI surety, Customs automatically considers the bond verified. Customs would then provide an electronic message of approval or rejection of the bond based on Customs requirements as set forth in 19 CFR part 113.

Riders and changes to continuous bonds may be submitted electronically and are subject to the same verification process described above. All requirements as set forth in § 113.24 are applicable to electronically transmitted riders and changes.

Terminations also may be submitted electronically. However, electronically submitted terminations will only be accepted if the ABI filer transmitting the termination is the principal on the bond in question or the ASI surety transmitting the termination is the surety of record. All requirements as set forth in § 113.27, Customs Regulations, are applicable.

A continuous bond activity record associated with a particular entry will be created for each use of the continuous bond as identified by entry or entry summary input. Bond information provided by either the ABI filer, or Customs input at entry, will be compared to the bond information provided or input at entry summary. This will greatly increase the integrity of Customs bond files both for single entry and continuous bonds.

Filing of Corporate Powers of Attorney by Sureties

ASI participants may transmit corporate powers of attorney, as provided in § 113.37(g) and any updates or revocations electronically through the interface pursuant to procedures set forth in Customs Publication #552. Customs will return the acceptance or rejection message to the appropriate ASI filer.

Queries

ASI participants will have access to certain query capabilities through the interface as identified in Customs Publication #552. The queries will include access to information pertaining to their particular single entry bond(s) and continuous bond activity. Additionally, query capability would be available to participants for individual entry(s), fines and penalty case information and individual bill(s). These query capabilities would be limited to those transactions where the ASI surety is listed as the surety of record. The availability of information within these queries will be based on the determination of whether the data queried is confidential.

Data Transmitted

In order that an ASI surety can verify that it is responsible for a bond, Customs proposes to release certain data to the sureties regarding the transactions that the bonds are covering. Some data elements shall be released to the sureties prior to release of the cargo; some after release of the cargo; and some subsequent to the breach of the bond by the importer.

I. Data Elements Provided to Sureties Prior to Release of Cargo

A. Single Entry Verification Request

The following data elements will be provided to participating sureties prior to the release of cargo to obtain verification of the single entry bond by the ASI surety:

1. Surety Code
2. Entry Filer Code
3. Entry Number
4. Entry Type
5. District Port of Entry
6. Importer Number (Principal on Single Entry Bond)
7. Other Government Agency Indicator
8. Filer Reference Number
9. Surety Reference Number
10. Total Entered Value (Estimated)
11. Bond Liability Amount
12. Bond Effective Date
13. Bond Action Code (Indication of whether initial, replacement or additional bond is being used.)
14. Bond Activity Code
15. Verification Request Date and Time
16. All Tariff Numbers Available at Time of Request

B. Importer Bond Query

The following data elements will be provided to sureties prior to release of cargo only if the surety queries specific Internal Revenue Numbers where the code of the querying surety code matches the surety code on file. This is provided regardless of a claim by U.S. Customs.

1. Importer Number
2. Name of principal with Importer Number
3. Surety Code
4. Bond Type
5. Bond Activity Code
6. Bond Amount
7. District Port where Bond is Filed
8. Bond Effective Date
9. Bond Number

C. Continous Bond Application Verification

The following data elements will be provided to sureties to obtain a verification on a continuous bond application prior to approval by Customs.

1. Surety Reference Number
2. Surety Code.
3. Bond Type
4. Bond Activity Code

5. Execution Date
6. Effective Date
7. Bon Liability Amount
8. Number of Bond Users
9. Corporate Surety Power of Attorney
10. Principal's Importer Number
11. Principal's Name
12. Principal's Address
13. Co-Principal's Importer Number
14. Co-Principal's Name
15. Co-Principal's Address
16. Importer Number of each bond user
17. Name of each bond user
18. Merchandise Description
19. Actual or Estimated Amount Indicator
20. Value
21. Duty
22. Taxes and Fees
23. Type of Business (Sole Proprietorship, Partnership or Corporation)
24. Customs Bond Number

II. Data Elements Provided After Release of Cargo

The following data elements will be provided regardless of a claim by Customs, but after the release of cargo. They will be available via a query and/or a weekly batch reporting to the participating sureties.

A. Single Entry Bond Activity

1. Surety Code
2. Entry Filer Code
3. Entry Number
4. Importer Number of principal on bond
5. Entry Date
6. Entry Status
7. Bond Type
8. Bond Activity Code
9. Bond Action Code
10. Total Entered Value (Estimated)
11. Bond Liability
12. Bond Effective Date
13. Filer Reference Number
14. Surety Reference Number
15. Source Document (Indication of whether bond data was submitted to Customs or input by Customs)
16. Verification Sent (Date and Time)
17. Verification Response (Yes or No, Date and Time)
18. Customs Override Indicator
19. Estimated Duty
20. Estimated Taxes and Fees

B. Continuous Bond Activity

1. Surety Code
2. Bond Number
3. Importer Number of principal
4. Bond Type
5. Bond Activity Code
6. Bond Amount
7. Bond Effective Date
8. Filer Code
9. Entry Number
10. Date of Entry
11. Entry Status
12. Total Entered Value (Estimated)
13. Bond Action Code
14. Filer Reference Number
15. Surety Reference Number
16. Source Document
17. Estimated Duty
18. Estimated Taxes and Fees

C. Open Entry Data

(Data on entries that have not yet been liquidated).

1. Filer Code
2. Entry Number
3. Entry Type
4. Region/District Port of Entry
5. Entry Date
6. Entry Summary Date
7. Entry Release Date
8. Reason for Late Filing
9. Late Report Date
10. Cancel Reason
11. Cancel Date
12. Multiple Bond Indicator (If more than one bond covers this entry)
13. Surety Code
14. Bond Type
15. Bond Number
16. Surety Reference Number
17. Filer Reference Number
18. Bond Action Code
19. Bond Activity Code
20. Bond Effective Date
21. Bond Liability Amount
22. Bond Location
23. Bond Status (On Single Entry Bonds)
24. Source Document
25. Principal's Importer Number
26. Principal's Name
27. Extension/Suspension Code
28. Extension/Suspension Date
29. Number of Extension
30. Reject Date
31. Protest Status
32. Protest Date
33. Document filing Location
34. Payment Status
35. Delayed Antidumping Duties
36. Delayed Countervailing Duties
37. Collection Date
38. Estimated Duty
39. Estimated Taxes
40. Estimated Antidumping Duties
41. Estimated Countervailing Duties
42. Estimated Fee

D. Liquidated Entry Data

1. Filer Code
2. Entry Number
3. Surety Code
4. Number of Liquidation
5. Liquidation Date
6. Document Filing Location
7. Multiple Bonds (This Entry)
8. Multiple Sureties (This Entry)
9. Liquidation results (No change, Increase or Refund)

III. Date Elements Provided After a Bill Has Been Issued.

The following data elements will be provided to a surety after a bill has been issued.

1. Bill Number
2. Surety Code
3. Bill Type
4. Bill Date
5. Status Code
6. Bill Age
7. Filer Code
8. Entry Number
9. Importer Number
10. Importer's Name
11. Importer's Address
12. Protest Status
13. Protest Date
14. Protest Decision Date
15. Bill Amount
16. Principal Amount
17. Interest Amount
18. Payment Amount
19. Cancel Code
20. Estimated Duty
21. Estimated Taxes
22. Estimated Antidumping Duties
23. Estimated Countervailing Duties
24. Estimated Fees
25. Paid Duty
26. Paid Taxes
27. Paid Antidumping Duties
28. Paid Countervailing Duties
29. Paid Fees
30. Liquidated Duty
31. Liquidated Taxes
32. Liquidated Antidumping Duties
33. Liquidated Countervailing Duties
34. Liquidated Fees

IV. Fines, Penalties and Forfeiture Data Elements and Entry Line Item Detail Provided After Breach Has Occurred

The following data elements will be provided to sureties after a breech has occurred.

1. Case Number
2. Surety Code
3. Bond Number
4. Bond Type
5. Bold Effective Date
6. Violation Type
7. Violation Date
8. Status Sequence
9. Current Status
10. System Status Date
11. Effective Date
12. Filer Code
13. Entry Number
14. Penalty Amount
15. Mitigated Amount
16. Collection Amount
17. Violation Citation
18. Violation Description
19. Violator Identification
20. Violator Name
21. Violator Address
22. Number of Total Lines on an entry

23. Line Number
24. Tariff Number
25. Country of origin
26. Country of export
27. Quantity—Unit of measure
28. Value
29. Duty
30. Fees
31. Internal Revenue Tax
32. Antidumping Duty Case Number
33. Antidumping Duty
34. Countervailing Duty Case Number
35. Countervailing Duty
36. In Transit Date and Number

Customs recognizes that some of the information that it proposes to provide sureties may be considered to be confidential business information which is protected from disclosure under exemption (b)(4) of the Freedom of Information Act. Accordingly, Customs is particularly interested in receiving comments from brokers, importers, or other affected individuals on whether the disclosure of any of this information will cause competitive harm.

Participation in ASI

The only parties that are eligible to participate in ASI are sureties as defined in §§ 113.35, 113.36 and 113.37 of the Customs Regulations and ASI service bureaus. An ASI service bureau is an individual, partnership, association or corporation which is approved by Customs to provide communication facilities and data processing services for sureties, but which is not, itself, a surety.

A prospective applicant shall submit a letter of intent to the Assistant Commissioner, Information Management, or designee. The letter of intent shall set forth a commitment to develop, maintain and adhere to the performance requirements and operational standards of the ASI system and all applicable Customs Regulations in order to ensure the validity, integrity and confidentiality of the data transmitted. The letter of intent shall also contain statements that participation constitutes declaration by the surety that, to the best of his knowledge, all transactions filed electronically fully disclose Customs bond information which is true and correct; that transmission of an affirmative response accepting responsibility of a bond amount shall constitute an irrevocable acceptance of bond liability; that the surety will agree to accept the electronic information available through ACS/ASI as legally sufficient evidence of their obligation for their bonds filed through ASI; and that the surety will not regularly request paper copies of the entry package as the basis for evidence of such obligation on those ASI filed bonds.

The letter of intent shall also contain a brief description of the company's computer hardware and data communications to be used and the estimated completion date of the programming; the name and telephone number of the ABI filer selected to participate in the ASI testing; a list of all the offices that will communicate with ACS regarding the prospective ASI filer and the approximate start-up time for each office; and the names and telephone number of the principal management and technical contacts for operations, applications program development, and computer data communications and operations.

Each application/letter of intent shall be evaluated by the Assistant Commissioner, Information Management, or his designee. Evaluation may require an investigation. If permission to test ASI is denied to an applicant, written notice shall be sent to the applicant and there is an appeal procedure. All approved applicants shall demonstrate that their system can interface directly with Customs computer and ensure accurate and timely submission of required data. Inability to pass testing shall result in denial of operational status.

Once operational, participants shall be required to adhere to the performance requirements and operational standards of the ASI system and to maintain a high level of quality in the transmission of data or be subject to revocation or suspension of ASI privileges. The privilege of ASI participation may be revoked if it is determined that participation in the system was obtained through fraud or the misstatement of a material fact or that the participant's continued use of ASI would pose a potential risk of significant harm to the integrity and functioning of the ACS system. Other grounds for immediate revocation are if the participant, without just cause, is considered to be significantly delinquent either in the number of outstanding bills or dollar amounts or if the participant has improperly disclosed any data relative to the business of one importer to a third party unrelated to the transaction to which the ASI data pertains.

Proposal

This document proposes to amend the Customs Regulations to provide for ASI by creating a new subpart H in part 113.

Customs Publication 552

This document cites Customs Publication #552, "CATAIR" as the source document for many of the operational requirements and standards for ASI. Copies of the proposed sections of Publication # 552 relating to ASI may be obtained by contacting Diane Hundertmark at (202) 927–0355 or by writing to the Office of Automated Commercial Systems, 1301 Constitution Avenue, NW., Washington, DC 20229. Users of ASI will be notified at least 30 days in advance of any changes regarding ASI set forth in Customs Publication #552.

Comments

Before adopting this proposal, consideration will be given to any written comments timely submitted to Customs. As stated previously, Customs is particularly interested in receiving comments regarding the data elements that are proposed to be provided to sureties. Comments submitted will be available for public inspection in accordance with the Freedom of Information Act (5 U.S.C. 552), § 1.4, Treasury Department Regulations (31 CFR 1.4) and § 103.11(b), Customs Regulations (19 CFR 103.11(b)), on regular business days between the hours of 9 a.m. and 4:30 p.m. at the Regulations Branch, U.S. Customs Service, Franklin Court, 1099 14th Street, NW., suite 4000, Washington, DC.

Regulatory Flexibility Act

Pursuant to the provisions of the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*), it is certified that, if adopted, the proposed amendments will not have a significant economic impact on a substantial number of small entities. Accordingly, the amendment is not subject to the regulatory analysis requirements of 5 U.S.C. 603 and 604.

Executive Order

The document does not meet the criteria for a "major rule" as defined in section 1(b) of E.O. 12291. Accordingly, no regulatory impact analysis has been prepared.

Paperwork Reduction Act

The collection of information contained in this notice of proposed rulemaking has been submitted to the Office of Management and Budget (OMB) for review in accordance with the Paperwork Reduction Act of 1980 (44 U.S.C. 3540(h)). Comments on the collection of information should be sent to the Office of Management and Budget, Attention: Desk Officer for the Department of the Treasury, Office of Information and Regulatory Affairs, Washington, DC 20503, with copies to the U.S. Customs Service at the address

previously specified. The collection of information in this regulation is in § 113.83. The information is necessary to determine eligibility to participate in the Automated Surety Interface program. The likely respondents are business or other for-profit institutions.

Estimated total annual reporting and/or recordkeeping burden: 10,155 hours

Estimated average annual burden per respondent and/or recordkeeper: .0169 hours

Estimated number of respondents: 600,310

Estimated annual frequency of responses: 1

Part 178, Customs Regulations (19 CFR part 178), which lists the information collections contained in the regulations and control numbers assigned by OMB would be amended accordingly if this proposal is adopted.

Drafting Information

The principal author of this document was Harold M. Singer, Regulations and Disclosure Law Branch, U.S. Customs Service. However, personnel from other Customs offices participated in its development.

List of Subjects in 19 CFR Part 113

Air carriers, Customs duties and inspection, Exports, Freight, Imports, Surety bonds, Vessels.

Proposed Amendments

It is proposed to amend part 113, Customs Regulations (19 CFR part 113), as set forth below.

PART 113—CUSTOMS BONDS

1. The authority citation for part 113 continues in part to read as follows:

Authority: 19 U.S.C. 66, 1623, 1624.

* * * * *

2. It is proposed to revise § 113.0 to read as follows:

§ 113.0 Scope.

This part sets forth the general requirements applicable to bonds. It contains the general authority and powers of the Commissioner of Customs in requiring bonds, bond approval and execution, bond conditions, general and special bond requirements, the requirements which must be met to be either a principal or a surety, the requirements concerning the production of documents, the authority and manner of assessing liquidated damages and requirements for canceling the bond or charges against a bond. The part also sets forth the requirements and procedures for participation in the Automated Surety Interface (ASI) and for the electronic filing of both single entry and continuous bonds.

3. It is proposed to revise part 113 by adding a new subpart H, encompassing §§ 113.81 through 113.96, to read as follows:

Subpart H—Automated Surety Interface and Electronic Bond Filing

Sec.

113.81 General.
113.82 Eligibility for participation in ASI.
113.83 Application.
113.84 Action on application.
113.85 System performance and testing requirements.
113.86 Confidentiality of data released through ASI.
113.87 Failure to maintain performance standards.
113.88 Revocation of ASI participation.
113.89 Appeal of suspension or revocation.
113.90 Eligibility criteria for electronic bond filing.
113.91 Electronic single entry Customs bond application and approval process.
113.92 Electronic continuous Customs bond application and approval process.
113.93 Changes made on electronic bonds and electronic riders.
113.94 Terminations made on electronic bonds.
113.95 Electronic corporate powers of attorney.
113.96 Electronic queries.

Subpart H—Automated Surety Interface and Electronic Bond Filing

§ 113.81 General.

The Automated Surety Interface (ASI) is a module of the Customs Automated Commercial System (ACS) which allows participants to transmit data electronically to Customs through ASI and to receive transmissions through ACS. Through ASI, Customs is able to establish and verify recognized bond liability. ASI will provide the participating surety a method to regularly obtain timely information regarding the status of individual transactions on which he is listed as the surety of record. This subpart sets forth general requirements for the input of both single entry bonds and continuous bonds through ASI. Use of this system is voluntary and optional on behalf of the filer. Unless otherwise specified in this subpart, bonds processed electronically through ASI are subject to the same requirements set forth earlier in this part. Paper bonds still must be submitted for bonds filed electronically.

§ 113.82 Eligibility for participation in ASI.

The only parties that are eligible to participate in ASI are sureties as defined in §§ 113.35, 113.36 and 113.37 of this chapter and ASI service bureaus. An ASI service bureau is an individual, partnership, association or corporation which is approved by Customs to provide communications facilities and data processing services for sureties, but which is not, itself, a surety.

§ 113.83 Application.

(a) *Place submitted.* A prospective participant in ASI shall submit a letter of intent to the Assistant Commissioner, Information Management, or designee.

(b) *Contents.* The letter of intent shall set forth a commitment to develop, maintain and adhere to the performance requirements and operational standards of the ASI system as set forth by Customs in Customs Publication # 552 and all applicable Customs Regulations in order to ensure the validity, integrity and confidentiality of the data transmitted. The letter of intent shall also contain statements that participation constitutes declaration by the surety that, to the best of his knowledge, all transactions filed electronically fully disclose Customs bond information which is true and correct; that transmission of an affirmative response accepting responsibility of a bond amount shall constitute an irrevocable acceptance of bond liability; that the surety agrees to accept the electronic information available through ACS/ASI as legally sufficient evidence of their obligation for their bonds filed through ASI; and that the surety agrees to rely on the ACS/ASI systems data and electronic verification as evidence of liability and will not regularly request copies of supporting documentation except in circumstances found justifiable by Customs. In addition, the letter of intent shall contain the following:

(1) A brief description of the company's current or planned computer hardware and data communications to be used and the estimated completion date of the programming;

(2) The name and telephone number of the ABI filer selected to participate in the ASI testing (if known). The agent shall be an operational ABI filer for cargo selectivity and entry summary;

(3) A list of all the offices that will communicate with ACS regarding the prospective ASI filer and the approximate start-up time for each office. The locations and Customs District/Port numbers of these offices are to be included. The corporate headquarters shall be specified; and

(4) The names and telephone numbers of the principal management and technical contact for operations, applications program development, and computer data communications and operations. If the system is being developed or supported by a service center, and/or a software vendor,

include the name of the company and the contact person and the contact person's telephone number.

§ 113.84 Action on application.

(a) *Evaluation.* The Assistant Commissioner, Office of Information Management, or his designee shall evaluate each application to determine whether:

(1) The applicant currently has or plans to have the equipment and capability to be in compliance with the ASI system performance procedures and standards as described in Customs Publication #552 and § 113.85 of this chapter; and

(2) The applicant is delinquent or otherwise remiss in their transactions with Customs.

(b) *Investigation.* If there is any cause to question the qualifications or fitness of the applicant to participate in ASI, the Assistant Commissioner, Office of Information Management, or his designee shall investigate the applicant. The investigation may include, but need not be limited to:

(1) The accuracy of the information provided in the letter of intent;

(2) The business integrity of the applicant;

(3) The character and reputation of an individual applicant or a member of a partnership or an officer of an association or corporation; and

(4) The character and reputation of the software vendor.

(c) *Determination.* If the Assistant Commissioner, Office of Information Management, or his designee, determines, either without an investigation or after an investigation, that an applicant is approved to test for ASI, permission will be so granted in writing. If permission to test ASI is denied to an applicant, written notice, including the grounds for the denial, shall be sent to him. The applicant may appeal the denial in the manner prescribed in § 113.89 of this subpart and the procedures set forth in that section for handling an appeal shall apply.

§ 113.85 System performance and testing requirements.

(a) *General.* The testing and performance requirements and operational standards for electronic bonds are detailed in Customs Publication # 552, "CATAIR", which is updated periodically. The Office of Automated Commercial Systems, Customs Headquarters, upon request, shall provide each prospective participant with a copy of this publication.

(b) *Testing.* Each prospective participant shall demonstrate that his system can interface directly with the Customs computer and ensure accurate submission of required data. Such demonstration will include intensive testing of the participant's system and monitoring of its performance in accordance with Customs Publication # 552. Inability to pass testing shall result in denial of operational status.

§ 113.86 Confidentiality of data released through ASI.

(a) *Data released to sureties.* Customs shall provide ASI sureties electronically with certain data so that the sureties may make informed decisions on whether to accept liability for a particular transaction. Some data elements shall be released to the sureties prior to release of the cargo; some after release of the cargo; and some subsequent to the breach of the bond by the importer. The list of data elements and stages that they will be released are set forth in Customs Publication # 552.

(b) *Confidentiality of data.* All data released by Customs to ASI participants regarding a particular entry shall be considered confidential and shall not be released to any parties which do not have a nexus to the transaction. Improper disclosure of the data elements may subject the ASI participant to revocation of operational status.

§ 113.87 Failure to maintain performance standards.

(a) *General.* Once operational on ASI, participants shall adhere to the performance requirements and operational standards of the ASI system and maintain a high level of quality in the transmission of data, as defined in Customs Publication # 552 and Customs directives and policy statements, or be subject to revocation or suspension of ASI privileges.

(b) *Probational status.* Any ASI participant who does not adhere to the performance requirements and operational standards and maintain a high level of quality in the transmission of data may be placed on probational status.

(1) *Notification.* The participant will be notified, electronically and in writing, by the Director, ACS, of any action to place the participant on probation. The notice shall specifically set forth the grounds for the proposed probation, and advise the participant that he will have 15 days from the date of the notice to show cause why the probationary period should not take effect. If the participant fails to respond within the allotted time, or fails to show to the satisfaction of the Director, ACS, that the probationary period should not take effect, the Director shall notify the participant of the effective date of the probationary period.

(2) *Length of probationary period.* the minimum length of the probationary period is 30 days. The Director, Office of ACS, shall monitor the participant's performance, including working with the participant and providing necessary guidance, during the probationary period and may extend the period up to a maximum of 90 days if the participant's performance remains below standard.

(3) *Suspension following probationary period.* If deficiencies are not corrected within the probationary period, the participant shall be suspended from operational status. The participant shall be notified, electronically and in writing, by the Director, Office of ACS, of any action to suspend participation. The notice will specifically set forth the grounds and effective date for the suspension, and the right to appeal the suspension to the Assistant Commissioner, Office of Commercial Operations, within 10 days following the date of the written notice of suspension.

(4) *Reinstatement following suspension.* To obtain reinstatement to operational status, a suspended participant must submit a letter to the Director, Office of ACS, stating that the deficiencies for which the suspension was invoked have been corrected. If the Director is satisfied that the deficiencies have been corrected, the participant may be reinstated. The Director may require the participant to demonstrate compliance with the system performance requirements and operational standards specified in § 113.85 of this part before reinstating the participant to operational status.

§ 113.88 Revocation of ASI participation.

(a) *Reasons for revocation.* The privilege of ASI participation may be immediately revoked under the following circumstances:

(1) *Fraud or misstatement of material fact.* The Director, Office of Trade Operations, may revoke ASI participation if it is determined at any time tha tparticipation in the system was obtained through fraud or the misstatement of a material fact;

(2) *Risk of significant harm to the SCS system.* The Director, Office of ACS, may revoke ASI participation if the participant's continued use of ASI would pose a potential risk of significant harm to the integrity and functioning of the ACS system; or

(3) *Significant delinquency.* The Director, Office of ACS, may revoke ASI

participation if the participant, without just cause, is considered to be significantly delinquent either in the number of outstanding bills or dollar amounts; or

(4) *Release of confidential information.* The Director, Office of ACS, may revoke ASI participation if the participant has improperly disclosed any data relative to the business of one importer to a third party unrelated to the transaction to which the ASI data pertains.

(b) *Notification of revocation.* The participant shall be notified of the revocation, electronically and in writing, by the appropriate Director. The notice shall specifically set forth the grounds and effective date of revocation, and the right to appeal the revocation.

§ 113.89 Appeal of suspension or revocation.

(a) *Timeliness of appeal.* A written appeal of a notification of suspension or revocation of ASI privileges shall be filed with the Assistant Commissioner, Office of Commercial Operations, within 10 days following the date of the written notice of action to suspend or revoke participation.

(b) *Effect of appeal on revocation or suspension.* Except in cases of revocation, when an appeal is filed timely, participation in ASI may continue during the period from when the appeal is decided.

(c) *Customs response to appeal.* The Customs officer who receives the appeal shall stamp the date of receipt on the appeal and the stamped date is the date of receipt for purposes of the appeal. The Assistant Commissioner, Office of Commercial Operations, shall inform the participant of the date of receipt and the date that a response is due. The Assistant Commissioner shall send his decision to the participant, stating his reasons therefore, by letter mailed within 30 working days following receipt of the appeal, unless this period is extended with due notification to the participant.

§ 113.90 Eligibility criteria for electronic bond filing

To be eligible to file electronic Customs bonds, the filer must be an operational ABI participant (see § 143.1, Customs Regulations *et seq.*), and the surety must either be qualified to use ASI or use an eligible service center (see § 113.82).

§ 113.91 Electronic single entry Customs bond application and approval process.

(a) *Application.* An ABI filer will transmit bond information and the associated entry information to Customs pursuant to the operations and procedures set forth in § 143.31 *et seq.*, Customs Regulations, and Customs Publication #552. All bond information shall be associated with a particular entry. If the information is found error-free by Customs, Customs shall transmit to the ASI surety indicated by the filer certain information identifying the transaction and a request for verification for the surety to acknowledge acceptance of liability for the particular transaction.

(b) *Approval.* All bonds are subject to Customs approval in accordance with Customs bond requirements set forth in this part. The ASI surety shall indicate whether liability for the particular bond is accepted or rejected within the time frame specified in Customs Publication #552. If the surety transmits an acceptance of liability and Customs accepts the bond, Customs shall so notify the entry filer by electronic message. Transmission of an acceptance of liability by the surety is irrevocable admission of liability. If no response is received from the ASI surety within the specified time frame or Customs receives a transmitted rejection of liability from the ASI surety, Customs shall send an appropriate electronic message to the entry filer that the cargo cannot be released under that bond.

§ 113.92 Electronic continuous Customs bond application and approval process.

(a) *Application.* The ABI filer or ASI surety may transmit continuous bond/application information pursuant to the operations and procedures set forth in § 143.31 *et seq.*, Customs Regulations and Customs Publication #552, except for instances where the continuous bond is to be obligated by two or more sureties. If the information is transmitted by an ABI filer and found to be error-free by Customs, Customs shall transmit to the surety indicated by the filer certain information identifying the transaction and a request for verification for the surety to acknowledge acceptance of liability for the particular transaction.

(b) *Approval.* All bonds are subject to Customs approval in accordance with Customs bond requirements set forth in this part. If the information is transmitted by the ASI surety, Customs automatically considers the bond verified. If Customs requests the ASI surety to verify that it is liable for a particular transaction under a specified bond, the surety shall respond to Customs within the time frame specified in Customs Publication #552. If the surety transmits an acceptance of liability and Customs approves the bond, Customs shall so notify the ABI filer by electronic message. Transmission of acceptance of liability by the ASI surety is irrevocable admission of liability. If no response is received from the ASI surety within the specified time frame or Customs receives a transmitted rejection of liability from the ASI surety, Csutoms shall send an appropriate electronic message to the ABI filer.

§ 113.93 Changes made on electronic bonds and electronic riders.

Riders and changes, may be submitted electronically in accordance with the procedures set forth in Customs Publication #552 and are subject to the verification and approval process detailed in §§ 113.91 and 113.92.

§ 113.94 Terminations made on electronic bonds.

Terminations may be submitted electronically in accordance with the procedures set forth in Customs Publication #552 and are subject to the same requirements as set forth in § 113.27. An electronic termination can only be transmitted by the principal or the surety of record.

§ 113.95 Electronic corporate powers of attorney.

ASI participants may transmit corporate powers of attorney as provided for in § 113.37(g) and any updates or revocations electronically through ASI pursuant to the procedures set forth in Customs Publication #552. Customs shall return the acceptance or rejection message to the appropriate ASI filer.

§ 113.96 Electronic queries.

ASI participants shall be able to electronically inquire to Customs about the status of transactions where the ASI surety is listed as the surety of record. The availability of information within these queries shall be based on the determination of whether the data queried is confidential.

Carol Hallett,

Commissioner of Customs.

Approved: December 23, 1992.

John P. Simpson,

Acting Assistant Secretary of the Treasury.

[FR Doc. 93–1431 Filed 1–21–93; 8:45 am]

BILLING CODE 4820–02–M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Social Security Administration

20 CFR Parts 404 and 416

[Regulations Nos. 4 and 16]

RIN 0960–AD05

Deemed Application Date Based on Misinformation: Amendment

AGENCY: Social Security Administration, HHS.

ACTION: Proposed rule; amendment.

SUMMARY: This document amends the notice of proposed rulemaking: Deemed Application Date Based on Misinformation, published in the **Federal Register** on October 16, 1992 (57 FR 47415).

In that document, we described the kinds of evidence we will consider in determining whether misinformation was provided. We explained what preferred evidence is and in the absence of preferred evidence, we described what other evidence we will consider to make a determination about the alleged misinformation.

When we described the other evidence in the proposed rules, we did not clearly reflect statements contained in the preamble which explained that we will evaluate the individual's allegations and seek corroboration; and that we will resolve reasonable doubt in the individual's favor if the allegation of misinformation seems credible, is supported by other evidence, and there is no contradictory evidence..

This amendment to the NPRM adds to the regulations the provision that we will not find that we gave the individual misinformation based solely on his or her statements. The other evidence which is provided by the individual or which we obtain must support his or her statements.

DATES: To be sure that your comments on the proposed rules as hereby amended are considered, we must receive them no later than March 23, 1993.

ADDRESSES: Comments should be submitted in writing to the Commissioner of Social Security, Department of Health and Human Services, P.O. Box 1585, Baltimore, MD 21235, or delivered to 3–B–1 Operations Building, 6401 Security Boulevard, Baltimore, MD 21235, between 8 a.m. and 4:30 p.m. on regular business days. Comments received may be inspected during these same hours by making arrangements with the contact person shown below.

FOR FURTHER INFORMATION CONTACT:

Henry D. Lerner, Legal Assistant, Office of Regulations, Social Security Administration, 6401 Security Blvd., Baltimore, MD 21235, (410) 965–1762.

SUPPLEMENTARY INFORMATION: Since this amendment is of a substantive nature, we are extending the comment period for the October 16, 1992, **Federal Register** notice of proposed rulemaking (57 FR 47415) by 60 days from the date of the publication of this notice. This will enable the public to comment on the proposed rules in light of the amendment. The amendment to page 47418 is made to conform to the amendments on pages 47420 and 47422. We are also amending page 47422 to correct a typographical error.

In the notice of proposed rulemaking appearing on pages 47415–47423 in the issue of Friday, October 16, 1992, make the following amendments:

1. On page 47418, in line 9 of the first column, the word "convincing" should be deleted.

§ 416.351 [Corrected]

2. In § 416.351, on page 47222, in line 12 of the third column, the designation "(b)" should be corrected to "(v)."

§§ 404.633 and 416.35 [Corrected]

3. On page 47420 in § 404.633 and on page 47422 in § 416.351, in the second column of each page, the introductory texts to paragraphs (d)(2) are revised to read as follows:

(2) *Other evidence.* In the absence of preferred evidence, we will consider other evidence, including your statements about the alleged misinformation, to determine whether we gave you misinformation which caused you not to file an application. We will not find that we gave you misinformation, however, based solely on your statements. Other evidence which you provide or which we obtain must support your statements. Evidence which we will consider includes, but is not limited to, the following—

Dated: December 24, 1992.

Louis D. Enoff,

Principal Deputy Commissioner of Social Security.

Approved: February 14, 1993.

Louis W. Sullivan,

Secretary of Health and Human Services.

[FR Doc. 93–1285 Filed 1–21–93; 8:45 am]

BILLING CODE 4190–29–M

DEPARTMENT OF THE TREASURY

Internal Revenue Service

26 CFR Part 1

[EE–74–92]

RIN 1545–AR19

Taxation of Tax-Exempt Organizations' Income from Corporate Sponsorship

AGENCY: Internal Revenue Service, Treasury.

ACTION: Notice of proposed rulemaking.

SUMMARY: This document provides guidance concerning whether sponsorship payments received by exempt organizations are unrelated business taxable income. The proposed regulations also clarify that the allocation rules governing the exploitation of exempt activities apply to sponsorship income. The proposed regulations apply to organizations subject to the unrelated business income tax imposed by section 511. They do not apply to qualified convention and trade show activity or to income derived from the sale of advertising in exempt organization periodicals.

DATES: Written comments, requests to appear, and outlines of oral comments to be presented at a public hearing scheduled for July 8, 1993, at 10 a.m., must be received by April 30, 1993. See notice of hearing published elsewhere in this issue of the **Federal Register.**

ADDRESSES: Send submissions to: Internal Revenue Service, P.O. Box 7604, Ben Franklin Station, Attention: CC:CORP:T:R (EE–74–92), room 5228, Washington, DC 20044. The public hearing will be held in the Auditorium, Seventh Floor, Internal Revenue Building, 1111 Constitution Avenue, NW., Washington, DC.

FOR FURTHER INFORMATION CONTACT: Concerning the proposed regulations, Regina L. Oldak, at (202) 622–6080 (not a toll-free number). Concerning the hearing, Carol Savage of the Regulations Unit, at (202) 622–8452 (not a toll-free number).

SUPPLEMENTARY INFORMATION: .

Background

An organization described in section 501(a) of the Internal Revenue Code of 1986 generally must pay tax on its unrelated business taxable income as defined in section 512. Section 512(a)(1) defines unrelated business taxable income (UBTI) as the gross income derived by any organization from any unrelated trade or business (as defined in section 513) regularly carried on by it, less the deductions which are

directly connected with the carrying on of the trade or business, both computed with the modifications provided in section 512(b).

Section 513(a) defines unrelated trade or business as any trade or business the conduct of which is not substantially related (aside from the need of an organization for income or funds or the use it makes of the profits derived) to the exercise or performance by the organization of its charitable, educational, or other purpose or function constituting the basis for its exemption under section 501. Section 513(c), which is captioned "Advertising, Etc., Activities," provides that the term trade or business includes any activity carried on for the production of income from the sale of goods or the performance of services.

The Service developed proposed examination guidelines regarding the circumstances under which payments received by exempt organizations from sponsorship arrangements might result in income from unrelated trade or business. The proposed guidelines were published as Announcement 92–15, 1992 5 I.R.B. 51 (Feb. 3, 1992). Interested parties were invited to comment on the guidelines.

Announcement 92–15 stated that payments to an exempt organization are nontaxable contributions if there is no expectation that the organization will provide a substantial return benefit. That is, the mere acknowledgement or recognition of a sponsor as a benefactor normally is incidental to the receipt of a contribution and is not in itself of sufficient benefit to the sponsor to give rise to unrelated trade or business income. However, Announcement 92–15 stated further that where an exempt organization performs valuable advertising, marketing and similar services on a *quid pro quo* basis for the sponsor, the payments are not contributions and questions of unrelated trade or business arise.

The Service received numerous oral and written comments on Announcement 92–15. A public hearing was held on July 21–23, 1992.

Many public comments suggested that the guidelines should be issued in the form of proposed regulations. Many comments also suggested that the substantial return benefit test was too vague or subjective and would not provide exempt organizations with the certainty they sought in this area. Some commentators requested that the audit guidelines expressly recognize that the use of written agreements or the participation of outside legal or other professionals would not necessarily indicate that payments received constituted advertising income. Some commentators requested that the guidelines clarify whether the allocation rule governing the exploitation of exempt activities applied to sponsorship income or raised other questions regarding allocation of expenses and deductions. Numerous other comments related to the specific concerns of individual organizations. One commentator expressed the view that the proposed guidelines did not go far enough but rather condoned the use of the nonprofit sector for private, commercial purposes.

Discussion of Proposed Amendments

The proposed regulations amend the regulations under section 513 to provide guidance in the area of sponsorship payments. The proposed regulations take into consideration both an exempt organization's need to attract private sector support and the statutory and regulatory requirement that the organization be organized and operated exclusively for exempt purposes. The proposed regulations apply to organizations subject to the unrelated business income tax imposed by section 511. They do not apply to qualified convention and trade show activities, nor do they apply to the sale of advertising in exempt organization periodicals.

The proposed regulations diverge from Announcement 92–15 in a number of significant respects. As suggested by numerous comments, the term advertising is defined in the proposed regulations. The proposed regulations distinguish between advertising, which is unrelated, and acknowledgements, which are the mere recognition of a sponsor' payment and, therefore, do not result in UBTI. The proposed regulations focus on the nature of the services provided by the exempt organization. However, whether an activity constitutes advertising or acknowledgements does not determine whether a sponsor may deduct its payment under section 162 or section 170.

The proposed regulations also respond to public comments by clarifying that the rules regarding sponsorship apply to broadcast as well as nonbroadcast activities. Thus, the proposed regulations apply uniformly to all sponsorship activities, unless otherwise expressly stated. The proposed regulations also apply uniformly to all sponsorship activities without regard to the local nature of the organization or activities or the amount of the sponsorship payment. To the extent possible, the proposed regulations are designed to parallel the statutory and regulatory framework of the Federal Communications Commission (FCC) currently in effect. See, In the Matter of Commission Policy Concerning the Noncommercial Nature of Educational Broadcasting Stations, Public Notice FCC 86–161, April 11, 1986. However, this should not be viewed as ceding, in any way, the Service's authority to interpret and administer the Internal Revenue Code. Similarly, this regulation does not affect a particular exempt organization's responsibility to comply with any other applicable statute, regulation, industry standard or ethical code.

The principle of administrative simplicity governs the rules defining advertising and acknowledgments in the proposed regulations. As a result, the lines drawn between activities constituting advertising and acknowledgments may not relate to the substance of the activities. For example, distribution of samples of a sponsor's product to the general public at a sponsored event is substantively an inducement to buy the sponsor's product and, therefore, advertising. However, the proposed regulations provide that distribution of samples of a sponsor's product constitutes acknowledgment rather than advertising.

The proposed regulations follow the rule in Rev. Rul. 67–246, 1967–2 C.B. 104. Thus, the proposed regulations permit an exempt organization to exclude the portion of a payment from a sponsor that can be shown to be in excess of the fair market value of the advertising benefit received by the sponsor. In addition, the proposed regulations do not preclude a showing, under section 512(b), that income received by an exempt organization is otherwise excludable from the computation of UBTI (*e.g.*, dividends, interest, royalties, etc.). On the other hand, the proposed regulations do not exclude income if the income constitutes unrelated business taxable income.

The proposed regulations amend the regulations under section 512(a) by adding examples that clarify that the allocation rule governing exploitation of exempt activities applies to sponsorship income.

*However, the proposed regulations do not amend the requirements of § 1.512(a)-1(d)(2) that, for the allocation rule governing exploitation to apply, the unrelated trade or business activity must be of a kind carried on for profit by taxable organizations and the exempt activity exploited by the business must be a type of activity normally conducted by taxable organizations in pursuance of

such business. The Service requests comments regarding the desirability of amending these rules in view of the rules adopted in the proposed regulations.

The proposed regulations also do not amend the rules in § 1.513–1(c) as to whether trade or business from which a particular amount of gross income derives is regularly carried on within the meaning of section 512. The Service requests comments regarding the desirability of amending these rules in view of the rules adopted in the proposed regulations with respect to advertising.

Proposed Effective Date

The amendments to the regulations are proposed to be effective with respect to amounts received after January 19, 1993.

Special Analyses

It has been determined that this rule is not a major rule as defined in Executive Order 12291. Therefore, a Regulatory Impact Analysis is not required. It has also been determined that section 553(d) of the Administrative Procedure Act (5 U.S.C. chapter 5) and the Regulatory Flexibility Act (5 U.S.C. chapter 6) do not apply to this regulation, and, therefore, an initial Regulatory Flexibility Analysis is not required. Pursuant to section 7805(f) of the Internal Revenue Code, this regulation 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 To Appear at a Public Hearing

Before adopting this proposed regulation, consideration will be given to any written comments that are submitted in a timely manner (preferably a signed original and eight copies) to the Internal Revenue Service. All comments will be available for public inspection and copying in their entirety. A public hearing will be held beginning at 10 a.m. on July 8, 1993, in the Auditorium, Seventh Floor, Internal Revenue Building, 1111 Constitution Avenue, NW., Washington, DC. Comments and requests to appear (with outlines of oral comments) at the public hearing must be received by April 30, 1993. See notice of public hearing published elsewhere in this issue of the Federal Register.

Drafting Information

The principal author of this regulation is Regina L. Oldak, Office of Associate Chief Counsel (Employee Benefits and Exempt Organizations), Internal Revenue Service. However, personnel from other offices of the Service and the Treasury Department participated in its development.

List of Subjects in 26 CFR 1.511–1 through 1.514(g)–1

Income taxes, Reporting and recordkeeping requirements.

Proposed Amendments to the Regulations

The proposed amendments to 26 CFR part 1 are as follows:

PART 1—INCOME TAX; TAXABLE YEARS BEGINNING AFTER DECEMBER 31, 1953

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

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

Par. 2. Section 1.512(a)–1(e) is amended as follows:

1. By revising the heading and introductory text for paragraph (e).

2. By revising the heading for the current "*Example.*" to read "*Example 1.*"

3. By adding *Example 2* through *Example 4.*

4. The revisions and additions read as follows:

§ 1.512(a)–1 Definition.

* * * * *

(e) *Examples.* Paragraphs (a) through (d) of this section are illustrated by the following examples:

Example 1. * * *

Example 2. (i) X, a section 501(c)(3) organization, conducts an annual college football bowl game featuring the Conference champion and another prominent nationally-ranked college team. In addition, X sells to commercial broadcasters the right to broadcast the bowl game on television and radio for $3,000,000 and receives $1,500,000 in admission and other fees. A major corporation agrees to be the exclusive sponsor of the bowl game and pays X $2,500,000. X distributes $2,000,000 of that amount to the colleges participating in the bowl game. X acknowledges the sponsorship payment by adding the corporation's name to the title of the event. This does not constitute advertising within the meaning of § 1.513–4 because it does not promote the sponsor's service, facility or product. In an activity distinct from the sponsorship agreement, X earns gross income of $800,000 from its design, manufacture and marketing of various items of wearing apparel featuring the name and logo of the bowl game. This activity constitutes unrelated trade or business that exploits X's exempt function. Expenses associated with this activity total $250,000.

(ii) The computation of unrelated business income is as follows:

Revenue:	
Television and radio rights	$3,000,000
Admission and other fees	1,500,000
Sponsorship (acknowledgments)	2,500,000
Income from unrelated trade or business	800,000
Total revenue	7,800,000
Expenses:	
Directly connected with bowl game	4,750,000
Overhead costs allocated to bowl game	1,000,000
Payments to event participants	2,000,000
Directly connected with the unrelated trade or business	200,000
Overhead costs allocated to unrelated trade or business	50,000
Total expenses	8,000,000
Unrelated trade or business (wearing apparel activity):	
Revenue	800,000
Expenses	250,000
Total unrelated business taxable income	550,000
Exempt function (bowl game):	
Revenue	7,000,000
Expenses	7,750,000
Total exempt function income (loss)	(750,000)

(iii) Exempt function expenses exceed revenues by $750,000. Because the unrelated income exploits the bowl game and is an activity normally conducted by taxable organizations in pursuit of similar businesses, this excess is allowed as a deduction from unrelated business taxable income to the extent of the net gain from unrelated business taxable income. Accordingly, there is no unrelated business income tax because the excess exempt function expenses of $750,000 more than offset total unrelated business taxable income of $550,000

Example 3. Assume the facts as stated in *Example 2*, except that in addition to conducting the bowl game, X leases its stadium to a professional football team for an event unrelated to the bowl game and provides utilities and maintenance services. The lease of the stadium is not related to the accomplishment of X's exempt purposes and does not exploit the bowl game. Accordingly, expenses, depreciation and similar items paid or incurred in conducting the bowl game may not be taken into account in computing unrelated business taxable income attributable to the lease of the stadium to a professional team.

Example 4. P, a manufacturer of photographic equipment, sponsors a photography exhibition organized by M, an art museum. In return for a sponsorship payment of $500,000, M agrees that exhibition catalogs, brochures, posters and other printed material prepared by M in connection with the exhibition will promote

P's product. M has not shown that any portion of the sponsorship payment exceeds the fair market value of the advertising benefit provided to P. Accordingly, the $500,000 payment is unrelated business income to M. The expenses directly connected with generating the unrelated business income total $150,000. The net unrelated taxable income, therefore, is $350,000 ($500,000 less $150,000). M also has $100,000 in exempt function income from admissions. Expenses connected with the exhibition total $400,000. Because the exempt expenses exceed exempt income by $300,000 ($400,000 less than $100,000), $300,000 is allowable as a deduction against the net unrelated business income of $350,000.

Par. 3. Section 1.513–4 is added to read as follows:

§ 1.513–4 Certain sponsorship not unrelated trade or business.

(a) *In general.* This section describes circumstances when income from certain sponsorship payments received by organizations subject to the unrelated business income tax imposed by section 511 are derived from a trade or business. This section does not apply to qualified convention and trade show activity. For rules governing qualified convention and trade show activity, see § 1.513–3. This section also does not apply to income derived from the sale of advertising in exempt organization periodicals. The term periodical includes regularly scheduled and printed material that is not related to and primarily distributed in connection with a specific sponsored event. For rules governing the sale of advertising in exempt organization periodicals, see § 1.512(a)–1(f). For rules governing whether an activity is regularly carried on, see § 1.513–1(c).

(b) *Advertising.* With respect to sponsorship of the activities of exempt organizations, advertising means any message or other programming material which is broadcast or otherwise transmitted, published, displayed or distributed in exchange for any remuneration, and which promotes or markets any company, service, facility or product. Advertising includes any activity which promotes or markets any company, service, facility or product. Advertising does not include acknowledgments described in paragraph (c) of this section.

(c) *Acknowledgments*—(1) *Description.* Acknowledgments are mere recognition of sponsorship payments. Acknowledgments may include the following, provided that the effect is identification of the sponsor rather than promotion of the sponsor's products, services or facilities: sponsor logos and slogans that do not contain comparative or qualitative descriptions of the sponsor's products, services, facilities or company; sponsor locations and telephone numbers; value-neutral descriptions, including displays or visual depictions, of a sponsor's product-line or services; and sponsor brand or trade names and product or service listings. Logos or slogans that are an established part of a sponsor's identity are not considered to contain comparative or qualitative descriptions.

(2) *Limitations.* Messages or other programming material that include the following constitute advertising: qualitative or comparative language; price information or other indications of savings or value associated with a product or service; a call to action; an endorsement; or an inducement to buy, sell, rent, or lease the sponsor's product or service. Distribution of a sponsor's product by the sponsor or the exempt organization to the general public at the sponsored event, whether for free or for remuneration, is not considered an inducement to buy, sell, rent or lease the sponsor's product for purposes of this regulation. If any activities, messages or programming material constitute advertising with respect to sponsorship payment, then all related activities, messages or programming material that might otherwise be acknowledgments are considered advertising.

(d) *Contracts.* The mere existence of a sponsorship contract does not necessarily mean that a sponsorship payment is income from advertising. The terms of the agreement, not its existence or degree of detail, are relevant to the determination. Similarly, the terms of the agreement and not the status of those negotiating the agreement are relevant. Exclusivity arrangements do not, in themselves, mean that a sponsorship payment is advertising income.

(e) *Contingent payments.* Where the amount of the sponsorship payment is contingent, by contract or otherwise, upon factors such as attendance at an event or broadcast ratings, the sponsorship payment is considered advertising income. However, the fact that a sponsorship payment is contingent upon an event actually taking place or being broadcast does not, in itself, mean that the payment is advertising income.

(f) *Provison of facilities.* Provision of facilities, services or other privileges by an exempt organization to the sponsor or individuals designated by the sponsor (*e.g.*, complimentary tickets, pr-am playing spots in golf tournaments or receptions for major donors) in connection with the sponsorship payment does not affect the determination of whether a sponsorship payment is advertising income.

(g) *Examples.* The provisions of this section are illustrated by the following examples:

Example 1. M, an exempt organization, organizes a marathon and walkathon at which it serves to participants drinks and other refreshments provided by a national corporation. M recognizes the assistance of the corporation by listing the name of the corporation in promotional fliers, in newspaper advertisements of the event and on T shirts worn by participants. M acknowledges prizes provided by the corporation or any other sponsor in the same manner. M changes the name of its event to include the name of the sponsor. M's activities are acknowledgments of the sponsorship and not advertising.

Example 2. N, an art museum, organizes an exhibition and receives a large payment from a corporation to underwrite the production of the catalog for the exhibition. N acknowledges the corporation in materials publicizing the exhibition, including banners, posters, brochures and public service announcements. N also arranges a special tour of the exhibition for employees of the corporation and hosts a dinner for the corporation's executives. N's activities are acknowledgments of the payment and not advertising.

Example 3. O organizes sports tournaments for local charities across the country that are underwritten by an auto manufacturer. O acknowledges the sponsorship payment by including the manufacturer's name and logo in the title of the tournament and displaying the manufacturer's name and logo on signs, scoreboards and other printed material. The auto manufacturer receives complimentary admission passes and pro-am playing spots. Additionally, O displays the latest models of the sponsor's premier luxury cars in the tournament area. O's activities are acknowledgments of the payment and not advertising.

Example 4. P conducts an annual college football bowl game. P sells to commercial broadcasters the right to broadcast the bowl game on television and radio. A major corporation agrees to be the exclusive sponsor of the bowl game. The sponsorship payment includes amounts to be paid to the colleges participating in the bowl game. The detailed contract between P and the corporation provides that the name of the bowl game will include the name of the corporation. The contract further provides that the corporation's name and a special logo will appear on players' helmets and uniforms, on the scoreboard and stadium signs, on the playing field, on cups used to serve drinks at the game, and on all related printed material distributed in connection with the game. The sponsorship agreement is contingent upon the game being broadcast on television and radio, but the amount of the sponsorship payment is not contingent upon the number of people attending the game or the television ratings. The contract provides that television cameras will focus on the corporation's name and logo on the field at

certain intervals during the game. P's activities are acknowledgments of the payment and not advertising.

Example 5. Players on team Q wear uniforms provided by a major pizza chain which also underwrites the operational expenses of the team. The uniforms bear the name and logo of the chain. The sponsorship payments and uniforms are not advertising income to Q, because use of the name and logo is acknowledgment of the sponsorship and not advertising.

Example 6. R organizes an annual art festival. Restaurants sell food or provide samples at festival booths. Similarly, local artists and craft shops sell arts and crafts at the festival. The restaurants, artists and shops are recognized by R as sponsors of the event in the festival brochure. The recognition of these sponsors constitutes acknowledgment of the payments and not advertising.

Example 7. S is a noncommercial broadcast station that airs a program sponsored by a local record shop. In recognition of that sponsorship, S broadcasts the following message: "This program has been underwritten by the Record Shop, where you can find all of your great hit music. The Record Shop is located at 123 Main Street. Give them a call today at 555–1234. This station is proud to have the Record Shop as a sponsor." S's activities constitute advertising.

Example 8. T, an exempt symphony orchestra, performs a series of concerts. A program guide that contains notes on guest conductors and other information concerning the evening's program is distributed at each concert. Sponsors may underwrite a specific concert or may contribute to a single program guide. Sponsors are recognized in the program guide in either case and, therefore, their payments are sponsorship payments for purposes of this section. If T's recognition of a specific concert sponsor in the program guide promotes the sponsor's product, T's activities are advertising with respect to all amounts received from the sponsor for that concert even if other items in the program guide relating to the sponsor would otherwise be acknowledgments. T also mails to subscribers a monthly magazine that contains various articles on music but is not primarily related to and distributed in connection with a specific concert. This section does not apply to the magazine because it is a periodical.

Michael P. Dolan,

Acting Commissioner of Internal Revenue.

[FR Doc. 93–1402 Filed 1–19–93; 8:45 am]

BILLING CODE 4830–01–M

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26 CFR Part 1

[EE–74–92]

RIN 1545–AR19

Taxation of Tax-Exempt Organizations' Income From Corporate Sponsorship; Hearing

AGENCY: Internal Revenue Service, Treasury.

ACTION: Notice of public hearing on proposed regulations.

SUMMARY: This document provides notice of a public hearing on proposed regulations governing the definition of unrelated trade or business.

DATES: The public hearing will be held on Thursday, July 8, 1993, beginning at 10:00 a.m. Requests to speak and outlines of oral comments must be received by Thursday, June 17, 1993.

ADDRESSES: The public hearing will be held in the Internal Revenue Service Auditorium, Seventh floor, 7400 Corridor, Internal Revenue Service Building, 1111 Constitution Avenue NW., Washington, DC. Requests to speak and outlines of oral comments should be submitted to: Internal Revenue Service, P.O. Box 7604, Ben Franklin Station, Attn: CC:CORP:T:R, (EE–74–42), room 5228, Washington, DC 20044.

FOR FURTHER INFORMATION CONTACT: Carol Savage of the Regulations Unit, Assistant Chief Counsel (Corporate), (202) 622–8452 or (202) 622–7180 (not toll-free numbers).

SUPPLEMENTARY INFORMATION: The subject of the public hearing is proposed regulations under sections 512 and 513 of the Internal Revenue Code of 1986. The proposed regulations appear elsewhere in this issue of the **Federal Register**.

The rules of § 601.601(a)(3) of the "Statement of Procedural Rules" (26 CFR part 601) shall apply with respect to the public hearing. Persons who have submitted written comments within the time prescribed in the notice of proposed rulemaking and who also desire to present oral comments at the hearing on the proposed regulations should submit not later than Thursday, June 17, 1993, an outline of the oral comments/testimony to be presented at the hearing and the time they wish to devote to each subject.

Each speaker (or group of speakers representing a single entity) will be limited to 10 minutes for an oral presentation exclusive of the time consumed by questions from the panel for the government and answers to these questions.

Because of controlled access restrictions, attendee cannot be permitted beyond the lobby of the Internal Revenue Service Building until 9:45 a.m.

An agenda showing the scheduling of the speakers will be made after outlines are received from the persons testifying. Copies of the agenda will be available free of charge at the hearing.

By direction of the Commissioner of Internal Revenue.

Dale D. Goode,

Federal Register Liaison Officer, Assistant Chief Counsel (Corporate).

[FR Doc. 93–1403 Filed 1–19–93; 8:45 am]

BILLING CODE 4830–01–M

DEPARTMENT OF VETERANS AFFAIRS

38 CFR Part 4

RIN 2900–AE41

Schedule for Rating Disabilities; Endocrine System Disabilities

AGENCY: Department of Veterans Affairs.

ACTION: Proposed rule.

SUMMARY: The Department of Veterans Affairs (VA) is proposing to amend its Schedule for Rating Disabilities of the Endocrine System. This change is necessary because of a General Accounting Office (GAO) study and recommendation that the medical criteria in the rating schedule be reviewed and updated as necessary. The intended effect is to update the endocrine system portion of the rating schedule to ensure that it uses current medical terminology and criteria for evaluating disabilities of that system. This is one of the 16 categories of disability in the rating schedule which we plan to revise.

DATES: Comments must be received by VA on or before March 23, 1993. Comments will be available for public inspection until April 2, 1993. This change is proposed to be effective February 22, 1993.

ADDRESSES: Interested persons are invited to submit written comments, suggestions, or objections regarding this change to the Secretary of Veterans Affairs (271A), Department of Veterans Affairs, 810 Vermont Ave., NW., Washington, DC 20420. All written comments received will be available for public inspection only in the Veterans Services Unit, room 170, at the above address between the hours of 8 a.m. and 4:30 p.m., Monday through Friday (except holidays), until April 2, 1993.

FOR FURTHER INFORMATION CONTACT: Bob Manchester, Consultant, Regulations Staff (211B), Compensation and Pension Service, Veterans Benefits Administration, (202) 233–3005.

SUPPLEMENTARY INFORMATION: In December 1988, GAO published a report entitled VETERANS' BENEFITS: Need to Update Medical Criteria Used in VA's Disability Rating Schedule (GAO/HRD–89–28). After consulting numerous

medical professionals and VA rating specialists GAO concluded that a comprehensive and systematic plan was needed for reviewing and updating VA's Schedule for Rating Disabilities (38 CFR part 4). The medical professionals noted outdated terminology, ambiguous impairment classifications and the need to add a number of medical conditions not presently in the rating schedule. GAO recommended that VA prepare a plan for a comprehensive review of the rating schedule and, based on the results, revise the medical criteria accordingly. VA agreed to these recommendations.

In the **Federal Register** of February 26, 1990, VA published an advance notice of proposed rulemaking advising the public that we were preparing to revise and update the rating schedule for endocrine disabilities and soliciting suggestions as to how the review should be conducted. We received suggestions from the Disabled American Veterans, and we also contacted an outside consultant to suggest revisions to the endocrine portion of the rating schedule. The primary objective of this review is to update the medical terminology and criteria used to evaluate disabilities rather than to amend the percentage evaluations assigned to each level of severity, although some changes in evaluation are proposed.

Current provisions under diagnostic codes 7900, Hyperthyroidism, 7902, Thyroid gland, nontoxic adenoma of, and 7903, Hypothyroidism, contain no affirmative criteria for noncompensable evaluations, but require instead that the condition at issue be "nonsymptomatic" or "in remission." We propose to eliminate these provisions since they merely restate the general rule found in § 4.31 that a 0 percent evaluation will be assigned when the criteria for compensable evaluations are not met.

Evaluation criteria under diagnostic code 7900 and other diagnostic codes in the endocrine schedule occasionally refer to symptoms which qualify for a specific evaluation after corrective surgery. We propose to delete references to surgery because they are of no value in explaining the qualifying symptoms. Similarly, adjectives such as "pronounced," "severe," "moderately severe," "moderate," and "cured" which preface criteria in several diagnostic codes will be deleted since they serve no objective function in the evaluation of a disability.

Rating criteria under diagnostic codes 7900 and 7903 currently direct that thyroid dysfunction be evaluated by measurement of the hormones T3 and/or T4. Since a number of other tests are commonly performed in the assessment of the thyroid patient, we propose that thyroid dysfunction under diagnostic codes 7900 and 7903 be evaluated by measurement of total or free T4 or equivalent. NOTEs following diagnostic codes 7900, Hyperthyroidism, and 7903, Hypothyroidism, currently provide for a rating of 10 percent when medication is necessary for control of systems. We propose to remove that provision since medication for hyperthyroidism or hypothyroidism rarely results in disabling symptoms. Any permanent disability which is proximately due to a service-connected disease shall in any event be service-connected according to the provisions of § 3.310.

Since long-standing hyperthyroidism can lead to significant impairment affecting the eyes, we propose to include eye involvement as a criterion for evaluation at the 100 percent level under diagnostic code 7900, Hyperthyroidism. At the same percentage level, the word "nervous" which modifies "symptoms" will be amended to "sympathetic nervous system," since only this division of the autonomic nervous system is affected by hyperthyroidism.

Criteria under diagnostic code 7902, Thyroid gland, nontoxic adenoma of, currently require pressure symptoms and marked disfigurement for entitlement to a 20 percent evaluation. Since pressure symptoms are rarely encountered, we propose to eliminate this requirement. Marked disfigurement will be specified as limited to the head and neck, since these are the areas particularly affected.

Under diagnostic code 7903, Hypothyroidism, we propose to remove the requirement for slow return of reflexes and add severe cold intolerance, muscular weakness, and cardiovascular involvement to the criteria required for a 100 percent evaluation. The level of circulating hormones will be characterized as undetectable rather than decreased. These symptoms are typical of the disease when it is totally disabling. Under the 60 percent level, we propose to add criteria of muscular weakness, mental symptoms, and weight gain. Consideration of these symptoms will allow for a more objective assessment of severity than the current reference to "symptoms under 'pronounced' somewhat less marked" which will be removed. Sluggish mentality and other indications of myxedema are currently required for a 30 percent evaluation under diagnostic code 7903. We propose to add the more commonly encountered symptoms of fatigability, constipation, and mental sluggishness to the evaluation criteria for this level and remove the reference to myxedema, which is seldom encountered. Dementia, slowing of thought, and depression are the mental symptoms typical of hypothyroidism, and we propose to include them in the evaluation criteria under diagnostic code 7903.

We propose to remove the words osteitis fibrosa cystica from the heading of diagnostic code 7904, Hyperparathyroidism, since these words meaning cystic changes in bones are not synonymous with the disease itself. We propose to add kidney stones and gastrointestinal symptoms to the evaluation criteria for the 100 percent level since they are indicative of a totally disabling level. At the 60 percent level, we propose to replace the requirement for "muscle weakness" with "weakness." Since "weakness" is one of the criteria at the 100 percent level, this change will make the disability indicators consistent at both levels of severity. The evaluation criteria under this diagnostic code also contain the instruction that following surgery or treatment rate as residual of benign tumor considering especially bones and kidneys. We propose to delete mention of benign tumor and add references to digestive, cardiovascular, and endocrine dysfunctions as other possible disabling effects of hyperparathyroidism.

Criteria for the 100 percent evaluation under diagnostic code 7905, Hypoparathyroidism, currently include a reference to thyroidectomy because hypoparathyroidism is often the result of accidental removal of or damage to several parathyroid glands during thyriodectomy. We propose to delete this reference because it does not identify symptoms helpful in the evaluation process, and causes of hypoparathyroidism other than complications of surgery are now recognized. We propose to add "seizures or convulsions" and "ocular disturbances" to the 100 percent criteria since these symptoms are typical of this level of disability. A direction under this diagnostic code currently instructs the rater to evaluate less than totally disabling levels of hypoparathyroidism by analogy to diagnostic code 7900, Hyperthyroidism. The disabling symptoms of hypoparathyroidism and hyperthyroidism are not similar, and we propose to replace this instruction with a distinct 60 percent evaluation level with appropriate rating criteria.

We propose to amend the heading of diagnostic code 7907, Hyperpituitarism (pituitary basophilism, Cushing's syndrome), to read simply "Cushing's

syndrome," since this is the medically accepted term for this condition. Criteria for the 100 percent evaluation under this diagnostic code include requirements of pathological fractures and enlargement of the sella turcica. These conditions are rarely encountered in Cushing's syndrome, and we propose to replace them with the more frequently experienced symptoms of hypertension and weakness. Criteria for the 60 percent evaluation currently require a symptom combination less than for the 100 percent rating with only partial control by treatment. We propose to replace this ambiguous requirement with a more specific description of loss of muscle strength and enlargement of pituitary or adrenal gland. In the NOTE following diagnostic code 7907, the rater is directed to evaluate residuals such as adrenal insufficiency, cardiac, skin and bony complications under the appropriate diagnostic code. We propose to enlarge this list of possible residuals by including psychiatric symptoms and changing the word cardiac to cardiovascular.

We propose to condense the heading of diagnostic code 7908, Hyperpituitarism (acromegaly or gigantism) to Acromegaly since this is the most commonly used term for this disability. Criteria for the 100 percent evaluation under this diagnostic code include mention of a hypofunctional stage of the disease following hyperfunction. We propose to delete this description since it does not assist in the evaluation of the condition. We propose to replace the symptoms described as intracranial pressure, genital decline and atrophy, hypotrichosis, hypoglycemia, obesity, and asthenia with increased intracranial pressure, arthropathy, glucose intolerance, cardiomegaly, and visual impairment since those sumptoms more accurately represent the 100 percent level of severity. We also propose to replace the criteria for the 60 percent evaluation, currently "bone and joint pains, hyperglycemia and glycosuria, symptoms of intracranial pressure in optic region" with "arthropathy, glucose intolerance, and hypertension," since these are more frequently encountered symptoms.

We propose to use simply Diabetes insipidus as the heading for diagnostic code 7909, Hypopituitarism (diabetes insipidus), since it alone is sufficient to identify this category of disease. In the criteria for the 100 percent evaluation, we propose to qualify the term "parenteral replacement therapy" with the word "hydration" for the sake of clarity. We also propose to replace the phrase "increase in urinary chlorides, etc." with "excessive thirst" and "dehydration" in the criteria for the 40 percent evaluation. The level of urinary chlorides is not necessarily indicative of the severity of disabetes insipidus, and excessive thirst and dehydration are more characteristic of this level of severity.

In the criteria for the 20 percent evaluation under diagnostic code 7911, Addison's disease (adrenal cortical hypofunction), we propose to delete the requirement for well-established Addison's disease with fewer than 3 crises or less than 5 episodes of lesser symptomatology during the past year. The fact that the disease is well-established has no bearing on the evaluation process and therefore serves no useful purpose in the criteria. The terms "fewer than 3" or "less than 5," in reference to the number of crises or episodes, are too imprecise to have any value in establishing objective impairment classifications. The current reference to §§ 4.88b and 4.89 regarding non-pulmonary tuberculosis will be deleted since the proper procedure for rating such conditions is adequately stated after diagnostic code 6353 under "systemic conditions" in the rating schedule.

We propose to determine the degree of impairment for diagnostic code 7913, Diabetes Mellitus, according to how well the disease is controlled. Evaluation criteria at the 100 percent level currently include provisions regarding diabetic episodes, regulation of diet and activities, weight or strength loss, and complications of the disease. The frequency of insulin injection and medical treatment are also valid measures of the disabling severity of diabetes. We therefore propose to stipulate under the 100 percent level that the veteran's condition require more than 1 daily injection of insulin and frequent hospital or physician treatment. The word "with" currently precedes "progressive loss of weight and strength, or severe complications" under the 100 percent criteria. We propose to substitute the word "either" for "with" since the word "either" will more clearly emphasize that only one of these criteria is required to establish the 100 percent level of severity. In order to clarify the meaning of "severe complications" currently mentioned at the 100 percent level, we propose to cite common examples of complications to include retinopathy, nephropathy, arteriosclerosis, and neuropathy.

The need for insulin, restricted diet, and regulation of activities are reliable indicators of the extent to which diabetes is controlled, and for the sake of consistency, we propose to make them part of the criteria necessary to establish any level of disability 40 percent or greater. For the 60 percent level, we propose to specify "occasional" episodes of ketoacidosis or hypoglycemic reactions to distinguish from the "repeated" episodes required under the 100 percent criteria. We propose to delete pruritus ani from the 60 percent evaluation criteria since it is of no practical value in determining the actual severity of diabetes. We also propose to delete "considerable loss of weight and strength" from the 60 percent level, since reference to weight loss is most appropriately reserved for consideration of total disablement in the 100 percent criteria.

We propose to delete the phrase "avoidance of strenuous occupational and recreational activities" from the 40 percent evaluation for diabetes since it does not substantially clarify the meaning of careful regulation of activities. Currently the evaluation criteria for the 40 and 20 percent levels require "large" or "moderate" insulin or oral hypoglycemic dosage. The severity of diabetes is properly determined by the degree of control achieved in response to medication, and not by the amount of medication taken in any one dosage to achieve such control. We therefore propose to delete the references to large or moderate dosage at the 40 and 20 percent levels. The words "without impairment of health or vigor or limitation of activity" which currently appear in the criteria for the 20 and 10 percent evaluations will be deleted since they do not affirmatively denote criteria whose presence is required for the designated levels of disability.

The first sentence of the NOTE following diagnostic code 7913, Diabetes mellitus, now states that definitely established complications of diabetes are to be separately rated. The regulation is currently applied by distinguishing between complications which are "mild," or noncompensable, and those which are compensable. Noncompensable complications are to be rated as part of diabetes under diagnostic code 7913, whereas compensable evaluations may be separately rated. An exception to separate evaluations for compensable complications is found in the 100 percent level under diagnostic code 7913, where complications which are severe may be an essential part of the total evaluation for diabetes and are reserved for that purpose. We propose to elevate this instruction to a regulatory requirement by amending the NOTE following diagnostic code 7913. We propose to separate the last sentence

regarding glucose tolerance tests from the existing NOTE to create a separate NOTE "2" since it involves a different issue. The sentence will be retained with editorial changes, and no substantive change is intended.

We propose to replace the words new growths in the headings of diagnostic codes 7914 and 7915 with the word neoplasms since it better connotes a pathological abnormality. For malignancies of the endocrine system, diagnostic code 7914 currently provides a 100 percent evaluation for one year following surgery or the cessation of antineoplastic therapy. This provision is applied at the time of rating by assignment of a one year total evaluation with a prospective reduction consistent with the protected, known or minimum evaluation. Due to improvements in the administration of chemotherapy and radiation treatments, we believe that a one year convalescent evaluation is no longer warranted, but that it is reasonable to assess residual disability six months after treatment terminates. Not every patient will recover in a set period of time, however, so a decision to reduce an evaluation after six months should be based on medical findings rather than a regulatory assumption that there has been an improvement. We propose to change the period of convalescence under diagnostic code 7914 for malignancies from one year to six months. The total evaluation will continue until the veteran is examined and the results of this examination have been reviewed by a rating board. At that time, if a reduction in evaluation is warranted, it would be implemented under the provisions of 38 CFR 3.105(e). This instruction has been included in the Note following diagnostic code 7914.

We are proposing to delete one endocrine disorder, Hyperadrenia (adrenogenital syndrome), diagnostic code 7910, from the rating schedule. Adrenogenital syndrome, which causes precocious sexual development, is a condition that occurs during infancy and childhood. It is so rarely encountered among service persons that it does not warrant a separate category in the rating schedule. Two disorders, diagnostic code 7901, Thyroid gland, toxic adenoma of, and diagnostic code 7912, Pluriglandular syndromes, will remain unchanged.

We propose to add four diagnostic codes for disorders of the endocrine system which commonly occur: 7916, Hyperpituitarism (prolactin secreting pituitary dysfunction); 7917, Hyperaldosteronism (benign or malignant); 7918, Pheochromocytoma (benign or malignant); and 7919, C-cell hyperplasia of the thyroid.

The Secretary hereby certifies that this regulatory amendment will not have a significant economic impact on a substantial number of small entities as they are defined in the Regulatory Flexibility Act, 5 U.S.C. §§ 601–612. The reason for this certification is that this amendment would not directly affect any small entities. Only VA beneficiaries could be directly affected. Therefore, pursuant to 5 U.S.C. 605(b), this amendment is exempt from the initial and final regulatory flexibility analysis requirements of sections 603 and 604.

In accordance with Executive Order 12291, Federal Regulation, the Secretary has determined that this regulatory amendment is non-major for the following reasons:

(1) It will not have an annual impact on the economy of $100 million or more.

(2) It will not cause a major increase in costs or prices.

(3) It will not have significant adverse effects on competition, employment, investment, productivity, innovation, or on the ability of United States-based enterprises to compete with foreign-based enterprises in domestic or export markets.

The Catalog of Federal Domestic Assistance numbers are 64.104 and 64.109.

List of Subjects in 38 CFR Part 4

Handicapped, Pensions, Veterans.

Note: This document received by the Office of the Federal Register on January 15, 1993.

Approved: April 1, 1992.

Edward J. Derwinski,

Secretary of Veterans Affairs.

For the reasons set out in the preamble, 38 CFR part 4, subpart B, is proposed to be amended as set forth below:

PART 4—SCHEDULE FOR RATING DISABILITIES

1. The authority citation for part 4 continues to read as follows:

Authority: 72 Stat. 1125; 38 U.S.C. 1155.

Subpart B—Disability Ratings

2. Section 4.119 is revised to read as follows:

§ 4.119 Schedule of ratings—endocrine system.

	Rating
7900 Hyperthyroidism:	
Thyroid enlargement, severe tachycardia, eye involvement, elevated levels of circulating thyroid hormones (as measured by total or free T4 or equivalent), muscular weakness, loss of weight, and marked sympathetic nervous system, cardiovascular, or gastrointestinal symptoms	100
Marked emotional instability, tachycardia, elevated levels of circulating thyroid hormones (as measured by total or free T4 or equivalent), fatigability, and increased pulse pressure or blood pressure	60
Tachycardia, tremor, and increased pulse pressure or blood pressure	30
Tachycardia (which may be intermittent) and tremor	0
Note 1: If disease of the heart predominates, rate as hyperthyroid heart disease, diagnostic code 7008.	
Note 2: If only ophthalmopathy exists, rate as impairment of field vision, diagnostic code 6080, diplopia, diagnostic code 6090 or central visual acuity, diagnostic codes 6061–6079.	
7901 Thyroid gland, toxic adenoma of:	
Rate as hyperthyroidism, diagnostic code 7900	
7902 Thyroid gland, nontoxic adenoma of:	
Marked disfigurement of the head or neck	20
Note: If a higher evaluation is warranted, rate as impairment of affected organ.	
7903 Hypothyroidism:	
Severe cold intolerance, muscular weakness, cardiovascular involvement, mental symptoms (dementia, slowing of thought, depression), slow pulse, sleepiness, and undetectable levels of circulating thyroid hormones	100
Muscular weakness, mental symptoms, weight gain, and decreased levels of circulating thyroid hormones (as measured by total or free T4 or equivalent)	60
Fatigability, constipation, mental sluggishness, and decreased levels of circulating thyroid hormones (as measured by total or free T4 or equivalent)	30
Fatigability	10
7904 Hyperparathyroidism:	
Generalized decalcification of bones, kidney stones, gastrointestinal symptoms, elevated blood and urine calcium levels, marked weight loss, and weakness	100
Elected blood and urine calcium levels, marked weight loss, and weakness	60
Following surgery or treatment:	
Rate as digestive, skeletal, renal, or cardiovascular residuals or as endocrine dysfunction.	

	Rating
7905 Hypoparathyroidism:	
Seizures or convulsions, muscular spasms (tetany) or marked neuromuscular excitability, and ocular disturbances	100
Marked neuromuscular excitability, ocular disturbances, and constipation or tingling and numbness of extremities	60
Note: When continuous medication is required for control of hypoparathyroidism, a minimum rating of 10 percent will be assigned.	
7907 Cushing's syndrome:	
As active progressive disease including marked loss of muscle strength, areas of osteoporosis, hypertension, weakness, and enlargement of pituitary or adrenal gland	100
Loss of muscle strength and enlargement of pituitary or adrenal gland	60
Note: With recovery or control, rate as residuals of adrenal insufficiency or cardiovascular, psychiatric, skin, or skeletal complications under appropriate diagnostic code.	
7908 Acromegaly:	
Increased intracranial pressure, arthropathy, glucose intolerance, hypertension, cardiomegaly, and visual impairment	100
Arthropathy, glucose intolerance, and hypertension	60
Enlargement of acral parts or overgrowth of long bones, and enlarged sella turcia	30
7909 Diabetes insipidus:	
Excessive thirst and severe polyuria requiring parenteral hydration therapy, episodes of syncope, low systolic and diastolic blood pressure	100
Excessive thirst, polyuria, dehydration, serum osmolality greater than 295 mOsm/kg, and urine osmolality less than 38 mOsm/kg	60
Polyuria, excessive thirst, and dehydration	40
Polyuria and excessive thirst	20
7911 Addison's disease (adrenal cortical hypofunction):	
Four or more crises (increasingly severe hypotension, dehydration, pronounced weakness, with hyponatremia, hyperpotassemia, azotemia, hypoglycemia and cortisol deficiency) during the past year	60
Three crises during the past year; or 5 or more episodes (vomoting, diarrhea, hypotension, or marked weakness) during the past year	40
Weakness and fatigability; or corticosteroid therapy required for control	20
Note: Tuberculous Addison's disease will be rated as active or inactive tuberculosis. If inactive, these ratings are not to be combined with the graduated ratings of 50 percent or 30 percent for non-pulmonary tuberculosis as specified under §4.88b. Assign the higher rating..	

	Rating
7912 Pluriglandular syndromes:	
Rate according to major manifestations.	
7913 Diabetes mellitus:	
Repeated episodes of ketoacidosis or repeated hypoglycemic reactions which require more than 1 daily injection of insulin, frequent hospital or physician treatment, restricted diet and regulation of activities, and either progressive loss of weight and strength, or severe complications such as retinopathy, nephropathy, arteriosclerois, or neuropathy	100
Occasional episodes of ketoacidosis or hypoglycemic reactions requiring insulin, restricted diet and regulation of activities, with mild complications such as mild vascular deficiencies or beginning diabetic ocular disturbances	60
Restricted diet, regulation of activities, and insulin required for control	40
Restricted diet and either insulin or oral hypoglycemic agent required for control	20
Controlled by restricted diet only	10
Note 1: Rate compensable complications of diabetes separately unless they are part of the criteria used to support a 100 percent evaluation. Noncompensable complications are considered part of the diabetic process under diagnostic code 7913..	
Note 2: When diabetes mellitus has been definitely diagnosed, do not request a glucose tolerance test solely for rating purposes..	
7914 Neoplasms, malignant, any specified part of the endocrine system	100
Note: Following the cessation of surgical, X-ray, antineoplastic chemotherapy or other therapeutic procedure, the rating of 100 percent shall continue with a mandatory VA examination at the expiration of six months. Any change in evaluation based upon that examination shall be subject to the provisions of §3.105(e) of this chapter. If there has been no local recurrence or metastasis, rate on residuals..	
7915 Neoplasms, benign, any specified part of the endocrine system:	
Rate as residual of endocrine dysfunction.	
7916 Hyperpituitarism (prolactin secreting pituitary dysfunction)	
7917 Hyperaldosteronism (benign or malignant)	
7918 Pheochromocytoma (benign or malignant)	
Note: Rate diagnostic codes 7916 through 7918 as malignant or benign peoplasm under diagnostic code 7914 or 7915, whichever is applicable..	
7919 C-cell hyperplasia of the thyroid:	
Rate as malignant neoplasm under diagnostic code 7914.	

(Authority: 38 U.S.C. 1155).

[FR Doc. 93-1543 Filed 1-21-93; 8:45 am]

BILLING CODE 8320-01-U

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 52

[NH-6-2-5598; A-1-FRL-4554-3]

Approval and Promulgation of Air Quality Implementation Plans; New Hampshire—Capture Efficiency Test Procedures

AGENCY: Environmental Protection Agency (EPA).

ACTION: Proposed rule.

SUMMARY: EPA is proposing to approve a State Implementation Plan (SIP) revision submitted by the State of New Hampshire. This revision corrects deficiencies in the State's volatile organic compound (VOC) regulations in response to EPA's May 25, 1988 Ozone SIP call and the Clean Air Act requirement that States "fix-up" their reasonably available control technology (RACT) rules. The intended effect of this action is to propose approval of this revision to New Hampshire's SIP which incorporates the current federal RACT requirements for VOC. These RACT corrections are a requirement of the Clean Air Act (CAA) as amended in 1990 (Section 182(a)(2)(A)). This action is being taken under section 110 and part D of the Clean Air Act.

DATES: Comments must be received on or before February 22, 1993. Public comments on this document are requested and will be considered before taking final action on this SIP revision.

ADDRESSES: Comments may be mailed to Linda M. Murphy, Director, Air, Pesticides and Toxics Management Division, U.S. Environmental Protection Agency, Region I, JFK Federal Bldg., Boston, MA 02203. Copies of the State submittal and EPA's technical support document are available for public inspection during normal business hours, by appointment at the Air, Pesticides and Toxics Management Division, U.S. Environmental Protection Agency, Region I, One Congress Street, 10th floor, Boston, MA and the Air Resources Division, Department of Environmental Services, 64 North Main Street, Caller Box 2033, Concord, NH 03302-2033.

FOR FURTHER INFORMATION CONTACT: Jeanne Cosgrove, (617) 565-3246.

SUPPLEMENTARY INFORMATION: On May 15, 1992, the New Hampshire Air Resources Division (ARD) submitted a

revision to its SIP. This revision corrects deficiencies in New Hampshire's VOC regulations.

Background

Based on monitored ozone exceedances in New Hampshire, EPA sent letters to the Governor of New Hampshire on May 25, 1988 and November 8, 1989, pursuant to section 110(a)(2)(H) of the pre-amended Clean Air Act, informing him that the New Hampshire SIP was substantially inadequate to achieve the national ambient air quality standard (NAAQS) for ozone in parts of New Hampshire. EPA requested that the State respond to the SIP call in two phases—the first in the near future and the second following EPA's issuance of a final policy on how the States should correct their SIPs. The first phase of the response to the SIP call was meant to consist of (1) correcting identified deficiencies in the existing SIP's VOC regulations, (2) adopting VOC regulations previously required or committed to, but never adopted, and (3) updating the area's base year emission inventory.

On June 16, 1988, EPA sent a follow-up letter to the New Hampshire ARD identifying specific technical inadequacies and inconsistencies in New Hampshire's VOC regulations as compared to the requirements of the CAA as interpreted in EPA guidance. One of the noted deficiencies was the lack of a capture efficiency test method. On November 15, 1990, the Clean Air Act Amendments of 1990 were enacted. Public Law 101–549, 104 Stat. 2399, codified at 42 U.S.C. 7401–7671q. In amended section 182(a)(2)(A), Congress statutorily adopted the requirement that ozone nonattainment areas fix their deficient RACT rules for ozone. Areas designated nonattainment before enactment of the Amendments and which retained that designation and were classified as marginal or above as of enactment are required to meet the RACT fix-up requirement. Under section 182(a)(2)(A), those areas were required by May 15, 1991, to correct RACT as it was required under pre-amended section 172(b) as interpreted in EPA's pre-amendment guidance.[1] The SIP call letters interpreted that guidance and indicated corrections necessary for specific nonattainment areas. Portions of New Hampshire are classified as marginal and serious.[2] Therefore, these areas are subject to the RACT fix-up requirement and the May 15, 1991 deadline.

New Hampshire's Revision

In response to the first phase of EPA's SIP call and the section 182(a)(2)(A) requirement, and EPA's June 16, 1988 follow-up letter, on January 17, 1992, New Hampshire adopted a new regulation entitled "Capture Efficiency Test Procedures" (Part Env-A 805). Although EPA is only requiring this RACT fix-up requirement to be adopted in portions of the State classified as marginal and serious, New Hampshire has chosen to make this regulation applicable throughout the entire State. The "Capture Efficiency Test Procedures" regulation is briefly summarized below.

Part Env-A 805—Capture Efficiency Test Procedures

This regulation specifies the test procedures required to measure how much of the total VOC emissions from a regulated source is captured and delivered to a control system.

EPA has evaluated this revision and found that it corrects the deficiencies listed in EPA's SIP call follow-up letter and is consistent with EPA's guidance contained in EPA's April 16, 1990 memorandum from John S. Seitz, Director, Stationary Source Compliance Division entitled "Guidelines for Developing a State Protocol for the Measurement of Capture Efficiency" and August 3, 1990 memorandum from G. T. Helms, Chief, Ozone/Carbon Monoxide Programs Branch entitled "Model Regulatory Language for Capture Efficiency Testing." In addition, it should be noted that the August 3, 1990 model rule did not address certain issues which the State was given the responsibility to specify. Specifically, these issues are: 1) how often a source should perform a new capture efficiency test, 2) what parameters should be routinely monitored after a test has been conducted, and 3) what changes in the parameters would trigger a new test. Regional personnel worked with the State of New Hampshire in order to address these issues in its regulation.

New Hampshire's regulation and EPA's evaluation are detailed in a memorandum, dated October 6, 1992, entitled "Technical Support Document—New Hampshire SIP Revision Concerning Amendments to Chapter Env-A 800 of the New Hampshire Rules Governing the Control of Air Pollution (Capture Efficiency)." Copies of that document are available, upon request, from the EPA Regional Office listed in the **ADDRESSES** section of this notice.

EPA is proposing to approve the New Hampshire SIP revision for capture efficiency test procedures and is soliciting public comments. These comments will be considered before taking final action. Interested parties may participate in the Federal rulemaking procedure by submitting written comments to the EPA Regional Office listed in the **ADDRESSES** section of this notice.

Proposed Action

EPA is proposing to approve Part Env-A 805 "Capture Efficiency Test Procedures" because it corrects deficiencies listed in EPA's SIP call follow-up letter and is consistent with the above noted EPA guidance. Therefore, EPA believes that New Hampshire has met the RACT fix-up requirement that it correct its existing RACT rules to provide a capture efficiency testing procedure.

Under the Regulatory Flexibility Act, 5 U.S.C. 600 et. seq., EPA must prepare a regulatory flexibility analysis assessing the impact of any proposed or final rule on small entities. 5 U.S.C. 603 and 604. Alternatively, EPA may certify that the rule will not have a significant impact on a substantial number of small entities. Small entities include small businesses, small not-for-profit enterprises, and government entities with jurisdiction over populations of less than 50,000. SIP approvals under section 110 and subchapter I, Part D of the CAA do not create any new requirements, but simply approve requirements that the State is already imposing. Therefore, because the federal SIP-approval does not impose any new requirements, I certify that it does not have a significant impact on any small entities affected. Moreover, due to the nature of the federal-state relationship under the CAA, preparation of a regulatory flexibility analysis would constitute federal inquiry into the economic reasonableness of state action. The CAA forbids EPA to base its actions concerning SIPs on such grounds. *Union Electric Co.* v *U.S. E.P.A.*, 427 U.S. 246, 256–66 (S.Ct. 1976); 42 U.S.C. 7410(a)(2).

This action has been classified as a Table 2 action by the Regional Administrator under the procedures published in the **Federal Register** on

[1] Among other things, the pre-amendment guidance consists of the portions of the Post-87 policy that concern RACT, 52 Fed. Reg. 45044 (Nov. 24, 1987); the Bluebook, "Issues Relating to VOC Regulation Cutpoints, deficiencies and Deviations, Clarification to appendix D of November 24, 1987 **Federal Register** Notice" (of which notice of availability was published in the **Federal Register** on May 25, 1988); and the existing control technique guidelines (CTGs).

[2] These areas were designated as nonattainment prior to enactment of the amended Act. They retained their designation of nonattainment and were classified by operation of law pursuant to section 107(d) and 181(a) upon enactment of the Amendments. 56 FR 56694.

January 19, 1989 (54 FR 2214). On January 6, 1989, the Office of Management and Budget (OMB) waived Table 2 and Table 3 revisions (54 FR 2222) from the requirements of Section 3 of Executive Order 12291 for a period of two years. EPA has submitted a request for a permanent waiver for Table 2 and Table 3 SIP revisions. OMB has agreed to continue the temporary waiver until such time as it rules on EPA's request.

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.

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)–(L) and 110(a)(3) of the Clean Air Act, as amended, and EPA regulations in 40 CFR part 51.

List of Subjects in 40 CFR Part 52

Air pollution control, Hydrocarbons, Incorporation by reference, Ozone.

Authority: 42 U.S.C. 7401–7671q.

Dated: December 29, 1992.

Julie Belaga,

Regional Administrator, Region I.

[FR Doc. 93–1503 Filed 1–21–93; 8:45 am]

BILLING CODE 6560–50–M

DEPARTMENT OF THE INTERIOR

Bureau of Land Management

43 CFR Part 3400

[WO–650–4120–02]

RIN 1004–AC04

Coal Management—General

AGENCY: Bureau of Land Management, Interior.

ACTION: Proposed rulemaking.

SUMMARY: This proposed rule would add to the regulations on coal management a section that allows decisions affecting actions in the Federal Coal Management Program to remain in full force and effect during the pendency of any appeals to the Interior Board of land Appeals (IBLA), unless the appellant shows sufficient justification to the IBLA that a stay is necessary. Such a provision would allow the IBLA to proceed with consideration of significant issues without hindering the expeditious completion of the coal leasing and lease management process. It will allow the IBLA to determine whether the issues involved in an appeal warrant a stay of leasing and lease management activity and the accompanying delays and economic consequences. This rule in no way reduces the right of aggrieved parties to file an administrative appeal or affects the rights to sue the Federal Government in court over disagreements with policies and decisions.

DATES: Comments should be received at the address below by March 23, 1993. Comments received after this date may not be considered in the promulgation of a final rule.

ADDRESSES: Comments should be sent to: Director (140), Bureau of Land Management, room 5555, Main Interior Building, 1849 C St., NW., Washington, DC 20240.

FOR FURTHER INFORMATION CONTACT: Paul Politzer, (202) 208–7722, or Carole Smith, (202) 208–3258.

SUPPLEMENTARY INFORMATION: This proposed rule responds to a petition for rulemaking, filed by Entech, Inc., under the provisions of 43 CFR part 14.

I. Background

In early June 1992, the Department of the Interior received a petition for emergency rulemaking from Entech, Inc. Under 43 CFR part 14, such a petition is to be given prompt consideration, and the Secretary of the Interior may request public comment to aid in the consideration of the petition. The Department has decided, based on a review of the petition and the current situation in the Federal Coal Management Program, to request public review of and comment on the proposal and its rationale through a proposed rule.

The petitioner is one of four applicants for Federal coal lease tracts located in the Powder River Basin (the Basin) of northeastern Wyoming. Leasing activity in the Basin resumed in September 1991 after a hiatus of 9 years, during which an estimated 1 billion tons of coal were mined and shipped to markets in 22 different States. Although it has relatively low Btu values, Basin coal has a generally low sulfur content, making it useful in achieving the restrictive standards for emissions of oxides of sulfur required by the Clean Air Act Amendments. The September 1991 sale was appealed to the IBLA by environmental groups concerned about coal leasing procedures and alleged impacts on groundwater in the Basin. The appeal was filed despite longstanding efforts to resolve differences and to solicit and accommodate environmental concerns both within the environmental analysis process and under the public meeting process provided by the powder River Regional Coal Team. Several groups—other applicants for lease sales, the State of Wyoming and the City Commissioners of Gillette, Wyoming—were granted friend of the court status or intervened and filed briefs in support of the Bureau of Land Management (BLM) in this appeal. The IBLA ruled in favor of the BLM, Powder River Basin Resource Council, 124 IBLA 83 (1992), but during the year that the case was pending, the prospective lessee did not know whether the lease would issue and therefore could not depend on the Federal coal to meet its contract obligations, the State of Wyoming as denied mineral leasing revenues for public uses, and the allegations about adverse environmental impacts remained unresolved.

Although the primary area of focus of this proposed rule is the Basin, appeals of coal leasing decisions have public interest consequences nationally. Historically, disputes over the procedures by which coal leasing decisions are reached and over the amount of coal that is leased—principally in the Basin—have received Congressional oversight, resulting in studies and leasing moratoria. As of July 1, 1992, there were 24 applications, covering 44,710 acres and containing approximately 1.3 billion tons of Federal coal, for lands located in Alabama (3), Colorado (4), Kentucky (4), Montana (1), Utah (6), and Wyoming (6). The number represents a backlog of demand for unleased Federal coal, caused by 4 years of low coal leasing activity while mining continued on Federal leases.

Potential sales resulting from these applications are tentatively scheduled to occur within the next 3 years and to become significant sources of revenue for State and local governments and require significant expenditures of BLM administrative resources (an estimated average of 38.5 work months and $192,500 per application). The applications for the most part represent extensions of existing mines to meet contract obligations or to prevent the bypass of Federal coal, and will not be offered for lease sale until and unless all statutory, regulatory, and procedural requirements for environmental analysis, consultation with appropriate Federal and State entities, and economic evaluation have been met.

Growing numbers of appeals are expected. If appeals are taken for other

coal leasing decisions,both within the outside of the Powder River Basin, significant potential exists for the bypass of Federal coal, for delays in mining operations and royalty payments to the States, for decreases in revenues to the Treasury, for additional strain and uncertainty on the industry as to the reliability of the United States Government as a supplier of coal resources and for loss of employment opportunities. Supplier reliability is crucial, particularly in the western United States, where there are limited non-Federal coal reserves. Loss of revenue to the States, particularly the western States, may adversely affect citizens of the communities near mines, as the States may be less able to provide or maintain public services for them.

Although bonus payments from lease sales are significant, the major portion of mineral revenues accruing to the States derives from rentals and royalties from producing leases. In Fiscal Year 1991, for instance, production from Federal leases generated 268 million tons of coal and $284 million in royalties, at least half of which, depending upon the statutory leasing authority involved, was returned to the States or counties for their use in mitigating impacts to community infrastructures. Many States additionally impose severance taxes on all coal removed from the ground within State boundaries.

Appeals of leasing an lease management decisions delay or prevent the Bureau from meeting its responsibility to implement the Federal Coal Leasing Amendments Act and the Surface Mining Control and Reclamation Act of 1977, and its mission to provide for the multiple use and sustained yield of public lands pursuant to the Federal Land Policy and Management Act of 1976.

Under current appeals procedures, appeals that are brought by entities who disagree with agency procedures and decisions, and that are filed to prevent Federal coal leasing and development, may delay that activity indefinitely.

II. Appeals Language—Effect on Third Parties

The September 1991 appeal by environmental groups concerned the nature of the leasing process by which the Federal coal was offered for sale—the so-termed "lease-by-application" method—and the degree of analysis given potential environmental impacts from mining, particularly potential adverse impacts on regional groundwater supplies.

The merits of the lease-by-application method are beyond the scope of this rule and were not addressed in the IBLA decision in the Powder River Basin Resource Council case.

With respect to the degree of analysis given impacts from mining, the most effective time for public participation in the environmental analysis process is during scoping meetings and public hearings, when all matters of environmental concern may be raised by the public and specific examples of adverse impacts discussed. The concerns expressed by the public guide the Bureau in preparing and analyzing the environmental impacts of coal mining on specific tracts and are reflected in site-specific stipulations in the leases for those tracts being offered for sale. In deciding whether or not to offer a tract for lease sale, the Bureau balances those environmental impacts resulting from mining that can be mitigated or eliminated and those that cannot be against the value of the resource. The Bureau usually issues coal leases to high bidders offering at least the fair market value of the resource, if those bidders meet all other statutory and regulatory requirements.

Lease issuance then triggers the exploration and development requirements of the Surface Mining Control and Reclamation Act of 1977. Meeting these requirements represents a considerable financial investment on the part of the lessee. The requirements also subject proposed lease operations to further environmental analysis and public review. The environmental analysis process usually generates public hearings, at which mine-specific issues are raised and addressed, and an environmental impact statement. The end result of the process is the decision to issue a permit to mine or to reject the application for permit to mine.

This two-stage environmental analysis process gives the public many opportunities for involvement in the leasing and mining process while at the same time imposing a risk on potential lessees and lessees that the process will be delayed indefinitely by possible third-party appeals. Such delays in leasing or lease development may endanger contract obligations and may impose severe financial hardships on lessees and operators who are trying in good faith to meet their responsibilities for environmental protection while remaining competitive in private enterprise. It may also impose a risk to the public interest if the development of lease tracts is blocked by parties alleging unsubstantiated harm. This rule would not diminish the opportunity to appeal coal leasing decisions, but would require a substantiation of alleged harm in order to stay a leasing decision during an appeal.

Given the public involvement prior to a decision being made to lease a coal tract and the other steps the Bureau takes to comply with environmental requirements, the proposed changes to the coal leasing appeals rules are reasonable. The proposed rule change would place some reasonable responsibilities on appellants without taking away any substantive appeal rights. The new section 3400.7 would require that appellants to IBLA be adversely affected by the decision and that all coal leasing and coal lease management decisions are in full force and effect pending appeal unless the IBLA determines otherwise. The rule would place a burden on appellants to show clearly why a stay of the decision is warranted. Parties pursuing appeals may obtain a stay of the decision from the IBLA upon a showing of sufficient justification based on the following standards: (1) The relative harm to the parties if the stay is granted or denied, (2) the likelihood of the appellant's success on the merits, (3) the likelihood of irreparable harm to the appellant or resources if the stay is not granted, and (4) whether granting the stay would be in the public interest.

III. Appeals Language—Effect on Lessees and Operators

The proposed rule change would also directly affect coal lessees and operators who appeal decisions regarding lease operations.

After a coal lease is issued, lessees must be producing coal in commercial quantities within 10 years in order to prevent the leases from terminating. This so-called "diligent development requirement" is of significant concern to lessees and operators. Since August 1976, when the Federal Coal Leasing Amendments Act was enacted, over 40 coal leases have terminated due to a failure to comply with the diligent development requirement. That number is expected to grow as more and more pre-1976 coal leases become subject to the Act's diligence provision.

Under this proposed rule change, in instances wherein a lessee or operator appeals a decision regarding noncompliance, the decision would remain in effect pending the resolution of the appeal. Decisions such as a denial of approval of applications for a logical mining unit (LMU) would remain in effect pending the resolution of any appeals. Unless a stay of the decision denying the formation of the LMU is granted by the IBLA, the time period of the appeal would diminish the diligence period of any older coal leases in the

LMU. Therefore, under this rule change, lessees and operators, as well as third-party appellants, would be required to make a proper showing in order to obtain a stay of a decision being appealed.

IV. Determinations

The principal author of this proposed rule is Carole Smith, Division of Solid Minerals, assisted by the staff of the Division of Legislation and Regulatory Management, Bureau of Land Management, and the Office of the Solicitor, Department of the Interior.

It is hereby determined that this proposed rule does not constitute a major Federal action significantly affecting the quality of the human environment and that no detailed statement pursuant to section 102(2)(C) of the National Environmental Policy Act of 1969 (42 U.S.C. 4332(2)(C)) is required. Before offering coal tracts for lease sale, the Bureau prepares environmental documents (either an environmental assessment or an environmental impact statement), analyzing the impacts of potential leasing and development activities on the cultural, economic, physical, and social environments. Prior to lease development, additional environmental analysis is conducted. Therefore, by the time of the lodging of an appeal, under standard BLM procedures, an environmental review and analysis will have been performed as to the activity that is the subject matter of the appeal. The lodging of an appeal on the lease sale is essentially a disagreement with the procedures or analysis used in reaching the decision. Accordingly, no additional environmental analysis is needed because this rule would change the effect of the pendency of an appeal only.

The Department has determined that this document is not a major rule under Executive Order 12291. A major rule is any regulation that is likely to result in an annual effect on the economy of $100 million or more, a major increase in costs or prices for consumers, individual industries, Federal, State, or local government agencies or geographic regions, or significant adverse effects on competition, employment, investment, productivity innovation, or on the ability of United States-based enterprises to compete in domestic and foreign markets. This rule will not increase or decrease the bonus bids made at competitive lease sales, change the extent of investment of coal lessees and operators in leasing and lease development, increase the price that consumers pay for electricity, or necessitate increases in State or local budgets to offset extended financial and personnel requirements. In fact, third party appeals may increase all costs to all parties directly affected by leasing and development decisions so that the net effect of this rule is to lower costs overall.

The Department has determined that this rule has no significant economic impact on a substantial number of small entities, as required by the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*). Small entities will benefit from this rulemaking to the same extent that larger entities will in that their authority to act in making bids at lease sales and in making investment decisions on lease exploration and development will not be delayed pending the outcome of appeals by third parties not directly affected by agency decisions.

The Department certifies that this proposed rule does not represent a governmental action capable of interference with constitutionally protected property rights. It does not infringe upon any private property rights. Therefore, as required by Executive Order 12630, the Department of the interior has determined that the rule would not cause a taking of private property.

The Department has certified to the Office of Management and Budget that this rule meets the applicable standards provided in sections 2(a) and 2(b)(2) of Executive Order No. 12278.

This rule does not contain information collection requirements that require approval by the Office of Management and Budget under 44 U.S.C. 3501 *et seq.*

List of Subjects in 43 CFR Part 3400

Administrative practice and procedure, Coal, Government contracts, Intergovernmental contracts, Mines, Public lands-mineral resources.

For the reasons stated in the preamble, and under the authorities stated below, subpart 3400 of group 3400, subchapter C, chapter II, subtitle B, of title 43 of the Code of Federal Regulations is proposed to be amended as follows:

PART 3400—COAL MANAGEMENT: GENERAL

1. The authority citation continues to read as follows:

Authority: 30 U.S.C. 181 *et seq.*; 30 U.S.C. 351–359; 30 U.S.C. 521–531; 30 U.S.C. 1201 *et seq.*; 43 U.S.C. 1701 *et seq.*; 25 U.S.C. 396–399; 25 U.S.C. 2101 *et seq.*; 42 U.S.C. 4321 *et seq.*; 16 U.S.C. 470 *et seq.*; 16 U.S.C. 1531 *et seq.*; 43 U.S.C. 1457 *et seq.*; 40 U.S.C. 471 *et seq.*; 5 U.S.C. 552; and 30 U.S.C. 811 and 877.

2. Section 3400.7 is added to read as follows:

§ 3400.7 Appeals.

(a) A party adversely affected by a decision or approval of the authorized officer under group 3400 may appeal that decision to the Interior Board of Land Appeals as set forth in part 4 of this title.

(b) All decisions and approvals of the authorized officer under group 3400 shall remain effective pending appeal unless the Interior Board of Land Appeals determines otherwise upon consideration of the standards stated in this paragraph. The provisions of 43 CFR 4.21(a) shall not apply to any decision under this Group. A petition for stay of a decision of the authorized officer shall be filed with the Interior Board of Land Appeals, Office of Hearings and Appeals, Department of the Interior, and shall show sufficient justification based on the following standards:

(1) The relative harm to the parties if the stay is granted or denied,

(2) The likelihood of the appellant's success on the merits,

(3) The likelihood of irreparable harm to the appellant or resources if the stay is not granted, and

(4) Whether the public interest favors granting the stay.

Dated: December 31, 1992.

Richard Roldan,

Acting Assistant Secretary of the Interior.

[FR Doc. 93–1468 Filed 1–21–93; 8:45 am]

BILLING CODE 4310–84–M

DEPARTMENT OF TRANSPORTATION

National Highway Traffic Safety Administration

49 CFR Part 571

[Docket No. 80–9; Notice 7]

RIN 2127–AE86

Federal Motor Vehicle Safety Standards; Lamps, Reflective Devices, and Associated Equipment

AGENCY: National Highway Traffic Safety Administration (NHTSA), DOT.

ACTION: Supplementary notice of proposed rulemaking (SNPRM).

SUMMARY: This SNPRM proposes that trailers which have an overall width of 80 inches or more and a GVWR of more than 10,000 pounds, except trailers manufactured exclusively for use as offices or dwellings, and which are equipped with a conspicuity treatment conforming to S5.7, need not be

equipped with the reflex reflectors required by Table I. Also, the notice proposes modifications to Figure 29's requirements for specific intensity per unit area values for retroreflective sheeting.

DATES: Comments are due on the notice March 8, 1993.

ADDRESSES: Comments should refer to Docket 80–9; Notice 7, and be submitted to: Administrator, Docket Section, room 5109, Nassif Building, 400 Seventh Street, SW., Washington DC 20590 (Docket hours are from 9:30 a.m. to 4 p.m.)

FOR FURTHER INFORMATION CONTACT: Patrick Boyd, Office of Rulemaking (202–366–6346).

SUPPLEMENTARY INFORMATION: On December 10, 1992, NHTSA published a final rule amending Federal Motor Vehicle Safety Standard No. 108 *Lamps, Reflective Devices and Associated Equipment* to add paragraph S5.7 *Conspicuity Systems*. The rule (57 FR 58406) implemented a notice of proposed rulemaking (NPRM) published on December 4, 1991 (56 FR 63474). Under the rule, trailers manufactured on or after December 1, 1993, which have an overall width of 80 inches or more and a GVWR of more than 10,000 pounds (except trailers manufactured exclusively for use as offices or dwellings), must be equipped with a conspicuity treatment of either retroreflective sheeting or reflex reflectors.

The comments responding to the rule when it was proposed suggested two modifications that appeared merited, but could not be adopted in the rule because they were beyond the scope of the proposal. NHTSA announced that it would issue the SNPRM proposing a modification of the final rule to implement those comments.

Performance of Retroreflective Sheeting

Brightness of retroreflective material is expressed in "specific intensity per unit area" or "SIA". SIA is specified in Standard No. 108's Figure 29 at observation angles of 0.2 degree and 0.5 degree, and light entrance angles of -4 degrees and 30 degrees. Commenters such as 3M, TSIE, and Peterson Manufacturing voiced a need for values at an entrance angle of 45 degrees. NHTSA tentatively concurs. The value suggested was 60, as contained in SAE J1967. This appears to be based upon the characteristics of the retroreflective material used in the Vector study (see the NPRM for a discussion of the study). The SNPRM proposes that Figure 29 be amended to add a value of 60 at an entrance angle of 45 degrees and an observation angle of 0.2 degree for DOT–C2 white retroreflective material. An appropriate value is also proposed for 0.5 degree, as are values for red retroreflective materials. The proposal extends to DOT–C3 and DOT–C4 materials as well.

Stimsonite commented that the ratio of red to white brightness of retroreflective material is constant for changes in observation angle. This means that the value of 10 SIA adopted for DOT–C2 red material at 0.5 degree and entrance angles of –4 degrees and 30 degrees should be 15, and not 10 as adopted. NHTSA is proposing an appropriate amendment of Figure 29 to ensure consistency.

Redundancy of Reflex Reflectors

Some commenters stated that the requirements for conspicuity materials obviate the need for some existing lamps and reflectors. UPS asked that clearance lamps be eliminated, while TTMA requested the elimination of identification lamps and reflex reflectors for trailers equipped with conspicuity treatment. The American Petroleum Institute would add side marker lamps as well to the list of the items to be eliminated. On the other hand, Trucklite and Grote oppose elimination of any lamps and reflectors, believing that each has a safety function to perform.

The agency does not intend to propose removal of identification, clearance, or marker lamps for trailers equipped with conspicuity materials. The conspicuity treatment is intended to augment lighting devices, not substitute for them. Trucklite points out that, even granting the benefits of conspicuity treatment, safety depends on the light output of lamps in extreme weather conditions, when the trailer is dirtier than normal, or when the headlamps of an approaching vehicle are faulty.

However, the agency believes there may be some duplication of safety mission between the reflex reflectors required by the standard, and the conspicuity treatment required by paragraph S5.7. Table I of Standard No. 108 requires that large trailers be equipped with 2 amber reflex reflectors located at the side front, 2 red reflex reflectors located at the side rear, and 2 red reflex reflectors on the rear. If the overall length of the trailer is 30 feet or more, intermediate side reflex reflectors, amber in color, must be added. Under Table II, reflex reflectors may be mounted at any height between 15 and 60 inches. Thus, rear and side reflex reflectors could be considered redundant, even though amber reflex reflectors on the front and midpoint of large trailers would be replaced with red conspicuity treatment.

NHTSA is proposing that new trailers manufactured with a conspicuity treatment that meets S5.7 need not be equipped with reflex reflectors as required by Table I. It wishes to have comments on whether this permission should apply only to vehicles whose conspicuity treatment consists entirely of reflex reflectors.

This proposed rule does not have any retroactive effect. Under section 103(d) of the National Traffic and Motor Vehicle Safety Act (15 U.S.C. 1392(d)), whenever a Federal motor vehicle safety standard is in effect, a state may not adopt or maintain a safety standard applicable to the same aspect of performance which is not identical to the Federal standard. Section 105 of the Act (15 U.S.C. 1394) sets forth a procedure for judicial review of final rules establishing, amending or revoking Federal motor vehicle safety standards. That section does not require submission of a petition for reconsideration or other administrative proceedings before parties may file suit in court.

Proposed Effective Date of Final Rule

The proposed effective date of the final rule is December 1, 1993. This is the general effective date for the conspicuity requirements of S5.7.

Rulemaking Analyses

Executive Order 12291 (Federal Regulation) and DOT Regulatory Policies and Procedures

NHTSA has considered the impacts of this rulemaking action and has determined that it is not major within the meaning of Executive Order 12291 "Federal Regulation," nor is it significant under Department of Transportation regulatory policies and procedures. The rulemaking will not have an effect upon the economy in excess of $100 million a year. NHTSA estimates that the cost savings that would be realized by elimination of superfluous reflex reflectors would be a total of $1.7 million a year. A Regulatory Evaluation of the original rule has been prepared and is available for examination by the public in the docket.

Regulatory Flexibility Act

The agency has also considered the effects of this rulemaking action in relation to the Regulatory Flexibility Act. I certify that this rulemaking action would not have a significant economic effect upon a substantial number of small entities. Although trailer

manufacturers are generally small businesses within the meaning of the Regulatory Flexibility Act, the agency estimates that compliance cost savings to the trailer buyer who chooses to eliminate reflectors would average $10 to $13 per trailer. Further, small organizations and governmental jurisdictions would not be significantly affected as the price of new trailers equipped with conspicuity treatment would not be more than minimally impacted. Accordingly, no Regulatory Flexibility Analysis has been prepared.

Executive Order 12612 (Federalism)

This rulemaking action has been analyzed in accordance with the principles and criteria contained in Executive Order 12612 on "Federalism." It has been determined that the proposed rule does not have sufficient federalism implications to warrant the preparation of a Federalism Assessment.

National Environmental Policy Act

NHTSA has analyzed this rulemaking action for purposes of the National Environmental Policy Act. The proposed rule will not have a significant effect upon the environment. Retroreflective material is non-toxic. There would be a materials saving from manufacturing fewer reflex reflectors. The proposed rule would not have an effect upon fuel consumption.

List of Subjects in 49 CFR Part 571

Imports, Motor vehicle safety, Motor vehicles

PART 571—FEDERAL MOTOR VEHICLE SAFETY STANDARDS

In consideration of the foregoing, it is proposed that 49 CFR part 571 be amended as follows:

1. The authority citation for part 571 would continue to read as follows:

Authority: 15 U.S.C. 1392, 1401, 1403, 1407; delegation of authority at 49 CFR 1.50.

§ 571.108 [Amended]

2. S5.1.1.32 would be added to read as follows:

S5.1.1.32 A trailer equipped with a conspicuity treatment in conformance with paragraph S5.7 of this standard need not be equipped with the reflex reflectors required by Table I of this standard.

3. Figure 29 would be revised to read as follows:

FIGURE 29.—MINIMUM PHOTOMETRIC PERFORMANCE OF RETROREFLECTIVE SHEETING IN CANDELA/LUX SQUARE METER

Entrance angle	Observation angle				Grade
	0.2 Degree		0.5 Degree		
	White	Red	White	Red	
-4 degree	250	60	65	15	DOT–C2.
30 degree	250	60	65	15	DOT–C2.
45 degree	60	15	15	4	DOT–C2.
-4 degree	165	40	43	10	DOT–C3.
30 degree	165	40	43	10	DOT–C3.
45 degree	40	10	10	3	DOT–C3.
-4 degree	125	30	33	8	DOT–C4.
30 degree	125	30	33	8	DOT–C4.
45 degree	30	8	8	2	DOT–C4.

Issued on: January 14, 1993.

Barry Felrice,

Associate Administrator for Rulemaking.

[FR Doc. 93–1337 Filed 1–21–93; 8:45 am]

BILLING CODE 4910–59–M

DEPARTMENT OF THE INTERIOR

Fish and Wildlife Service

50 CFR Part 17

Endangered and Threatened Wildlife and Plants; Notice of 12-Month Finding on Petition to List Cagle's Map Turtle

AGENCY: Fish and Wildlife Service, Interior.

ACTION: 12-month petition finding.

SUMMARY: The Fish and Wildlife Service (Service) announces a 12-month finding for the petition to add the Cagle's map turtle (*Graptemys caglei*) to the List of Endangered and Threatened Wildlife and Plants. The Cagle's map turtle is currently found only in the Guadalupe River system in southeast-central Texas in Kerr, Kendall, Comal, Guadalupe, Gonzales, Dewitt, and Victoria Counties. The Cagle's map turtle is threatened by habitat loss due to reservoir construction, water diversions, water quality degradation, and by human depredation (collecting for pet trade and intentional shootings). Information has been presented that the petition to list Cagle's map turtle is warranted but precluded by listing actions of higher priority. Because the threat to the species is not imminent, Cagle's map turtle is not proposed for listing at this time.

DATES: The finding announced in this notice was made on January 4, 1993.

ADDRESSES: Information, comments, or questions concerning this petition should be sent to the State Office Supervisor, Texas State Office, U.S. Fish and Wildlife Service, 611 East 6th Street, Room 407, Austin, Texas 78701. The petition, petition finding, and supporting data are available for public inspection by appointment, during normal business hours, at the above address.

FOR FURTHER INFORMATION CONTACT: Patrick Connor, Fish and Wildlife Biologist, at the above address (telephone 512/482–5436).

SUPPLEMENTARY INFORMATION:

Background

Section 4(b)(3)(B) of the Endangered Species Act of 1973, as amended (Act) (16 U.S.C. 1531 *et seq.*), requires that, for any petition to revise the List of Endangered and Threatened Wildlife and Plants that contains substantial scientific or commercial information, the Service should make a finding within 12 months of the date of receipt of the petition on whether the petitioned action is (a) not warranted, (b) warranted, or (c) warranted, but precluded from immediate action by other pending proposals.

Dr. Flavius Killebrew, Department of Biology and Geosciences, West Texas State University, Canyon, Texas, submitted a petition to the Service to list the Cagle's map turtle as a threatened species. The petition was dated April 16, 1991, and received by the Service on April 26, 1991. A 90-day determination that the action requested

may be warranted was announced in the Federal Register on December 16, 1991 (56 FR 65209).

Distribution and Biology of Cagle's Map Turtle

Cagle's map turtle is a river turtle and is restricted to riverine habitat (Killebrew 1991a). This turtle is endemic to the Guadalupe River system. Cagle's map turtle is currently found only in segments of the Guadalupe and San Marcos Rivers in Kerr, Kendall, Comal, Guadalupe, Gonzales, Dewitt, and Victoria Counties in southeast central Texas (Killebrew 1992, Killebrew and Porter 1991, Porter 1992).

The current distribution of Cagle's map turtle is in three river segments: (a) The upper Guadalupe River from Kerrville to Seguin, (b), the middle Guadalupe River from Seguin to Cuero (including the San Marcos River from Ottine to its confluence with the Guadalupe River), and (c) the lower Guadalupe River from Cuero to Victoria. The distribution is based on surveys using time-constrained basking turtle frequency indices and mark-recapture studies (Killebrew 1991a, Killebrew 1991b, Porter 1992).

The populations in the upper Guadalupe River are small and disjunct (Killebrew 1991a). From Kerrville downstream to Canyon Lake, populations are described as minimal and unevenly distributed (Killebrew 1991a). Cagle's map turtle is absent from Canyon Lake proper and virtually absent in the segment from Canyon Dam downstream to New Braunfels (Killebrew 1991a). Five impoundments on the Guadalupe River (Lake Dunlap, Lake McQueeny, Lake Placid, Starcke Park Lake, and Meadow Lake) occur between New Braunfels and Seguin. In this segment, Cagle's map turtle occurs only in small populations in a 7.5 km (4.6 mile) section where riverine conditions exist (Killebrew 1991a).

The middle Guadalupe supports the main population of this species consisting of the Guadalupe River between the towns of Seguin and Cuero (about 233 river-km or 144 river-miles), (Killebrew 1991a). About 60 to 70% of the species is estimated to occur between Seguin and Cuero, constituting the largest continuous distribution of the species (Flavius Killebrew, West Texas State University, pers. comm., 1992). A smaller population has been noted on the San Marcos River in Gonzales County (Porter 1992).

The Guadalupe River from Cuero to Victoria marks the southern extent of the distribution of *G. caglei*. The number of Cagle's map turtles decrease going downstream from Cuero, and disappear in the vicinity of Victoria (Killebrew 1991a, Killebrew 1992).

Habitat requirements for Cagle's map turtle are exemplified by the Guadalupe River between Seguin and Cuero where the "river bed is mostly silt and gravel" and "gravel bars connecting long pool areas with a shallow average depth and a muddy, moderate flow" (Killebrew 1992). Basking habitat is provided by fallen trees and shrubs, logs, rocks and cypress knees (Haynes and McKown 1974, Killebrew 1992).

Cagle's map turtle has distinct size differences between the sexes. The adult male upper shell (carapace) length averages 7 to 12 cm (3 to 5 in.), while those of females are generally larger and may attain sizes up to 20 cm (8 in) (Conant and Collins 1991, Haynes 1976, Haynes and McKown 1974, Killebrew and Porter 1989, Killebrew and Porter 1990). Little is known regarding reproduction in this species. Haynes and McKown (1974) collected hatchling turtles from September through November and surmised that Cagle's map turtle nesting period occurs in late spring and early summer. Nesting habits in this species are not well known. One observed nesting took place on a sand bar (Killebrew, pers. comm., 1992). However, Haynes and McKown (1974) reported that sand bars are virtually nonexistent in many reaches of the Guadalupe River and concluded that nesting habits in Cagle's map turtle may differ from other species of *Graptemys* that often nest on sandbars.

Cagle's map turtle is highly aquatic, and optimal habitat appears to include both riffles and pools (Haynes and McKown 1974, Killebrew 1991a, Killebrew 1992). Riffles are a section of a stream/river where the water is usually shallower and the current is of greater velocity than in the connecting pools. Gravel bar riffles and transition areas between riffles and pools are considered to be important for Cagle's map turtles since these areas are considered to be highly productive of inset prey items of Cagle's map turtle (Killebrew 1991a, Killebrew 1991b). Recent radiotelemetry studies indicate males may spend most of their time in these areas (Killebrew 1991b).

Killebrew (1991b) described Cable's map turtle feeding ecology, including seasonal, size-specific, and sex-specific diet differences. This study took place near Cuero in the southern part of the range. Adult males fed primarily on insects (81% of gastrointestinal contents by weight were insects) while adult females fed primarily on mollusks (88% of gastrointestinal contents by weight were Asiatic clam, *Corbicula fluminea*) (Killebrew 1991b). The Asiatic clam, a non-native species, escaped into Texas rivers sometime between 1970 and 1973 (B. McMann, University of Texas at Arlington, pers. comm., 1992).

Male Cagle's map turtles feed extensively (45% gastrointestinal contents by weight) on trichopteran (caddisfly) larvae of the genus *Nectopsyche* (Killebrew 1991b). Killebrew (1991b) also described other insect prey for Cagle's map turtles of both sexes, including mayfly nymphs, damselfly nymphs and adults, dragonfly nymphs and adults, stonefly nymphs, and spongillafly larvae. Male juveniles fed on nearly equal quantities of snails and insects while female juveniles ate nearly equal quantities of Asiatic clams and insects (Killebrew 1991b).

Haynes and McKown (1974) examined food items in several juvenile and adult males and two subadult females collected in July. They reported a diet of insects for both sexes (mostly caddisflies). Juveniles had also eaten large number of small gnat-like dipterans. The females had eaten cadisflies and snails. Lehmann (1979) reported both sexes as insectivorous, primarily consuming caddisflies and odonates (Dragonflies and damselflies). The studies of Haynes and McKown (1974) and Lehmann (1979) involved small sample sizes and collections during a one or two month period.

Threats to Cagle's Map Turtle

Cagle's map turtle warrants protection under the Act for the following reasons: (1) Cagle's map turtle has an extremely limited distribution; (2) within its current range, suitable habitat for Cagle's amp turtle is fragmented and becoming more scarce. Cagle's map turtle faces further losses of suitable habitat from proposed impoundments and water diversions; (3) Cagle's map turtles diet of aquatic invertebrates (particularly insects) may be adversely affected by altered instream flow, pollution and increased sedimentation; and (4) human depredation is occurring in the from of intentional shootings and over-collecting for the pet trade, zoos, museums, and scientific studies (Killebrew 1991a, Killebrew 1992). These factors are discussed below.

Cagle's map turtle is a restricted endemic species, occurring only in segments of the Guadalupe River and a small contiguous reach of the San Marcos River. Mark-recapture studies on a 27 km (17 mi) segment of the Guadalupe River near Cuero indicates that the population in the study area is stable (Killebrew 1992). The populations in the upper Guadalupe River are vulnerable due to their limited size and disjunct distribution.

The validity of historic records from the San Antonio River system (Dixon 1987, Haynes 1976, Haynes and McKown 1974) is uncertain (Porter 1992). The holotype and paratype specimens were from the Guadalupe River (Haynes and Mckown 1974) and only a few sight records were reported from the San Antonio River system. A recent survey of the San Antonio did not find any Cagle's map turtles (Porter 1992).

Historic records of Cagle's map turtle from the Blanco River and San Marcos River above Ottine exist, but this species was not found in those reaches during recent field work (Killebrew, pers. comm., 1992, Porter 1992).

Cagle's map turtle faces further riverine habitat losses and degradation in the form of small and/or large impoundments and water diversions. Cagle's map turtle is absent from deep water/non-riverine habitat in its range (Killebrew 1991a).

Cagle's map turtles occur where the Guadalupe River empties into Canyon Lake (an 8,240 acre reservoir) and they occur above the reservoir but not in the lake proper (Killebrew 1991a). The water released from the deeper and cooler portion of Canyon Lake may decrease the suitability of riverine habitat for Cagle's map turtle below Canyon Dam. Cagle's may turtle has been observed in only one small, warm pool between Canyon Lake and New Braunfels (Killebrew 1991a).

One effect of impoundment is the loss of riffle and riffle/pool transition areas used by males for foraging. Depending on its size, a dam itself may be a partial or complete barrier to Cagle's map turtle movement and could fragment a population. Construction of smaller impoundments and human activities on the river have likely eliminated or reduced foraging and basking habitats. Since Cagle's map turtle appears not to persist in lentic or lacustrine (lake-like) conditions (Killebrew 1992), impoundments reduce total habitat area and suitability, as well as fragment remaining habitat.

Proposed impoundments on the Guadalupe River and certain tributaries would adversely affect the Cagle's map turtle. The Texas Water Development Board (1990) recommended two reservoir sites (Lindenau and Cuero) in the Guadalupe River basin be developed to meet regional water supply needs. The proposed Cuero Reservoir would eliminate over half of the suitable habitat used by the main population (Killebrew 1991a). The Cuero Reservoir could be completed about 10 years from the time reservoir development begins in earnest. Other proposed reservoirs in the Guadalupe River system include: (a) Upper Guadalupe Reservoir; (b) Ingram Reservoir; (c) Lindenau Reservoir; (d) Clopton Crossing Reservoir; and (e) Lockhart Reservoir (Frye and Curtis 1990, Texas Water Development Board 1990). None of these reservoirs are on the Guadalupe River proper, but their construction would have effects on the Guadalupe River, its flow and physical habitat, existing Cagle's map turtle habitats, and the potential for species recovery in tributaries of the Guadalupe River. The City of San Antonio is currently examining alternate water supplies and is considering transfers from the Guadalupe River Basin and elsewhere to meet their needs. Water diversions from the Guadalupe River may affect Cagle's map turtle habitat in various ways depending upon how much water is diverted and how the diversion is accomplished. Although dams and reservoirs have high potential to impact Cagle's map turtle, construction of these impoundment projects is not occurring at this time and do not constitute an immediate or ongoing threat.

The distribution and abundance of Cagle's map turtles's prey base of aquatic insects may be affected by the proposed impoundments or diversions noted above. Male Cagle's map turtles feed extensively on caddisfly larvae of the genus *Nectopsyche* (Killebrew 1991b). This caddisfly genus has been identified as sensitive to and intolerant of organic/nutrient pollution (Hilsenhoff 1987). Other Cagle's map turtle insect prey items (described above) have been characterized as sensitive to organic pollution and other environmental changes (U.S. Environmental Protection Agency 1990). These insect groups (mayflies, stoneflies, and odonates) are likely to be adversely affected by increased organic waste/nutrient pollution or water quality degradation.

The availability of the Asiatic clam as a food item for female Cagle's map turtles is likely to be variable in time and space. The Asiatic clam is known for its explosive population growth and massive mortalities (die-offs) (Sinclair 1971) and is vulnerable to flooding (B. McMann, pers. comm., 1992). Dependence on this unreliable food source may further reduce population viability for Cagle's map turtle.

Currently, the cities of New Braunfels and Seguin are major point sources of treated municipal wastewater on the Guadalupe River, permitted for a combined discharge of 10.23 million gallons per day (MGD). Two more wastewater treatment plants in the area are planned with a combined permitted discharge of about 5 MGD. The capability of the Guadalupe River to assimilate this and other nutrient loading depends on the amount of steam flow.

Cagle's map turtles are threatened by human depredation in the form of over-collecting for the pet trade and intentional shootings (Killebrew, pers. comm., 1991, Killebrew 1991a, Killebrew 1992). Dealers in the pet trade are evidently selling Cagle's map turtles to wholesalers and have offered $50 per hatchling and $400 per breeding pair to map turtle collectors (Killebrew, pers. comm., 1991). Regulation of this commercial exploitation is minimal at the State level and there are no Federal regulations. State law requires only a hunting license to collect, shoot, sell, or trade Cagle's map turtle. Currently, exportation of Cagle's map turtles require only a declaration to the Fish and Wildlife Service at Ports of Entry. About 5% of individuals handled in the field have shell deformities indicative of shootings (Killebrew, pers. comm., 1992).

Section 4(b)(3)(B) of the Endangered Species Act requires that the Service make one of the following 12-month findings on any petition presenting substantial information: (i) The petitioned action is not warranted; (ii) the petitioned action is warranted and will be proposed promptly; or (iii) the petitioned action is warranted but is precluded by other efforts to revise the lists, and expeditious progress is being made in listing and delisting species. Section 4(b)(3)(B)(ii) requires that petitions for which the action requested is found to be warranted will be promptly published in the **Federal Register** along with a general notice and complete text of a proposed regulation to implement such action.

On the basis of the best available scientific and commercial information and the following assessment of Service listing priorities and progress, the Service finds that listing of Cagle's map turtle is warranted, but precluded by work on other species having higher priority for listing. Although the degree of threat to the species from impoundment projects is high, it is not an ongoing or imminent threat. Degrading water quality from pollution and human depredation is ongoing, but these threats by themselves would not cause the species to go extinct. The Service is expeditiously working on listing a backlog of species having higher priority for protection under the Endangered Species Act. The Service intends to list this species as soon as listing actions for species with a higher listing priority are completed. (With this petition finding of warranted but

precluded, Cagle's map turtle will be assigned to Category 1 on the Service's Animal Notice of Review.)

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Author

The primary author of this notice is Patrick Connor (see ADDRESSES above).

Authority

The authority for this action is 16 U.S.C. 1531–1544.

List of Subjects in 50 CFR Part 17

Endangered and threatened species, Exports, Imports, Reporting and recordkeeping requirements, Transportation.

Dated: January 4, 1993.

Richard N. Smith,

Acting Director, Fish and Wildlife Service.

[FR Doc. 93–1385 Filed 1–21–93; 8:45 am]

BILLING CODE 4310–55–M

Notices

Federal Register
Vol. 58, No. 13
Friday, January 22, 1993

This section of the FEDERAL REGISTER contains documents other than rules or proposed rules that are applicable to the public. Notices of hearings and investigations, committee meetings, agency decisions and rulings, delegations of authority, filing of petitions and applications and agency statements of organization and functions are examples of documents appearing in this section.

DEPARTMENT OF AGRICULTURE

Cooperative State Research Service

National Agricultural Research and Extension Users Advisory Board and Joint Council on Food and Agricultural Sciences; Meeting

According to the Federal Advisory Committee Act of October 6, 1972 (Pub. L. 92–463, 86 stat. 770–776), the Office of Grants and Program Systems, Cooperative State Research Service, announces the following meeting:

Name: National Agricultural Research and Extension Users Advisory Board (UAB) and Joint Council on Food and Agricultural Sciences (JC).

Date: February 16–19, 1993.

Time: 8 a.m.—5 p.m., February 16, 1993; 8 a.m.—2:30 p.m., February 17, 1993; 2:45 p.m.—5:30 p.m., February 17, 1993 (UAB and JC meet separately in workgroups); 8 a.m.—5 p.m., February 18, 1993 (UAB only); 8 a.m.—1 p.m., February 19, 1993 (UAB only).

Place: U.S. Department of Agriculture, 107A Administration Building, 12th and Independence Ave. S.W. Washington, DC.

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

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

Purpose: The UAB and JC will be preparing separate reports on FY 1995 priorities for agricultural research, teaching, and extension. The UAB and JC will also review budget requests for FY 1994.

Contact person for agenda and more information: Marshall Tarkington, Executive Secretary, National Agricultural Research and Extension Users Advisory Board and Joint Council on Food and Agricultural Sciences; room 432–A, Administration Building, U.S. Department of Agriculture, Washington, DC 20250–2200; telephone (202) 720–3684. Done in Washington, DC, this 12th day of January 1993.

John Patrick Jordan,

Administrator.

[FR Doc. 93–1482 Filed 1–21–93; 8:45 am]

BILLING CODE 3410–22–M

Federal Grain Inspection Service

Designation of the Cairo (IL) Agency to provide Class X or Class Y Weighing Services

AGENCY: Federal Grain Inspection Service (FGIS).

ACTION: Notice.

SUMMARY: FGIS announces the designation of the Cairo Grain Inspection Agency, Inc. (Cairo), to provide Class X or Class Y weighing services under the United States Grain Standards Act, as amended (Act), in the Cairo, Illinois, geographic area.

EFFECTIVE DATE: December 16, 1992.

ADDRESSES: Homer E. Dunn, Chief, Review Branch, Compliance Division, FGIS, USDA, Room 1647 South Building, P.O. Box 96454, Washington, DC 20090–6454.

FOR FURTHER INFORMATION CONTACT: Homer E. Dunn, telephone 202–720–8525.

SUPPLEMENTARY INFORMATION:

This action has been reviewed and determined not to be a rule or regulation as defined in Executive Order 12291 and Departmental Regulation 1512–1; therefore, the Executive Order and Departmental Regulation do not apply to this action.

In the September 30, 1992, **Federal Register** (57 FR 45033), FGIS announced the designation of Cairo to provide official inspection services under the Act, effective November 1, 1992. Subsequently Cairo asked FGIS to amend their designation to include official weighing services.

Section 7A(c)(2) of the Act authorizes FGIS' administrator to designate authority to perform official weighing to an agency providing official inspection services within a specified geographic area, if such agency is qualified under Section 7(f)(1)(A) of the Act. FGIS evaluated all available information regarding the designation criteria in Section 7(f)(1)(A) of the Act, and determined that Cairo is qualified to provide official weighing services in their currently assigned geographic area.

Effective December 17, 1992, and terminating upon the end of Cairo's designation to provide official inspection services (October 31, 1995), Cairo's present designation is amended to include Class X or Class Y weighing in their assigned geographic area, as specified in the May 1, 1992, **Federal Register** (57 FR 18863).

Interested persons may obtain official services in the Cairo area by contacting Cairo at 618–734–0689.

AUTHORITY: Pub. L. 94–582, 90 Stat. 2867, as amended (7 U.S.C. 71 *et seq.*)

Dated: January 12, 1993

Neil E. Porter

Acting Director, Compliance Division

[FR Doc. 93–1411 Filed 1–21–93; 8:45 am]

BILLING CODE 3410–EN–F

Correction of the Name of the Applicant Designated in the Schaal (IA) Area

AGENCY: Federal Grain Inspection Service (FGIS).

ACTION: Notice Correction.

SUMMARY: The notice published in the December 1, 1992, **Federal Register** incorrectly stated the name of applicant designated to provide official services in the Schaal geographic area. FGIS is correcting that notice by changing the name Lewis D. Schaal dba D. R. Schaal Agency to D. R. Schaal Agency, Inc.

ADDRESSES: Homer E. Dunn, Chief, Review Branch, Compliance Division, FGIS, USDA, Room 1647 South Building, P.O. Box 96454, Washington, DC 20090–6454.

FOR FURTHER INFORMATION CONTACT: Homer E. Dunn, telephone 202–720–8525.

SUPPLEMENTARY INFORMATION:

In the December 1, 1992, **Federal Register** (57 FR 56899), FGIS incorrectly stated the name of the applicant selected for designation in the Schaal area as Lewis D. Schaal dba D. R. Schaal Agency. This firm had incorporated, and the correct name is D. R. Schaal Agency, Inc.

FGIS is publishing this notice to correct the name of the applicant designated.

CORRECTION: In FR Doc. 92–28807, beginning on page 56899 (57 FR 56899) in the issue of Tuesday, December 1, 1992, make the following correction: on page 56899, in the second column, under "SUMMARY", in the first paragraph, change "Lewis D. Schaal dba D. R. Schaal Agency (Schaal)" to "D. R. Schaal Agency, Inc. (Schaal)."

AUTHORITY: Pub. L. 94–582, 90 Stat. 2867, as amended (7 U.S.C. 71 *et seq.*)

Dated: January 12, 1993
Neil E. Porter
Acting Director, Compliance Division
[FR Doc. 93–1410 Filed 1–21–93; 8:45 am]
BILLING CODE 3410–EN–F

Forest Service

Canyon Timber Sale, Clearwater National Forest, Idaho County, ID; Intent To Prepare an Environmental Impact Statement

AGENCY: Forest Service, USDA.

ACTION: Notice; intent to prepare an environmental impact statement.

SUMMARY: The Forest Service will analyze and disclose the environmental impacts of a proposal to harvest and reforest approximately 305 acres of timber and reconstruct approximately 2.5 miles of existing roads in the Canyon Creek and Glade Creek drainages on the Lochsa Ranger District. An EIS (Environmental Impact Statement) will be prepared which will document the analysis. This EIS will tier to the Clearwater National Forest Land and Resource Management Plan Final EIS of September, 1987, which provides overall guidance in achieving the desired future condition for the area. The purpose of the proposed action is to improve growth on timber producing ground, soften existing visual impacts, and lessen impacts to biodiversity.

The agency invites written comments and suggestions on the issues and management opportunities for the area being analyzed.

DATES: Comments concerning the scope of the analysis should be received by March 12, 1993 to receive timely consideration in the preparation of the Draft EIS. The Draft EIS will be filed with the Environmental Protection Agency by April 30, 1993. The Final EIS and Record of Decision are expected in July of 1993.

ADDRESSES: Send written comments to Jon B. Bledsoe, District Ranger, Lochsa Ranger District, Rt. 1 Box 398, Kooskia, ID 83539.

FOR FURTHER INFORMATION CONTACT: George Harbaugh, Canyon Interdisciplinary Team Leader, or Jon B. Bledsoe, District Ranger, Lochsa Ranger District, Clearwater National Forest, (208) 926–4275.

SUPPLEMENTARY INFORMATION: The Canyon study area is located in T33N and T34N, R7E of the Boise Principal Meridian. Clearcutting with reserve trees followed by reforestation (8 harvest units on 124 acres) is proposed to improve forest growth and lessen the impacts to biodiversity. Seedtree or shelterwood cutting followed by interplanting (7 harvest units on 124 acres) is proposed adjacent or between past harvest units to reduce stand fragmentation and soften visual impacts of past harvests. Salvage of dead and dying timber (3 harvest units on 57 acres) is proposed to maximize timber yield and improve stand conditions. Ten units are within the Canyon Creek drainage, and eight units are within the Glade Creek drainage.

The Clearwater National Forest Land and Resource Management Plan provides overall guidance for management activities in the potentially affected area through goals, objectives, standards, guidelines, and management area direction. Management areas found within the Canyon study area emphasize management for timber production, with big game winter range and timber on low elevation forested ground, and riparian resources along streamcourses.

Scoping for this timber sale began in 1990 with the Canyon Integrated Analysis. This analysis was completed in May of 1991, and a Scoping Letter was sent to Federal and State agencies, key interest groups, and individuals. After an Interdisciplinary Team refined the proposed action, identified issues, and formulated alternatives, a legal notice about the proposal appeared in three local newspapers during April 1992. Key issues identified by the Interdisciplinary Team are:

1. Potential impacts to biodiversity (stand fragmentation, snags, and old growth) of the area;
2. Potential reductions in timber growth and yield;
3. Proposed landscape units over 40 acres in size; and
4. Potential impacts to fisheries (chinook salmon).

In response to the issues identified, nine alternatives have been developed, five in detail, including the "no action" alternative.

Because of the time lapse since scoping began and the decision to prepare an EIS, the Forest Service is now looking for further information and comments from Federal, State, and local agencies, industry, and from people or groups who are interested in or affected by the proposed action. No meetings are planned, but letters, phone calls, or personal visits are invited for the purpose of providing information related to this proposal. This additional information will be used to prepare a draft EIS. This process will include:

1. Determination of significant issues;
2. Determination of potential cooperating agencies;
3. Identification and elimination from detailed study of nonsignificant issues, or issues that have been covered by previous environmental review;
4. Identification of additional, reasonable alternatives; and
5. Identification of potential environmental effects of the alternatives.

Public participation is important all through the analysis process. Two key time periods have been identified for receipt of formal comments on the proposal and analysis:

1. Scoping period, which is now through March 12, 1993; and
2. Review of the Draft EIS in May and June, 1993.

The Forest Service expects to file the Draft EIS with the Environmental Protection Agency by April 30, 1993. The Final EIS and Record of Decision are expected in July of 1993. The responsible official is the Forest Supervisor of the Clearwater National Forest, Forest Supervisor's Office, 12730 Highway 12, Orofino, ID 83544.

The comment period on the Draft EIS will be 45 days from the date the Environmental Protection Agency publishes the notice of availability in the **Federal Register.**

The Forest Service believes it is important to give reviewers notice at this early stage of several court rulings related to public participation in the environmental review process. First, reviewers of a draft EIS must structure their participation in the environmental review of the proposal so that it is meaningful and alerts an agency to the reviewer's position and contentions. *Vermont Yankee Nuclear Power Corp.* v. *NRDC,* 435 U.S. 519, 553 (1978). Also, environmental objections that could be raised at the draft EIS stage but that are not raised until after completion of the final EIS may be waived or dismissed by the courts. *Wiconsin 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 EIS.

To assist the Forest Service in identifying and considering issues on the proposed action, comments on the draft EIS should be as specific as possible. It is also helpful if comments refer to specific pages or chapters of the draft EIS.

Comments may also address the adequacy of the draft EIS 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: January 11, 1993.

Win Green,

Forest Supervisor.

[FR Doc. 93–1449 Filed 1–21–93; 8:45 am]

BILLING CODE 3410–11–M

DEPARTMENT OF THE INTERIOR

Fish and Wildlife Service

National Park Service

Reintroduction of Black-footed Ferrets into the Conata Basin/Badlands Area in South Dakota

AGENCY: Forest Service, USDA; Fish and Wildlife Service, Interior; National Park Service, Interior.

ACTION: Revised notice of intent to prepare an environmental impact statement.

SUMMARY: On Friday, February 14, 1992, a Notice of Intent (NOI) to conduct public meetings and prepare an Environmental Impact Statement (EIS) evaluating reintroduction of black-footed ferrets into the Conata Basin/Badlands Area was published in the **Federal Register** (Vol. 57, No. 31, pages 5415—5416). The Conata Basin/Badlands Area refers to the Buffalo Gap National Grassland and the Badlands National Park in southwestern South Dakota. The earlier NOI was published under the signatures of the regional directors, USDI Fish and Wildlife Service and National Park Service and Regional Forester, USDA Forest Service. The purpose of the earlier NOI was to solicit issues, concerns, and suggestions from the public to be used in the EIS to develop and evaluate alternatives to ferret reintroduction in the Conata Basin/Badlands Area.

The USDA Forest Service, Nebraska National Forest, which administers the Buffalo Gap National Grassland, intends to revise the scope of the action in the earlier NOI to include possible amendment of the Land and Resource Management Plan (Forest Plan) for the Nebraska National Forest. This revised NOI serves to correct a deficiency in the earlier notice.

DATES: Publication of Draft EIS: Early 1993; Public comment period on Draft EIS and any proposal to amend the Forest Plan for the Nebraska National Forest: Conducted concurrently for 45 days following the publication date of the DEIS.

ADDRESSES: Written correspondence about any proposed Forest Plan amendments would be sent during the 45-day comment period to: Mary Peterson, Forest Supervisor, Nebraska National Forest, 270 Pine Street, Chadron, NE 69337.

FOR FURTHER INFORMATION CONTACT: Greg Schenbeck, Fish and Wildlife Staff Officer, Nebraska National Forest (308) 432–0313, or Peter McDonald, Wildlife Biologist, Wall Ranger District, (605) 279–2125.

SUPPLEMENTARY INFORMATION: Under the earlier NOI, the Fish and Wildlife Service, Forest Service, and National Park Service jointly proposed the reintroduction of black-footed ferrets (*Mustela nigripes*) into the Conata Basin/Badlands Area—specifically the Buffalo Gap National Grassland and Badlands National Park—in South Dakota. The proposed Reintroduction Area of approximately 42,000 acres in southwestern South Dakota supports mixed grass prairie interspersed with barren lands. More than 99 percent of the area is public land administered by the U.S. Forest Service and National Park Service.

The Land and Resource Management Plan (Forest Plan) for the Nebraska National Forest guides all natural resource management activities through its goals, objectives, standards, guidelines, and designations of "Management Areas." The Forest Plan Final Environmental Impact Statement and Record of Decision (ROD) disclosed the environmental effects of implementing the Forest Plan goals, standards, and guidelines. Forest Service policy is that any proposed changes to the "* * * goals, objectives, Forest or management area direction, implementation schedules, or other Plan contents require an amendment to the Forest Plan" (FSH 1909.12–92–1). Therefore, any proposals presented in the Ferret Reintroduction EIS (draft due in early 1993) that would not be consistent with the Forest Plan for the Nebraska National Forest would require an amendment to the Plan. Depending on any decision made connected with the EIS, the Nebraska National Forest Plan may have to be amended to do one or more of the following:

—Create a new management area designation for any designated Experimental Population Area;
—Create a new management area designation for any designated Reintroduction Area on National Grassland;
—Create new standards and guidelines for management of black-footed ferrets and their habitat;
—Create new standards and guidelines for ferret surveys, ORV use, sport shooting of prairie dogs, furbearer trapping, public access and use, and for the location and timing of range improvements within any designated Reintroduction Area on the National Grassland;
—Create new standards and guidelines for educational activities related to black-footed ferrets and their recovery; and
—Append the Ferret Reintroduction EIS to the Forest Plan.

A Draft Environmental Impact Statement is scheduled to be completed and presented to the public in early 1993. The comment period on the DEIS will be 45 days from the date the Environmental Protection Agency publishes the notice of availability in the **Federal Register**. Scoping for any proposed amendments to the Nebraska National Forest Plan would occur concurrently with this EIS process, with a decision for any amendments to come concurrently with the signing of the Record of Decision for this Ferret Reintroduction EIS.

Dated: January 11, 1993.

Mary H. Peterson,

Forest Supervisor.

[FR Doc. 93–1384 Filed 1–21–93; 8:45 am]

BILLING CODE 3410–11–M

DEPARTMENT OF COMMERCE

Agency Form Under Review by the Office of Management and Budget

DOC has submitted to the Office of Management and Budget (OMB) for clearance the following proposal for collection of information under the provisions of the Paperwork Reduction Act (44 U.S.C. chapter 35).

Agency: Bureau of the Census.

Title: Survey of Building and Zoning Permit Systems.

Form Number(s): C–411

Agency Approval Number: 0607–0350

Type of Request: Extension of the expiration date of a currently approved collection without any change in the substance or in the method of collection.

Burden: 500 hours.

Number of Respondents: 2,000.

Avg Hours Per Response: 15 minutes.

Needs and Uses: The Census Bureau conducts the Survey of Building and Zoning Permit Systems to gather data from State and local building permit officials on the existence of new permit

issuing systems or changes to existing systems. The questionnaire asks for such items as geographic coverage and types of construction for which permits are issued. We use data gathered in this survey to update the universe of building permit–issuing places, the sampling frame for the Building Permits Survey (BPS). The BPS provides widely used measures of construction activity, including the economic indicator Housing Units Authorized by Building Permits.

Affected Public: State and local governments.

Frequency: On occasion.

Respondent's Obligation: Voluntary.

OMB Desk Officer: Maria Gonzalez, (202) 395–7313.

Copies of the above information collection proposal can be obtained by calling or writing Edward Michals, DOC Forms Clearance Officer, (202) 482–3271, Department of Commerce, room 5312, 14th and Constitution Avenue, NW, Washington, DC 20230.

Written comments and recommendations for the proposed information collection should be sent to Maria Gonzalez, OMB Desk Officer, room 3208, New Executive Office Building, Washington, DC 20503.

Dated: January 14, 1993.

Edward Michals,

Departmental Forms Clearance Officer, Office of Management and Organization.

[FR Doc. 93–1510 Filed 1–21–93; 8:45 am]

BILLING CODE 3510–07–F

Agency Form Under Review by the Office of Management and Budget

DOC has submitted to the Office of Management and Budget (OMB) for clearance the following proposal for collection of information under the provisions of the Paperwork Reduction Act (44 U.S.C. chapter 35).

Agency: Bureau of the Census.

Title: Survey of Plant Capacity Utilization.

Form Number(s): MQ–C1.

Agency Approval Number: 0607–0175.

Type of Request: Revision of a currently approved collection.

Burden: 18,000 hours.

Number of Respondents: 9,000.

Avg Hours Per Response: 2 hours.

Needs and Uses: This survey provides information on the use of industrial capacity by Standard Industrial Classification (SIC) for manufactured products and is the only statistical series that provides 4–digit SIC data for use in other Government economic series. Information is collected on the level of output in the fourth quarter of the year in terms of value of production. The survey will also be used to collect data on the level of output that could have been achieved under specified conditions representing "full production" capability and "National emergency production" capability. Data are used by Government agencies, business firms, trade associations, and research organizations to measure inflationary pressures and capital flows, to understand productivity determinants, and to analyze and forecast economic and industrial trends. In this clearance package, we request minor revisions to the definitions and criteria for determining emergency production and a check box item to be added on the length of time to achieve emergency production levels. These changes are intended to make the concept of emergency production more clear to respondents and to make the information more useful to emergency planners.

Affected Public: Business or other for–profit organizations.

Frequency: Annually.

Respondent's Obligation: Mandatory.

OMB Desk Officer: Maria Gonzalez, (202) 395–7313.

Copies of the above information collection proposal can be obtained by calling or writing Edward Michals, DOC Forms Clearance Officer, (202) 482–3271, Department of Commerce, room 5312, 14th and Constitution Avenue, NW, Washington, DC 20230.

Written comments and recommendations for the proposed information collection should be sent to Maria Gonzalez, OMB Desk Officer, room 3208, New Executive Office Building, Washington, DC 20503.

Dated: January 14, 1993.

Edward Michals,

Departmental Forms Clearance Officer, Office of Management and Organization.

[FR Doc. 93–1511 Filed 1–21–93; 8:45 am]

BILLING CODE 3510–07–F

National Oceanic and Atmospheric Administration

[Docket No. 921068–2268]

Financial Assistance for Research and Development Projects to Provide Information for the Full and Wise Use and Enhancement of Fishery Resources in the Gulf of Mexico and off the U.S. South Atlantic Coastal States

AGENCY: National Marine Fisheries Service (NMFS), NOAA, Commerce.

ACTION: Notice of availability of financial assistance.

SUMMARY: For fiscal year (FY) 1993, Marine Fisheries Initiative (MARFIN) funds are expected to be available to assist persons in carrying out research and development projects that optimize the use of U.S. Gulf of Mexico and South Atlantic (North Carolina to Florida) fisheries involving the U.S. fishing industry (recreational and commercial), including, but not limited to, harvesting methods, economic analyses, processing, fish stock assessment, and fish stock enhancement, recovery and maintenance. NMFS issues this notice describing the conditions under which applications will be accepted and how NMFS will determine which applications will be selected for funding. Areas of MARFIN emphasis for FY 1993 were formulated from recommendations received from a MARFIN Steering Committee, NMFS research and operations officials and from input received in response to a Federal Register notice of July 13, 1992, that solicited public comments and recommendations on proposed FY 1993 MARFIN Areas of Emphasis.

DATES: Applications for funding under this program will be accepted between January 22, 1993, and 6 p.m. e.s.t. on March 23, 1993. Applications received after that time will not be considered for funding.

Applications may be inspected at the NMFS Southeast Regional Office (see **ADDRESSES**) from March 29, 1993, through March 31, 1993.

Successful applicants generally will be selected within 180 days from the date of publication of this notice and the earliest start dates of successful applicant project awards will normally be about 210 days after the date of publication of this notice.

ADDRESSES: Send applications to: David Pritchard, Chief, Cooperative Programs Division, Southeast Regional Office, National Marine Fisheries Service, 9450 Koger Boulevard, St. Petersburg, FL 33702.

Questions of an administrative nature should be referred to: Grants Management Division, Attn: Jean West, Chief, Grants Operations Branch, NOAA, SSMC2, OA321, 1325 East-West Highway, Silver Spring, MD 20910, telephone 301–713–0926.

Send comments on the collection of information to the Office of Information and Regulatory Affairs, Office of Management and Budget, Executive Office Building, Washington, DC 20503.

FOR FURTHER INFORMATION CONTACT: Mr. David L. Pritchard, 813–893–3720.

SUPPLEMENTARY INFORMATION:

I. Introduction

The Fish and Wildlife Act of 1956, at 16 U.S.C. 753a, authorizes the Secretary of Commerce (Secretary) to conduct research to enhance U.S. fisheries. The Departments of Commerce, Justice, State, the Judiciary, and Related Agencies Appropriation Act of 1993 makes funds available to the Secretary for FY 1993. This solicitation makes available about $1.8 million (including approximately $0.5 million for continuing projects) for financial assistance under the MARFIN program to conserve, manage and enhance fishery resources in the Gulf of Mexico and off the South Atlantic states of North Carolina, South Carolina, Georgia and Florida. There is no guarantee that sufficient funds will be available to make awards for all approved projects. U.S. fisheries[1] include any fishery that is or may be engaged in by U.S. citizens. The phrase "fishing industry" includes both the commercial and recreational sectors of U.S. fisheries. This program is described in the Catalog of Federal Domestic Assistance under program number 11.433 Marine Fisheries Initiative.

II. Areas of Special Emphasis

A. Proposals for FY 1993 should exhibit familiarity with related work that is completed or ongoing. Where appropriate, proposals should be multidisciplinary. Coordinated efforts involving multiple institutions or persons are encouraged. While the areas for special emphasis are listed below, proposals in other areas will be considered on a funds available basis.

In addition to reference to the areas of special interest listed below, proposals should state whether the research will apply to the Gulf of Mexico only, the South Atlantic only, or a combination of both areas. Successful applicants may be required to collect and manage data in accordance with standardized procedures and formats approved by NMFS, and to participate with NMFS in various cooperative activities and protocols that will be determined by consultations between NMFS and successful applicants before project grants are awarded. In addition, recipients of financial assistance for multiple budget periods under this program shall include funding in their applications for travel expenses for the principal investigator to participate in one annual project review and evaluation meeting in St. Petersburg, Florida.

Research needs identified in fishery management plans and amendments prepared by the Gulf and South Atlantic Fishery Management Councils (Councils) and the Gulf and Atlantic States Marine Fisheries Commissions (Commissions) are included by reference. Areas of special emphasis for FY 1993 include:

1. Shrimp Trawler Bycatch

Studies are needed to contribute to the regional marine shrimp trawler bycatch program being conducted by NMFS in cooperation with state fishery management agencies, commercial and recreational fishing organizations and interests, environmental organizations, universities, the Councils, and the Commissions. Applicants should refer to the Regional Bycatch Research Plan prepared by the Gulf and South Atlantic Fisheries Development Foundation when developing research proposals related to bycatch. In particular, the studies should address:

a. Data collections and analyses to expand and update current bycatch estimates temporally and spatially, including offshore, nearshore, and inshore waters. Emphasis should be on inshore and nearshore waters (less than 10 fathoms (18.3 m)).

b. Assessments of the status and condition of fish stocks significantly impacted by shrimp trawler bycatch, with emphasis given to overused species under the jurisdiction of the Councils.

c. Identification, development, and evaluation of gear, non-gear, and tactical fishing options to reduce bycatch.

d. Social and economic assessments of the impact of bycatch and of bycatch reduction options on coastal communities and industries.

e. Economic studies of the dynamic effects of bycatch on the bycatch fisheries; e.g., mackerel and reef fish.

f. Improved methods for communicating with the improving technology and information transfer to the shrimp industry.

g. New regulations have been proposed for the conservation of sea turtles in the inshore waters of the Gulf and South Atlantic. These regulations depend mainly on the use of turtle excluder devices (TEDs). More information, however, is needed on:

(1) The seasonal and spatial distribution of sea turtles in inshore waters, including species and size information.

(2) New TED designs and approaches specifically for the smaller shrimp trawls characteristic of the inshore waters.

(3) Alternatives to TEDs such as tow-time monitoring devices.

(4) Information by area and season on the catch and mortality of sea turtles by shrimp trawlers.

2. Highly Migratory Pelagic Fisheries

a. Longline Fishery, Including Bycatch

A number of pelagic longline fisheries exist in the Gulf and South Atlantic. Most target highly migratory species, such as tunas, billfish, sharks, and swordfish. These fisheries have evolved rapidly over the last decade, with increases in fishing effort and changes in fishing gear and tactics. These changes need to be characterized and their effects quantified. High priority areas include:

(1) Characterization of specific longline fisheries, including targeted species, bycatch catch per unit effort, and biological parameters (e.g., sex, and reproductive state) by gear type, area, and season.

(2) Evaluation of vessel log data for monitoring the fisheries.

(3) Development and evaluation of gear and fishing tactics to minimize the bycatch of undersized and unwanted species, including sea turtles and marine mammals

(4) Assessment of the impact of longline bycatch on related fisheries, including biological, social, and economic factors and effects.

b. Sharks

Little is known about shark resources in the Gulf and South Atlantic. A Secretarial Fisheries Management Plan (FMP) for sharks has been developed that identifies a number of research needs. In general, these needs can be grouped as:

(1) Characterization of the directed and bycatch commercial and recreational fisheries from existing and new data. Emphasis should be on species, size, and sex composition and catch per unit effort by season, area, and gear type.

(2) Collection and analysis of basic biological data on movements, habitats, growth rates, mortality rates, age composition, and reproduction.

(3) Determination of baseline costs and returns for commercial fisheries that take and retain sharks, and estimations of demand curves for shark products and recreational shark fisheries.

[1] For purposes of this notice, a fishery is defined as one or more stocks of fish, including tuna and shellfish, that are identified as a unit based on geographic, scientific, technical, recreational and economic characteristics, and any and all phases of fishing for such stocks. Examples of fisheries are: Gulf of Mexico shrimp, groundfish, menhaden, South Atlantic snapper-grouper, etc.

(4) Development of species profiles and stock assessments for sharks taken in significant quantities by commercial and recreational directed and bycatch fisheries. Assessments can be species-specific or for species groups, as long as the latter do not differ substantially from the groups identified in the Secretarial Shark FMP.

(5) Identification of coastal sharks using laboratory (tissue analysis) methods, and preservation of tissue samples for mercury analysis.

3. Reef Fish

Many species within the reef fish complex are showing signs of being overutilized, either by directed or bycatch fisheries. The ecology of reef fish makes them especially vulnerable to overfishing because they tend to concentrate over specific types of habitats that are patchily distributed. The patchy distribution of the resource can make traditional fishery statistics misleading, because catch per unit effort can remain relatively high as fishermen move from one area to another, yet overall abundance of the resource can be declining sharply. Priority research areas include:

a. Collection of basic biological data for species in commercially and recreationally important fisheries, with emphasis on stock and species identification, age and growth, early life history, the source of recruits (especially amberjack and vermilion snapper in the Gulf of Mexico) and reproductive biology. The behavior of age-0 and age-1 red snapper is another important research need. Also important is the effect of reproductive mode and sex change (protogynous hermaphroditism) on population size and characteristics, with reference to sizes of fish exploited in the fisheries and the significance to proper management.

b. Identification and quantification of natural and human-induced mortality (such as the loss of undersized fishes caught in deep water).

c. Mapping and quantification of reef fish habitat, primarily from existing biological and physical data. Special attention should be directed to determine the habitat and limiting factors for red snapper in the Gulf of Mexico.

d. Identification and characterization of spawning aggregations by species, areas, and seasons.

e. Stock assessments to establish the status of major recreational and commercial species. Especially needed are innovative methods for stock assessments on aggregate species, including the impact of fishing on genetic structure.

f. Research in direct support of management techniques, including catch-and-release mortality, marine fishery reserves, gear and fishing tactic modifications to minimize bycatch, balancing traditional fisheries use with alternate uses (e.g., eco-tourism and sport diving), and economic and social profiles and studies to evaluate impacts of management options. Also needed are studies to determine effects of fishing closures and quotas on alternative commercial and recreational fisheries.

g. Research to evaluate the use of reef fish marine reserves as an alternative or supplement to current fishery management measures and practices, especially in the South Atlantic.

h. Use of available data to describe the socioeconomic behavior of recreational fishermen (e.g., effects of switching species, use of navigational devices (e.g., Loran, GPS, etc.) to consistently target specific fish concentrations, and bag limits on recreational trips).

Additional explanation of research needs for Gulf reef fish is available from a MARFIN-supported plan for cooperative reef fish research in the Gulf of Mexico.

4. Coastal Herrings

Preliminary studies indicate that substantial stocks of coastal herrings occur in the Gulf and South Atlantic. Most of the available data come from fishery-independent surveys conducted by NMFS and state fishery management agencies. Because of the size of these stocks, their importance as prey, and in some instances as predator species, their potential for development as commercial and recreational fisheries needs to be understood. General research needs include:

a. Collection, collation, and analysis of available fishery-independent and fishery-dependent data from state and Federal surveys, with emphasis on species and size composition, seasonal distribution patterns, biomass, and environmental relationships. Emphasis should be given to controversial species, such as Spanish sardine.

b. Description and quantification of predator-prey relationships between coastal herring species and those such as the mackerels, tunas, swordfish, billfish, sharks, bluefish, and others in high demand by commercial and recreational fisheries.

5. Coastal Migratory Pelagic Fisheries

The demand for many of the species in this complex by commercial and recreational fisheries has led to overfishing for some, such as Gulf king and Spanish mackerel, and Atlantic Spanish mackerel. Additionally, some are transboundary with Mexico and other countries and ultimately will demand international management attention. Current high priorities include:

a. Development of recruitment indices for king and Spanish mackerel, cobia, dolphin, and bluefish, primarily from fishery-independent data sources, although indices of year-class success using occurrence in bycatch is also important.

b. Improved catch statistics for all species in Mexican waters, with special emphasis on king mackerel. This includes length frequency and life history information.

c. Information on population of coastal pelagics overwintering off North Carolina, South Carolina, and Georgia, especially population size, age, food, and movements.

d. Collection of basic biostatistics for coastal migratory pelagic species (e.g., cobia and dolphin) to develop age-length keys and maturation schedules for stock assessments, where significant gaps in the database exist.

e. Demand and supply functions for recreational and commercial fisheries for king macherel in the Gulf of Mexico and for Spanish mackerel in the South Atlantic. Emphasis can be on changes in marginal values of producer and consumer surplus, since the studies would be used in allocation frameworks where total values are not necessarily required.

g. Groundfish and Estuarine Fishes (Weakfish, Menhaden, Spot, Croaker, and Red Drum)

Substantial stocks of groundfish and estuarine species occur in the Gulf and South Atlantic. Most of the database comes from studies conducted by NMFS and state fishery management agencies. Because of the historic and current size of these fish stocks, their importance as predator and prey species, and their current or potential use as commercial and recreational fisheries, more information on their biology and conservation is needed. General research needs include:

a. Measurement of general levels of sportfishing effort and associated economic and biological parameters (including other factors regarding retained and released catch) for red drum in both the Gulf of Mexico and the South Atlantic.

b. Definitions of the stocks of weakfish in the South Atlantic.

c. Information on the immigration and escapement of red drum from state waters into the exclusive economic zone in the Gulf of Mexico.

d. Stock identification, including determination of migratory patterns through tagging studies, monitoring long-term changes in abundance, growth rates and age structure, and determination of inshore versus offshore components of the fishery.

e. Monitoring of juvenile populations and population indices to determine year-class strength.

f. Catch and effort statistics from recreational and commercial fisheries, including size and age structure of the catch, to develop production models.

g. Biological and economic analyses of the optimum utilization of long-term fluctuating populations.

h. Quantification of the bycatch in the commercial menhaden purse seine fishery, and the coastal herring purse seine and beach seine fisheries.

7. General

There are many areas of research that need to be addressed for improved understanding and management of fishery resources. These include methods for data collection, management, and analysis, and for better conservation and management of resources. Examples of high priority research topics include:

a. Development and refinement of social and economic models of fisheries. Models should focus on effects of management alternatives, such as quotas, moratoria, fishery reserves, bag limits, size limits, gear restrictions, and limited area and seasonal closures.

b. Assessment of the changes in recreational and commercial values that have resulted from past management actions for red drum, shrimp, mackerels, and reef fish.

c. Development and evaluation of controlled-access approaches (e.g., limited entry) for species under Federal management. Of special interest are studies that would address fisheries where both state and Federal jurisdictions are involved, such as the Gulf shrimp fishery. Studies of systems for mackerel and reef fish will have the highest priority since the Councils are considering controlled-access approaches to the management of these species. Studies should consider existing management strategies and how these strategies might be benefited or adversely impacted by controlling access. Additionally, they should address how a controlled-access program should be introduced into affected fisheries.

d. Development of improved methods and procedures for technology transfer and education of constituency groups concerning fishery management and conservation programs. Of special importance are programs concerned with controlled access and introductions of conservation gear and fishing practice modifications.

e. Development of new modeling and analytical approaches to understanding basic processes in fishery productivity and energy transfer that can be applied to specific fishery resource problems.

f. Development of baseline socio-demographic information on federally managed South Atlantic and Gulf of Mexico fisheries.

B. MARFIN financial assistance started in FY 1986. For FYs 1986 through 1992, financial assistance awards totaled about $12.5 million.

C. Priority in program emphasis will be placed upon funding projects that have the greatest probability of recovering, maintaining, improving, or developing fisheries; improving understanding of factors affecting recruitment success; and/or generating increased values and recreational opportunities from fisheries. Projects will be evaluated as to the likelihood of achieving these benefits through both short-term and long-term research projects, with consideration of the magnitude of the eventual economic benefit that may be realized. Both short-term projects that may yield more immediate benefits and projects yielding longer term benefits will receive equal consideration.

D. Further information on current Federal programs that address the above-listed priorities may be obtained from the NMFS Southeast Regional Office (see **ADDRESSES**).

III. How to Apply

A. Eligible Applicants

1. Applications for grants or cooperative agreements for MARFIN projects may be made, in accordance with the procedures set forth in this notice, by:

a. Any individual who is a citizen or national of the United States;

b. Any corporation, partnership, or other entity, non-profit or otherwise, if such entity is a citizen of the United States within the meaning of section 2 of the Shipping Act, 1916, as amended (46 app. U.S.C. 802).[2]

[2] To qualify as a citizen of the United States within the meaning of this statute, citizens or nationals of the United States or citizens of the Northern Mariana Islands (NMI) must own not less than 75 percent of the interest in the entity or, in the case of a non-profit entity, exercise control of the entity that is determined by the Secretary to be equivalent to such ownership; and in the case of a corporation, the president or other chief executive officer and the chairman of the board of directors must be citizens of the United States. No more of its board of directors than a minority of the number necessary to constitute a quorum may be non-citizens; and the corporation itself must be organized under the laws of the United States, or of a State, including the District of Columbia, Commonwealth of Puerto Rico, American Samoa, the Virgin Islands of the United States, Guam, the NMI or any other Commonwealth, territory, or possession of the United States. Seventy-five percent of the interest in a corporation shall not be deemed to be owned by citizens of the NMI, if: (1) The title to 75 percent of its stock is not vested in such citizens or nationals of the United States or citizens of the NMI free from any trust or fiduciary obligation in favor of any person not a citizen or national of the United States or citizens of the NMI; (2) 75 percent of the voting power in such corporation is not vested in citizens or nationals of the United States or citizens of the NMI; (3) through any contract or understanding it is arranged that more than 25 percent of the voting power in such corporation may be exercised, directly or indirectly in behalf of any person who is not a citizen or national of the United States or a citizen of the NMI; or (4) by any means whatsoever, control of any interest in the corporation is conferred upon or permitted to be exercised by any person who is not a citizen or national of the United States.

2. No award of Federal funds shall be made to an applicant who has an outstanding delinquent Federal debt until either: (1) The delinquent account is paid in full, (2) a negotiated repayment schedule is established and at least one payment is received, or (3) other arrangements satisfactory to the Department of Commerce (DOC) are made. Any first-time applicant for Federal grant funds is subject to a preaward accounting survey prior to execution of the award. Women and minority individuals and groups are encouraged to submit applications. NOAA employees, including full-time, part-time, and intermittent personnel (or their immediate families), and NOAA offices or centers are not eligible to submit an application under this solicitation, or aid in the preparation of an application, except to provide information about the MARFIN program and the priorities and procedures included in this solicitation. However, NOAA employees are permitted to provide information about ongoing and planned NOAA programs and activities that may have implication for an application. Potential applicants are encouraged to contact NOAA organizations engaged in fisheries research in the Gulf of Mexico and off the U.S. South Atlantic, or David Pritchard at the NMFS Southeast Regional Office (see **ADDRESSES**) for information on NOAA programs. Documents available from this office that may be useful to the applicant include:

a. A Cooperative Reef Fish Research Program for the Gulf of Mexico.

b. A Cooperative Bycatch Research Plan for the Southeast Region.

c. Strategic Plan of the National Marine Fisheries Service.

d. National Status of Stocks Report.

e. Various fishery management plans and plan amendments produced by the Councils and the Commissions.

B Amount and Duration of Funds

Under this solicitation for FY 1993, NMFS estimates about $1.8 million will be available to fund fishery research and development projects (about $1.3 million for new projects and about $0.5 million for continuing projects). Projects planned for more than one year in duration will not compete for funding in subsequent years. Continued funding for such projects, however, is contingent upon the availability of funds from Congress, satisfactory performance, and will be at the sole discretion of the agency. Publication of this notice does not obligate NMFS to award any specific grant or to obligate all or any part of the available funds. Awards generally will be made no later than 90 days after the funding selection is determined and negotiations are completed. Under no circumstances should an applicant proceed with the proposed project until such time that he or she has received a signed award from the Grant Officer. Notwithstanding any verbal assurance that the applicant may have received, there is no obligation on the part of the Department of Commerce to cover any costs. An applicant that incurs costs prior to an award being made proceeds solely at his or her own risk.

C. Cost-Sharing Requirements

Applications must reflect the total budget necessary to accomplish the project, including contributions and/or donations. Cost-sharing is not required for the MARFIN program. However, cost-sharing is encouraged, and in case of a tie in considering proposals for funding, cost-sharing may affect the final decision. The appropriateness of all cost-sharing will be determined on the basis of guidance provided in OMB circulars. Appropriate documentation must exist to support in-kind services or property used to fulfill cost-sharing requirements.

D. Format

1. Applications for project funding must be complete. They must identify the principal participants and include copies of any agreements describing the specific tasks to be performed by participants. Project applications should give a clear presentation of the proposed work, the methods for carrying out the project, its relevance to managing and enhancing the use of Gulf of Mexico and/or South Atlantic fishery resources, and cost estimates as they relate to specific aspects of the project. Budgets must include a detailed breakdown by category or expenditures with appropriate justification for both the Federal and non-Federal shares. Applicants should not assume prior knowledge on the part of NMFS as to the relative merits of the project described in the application.

2. Applications must be submitted in the following format:

a. *Cover Sheet:* An application must use OMB Standard Form 424 (revised 4/88) as the cover sheet for each project. Applicants may obtain copies of the form from the NMFS Southeast Regional Office, or NOAA Grants Management Division (see **ADDRESSES**).

b. *Project Summary:* Each project must contain a summary of not more than one page that provides the following information:

(1) Project title.

(2) Project status (new or continuing). If continuing, show previous financial assistance award number and beginning/ending date.

(3) Project duration (beginning and ending dates).

(4) Name, address, and telephone number of applicant.

(5) Principal Investigator(s).

(6) Project objectives.

(7) Summary of work to be performed. For continuing projects, the applicant must briefly describe progress to date, in addition to any changes to the statement of work previously submitted.

(8) Total Federal funds requested (for multi-year projects, identify each year's requested funding).

(9) Cost-sharing to be provided from non-Federal sources (for multi-year projects, identify each year's cost-sharing). Specify whether contributions are project related cash or in-kind.

(10) Total project cost.

c. *Project Description:* Each project must be completely and accurately described. Each project description may be up to 15 pages in length. NMFS will make all portions of the project description available to the public and members of the fishing industry for review and comment; therefore, NMFS cannot guarantee the confidentiality of any information submitted as part of any project, nor will NMFS accept for consideration any project requesting confidentiality of any part of the project.

Each project must be described as follows:

(1) *Identification of Problem(s):* Describe how existing conditions prevent the full use of Gulf of Mexico and/or South Atlantic fishery resources. In this description, identify:

(a) The fisheries involved;

(b) The specific problem(s) that the fishing industry, management agencies or environmental organizations have encountered;

(c) The sectors of the fisheries that are affected; and

(d) How the problem(s) prevent the fishing industry or management agencies from using or managing the fishery resources.

(2) *Project Goals and Objectives:* This is one of the most important parts of the Project Proposal. Use the following guidelines for stating the goal or objective of the project.

(a) Keep it simple and easily understandable.

(b) Be as specific and quantitative as possible.

(c) Specify the "what and when;" avoid the "how and why".

(d) Keep it attainable within the time, money and manpower available.

(e) Use action verbs that are accomplishment oriented.

(3) *Need for Government Financial Assistance:* Demonstrate the need for assistance. Any appropriate data base to substantiate or reinforce the need for the Project should be included. Explain why other funding sources cannot fund all the proposed work. List all other sources of funding that are or have been sought for the project.

(4) *Results or Benefits Expected:* Identify and document the results or benefits to be derived from the proposed activities.

(5) *Project Statement of Work:* The Statement of Work is a scientific or technical action plan of activities that are to be accomplished during each budget period of the project. A separate Statement of Work is to be submitted for each budget period of the project proposal. Each Statement of Work must include the following information:

(a) The applicant's name.

(b) The inclusive dates of the budget period covered under the Statement of Work.

(c) The title of the proposal.

(d) The scientific or technical objectives and procedures that are to be accomplished during the budget period. Devise a detailed set of objectives and procedures to answer who, what, how, when, and where. The procedures must be of sufficient detail to enable competent workers to be able to follow them and to complete scheduled activities. Cooperative agreement procedures should identify applicant activities and deliverables, NMFS activities and deliverables, and applicant/NMFS joint activities and deliverables.

(e) Location of the work.

(f) A list of all project personnel and their responsibilities.

(g) A milestone table that summarizes the procedures (from item (d)) that are to be attained in each month covered by the statement of work.

(6) *Participation by Persons or Groups Other Than the Applicant:* Describe the level of participation required in the project(s) by NOAA or other government and non-government entities. Specific NOAA employees should not be named in the initial proposal.

(7) *Federal, State, and Local Government Activities:* List any programs (Federal, state, or local government or activities, including state Coastal Zone Management Programs, Sea Grant, Southeast Area Monitoring and Assessment Program, Public Law 99–659 and Cooperative Statistics) this project would affect and describe the relationship between the project and those plans or activities.

(8) *Project Management*: Describe how the project will be organized and managed. Include resumes of principal investigators. List all persons directly employed by the applicant who will be involved in the project, their qualifications, and their level of involvement in the project.

(9) *Monitoring of Project Performance*: Identify who will participate in monitoring the project.

(10) *Project Impacts*: Describe the impact of the project in terms of anticipated increased production, sales, exports, product quality and safety, improved management, social values or any other that will be produced by this project. Describe how these products or services will be made available to the fishery and management communities.

(11) *Evaluation of Project*: The applicant is required to provide an evaluation of project accomplishments at the end of each budget period and in the final report. The application must describe the methodology or procedures to be followed to determine technical or economic feasibility, to evaluate user acceptability, or to quantify the results of the project in promoting increased production, sales, exports, product quality and safety, social values, management effectiveness or other measurable factors.

(12) *Total Project Cost*: Total project cost is the amount of funds required to accomplish the proposed statement of work, and includes contributions and donations. All costs must be shown in a detailed budget. Cost-sharing must not come from another Federal source. Costs must be allocated to the Federal share and non-Federal share provided by the applicant or other sources. Non-Federal costs are to be divided into cash and in-kind contributions. A standard budget form (ED–357 NG; Rev. 3–80) is available from the offices listed (see ADDRESSES). A separate budget must be submitted for each project. An applicant submitting a multi-year project must submit budgets covering total project costs (including individual costs per year) and budgets covering each budget period. The initial funding request must cover funds required during the first 12-month period. NMFS will not consider fees or profits as allowable costs for grantees. To support its budget, the applicant must describe briefly the basis for estimating the value of the non-Federal funds derived from in-kind contributions. Costs for the following categories must be detailed in the budget as follows:

(i) *Personnel.*

(a) *Salaries*: Identify salaries by position and percentage of time and annual/hourly salary of each individual dedicated to the project.

(b) *Fringe Benefits*: Indicate benefits associated with personnel working on the project. This entry should be the proportionate cost of fringe benefits paid for the amount of time spent in the project. For example, if an employee spends 20 percent of his or her time on the project, 20 percent of his or her fringe benefits should be charged to the project.

(ii) *Consultants and Contract Services*: Identify all consultant and/or contractual service costs by specific task in relation to the project. If a commitment has been made prior to application to contract with a particular organization, explain how the organization was selected. Describe the type of contract, budget, deliverables expected, and timeframe. A detailed budget must be submitted (with supporting documentation) for the total amount of funding requested for a subcontractor/consultant. All contracts must meet the standards established in OMB circulars.

(iii) *Travel and Transportation:* Identify number of trips to be taken, purpose, and number of people to travel. Itemize estimated costs to include approximate cost of transportation, per diem, and miscellaneous expenses. All applicants must include an estimated budget for the principal investigator to attend an annual meeting in the NMFS Southeast Region to review the progress being made on attaining the objectives of ongoing multiyear project activities

(iv) *Equipment, Space or Rental Costs:* Identify equipment purchases or rental costs with the intended use. Equipment purchases greater than $500 are discouraged, since experienced investigators are expected to have sufficient capital equipment on hand. Use of lease to purchase (LTOP) or similar leases are prohibited. Identify space or rental costs with specific uses.

(v) *Other Costs.*

(a) *Supplies:* Identify specific supplies necessary for the accomplishment of the project. Consumable office supplies must be included under Indirect Costs unless purchased in a large quantity to be used specifically for the project.

(b) *Postage and Shipping:* Include postage for correspondence and other project related material, as well as air freight, truck or rail shipping of bulk materials.

(c) *Printing Costs:* Include costs associated with producing materials in conjunction with the project.

(d) *Long Distance Telephone and Telegraph:* Identify estimated monthly bills.

(e) *Utilities:* These costs should be included under Indirect Costs unless purchased in a large quantity to be specifically identified to the project. Identify costs of utilities and percentage of use in conjunction with performance of project.

(f) *Indirect Costs:* This entry should be based on the applicant's established indirect cost agreement rate with the Federal Government. A copy of the current, approved, negotiated Indirect Cost Agreement must be included. It is the policy of the Department of Commerce that indirect costs shall not exceed direct costs.

(g) *Additional Costs:* Indicate any additional costs associated with the project that are allowable under OMB Circulars A–21, A–87, and A–122.

(h) *Requested Start Date:* Normally, applications that are selected for funding will result in financial assistance awards by the NOAA Grants Division within about 210 days after publication of this notice. Applicants should consider this processing time in developing requested start dates for their applications.

d. *Supporting Documentation:* This section should include any required documents and any additional information necessary or useful to the description of the project. The amount of information given in this section will depend on the type of project proposed, but should be no more than 20 pages. The applicant should present any information that would emphasize the value of the project in terms of the significance of the problems addressed. Without such information, the merits of the project may not be fully understood, or the value of the project may be underestimated. The absence of adequate supporting documentation may cause reviewers to question assertions made in describing the project and may result in a lower ranking of the project. Information presented in this section should be

clearly referenced in the project description.

E. Application Submission and Deadline

1. *Deadline:* (see **DATES**).

2. *Submission of Applications to NMFS:* Applications are not to be bound in any manner and should be one-sided. All incomplete applications will be returned to the applicant. Applicants must submit one signed original and two (2) copies of the complete application to the NMFS Southeast Regional Office (see **ADDRESSES**). Questions of an administrative nature should be referred to the Grants Management Division, OA321 (see **ADDRESSES**).

IV. Review Process and Criteria

A. Evaluation and Ranking of Proposed Projects

1. Unless otherwise specified by statute, in reviewing applications for grants and cooperative agreements that include consultants and contracts, NOAA will make a determination regarding the following:

a. Is the involvement of the applicant necessary to the conduct of the project and the accomplishment of its goals and objectives?

b. Is the proposed allocation of the applicant's time reasonable and commensurate with the applicant's involvement in the project?

c. Are the proposed costs for the applicant's involvement in the project reasonable and commensurate with the benefits to be derived from applicant's participation?

2. For applications meeting the requirements of this solicitation, NMFS will conduct a technical evaluation of each project prior to any other review. This review normally will involve experts from non-NOAA as well as NOAA organizations. All comments submitted to NMFS will be taken into consideration in the technical evaluation of projects. NMFS will provide point scores on proposals based on the following evaluation criteria:

a. Adequacy of research/development/demonstration for managing or enhancing Southeast marine fishery resources, addressing especially the possibilities of securing productive results (30 points).

b. Soundness of design/technical approach for enhancing or managing the use of Southeast marine fishery resources (25 points).

c. Organization and management of the project, including qualifications and previous related experience of the applicant's management team and other project personnel involved (20 points).

d. Effectiveness of proposed methods for monitoring and evaluating the project (15 points).

e. Justification and allocation of the budget in terms of the work to be performed (10 points).

3. Applications will be ranked by NMFS into three groups: (a) highly recommended, (b) recommended, and (c) not recommended. These rankings will be presented to a panel of fishery experts convened by NMFS. The panel members will also individually consider the significance of the problem addressed in the project, along with the technical evaluation and need for funding. The panel members' individual recommendations will aid NMFS in determining the appropriate level of funding for each project.

B. Consultation with Others

NMFS will make project descriptions available for review as follows:

1. *Public Review and Comment:* Applications may be inspected at the NMFS Southeast Regional Office (see **ADDRESSES** and **DATES**).

2. *Consultation with Members of the Fishing Industry, Management Agencies, Environmental Organizations, and Academic Institutions.* NMFS shall, at its discretion, request comments from members of the fishing and associated industries, groups, organizations and institutions who have knowledge in the subject matter of a project or who would be affected by a project.

3. *Consultation with Government Agencies:* Applications will be reviewed by the NMFS Southeast Regional Program Office in consultation with the NMFS Southeast Science and Research Director and appropriate laboratory personnel, NOAA Grants Officer and, as appropriate, Department of Commerce bureaus and other Federal agencies, for elimination of duplicate funding. The Councils may be asked to review projects and advise of any real or potential conflicts with Council activities.

C. Funding Decision

After projects have been evaluated, the Southeast Regional Director, in consultation with the NOAA Assistant Administrator for Fisheries, will ascertain which projects do not substantially duplicate other projects that are currently funded by NOAA or are approved for funding by other Federal offices, determine the projects to be funded, and determine the amount of funds available for the program. The exact amount of funds awarded and specific NMFS cooperative involvement with the activities of each project will be determined in preaward negotiations between the applicant, the NOAA Grants Office and the NMFS program staff. The Department of Commerce will review all projects recommended for funding before an award is executed by the Grants Officer. The funding instrument will be determined by the Grants Officer. Projects must not be initiated by a recipient until a signed award is received from the Grants Officer. For multi-year projects, funds will be provided when specified tasks are satisfactorily completed and after NMFS has received MARFIN funds for subsequent fiscal years.

V. Administrative Requirements

A. Applicant Responsibility

An applicant must:

1. Meet all application requirements and provide all information necessary for the evaluation of the project.

2. Be available, upon request, in person or by designated representative, to respond to questions during the review and evaluation of the project(s).

3. If a project is selected by NMFS for funding, the applicant must be willing and able to cooperate with NMFS in predetermined project-related activities and programs, and to provide project data and results to the NMFS on a schedule determined by negotiation between the applicant and NOAA.

4. If a project is awarded, manage the day-to-day operations of the project, be responsible for the performance of all activities for which funds are awarded, and be responsible for the satisfactory completion of all administrative and managerial conditions required by the award. This includes adherence to procurement standards set forth in the award and referenced OMB Circulars and Department of Commerce regulations.

5. If a project is awarded, keep records sufficient to document any costs incurred under the award, and allow access to records for audit and examination by the Secretary, the Comptroller of the United States, or their authorized representatives.

6. Fishery data collected during the course of a project that could be pertinent to fishery management needs must be available to NMFS on request, subject to pertinent confidentiality requirements.

7. If a project is awarded, project status reports on the use of funds and progress of the project must be submitted to NMFS within 30 days after the end of each reporting period. The content of these reports will include, at a minimum:

a. A summary of work conducted, which includes a description of specific

accomplishments and milestones achieved;

b. The degree to which goals or objectives were achieved as originally projected;

c. Where necessary, the reasons why goals or objectives are not being met;

d. Any proposed changes in plans or redirection of resources or activities and the reason therefore; and

e. Expenses incurred during the reporting period.

8. If a project is funded, submit an original and two copies of a final report to NMFS within 90 days after completion of the project. The report must describe the accomplishments of the project and include an evaluation of the work performed and the results and benefits of the work in sufficient detail to enable NMFS to assess the success of the completed project. Results must be described in relation to the project objectives of resolving specific impediments to managing or using fisheries, and be quantified to the extent possible. Potential uses of project results by private industry or fishery management agencies should be specified. Any conditions or requirements necessary to make productive use of project results should be identified.

9. Present completed project results at the annual MARFIN conference and submit an abstract 15 days prior to the conference. Travel funds for the Principal Investigator to attend this meeting will be provided by NMFS.

10. Recipients and subrecipients are subject to all applicable Federal laws and Federal and DOC policies, regulations, and procedures applicable to Federal financial assistance awards.

11. For each project funded, three copies of all publications or reports printed with grant funds must be submitted to the Program Officer. Any publication printed with grant funds must identify the NOAA MARFIN program as the funding source, along with the grant award number. Grant recipients also must submit to the Program Officer three copies of all publications resulting wholly or in part from MARFIN funded projects, to indicate in such publications the role of the MARFIN program in accomplishing the research and, where another Federally funded program provides data sources used in the research, to so indicate.

B. NMFS Responsibility

NMFS Southeast Region will:

1. Provide programmatic information necessary for the proper submission of applications.

2. Provide advice to inform applicants of NMFS fishery management and development policies and goals.

3. As required by the terms of negotiated cooperative agreements under this NMFS financial assistance program, participate with the recipient in attaining cooperative activities, and monitor all projects after award to ascertain their effectiveness in achieving project objectives and in producing measurable results. Actual accomplishments of a project will be compared with stated objectives.

4. Refer questions regarding grant management policy and administration from applicants/recipients to the Grants Officer.

C. NOAA Grants Management Officer Responsibility.

The NOAA Grant Management Officer is responsible for the execution of NOAA Federal Assistance Awards. The Grants Officer is responsible for the business management aspects of awards, and serves as the counterpart to the business officer of the recipient. The Grants Officer works closely with the Program Officer, who is responsible for the scientific, technical, and programmatic aspects of the project. The official grant file will be maintained by the Grant Officer.

VI. Legal Requirements.

The applicant will be required to satisfy the requirements of applicable local, state, and Federal laws.

All primary applicants must submit a completed Form CD–511, "Certifications Regarding Debarment, Suspension and Other Responsibility Matters; Drug-Free Workplace Requirements and Lobbying."

Prospective participants (as defined at 15 CFR part 26, section 105) are subject to 15 CFR part 26, "Nonprocurement Debarment and Suspension" and the related section of the certification form.

Grantees (as defined at 15 CFR part 26, section 605) are subject to 15 CFR part 26, subpart F, "Governmentwide Requirements for Drug-Free Workplace (Grants)" and the related section of the certification form.

Persons (as defined at 15 CFR part 28, section 105) are subject to the lobbying provisions of 31 U.S.C. 1352, "Limitation on use of appropriated funds to influence certain Federal contracting and financial transactions," and the lobbying section of the certification form which applies to applications/bids for grants, cooperative agreements, and contracts for more than $100,000, and loans and loan guarantees for more than $150,000, or the single family maximum mortgage limit for affected programs, whichever is greater.

Any applicant that has paid or will pay for lobbying using any funds must submit an SF–LLL, "Disclosure of Lobbying Activities," as required under 15 CFR part 28, appendix B.

Recipients shall require applicants/bidders for subgrants, contracts, subcontracts, or other lower tier covered transactions at any tier under the award to submit, if applicable, a completed Form CD–512, "Certifications Regarding Debarment, Suspension, Ineligibility and Voluntary Exclusion-Lower Tier Covered Transactions and Lobbying" and disclosure from, SF–LLL, "Disclosure of Lobbying Activities." Form CD–512 is intended for the use of recipients and should not be transmitted to DOC. SF–LLL submitted by any tier recipient or subrecipient should be submitted to DOC in accordance with the instructions contained in the award document.

Potential recipients may be required to submit an "Identification-Application for Funding Assistance" form (Form CD–346), which is used to ascertain background information on key individuals associated with the potential recipient. The CD–346 form requests information to reveal if any key individuals in the organization have been convicted of, or are presently facing, criminal charges such as fraud, theft, perjury, or other matters pertinent to management honesty or financial integrity. Potential recipients may also be subject to reviews of Dun and Bradstreet data or other similar credit checks.

A false statement on the application may be grounds for denial or termination of funds and grounds for possible punishment by a fine or imprisonment as provided in 18 U.S.C. 1001.

Unsatisfactory performance under prior Federal awards may result in an application not being considered for funding.

If an application for an award is selected for funding, the Department of Commerce has no obligation to provide any additional prospective funding in connection with that award. Renewal of an award to increase funding or extend the period of performance is at the total discretion of the Department of Commerce.

Grants awarded pursuant to pertinent statutes shall be in accordance with the Fisheries Research Plan (comprehensive program of fisheries research) in effect on the date of the award.

Classification

NMFS reviewed this solicitation in accordance with E.O. 12291 and the Department of Commerce guidelines implementing that Order. This solicitation is not "major" because it is not likely to result in (1) an annual effect on the economy of $100 million or more; (2) a major increase in costs or prices for consumers, individual industries, Federal, State, or local government agencies, or geographic regions; or (3) significant adverse effects on competition, employment, investment, productivity, innovation, or on the ability of U.S.-based enterprises to compete with foreign-based enterprises in domestic or export markets.

This notice does not contain policies with sufficient federalism implications to warrant preparation of a federalism assessment under E.O. 12612.

Prior notice and an opportunity for public comments are not required by the Administrative Procedure Act or any other law for this notice concerning grants, benefits, and contracts. Therefore, a regulatory flexibility analysis is not required for purposes of the Regulatory Flexibility Act.

Information collection requirements contained in this notice have been approved by the Office of Management and Budget (OMB Clearance No. 0648–0175) under the provisions of the Paperwork Reduction Act. The CD–346 form also referenced in the notice is approved by OMB Clearance Number 0605–0001. Public reporting burden for Agency-specific collection-of-information elements, exclusive of requirements specified under applicable OMB circulars, is estimated to average 4 hours per response, including the time for reviewing instructions, searching existing data sources, gathering and maintaining the data needed, and completing and reviewing the collection of information. Send comments regarding this burden estimate or any other aspect of this collection of information, including suggestions for reducing this burden, to the Regional Director and to OMB (see **ADDRESSES**).

This program is subject to the provisions of E.O. 12372, "Intergovernmental Review of Federal Programs."

Authority: 16 U.S.C. 753a.

Dated: January 15, 1993.

Samuel W. McKeen,

Acting Assistant Administrator for Fisheries, National Marine Fisheries Service.

[FR Doc. 93–1476 Filed 1–21–93; 8:45 am]

BILLING CODE 3510–22–M

[Docket No. 911172–2021]

Groundfish of the Bering Sea and Aleutian Islands Area

AGENCY: National Marine Fisheries Service (NMFS), NOAA, Commerce.

ACTION: Receipt of an application for an experimental fishing permit.

SUMMARY: NMFS announces receipt of an application from Terra Marine Research and Education, Incorporated, for an experimental fishing permit (EFP). If awarded, this permit would authorize an experiment in which salmon and Pacific halibut caught as bycatch in directed groundfish fisheries conducted in the Bering Sea and Aleutian Islands area (BSAI) would be processed, delivered, and distributed, via food banks without charge, to disadvantaged individuals. Issuance of experimental fishing permits is authorized by the Fishery Management Plan for the Groundfish Fishery of the BSAI (FMP) and its implementing regulations.

ADDRESSES: Copies of the experimental fishing permit application are available by writing to Steven Pennoyer, Director, Alaska Region, National Marine Fisheries Service, P.O. Box 21668, Juneau, AK 99802 (Attn: Lori Gravel).

FOR FURTHER INFORMATION CONTACT: Ronald J. Berg, Chief, Fisheries Management Division, NMFS (907–586–7230).

SUPPLEMENTARY INFORMATION: The FMP and its implementing regulations at 50 CFR part 675 specify that EFPs may be issued to authorize fishing that otherwise would be prohibited by the FMP and regulations. The procedures for issuing permits are contained in the regulations at § 675.6,.

An EFP application has been accepted for review and copies have been forwarded to the North Pacific Fishery Management Council (Council). The Council intends to review the application at its January 18–21, 1993, meeting, which will be held at the Hilton Hotel, Anchorage, Alaska under Council agenda item D–4–e.

The applicant proposes to determine the feasibility of collecting salmon and Pacific halibut caught as bycatch in directed groundfish fisheries conducted in the BSAI. These bycatches would be processed, delivered, and distributed, via food banks without charge, to disadvantaged individuals. Other information regarding project design, deposition of fish harvested, and other information is contained in the application.

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

Dated: January 14, 1993.

Richard H. Schaefer,

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

[FR Doc. 93–1478 Filed 1–15–93; 1:57 pm]

BILLING CODE 3510–22–M

COMMITTEE FOR THE IMPLEMENTATION OF TEXTILE AGREEMENTS

Establishment of an Import Limit and Guaranteed Access Level for Certain Wool Textile Products Produced or Manufactured in the Dominican Republic

January 14, 1993.

AGENCY: Committee for the Implementation of Textile Agreements (CITA).

ACTION: Issuing a directive to the Commissioner of Customs establishing an import limit and guaranteed access level.

EFFECTIVE DATE: February 1, 1993.

FOR FURTHER INFORMATION CONTACT: Naomi Freeman, International Trade Specialist, Office of Textiles and Apparel, U.S. Department of Commerce, (202) 482–4212. For information on the quota status of these levels, refer to the Quota Status Reports posted on the bulletin boards of each Customs port or call (202) 927–5850. For information on embargoes and quota re-openings, call (202) 482–3715.

SUPPLEMENTARY INFORMATION:

Authority: Executive Order 11651 of March 3, 1972, as amended; section 204 of the Agricultural Act of 1956, as amended (7 U.S.C. 1854).

A Memorandum of Understanding (MOU) dated December 22, 1992, between the Governments of the United States and the Dominican Republic, establishes, among other things, a limit and guaranteed access level for wool textile products in Category 443 for the period February 1, 1993 through December 31, 1993.

A description of the textile and apparel categories in terms of HTS numbers is available in the CORRELATION: Textile and Apparel Categories with the Harmonized Tariff Schedule of the United States (see **Federal Register** notice 57 FR 54976, published on November 23, 1992). Also see 57 FR 53882, published on November 13, 1992; and 58 FR 3539, published on January 11, 1993.

Requirements for participation in the Special Access Program are available in **Federal Register** notices 51 FR 21208,

published on June 11, 1986; 52 FR 6594, published on March 4, 1987; 52 FR 26057, published on July 10, 1987; and 54 FR 50425, published on December 6, 1989.

The letter to the Commissioner of Customs and the actions taken pursuant to it are not designed to implement all of the provisions of the MOU, but are designed to assist only in the implementation of certain of its provisions.

J. Hayden Boyd,

Acting Chairman, Committee for the Implementation of Textile Agreements.

Committee for the Implementation of Textile Agreements

January 14, 1993.

Commissioner of Customs,
Department of the Treasury, Washington, DC 20229.

Dear Commissioner: This directive amends, but does not cancel, the directive issued to you on November 6, 1992, by the Chairman, Committee for the Implementation of Textile Agreements. That directive concerns imports of certain cotton, wool and man-made fiber textile products, produced or manufactured in the Dominican Republic and exported during the twelve-month period beginning on January 1, 1993 and extending through December 31, 1993.

Effective on February 1, 1993, you are directed to amend the November 6, 1992 directive to include a limit for wool textile products in Category 443 for the period beginning on February 1, 1993 and extending through December 31, 1993 at a level of 126,797 numbers [1].

Imports charged to the limit for Category 443 for the period beginning on September 30, 1992 and extending through January 31, 1993 shall be charged against that level of restraint to the extent of any unfilled balance. In the event the limit established for that period has been exhausted by previous entries, such goods shall be subject to the level set forth in this directive.

The limit set forth above is subject to adjustment in the future pursuant to the provisions of the current bilateral agreement between the Governments of the United States and the Dominican Republic.

Additionally, pursuant to the Memorandum of Understanding dated December 22, 1992; and under the terms of the Special Access Program, as set forth in 51 FR 21208 (June 11, 1986), 52 FR 26057 (July 10, 1987) and 54 FR 50425 (December 6, 1989), effective on February 1, 1993, a guaranteed access level is being established for properly certified textile products assembled in the Dominican Republic from fabric formed and cut in the United States in wool textile products in Category 443 for the period February 1, 1993 through December 31, 1993 at a level of 50,000 numbers.

In carrying out the above directions, the Commissioner of Customs should construe entry into the United States for consumption to include entry for consumption into the Commonwealth of Puerto Rico.

The Committee for the Implementation of Textile Agreements has determined that these actions fall within the foreign affairs exception of the rulemaking provisions of 5 U.S.C. 553(a)(1).

Sincerely,

J. Hayden Boyd,

Acting Chairman, Committee for the Implementation of Textile Agreements.

[FR Doc. 93–1461 Filed 1–21–93; 8:45 am]

BILLING CODE 3510–DR–F

[1] The limit has not been adjusted to account for any imports exported after January 31, 1993.

Amendment of Export Visa Requirements for Cotton, Wool, Man-Made Fiber, Silk Blend and Other Vegetable Fiber Textile Products Produced or Manufactured in Indonesia

January 15, 1993.

AGENCY: Committee for the Implementation of Textile Agreements (CITA).

ACTION: Issuing a directive to the Commissioner of Customs amending visa requirements.

EFFECTIVE DATE: February 1, 1993.

FOR FURTHER INFORMATION CONTACT: Ross Arnold, International Trade Specialist, Office of Textiles and Apparel, U.S. Department of Commerce, (202) 482–4212.

SUPPLEMENTARY INFORMATION:

Authority: Executive Order 11651 of March 3, 1972, as amended; section 204 of the Agricultural Act of 1956, as amended (7 U.S.C. 1854).

The existing export visa arrangement between the Governments of the United States and Indonesia is being amended, for goods exported on and after February 1, 1993, to require a new special commercial invoice. However, for goods exported during the period February 1, 1993 through February 28, 1993 either the old commercial invoice or the new commercial invoice may be used. For goods exported on and after March 1, 1993 the new commercial invoice must be used.

See 52 FR 20134, published on May 29, 1987.

J. Hayden Boyd,

Acting Chairman, Committee for the Implementation of Textile Agreements.

Committee for the Implementation of Textile Agreements

January 15, 1993.

Commissioner of Customs,
Department of the Treasury, Washington, DC 20229.

Dear Commissioner: This directive amends, but does not cancel, the directive issued to you on May 19, 1987, by the Chairman, Committee for the Implementation of Textile Agreements. That directive directed you to prohibit entry of certain cotton, wool, man–made fiber, silk blend and other vegetable fiber textile products, produced or manufactured in Indonesia for which the Government of Indonesia has not issued an appropriate visa.

Effective on February 1, 1993, you are directed to amend further the May 19, 1987 directive to require a new commercial invoice for shipments of cotton, wool, man–made fiber, silk blend and other vegetable fiber textile products, produced or manufactured in Indonesia and exported from Indonesia on and after February 1, 1993. For merchandise exported during the period February 1, 1993 through February 28, 1993, either the old commercial invoice or the new commercial invoice may be used. For goods exported on and after March 1, 1993, only the new commercial invoice may be used.

Shipments entered or withdrawn from warehouse according to this directive which are not accompanied by an appropriate export visa shall be denied entry and a new visa must be obtained.

The Committee for the Implementation of Textile Agreements has determined that this action falls within the foreign affairs exception to the rulemaking provisions of 5 U.S.C. 553(a)(1).

Sincerely,

J. Hayden Boyd,

Acting Chairman, Committee for the Implementation of Textile Agreements.

[FR Doc. 93–1454 Filed 1–21–93; 8:45 am]

BILLING CODE 3510–DR–F

DEPARTMENT OF DEFENSE

Department of the Air Force

USAF Scientific Advisory Board; Meeting

The USAF Scientific Advisory Board of the Aging Aircraft Ad Hoc Committee will meet on February 5, 1993 from 8 a.m. to 5 p.m. at ANSER Corp, Arlington, VA.

The purpose of this meeting is to receive briefings, hold discussions and begin report writing on projects related to Air Force Aging Aircraft. This meeting will involve discussions of classified defense matters listed in section 552(c) of title 5, United States Code, specifically subparagraph (1) thereof, and accordingly will be closed to the public.

For further information, contact the Scientific Advisory Board Secretariat at (703) 697–4648).

Patsy J. Conner,

Air Force Federal Register Liaison Officer.

[FR Doc. 93–1492 Filed 1–21–93; 8:45 am]

BILLING CODE 3910–01–M

USAF Scientific Advisory Board; Meeting

The USAF Scientific Advisory Board of the Current State of the Air Forces Panel (Information Architecture) will meet on February 8–9, 1993 from 8 a.m. to 5 p.m. at Air Force Communication Command, Scott AFB, IL.

The purpose of this meeting is to receive briefings, hold discussions and begin report writing on projects related to Information Architectures. This meeting will involve discussions of classified defense matters listed in section 552b(c) of title 5, United States Code, specifically subparagraph (1) thereof, and accordingly will be closed to the public.

For further information, contact the Scientific Advisory Board Secretariat at (703) 697–4648.

Patsy J. Conner,

Air Force Federal Register Liaison Officer.

[FR Doc. 93–1493 Filed 1–21–93; 8:45 am]

BILLING CODE 3910–01–M

USAF Scientific Advisory Board; Meeting

The USAF Scientific Advisory Board of the Mission Analysis Panel (Information Architecture) will meet on February 8–9, 1993 from 8 a.m. to 5 p.m. at the Air Combat Command, Langley AFB, VA.

The purpose of this meeting is to receive briefings, hold discussions and begin report writing on projects related to Information Architectures. This meeting will involve discussions of classified defense matters listed in section 552b(c) of title 5, United States Code, specifically subparagraph (1) thereof, and accordingly will be closed to the public.

For further information, contact the Scientific Advisory Board Secretariat at (703) 697–4648.

Patsy J. Conner,

Air Force Federal Register Liaison Officer.

[FR Doc. 93–1491 Filed 1–21–93; 8:45 am]

BILLING CODE 3910–01–M

USAF Scientific Advisory Board; Meeting

The USAF Scientific Advisory Board of the Current State of the Air Forces Panel (Information Architecture) will meet on February 25–26, 1993 from 8 a.m. to 5 p.m. at Tinker AFB, OK.

The purpose of this meeting is to receive briefings, hold discussions and begin report writing on projects related to Air Force Logistics. This meeting will involve discussions of classified defense matters listed in section 552b(c) of title 5, United States Code, specifically subparagraph (1) thereof, and accordingly will be closed to the public.

For further information, contact the Scientific Advisory Board Secretariat at (703) 697–4648.

Patsy J. Conner,

Air Force Federal Register Liaison Officer.

[FR Doc. 93–1490 Filed 1–21–93; 8:45 am]

BILLING CODE 3910–01–M

DEPARTMENT OF EDUCATION

National Education Goals Panel, Meeting

AGENCY: National Education Goals Panel, Education.

ACTION: Notice of meeting.

SUMMARY: This notice sets forth the date and location of a forthcoming meeting of the National Education Goals Panel. This notice also describes the functions of the panel. Notice of this meeting is required under section 10(a)(2) of the Federal Advisory Committee Act.

DATES: February 19, 1993, time to be announced.

ADDRESSES: Hyatt Regency Washington on Capitol Hill, 400 New Jersey Avenue NW., Washington, DC 20001.

FOR FURTHER INFORMATION CONTACT: Laura Lancaster, Public Information Officer, 1850 M Street NW., suite 270, Washington, DC 20036. Telephone (202) 632–0952.

SUPPLEMENTARY INFORMATION: The National Education Goals Panel was created to monitor and report annually to the President, Governors and Congress on the progress of the nation toward meeting the six National Education Goals adopted by the President and Governors in 1989.

The meeting of the panel is open to the public. The agenda includes discussion of feedback to the 1992 National Education Goals Report and suggestions for improvement of format.

Records are kept of all panel proceedings, and are available for public inspection at the Office of the Goals Panel at 1850 M Street NW., suite 270, Washington, DC 20036, from the hours of 10 a.m. to 5 p.m.

Dated: January 13, 1993.

Lanny Griffith,

Assistant Secretary, Office of Intergovernmental and Interagency Affairs.

[FR Doc. 93–1542 Filed 1–21–93; 8:45 am]

BILLING CODE 4000–01–M

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. QF85–311–002]

Acme POSDEF Partners, L.P.; Supplement to Filing

January 14, 1993.

On January 8, 1993, Acme POSDEF Partners, L.P. tendered for filing a supplement to its filing in this docket. No determination has been made that the submittal constitutes a complete filing.

The supplement provides additional information pertaining primarily to the technical data and the ownership structure of the cogeneration facility.

Any person desiring to be heard or objecting to the granting of qualifying status should file a motion to intervene or protest with the Federal Energy Regulatory Commission, 825 North Capitol Street, NE., Washington, DC 20426, in accordance with rules 211 and 214 of the Commission's Rules of Practice and Procedure. All such motions or protests must be filed by January 29, 1993, and must be served on the applicant. 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 petition to intervene. Copies of this filing are on file with the Commission and are available for public inspection.

Lois D. Cashell,

Secretary.

[FR Doc. 93–1535 Filed 1–21–93; 8:45 am]

BILLING CODE 6717–01–M

[Docket Nos. CP93–141–000, et al.]

Iroquois Gas Transmission System, Inc., et al.; Natural Gas Certificate Filings

January 13, 1993.

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

1. Iroquois Gas Transmission System, Inc.

[Docket No. CP93–141–000]

Take notice that on December 31, 1992, Iroquois Gas Transmission System, L.P. (Iroquois), One Corporate Drive, suite 606, Shelton, Connecticut 06484, filed in Docket No. CP93–141–000, an application pursuant to section 7(c) of the Natural Gas Act for a certificate of public convenience and necessity authorizing the construction

and operation of a compressor station to be located in the town of Croghan, New York at a cost of $25,915,000. Iroquois states that the compressor station is necessary to provide natural gas transportation services for two shippers in the aggregate amount of 99.5 MMcf/d. Iroquois states that it has entered into precedent agreements with Selkirk Cogen Partners, L.P. for service for 55 MMcf/d and with Rotterdam Generating Company, L.P. for service for 44.5 MMcf/d. Iroquois will provide this firm gas transportation service under its blanket certificate.

Comment date: February 3, 1993, in accordance with Standard Paragraph F at the end of this notice.

2. CNG Transmission Corporation

[Docket No. CP93–149–000]

Take notice that on January 7, 1993, CNG Transmission Corporation (CNG), 445 West Main Street, Clarksburg, West Virginia 26301, filed in Docket No. CP93–149–000 an application pursuant to section 7(b) of the Natural Gas Act for authorization to abandon certificated contract storage service for Transcontinental Gas Pipe Line Corporation (Transco), all as more fully set forth in the application which is on file with the Commission and open to public inspection.

CNG requests a Commission order approving the abandonment of the Rate Schedule GSS storage service to Transco under and expired service agreement dated September 12, 1972, to provide 37,975,000 Mcf of storage capacity (approximately 39,038, 300 dt equivalent of natural gas) and a maximum daily demand of 603,500 Mcf (approximately 620,398 dt equivalent of natural gas), to be effective no later than October 7, 1994. CNG states that by letter dated October 7, 1992, it provided timely notice to Transco that it was terminating its existing service agreement, whose primary term expired April 1, 1992, to be effective on twenty-four months advance notice.

CNG states that upon approval of this abandonment, it will provide service under CNG's revised Docket No. RS92–14–000 Rate Schedule GSS directly to those Transco customers desiring such services under revised terms and conditions. CNG states that it proposes to make available to Transco's GSS customers on a pro rata basis up to 36,838,380 dt equivalent of natural gas of storage capacity and 585,437 dt equivalent of natural gas per day of storage demand. CNG requests waiver of the Commission's first-come, first-served regulations to permit CNG to commence storage service to Transco's Rate Schedule GSS customers under Part 284 of the Commission's Regulations.

Comment date: February 3, 1993, in accordance with Standard Paragraph F at the end of this notice.

Standard Paragraphs

F. Any person desiring to be heard or make any protest with reference to said file with the Federal Energy Regulatory Commission, 825 North Capitol Street, NW., Washington, DC 20426, a motion to intervene or a protest in accordance with the requirements of the Commission's Rules of Practice and Procedure (18 CFR 385.211 and 385.214) and the Regulations under the Natural Gas Act (18 CFR 157.10). All protests filed with the Commission will be considered by it in determining the appropriate action to be taken but will not serve to make the protestants parties to the proceeding. Any person wishing to become a party to a proceeding or to participate as a party in any hearing therein must file a motion to intervene in accordance with the Commission's Rules.

Take further notice that, pursuant to the authority contained in and subject to jurisdiction conferred upon the Federal Energy Regulatory Commission by sections 7 and 15 of the Natural Gas Act and the Commission's Rules of Practice and Procedure, a hearing will be held without further notice before the Commission or its designee on this filing if no motion to intervene is filed within the time required herein, if the Commission on its own review of the matter finds that a grant of the certificate is required by the public convenience and necessity. If a motion for leave to intervene is timely filed, or if the Commission on its own motion believes that a formal hearing is required, further notice of such hearing will be duly given.

Under the procedure herein provided for, unless otherwise advised, it will be unnecessary for the applicant to appear or be represented at the hearing.

Lois D. Cashell,

Secretary.

[FR Doc. 93–1387 Filed 1–21–93; 8:45 am]

BILLING CODE 6717–01–M

[Docket No. QF93–15–000]

Central Florida Power, L.P.; Amendment to Filing

January 13, 1993.

On January 12, 1993, Central Florida Power, L.P. (Applicant) tendered for filing supplemental information in this docket.

The supplemental information pertains to the ownership structure. No determination has been made that the submittal constitutes a complete filing.

Any person desiring to be heard or objecting to the granting of qualifying status should file a motion to intervene or protest with the Federal Energy Regulatory Commission, 825 North Capitol Street NE., Washington, DC 20426, in accordance with rules 211 and 214 of the Commission's Rules of Practice and Procedure. All such motions or protests must be filed by February 1, 1993, and must be served on the Applicant. 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 petition to intervene. Copies of this filing are on file with the Commission and are available for public inspection.

Lois D. Cashell,

Secretary.

[FR Doc. 93–1391 Filed 1–21–93; 8:45 am]

BILLING CODE 6717–01–M

[Docket No. CP92–552–002]

Granite State Gas Transmission, Inc.; Proposed Rates and Tariff Provisions

January 13, 1993.

Take notice that on December 30, 1992, Granite State Gas Transmission, Inc. (Granite State), 300 Friberg Parkway, Westborough, Massachusetts 01581–5039 tendered for filing with the Commission the original and revised tariff sheets listed below in its FERC Gas Tariff, Second Revised Volume No. 1, containing proposed rates and tariff provisions to provide open-access transportation services on its pipeline system pursuant to part 284, subpart G, of the Commission's Regulations, effective January 30, 1993:

Purpose and Content

Third Revised Sheet No. 1—Table of Contents
Third Revised Sheet No. 20—Indices
Original Sheet No. 27—Transportation Rates
Original Sheet No. 28—Reserved-Future Use
Second Revised Sheet No. 30—Indices
Original Sheet Nos. 91–91H—Rate Schedule FT–1
Original Sheet Nos. 92–92H—Rate Schedule IT–1
Original Sheet Nos. 93–99—Reserved-Future Use
Second Revised Sheet No. 100—Indices
First Revised Sheet No. 101—GT&C, Definition of Terms
First Revised Sheet No. 102—GT&C, Definition of Terms
Original Sheet Nos. 102A–102B—GT&C, Definition of Terms
Original Sheet Nos. 150–157—Qualification for Trans. Service

Original Sheet Nos. 158–164—Scheduling & Allocation
Original Sheet Nos. 165–169—Scheduling & Balancing
Original Sheet Nos. 170–176—Trans. Request Form
Original Sheet Nos. 177–179—Determination: Receipt and Delivery Point
Original Sheet Nos. 180–197—Operating Balancing Agreements: Receipt and Delivery Points
Original Sheet Nos. 198–199—Reserved-Future Use
First Revised Sheet No. 200—Indices
Original Sheet Nos. 212–212I—Form of Contract-Firm Transportation
Original Sheet Nos. 213–213H—Form of Contract-Interim Transportation
Original Sheet Nos. 214–220—Reserved-Future Use

According to Granite State its filing is submitted in compliance with provisions in a certificate order issued November 2, 1992 in Docket No. CP92–552–000 granting Granite State a blanket transportation certificate under part 284, subpart G, of the Commission's Regulations and directing Granite State to file part 284 tariff provisions and rate schedules for firm and interruptible transportation services and storage, together with general terms and conditions applicable to such services.

Granite State further states that the Commission approved a settlement of its rate proceeding in Docket No. RP91–164–000 on June 29, 1992. According to Granite State, the settlement approved non-gas rates for sales and transportation services in two phases. Granite State states that the settlement rates were derived according to the Straight Fixed Variable methodology applied to the settlement cost of service. It is further stated that the Phase 1 settlement rates become effective July 1, 1992 and the Phase 2 rates were authorized to be effective on November 1, 1992 but in any event on January 1, 1993. Granite State further states that the rates for the open-access transportation services proposed in its filing are the Phase 2 transportation rates approved in the settlement in Docket No. RP91–164–000.

Since this filing is the first offering of open-access transportation services on its system, Granite State proposes a "window period" between January 11 and January 22, 1993 during which it will accept requests for transportation service. Granite State further states that all properly completed transportation requests received during the request period will be granted equal priority in the allocation of available capacity on its system.

Granite State states that copies of its filing were served on its affiliated distribution company customers, Bay State Gas Company and Northern Utilities, Inc. and a direct customer, Pease Air Force Base. Granite State further states that copies of its filing have also been served on the regulatory commissions of the States of Maine, Massachusetts and New Hampshire.

Any person desiring to protest said filing should file a protest with the Federal Energy Regulatory Commission, 825 North Capitol Street NE., Washington, DC 20426, in accordance with Rule 211 of the Commission's Rules of Practice and Procedure 18 CFR 385.211. All such protests should be filed on or before January 21, 1993. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Copies of this filing are on file with the Commission and are available for public inspection.

Lois D. Cashell,

Secretary.

[FR Doc. 93–1390 Filed 1–21–93; 8:45 am]

BILLING CODE 6717–01–M

[Project Nos. 2069–003, et al.]

Hydroelectric Applications; Arizona Public Service Company, et al.

Take notice that the following hydroelectric applications have been filed with the Commission and are available for public inspection:

1. a. Type of Application: New License for Major Project (Tendered Notice).

b. Project No.: 2069–003.

c. Date filed: December 18, 1992.

d. Applicant: Arizona Public Service Company.

e. Name of Project: Childs-Irving Hydroelectric Project.

f. Location: Entirely within the Coconino and Tonto National Forests, on Fossil Creek, in Yavapai and Gila Counties, Arizona. T11N, R6E; T11N, R7E; T12N, R6E; T12N, R7E.

g. Filed Pursuant to: Federal Power Act, 16 U.S.C. 791(a)—825(r).

h. Applicant Contact: Fearl M. Parker, Environmental Licensing, Arizona Public Service Company, P.O. Box 53999, Station 9364, Phoenix, Arizona 85072–3999.

i. FERC Contact: Mr. Michael Strzelecki, (202) 219–2827.

j. Description of Project: The project as licensed includes two existing developments. The Irving development consists of: (1) A 5-foot-high concrete diversion structure on Fossil Creek; (2) a 16,578-foot-long flume; (3) a 3,278-foot-long penstock; (4) a powerhouse containing one generating unit with a total installed capacity of 1,600 kW; (5) a trailrace returning water to the flume of the Childs development; (6) a 6.31-mile-long transmission line leading to the powerhouse of the Childs development; and (7) appurtenant facilities.

The Childs development consists of: (1) A 5-foot-high diversion structure on Fossil Creek located 350 feet upstream of the Irving powerhouse; (2) a 23,190-foot-long conduit discharging into the licensee's Stehr Lake; (3) the 23-acre lake created by a 12-foot-high dam and a 20-foot-high dam; (4) a 6,281-foot-long pressure tunnel connecting the lake with a penstock; (5) the 4,800-foot-long penstock; (6) a powerhouse containing three generating units with a total installed capacity of 5,400 kW; (7) a tailrace discharging water into the Verde River; (8) two 200-foot-long transmission lines interconnecting with the Arizona Public Service Company transmission grid; and (9) appurtenant facilities.

k. With this notice, we are initiating consultation with the State Historic Preservation Officer (SHPO), as required by 106, National Historic Preservation Act, and the regulations of the Advisory Council on Historic Preservation, 36 CFR, 800.4.

l. Under § 4.32(b)(7) of the Commission's regulations (18 CFR 4.32(b)(7), if any resource agency, SHPO, Indian Tribe, or person believes that the applicant should conduct an additional scientific study to form an adequate factual basis for a complete analysis of the application on its merits, they must file a request for the study with the Commission not later than 60 days after the applicant is filed, (on or before February 16, 1993) and must serve a copy of the request on the applicant.

m. The Commission's deadline for the applicant's filing of a final amendment to the application is March 18, 1993.

2. a. Type of Application: Subsequent License.

b. Project No.: 2341–004.

c. Date filed: November 20, 1991.

d. Applicant: Georgia Power Company.

e. Name of Project: Langdale.

f. Location: On the Chattahoochee River in Harris County, Georgia, and Chambers County, Alabama.

g. Filed Pursuant to: Federal Power Act 16 U.S.C. 791(a)–825(r).

h. Applicant Contact: Major H. Thompson, Jr., Manager, FERC Licensing and Compliance, P.O. Box 4545, Atlanta, GA 30302, (404) 526–7140.

i. FERC Contact: James Hunter at (202) 219–2839.

j. *Deadline Date:* March 8, 1993.

k. Status of Environmental Analysis: This application is ready for environmental analysis at this time, see attached paragraph D10.

l. Description of Project: The project consists of: (1) A 15-foot-high, 1,892-foot-long rubble masonry dam with a 1,362-foot-long overflow spillway at elevation 550.25 feet and a gated intake section containing two active and four retired water passageways connecting to the powerhouse, each 25 feet wide, 15 feet high, and 30 feet long; (2) a reservoir with a surface area of approximately 270 acres at the spillway elevation; (3) an integral, 35-foot-wide, 245-foot-high, concrete and brick powerhouse on the right bank containing two identical generating units with a total installed capacity of 1,040 kw; (4) a 250-foot-wide, 1,500-foot-long tailrace channel; and (5) a substation connecting directly to the applicant's distribution system. The average annual generation is 5.12 GWh. The applicant is not proposing any changes to the existing project works.

m. Purpose of Project: Power generated at the project is delivered to customers within the applicant's service area.

n. This notice also consists of the following standard paragraphs: A4 and D10.

o. Available Locations of Application: A copy of the application, as amended and supplemented, is available for inspection and reproduction at the Commission's Public Reference and Files Maintenance Branch, located at 941 North Capitol Street, NE., room 3104, Washington, DC 20426, or by calling (202) 208–1371. A copy is also available for inspection and reproduction at Georgia Power Company's office at 333 Piedmont Avenue, Atlanta, Georgia, (404) 526–6526.

3. a. Type of Application: Subsequent License.

b. Project No.: 2350–005.

c. Date filed: November 20, 1991.

d. Applicant: Georgia Power Company.

e. Name of Project: Riverview.

f. Location: On the Chattahoochee River in Harris County, Georgia, and Chambers County, Alabama.

g. Filed Pursuant to: Federal Power Act 16 U.S.C. 791(a)–825(r).

h. Applicant Contact: Major H. Thompson, Jr., Manager, FERC Licensing and Compliance, P.O. Box 4545, Atlanta, GA 30302, (404) 526–7140.

i. FERC Contact: James Hunter at (202) 219–2839.

j. *Deadline Date:* March 8, 1993.

k. Status of Environmental Analysis: This application is ready for environmental analysis at this time, see attached paragraph D10.

l. Description of Project: The project consists of: (1) A 15-foot-high, 994-foot-long stone masonry diversion dam with an overflow spillway at elevation 532.3 feet; (2) a back-channel headrace about 5,000 feet long; (3) a 200-foot-long lower stone masonry dam with an overflow crest at elevation 530.5 feet, raised to 532.5 feet with flashboards; (4) a 58-foot-long, 61-foot-wide, 25-foot-high, concrete and brick powerhouse at the western end of the lower dam with a gated intake section containing two 22-foot-wide, 18-foot-high, 30-foot-long water passageways connecting to the two generating units rated at 240 kW each; (5) a 100-foot-wide, 2,000-foot-long tailrace channel; and (6) a substation connecting directly to the applicant's distribution system. The average annual generation is 2.99 GWh. The applicant is not proposing any changes to the existing project works.

m. Purpose of Project: Power generated at the project is delivered to customers within the applicant's service area.

n. This notice also consists of the following standard paragraphs: A4 and D10.

o. Available Locations of Application: A copy of the application, as amended and supplemented, is available for inspection and reproduction at the Commission's Public Reference and Files Maintenance Branch, located at 941 North Capitol Street, NE., room 3104, Washington, DC 20426, or by calling (202) 208–1371. A copy is also available for inspection and reproduction at Georgia Power Company's office at 33 Piedmont Avenue, Atlanta, Georgia, (404) 526–6526.

4. a. Type of Application: New License.

b. Project No.: 2389–012.

c. Date Filed: December 20, 1991.

d. Applicant: Edwards Manufacturing Company and the City of Augusta, Maine.

e. Name of Project: Edwards Dam Project.

f. Location: On the Kennebec River in Kennebec County, Maine.

g. Filed Pursuant to: Federal Power Act, 16 U.S.C. 791(a)–825(r).

h. Applicant Contact: Mr. Fred Ayer, Northrop, Devine, & Tarbell, Inc., 500 Washington Avenue, Portland, Maine 04103, (207) 775–4495.

i. FERC Contact: Robert Bell (202) 219–2806.

j. *Comment Date:* March 5, 1993.

k. Status of Environmental Analysis: This application is not ready for environmental analysis at this time, see attached standard paragraph E1.

l. With this notice, we are initiating consultation with the State Historic Preservation Officer (SHPO), as required by section 106, National Historic Preservation Act, and the regulations of the Advisory Council on Historic Preservation, 36 CFR at 800.4.

m. Description of Project: The project consists of the:

(1) An upgraded and reinforced, concrete-capped, timber crib dam, totaling about 917 feet long, consisting of (a) an east-side, masonry abutment, about 40 feet high, with a top elevation of 33.0 feet msl; (b) a west-side, masonry abutment, with a top evaluation of 34.7 feet msl; (c) an 850-foot-long primary spillway section, with a maximum height of 42 feet at a crest elevation of 19.5 feet msl, topped with a proposed 6-foot-high inflatable crest control, rubber dam; and (d) a 67-foot-long bulkhead spillway section, with a maximum height of 35 feet at a crest elevation of 29.0 feet msl;

(2) An expanded power canal, with an average width of 126 feet, consisting of new tied-back, 560-foot-long retaining walls with top elevations ranging from 35.0 to 50.0 feet msl;

(3) A new gatehouse, about 125 feet long by 25 feet wide by 28 feet high, having four vertical lift gates, each 27 feet wide by 22 feet high, at a sill evaluation of 9.0 feet msl;

(4) A masonry and steel powerhouse, known as Wheelhouse No. 4, which would remain the same, about 117 feet long by 85 feet wide by 65 feet high, equipped with (a) seven vertical generating units, with (b) a total rated capacity of 2,850 kilowatts (kW), (c) a hydraulic capacity ranging from 246 to 2,682 cfs, and (d) a net head of 17 feet;

(5) A new excavated powerhouse, about 140 feet long by 63 feet wide by 94 feet high, containing (a) one vertical Kaplan generating unit, with (b) a rated capacity of 8,000 kW, (c) a hydraulic capacity of 5,800 cfs, and (d) a net head of 18 feet;

(6) New upstream and downstream fish passage facilities, to be located along the east wall of the power canal, between the two powerhouses, in detail: (a) the upstream passage facility would consist of fish transport channels, a central fish attraction pool, a duplex fish lift, sorting and holding tanks, piping, an exit channel and weir leading to the power canal; (b) the downstream passage facility, would consist of a concrete gated entrance chamber, to be located near the intake of each

powerhouse, and sluice piping, exiting into the tailrace;

(7) The altered impoundment, at the plant's hydraulic capacity of 8,500 cfs or less, would measure about 79,400 feet long, with (a) a surface area of about 1,169 AC; (b) a gross storage capacity of 18,437 AF; (c) a usable storage capacity of 4,035 AF; and (d) a normal pool headwater elevation of 25.0 feet msl;

(8) A new project substation; and

(9) Appurtenant facilities.

The existing project would also be subject to Federal takeover under Sections 14 and 15 of the Federal Power Act. Based on the expiration of December 31, 1993, the Applicant's estimated net investment in the project would amount to $6,373,457.

o. Purpose of Project: Project power would be sold to Central Maine Power Corporation.

p. This notice also consists of the following standard paragraphs: B1 and E1.

q. Available Location of Application: A copy of the application, as amended and supplemented, is available for inspection and reproduction at the Commission's Public Reference and Files Maintenance Branch, located at 941 North Capitol Street, NE., room 3104, Washington, DC, 20426, or by calling (202) 208–1371. A copy is also available for inspection and reproduction at Edwards Manufacturing Company, 250 Minot Avenue, Auburn, ME 04210 or by calling (207) 353–4111.

5. a. Type of Filing: Major New License.

b. Project No.: 2425–001.

c. Date Filed: December 12, 1991.

d. Applicant: The Potomac Edison Company.

e. Name of Project: Luray/Newport Project.

f. Location: On the South Fork of the Shenandoah River in Page County, Virginia.

g. Filed pursuant: Federal Power Act, 16 U.S.C., section 791(a) - 825(r).

h. Applicant Contact: Mr. D.E. Gervenak, Executive Director, Operations, Allegheny Power Service Corporation, 800 Cabin Hill Drive, Greensburg, PA 15601, (412) 838–6835.

i. FERC Contact: Héctor M. Pérez (202) 219–2843.

j. *Comment Date:* March 1, 1993.

k. Status of Environmental Analysis: This application is ready for environmental analysis at this time see attached paragraph D10.

l. The existing project comprises the Luray and the Newport Developments described below.

The Luray Development consists of: (1) A 21.9-foot-high, 525-foot-long reinforced concrete dam impounding a small reservoir with a storage capacity of 880 acre-feet; (2) a powerhouse at the southeast end of the dam containing 3 units with a total capacity of 1,600 kW; (3) a 1.54-mile-long, 34.5 kV transmission line; and (4) other appurtenances.

The Newport Development consists of: (1) A 28.8-foot-high, 443-foot-long reinforced concrete dam impounding a small reservoir with storage capacity of 1,090 acre-feet; (2) a powerhouse at the northwest end of the dam containing 3 units with a total installed capacity of 1,400 kW; (3) a 70-foot-long, 34.5kV transmission line; and (4) other appurtenances.

m. With this notice, we are initiating consultation with the State Historic Preservation Officer (SHPO), as required by section 106, National Historic Preservation Act, and the regulations of the Advisory Council on Historic Preservation, 36 CFR 800.4

n. Purpose of this Project: The energy generated by the project is integrated into Potomac Edison's system.

o. This notice also consists standard paragraph D10.

p. Available Locations of Application: A copy of the application is available for inspection and reproduction at the Commission's Public Reference and Files Maintenance Branch, located at 941 North Capitol Street, NE., room 3104, Washington, DC 20426, or by calling (202) 208–1371. A copy is also available for inspection and reproduction at Allegheny Power Service Corporation, 800 Cabin Hill Drive, Greensburg, PA 15601 (412) 838–6835.

6. a. Type of Application: Request for Extension of Time to Commence Project Construction.

b. Project No.: 4656–010.

c. Date Filed: December 23, 1992.

d. Applicant: Boise-Kuna Irrigation District, *et al.*

e. Name of Project: Arrowhead Dam Hydroelectric Project.

f. Location: At the U.S. Bureau of Reclamation's existing Arrowrock Dam and Reservoir on the South Fork of the Boise River. The project would be located in Elmore, Boise, and Ada Counties, Idaho, approximately 12 miles east of Boise, Idaho.

g. Filed Pursuant to: Energy Policy Act of 1992, title XVII, 1701(c)(4) and section 13 of the Act, 16 U.S.C. 806.

h. Applicant Contacts: Don A. Olowinski and Richard B. Burleigh, Counsel for Boise-Kuna Irrigation District, *et al.* Hawley Troxell Ennis & Hawley First Interstate Center, suite 1000, P.O. Box 1617, Boise, Idaho 83701, (208) 344–6000.

i. FERC Contact: Mr. Lynn R. Miles, (202) 219–2671.

j. *Comment Date:* March 1, 1993.

k. Description of the Request: Pursuant to the Energy Policy Act of 1992, Title XVII, section 1701(c)(4) and section 13 of the Act, 16 U.S.C. 806, the licensee requests that the deadline to commence project construction be extended to March 26, 1999. The licensee also requests that the deadlines to comply with articles 101–110, 112–115, 117 and 304 be extended to 90 days prior to the commencement of project construction. The licensee states that the extension will provide sufficient time to complete the ongoing power marketing efforts, prepare for and commence construction of the project and comply with all the license provisions. The licensee further contends that it has diligently pursued the development of the project and has invested over $500,000 in this effort.

l. This notice also consists of the following standard paragraphs: B, C, and D2.

7. a. Type of Application: Approval of Plan for Construction of Recreation Facilities.

b. Project No: 10853–004.

c. Date Filed: December 7, 1992.

d. Applicant: Otter Tail Power Company.

e. Name of Project: Otter Tail River Project.

f. Location: Otter Tail River, in Otter Tail County, Minnesota.

g. Filed Pursuant to: Federal Power Act, 16 U.S.C. 791(a)–825(r).

h. Applicant Contact: Mr. Verlin Menze, P.E., Manager, Environmental Engineering, Otter Tail Power Company, 215 S. Cascade Street, P.O. Box 496, Fergus Falls, MN 56538–0496, (218) 739–8409.

i. FERC Contact: Heather Campbell, (202) 219–3097.

j. *Comment Date:* February 13, 1993.

k. Description of Project: The Otter Tail Power Company, licensee for the Otter Tail River Project, requests Commission approval of a plan to construct recreation facilities at the Hoot Lake Diversion Dam bypass reach to ensure public access to the Otter Tail River. The plan will provide approximately thirteen miles of river reach for recreational canoeing, with multiple access points and varying degrees of difficulty and challenge. The licensee states that the plan has been developed with consideration to accommodating individuals with varying degrees of physical ability.

l. This note also consists of the following standard paragraphs: B, C, and D2.

8. a. Type of Application: Minor License.

b. Project No.: 10881–001.
c. Date Filed: April 24, 1992.
d. Applicant: Daniel Nelson Evans, Jr.
e. Name of Project: Whitney Mills.
f. Location: On the Lawson's Fork Creek, Spartanburg County, South Carolina.
g. Filed Pursuant to: Federal Power Act 16 U.S.C. 791(a)–825(r).
h. Applicant Contact: Daniel Nelson Evans, Jr., 212 Range Road, Kings Mountain, NC 28086, (704) 739–9710.
i. FERC Contact: Charles T. Raabe (tag) (202) 219–2811.
j. *Deadline Date*: March 8, 1993.
k. Status of Environmental Analysis: This application is ready for environmental analysis at this time, see attached paragraph D10.
l. Description of Project: The existing inoperative project would consist of: (1) A dam with a length of 296 feet and a maximum height of about 23 feet; (2) a reservoir with a surface area of about 2 to 4 acres, a maximum capacity of 30-acre feet, and a normal water surface elevation of 703 feet mean sea level (msl); (3) two buried steel penstocks, each with a length of 60 feet and a diameter of 4 feet; (4) a brick and concrete powerhouse with dimensions of 14.5 feet by 26.5 feet containing a single turbine-generator unit rated at 225 kilowats (kW) operating at 26 feet of head; (5) a tailrace protected by a 30-foot-long concrete tailrace wall; (6) a new 65-foot-long, 12.5-kilovolt (kV) transmission line; and (7) appurtenant facilities.

The dam contains two low-level 3- by 5-foot vertical slide gates and has a 231-foot-long uncontrolled overflow spillway with a crest elevation of 7000 feet msl surmounted by 3-foot-high flashboards. Applicant estimates that the average annual energy production would be 826,424 kWh. Energy produced would be sold to Duke Power Company. The existing facilities are owned by Ernest W. Miller. The application was filed during the term of Applicant's preliminary permit.
m. This notice also consists of the following standard paragraphs: A4 and D10.
n. Available Locations of Application: A copy of the application, as amended and supplemental, is available for inspection and reproduction at the Commission's Public Reference and Files Maintenance Branch, located at 941 North Capitol Street, NE. Washington, DC 20426, or by calling (202) 208–1371. A copy is also available for inspection and reproduction at 212 Range Road, Kings Mountain, NC 28086 and at the Spartanburg County Public Library, 333 South Pine Street, Spartanburg, SC.

9. a. Type of Application: Minor License.
b. Project No.: 11213–000.
c. Date filed: December 11, 1991.
d. Applicant: Thomas Hohman.
e. Name of Project: Barberville Hydroelectric Project.
f. Location: On the Poestenkill River, in Rensselaer County, New York.
g. Filed Pursuant to: Federal Power Act 16 U.S.C. 791(a)–825(r).
h. Applicant Contact: Mr. Thomas Hohman, 4 Cloverdale Road; Wyantskill, NY, (518) 283–6326.
i. FERC Contact: Mary Golato (202) 219–2804.
j. *Deadline Date:* March 8, 1993.
k. Status of Environmental Analysis: This application is ready for environmental analysis at this time, see attached paragraph D10.
l. Description of Project: The proposed project would consist of: (1) A natural forebay pool at the top of Barberville Falls; (2) a new intake structure in the forebay, including a trashrack oriented about 45 degrees to the direction of flow; (3) a new steel penstock 36 inches in diameter and about 90 feet long, connecting the intake to a new surge tank; (4) two new steel penstocks, each 24 inches in diameter and about 225 feet long, between the surge tank and the powerhouse; (5) a new reinforced concrete powerhouse containing two generator units each rated at 150 kW each, and one generator unit rated at 35 kW, for a total installed capacity of 335 kW; (6) a new overhead transmission line; and (7) appurtenant facilities.
m. Purpose of Project: All project energy generated would be utilized by the applicant for sale to its customers.
n. This notice also consists of the following standard paragraphs: A4 and D10.
o. Available Locations of Application: A copy of the application, as amended and supplemented, is available for inspection and reproduction at the Commission's Public Reference and Files Maintenance Branch, located at 941 North Capitol Street, NE., room 3104, Washington, DC 20426, or by calling (202) 219–1371. A copy is also available for inspection and reproduction at Mr. Thomas Hohman, 4 Cloverdale Road, Wyantskill, NY 12198 (518) 283–6326.

Standard Paragraphs

A4. Development Application: Public notice of the filing of the initial development application, which has already been given, established the due date for filing competing applications or notices of intent. Under the Commission's regulations, any competing development application must be filed in response to and in compliance with public notice of the initial development application. No competing applications or notices of intent may be filed in response to this notice.

B. Comments, Protests, or Motions to Intervene: Anyone may submit comments, a protest, or a motion to intervene in accordance with the requirements of the Rules of Practice and Procedure, 18 CFR 385.210, .211, and .214. In determining the appropriate action to take, the Commission will consider all protests or other comments filed, but only those who file a motion to intervene in accordance with the Commission's Rules may become a party to the proceeding. Any comments, protests, or motions to intervene must be received on or before the specified comment date for the particular application.

B1. Protests or Motions to Intervene: Anyone may submit a protest or a motion to intervene in accordance with the requirements of Rules of Practice and Procedure, 18 CFR 385.210, 385.211, and 385.214. In determining the appropriate action to take, the Commission will consider all protests filed, but only those who file a motion to intervene in accordance with the Commission's Rules may become a party to the proceeding. Any protests or motions to intervene must be received on or before the specified deadline date for the particular application.

C. Filing and Service of Responsive Documents: Any filings must bear in all capital letters the title "COMMENTS", "NOTICE OF INTENT TO FILE COMPETING APPLICATION", "COMPETING APPLICATION", "PROTEST", "MOTION TO INTERVENE", as applicable, and the Project Number of the particular application to which the filing refers. Any of the above-named documents must be filed by providing the original and the number of copies provided by the Commission's regulations to: The Secretary, Federal Energy Regulatory Commission, 825 North Capitol Street, NE., Washington, DC 20426. An additional copy must be sent to Director, Division of Project Review, Federal Energy Regulatory Commission, room 1027, at the above-mentioned address. A copy of any notice of intent, competing application or motion to intervene must also be served upon each representative of the Applicant specified in the particular application.

D2. Agency Comments: Federal, State, and local agencies are invited to file comments on the described application. A copy of the application may be

obtained by agencies directly from the Applicant. If an agency does not file comments within the time specified for filing comments, it will be presumed to have no comments. One copy of an agency's comments must also be sent to the Applicant's representatives.

D10. Filing and Service of Responsive Documents: The application is ready for environmental analysis at this time, and the Commission is requesting comments, reply comments, recommendations, terms and conditions, and prescriptions.

The Commission directs, pursuant to § 4.34(b) of the regulations (see Order No. 533 issued May 8, 1991, 56 FR 23108, May 20, 1991) that all comments, recommendations, terms and conditions and prescriptions concerning the application be filed with the Commission within 60 days from the issuance date of this notice. (March 8, 1993 for Project Nos. 2341–004, 2350–005, 10881–001, and 11213–000; March 1, 1993 for Project No. 2425–005). All reply comments must be filed with the Commission within 105 days from the date of this notice. (April 21, 1993 for Project Nos. 2341–004 and 2350–005; April 22, 1993 for Project Nos. 10881–001 and 11213–000; April 15, 1993 for Project No. 2425–001).

Anyone may obtain an extension of time for these deadlines from the Commission only upon a showing of good cause or extraordinary circumstances in accordance with 18 CFR 385.2008.

All filings must (1) bear in all capital letters the title "COMMENTS", "REPLY COMMENTS", "RECOMMENDATIONS," "TERMS AND CONDITIONS," or "PRESCRIPTIONS;" (2) set forth in the heading the name of the applicant and the project number of the application to which the filing responds; (3) furnish the name, address, and telephone number of the person submitting the filing; and (4) otherwise comply with the requirements of 18 CFR 385.2001 through 385.2005. All comments, recommendations, terms and conditions or prescriptions must set forth their evidentiary basis and otherwise comply with the requirements of 18 CFR 4.34(b). Agencies may obtain copies of the application directly from the applicant. Any of these documents must be filed by providing the original and the number of copies required by the Commission's regulations to: The Secretary, Federal Energy Regulatory Commission, 825 North Capitol Street, NE., Washington, DC 20426. An additional copy must be sent to Director, Division of Project Review, Office of Hydropower Licensing, Federal Energy Regulatory Commission, room 1027, at the above address. Each filing must be accompanied by proof of service on all persons listed on the service list prepared by the Commission in this proceeding, in accordance with 18 CFR 4.34(b), and 385.2010.

Dated: January 14, 1993, Washington, DC.

Lois D. Cashell,

Secretary.

[FR Doc. 93–1541 Filed 1–21–93; 8:45 am]

BILLING CODE 6717–01–M

[Docket No. CP93–94–000]

Kern River Gas Transmission Co.; Request Under Blanket Authorization

January 13, 1993.

Take notice that on December 7, 1992, Kern River Gas Transmission Company ("Kern River") P.O. Box 2511, Houston, Texas 77252 filed in Docket No. CP93–94–000 a request for authorization under § 157.205 of the Commission's Regulations and its blanket certificate issued in Docket No. CP89–2048 to establish a delivery point for Kern River's firm and interruptible shippers at the existing metering and appurtenant facilities located at the point of interconnection in Lincoln County, Wyoming between the Kern River system and the intestate gas pipeline system owned Kern River system and the interstate gas pipeline system owned and operated by Overland Trail Transmission Company ("Overland Trail"), all as more fully set forth in the request that is on file with the Commission and open to public inspection.

Kern River seeks authorization to utilize the Overland Trail Interconnect for deliveries by displacement into the Overland Trail system on behalf of Kern River's firm and interruptible shippers under Kern River's Part 284 transportation Rate Schedules KRF–1, MO–1, UP–1, CH–1, and KRI–1. Deliveries would be made in accordance with the 70,000 Mcf/day nominal design capacity of the existing metering facilities.

Availability of the Overland Trail Interconnect as a delivery point will provide Kern River's shippers with increased flexibility in arranging transportation services on the Kern River system. No additional construction or modification of the Overland Trail Interconnect would be necessary to enable Kern River to deliver gas to Overland Trail, as any such deliveries would be by displacement only and no physical deliveries would occur.

Any person or the Commission's Staff may, within 45 days after issuance of this notice by the Commission, file pursuant to Rule 214 of the Commission's Procedural Rules (18 CFR 385.214) a motion to intervene or notice of intervention and pursuant to § 157.205 of the Regulations under the National Gas Act (18 CFR 157.205) a protest to the request. If no protest is filed within the time allowed therefore, the proposed activity shall be deemed to be authorized effective the day after the time allowed for filing a protest. If a protest is filed and not withdrawn within 30 days after the time allowed for filing a protest, the instant request shall be treated as an application for authorization pursuant to section 7 of the Natural Gas Act.

Lois D. Cashell,

Secretary.

[FR Doc. 93–1392 Filed 1–21–93; 8:45 am]

BILLING CODE 6717–01–M

[Docket No. FA91–65–001]

Kentucky Utilities Co.; Order Establishing Hearing Procedures

January 14, 1993.

On November 12, 1992, the Chief Accountant issued a contested audit report under delegated authority noting that the Kentucky Utilities Company (Kentucky Utilities) disagreed with certain of the Division of Audit's recommendations. The Chief Accountant requested that Kentucky Utilities notify the Commission whether they would agree to the disposition of the issues under the shortened procedures provided for by part 41 of the Commission's Regulations. 18 CFR part 41.

The contested matters for Kentucky Utilities are related to accounting and tariff billing for depreciation expense related to coal cars.

On December 9, 1992, Kentucky Utilities responded that they do not consent to the shortened procedures. Section 41.7 of the Commission's Regulations provides that in case consent to the shortened procedures is not given, the proceeding will be assigned for hearing. Accordingly, the Secretary, under authority delegated by the Commission, will set these matters for hearing.

Any interested person seeking to participate in this docket shall file a protest or a motion to intervene pursuant to Rules 211 and 214 of the Commission's Rules of Practice and Procedure (18 CFR 385.211 and 385.214) no later than 15 days after the

date of publication of this order in the Federal Register.

It is ordered:

(A) Pursuant to the authority contained in and subject to the jurisdiction conferred upon the Federal Energy Regulatory Commission by section 402(a) of the Department of Energy Organization Act, the provisions of the Federal Power Act, particularly sections 205, 206 and 301 thereof, and pursuant to the Commission's Rules of Practice and Procedures (18 CFR, chapter I), a public hearing shall be held concerning the appropriateness of Kentucky Utilities' practices as discussed above.

(B) A Presiding Administrative Law Judge, to be designated by the Chief Administrative Law Judge, shall convene a prehearing conference in these proceedings, to be held within 45 days of the date of this order, in a hearing room of the Federal Energy Regulatory Commission, 810 First Street, NE., Washington, DC 20426. The Presiding Judge is authorized to establish procedural dates and to rule on all motions (except motions to dismiss) as provided in the Commission's Rules of Practice and Procedure.

(C) This order shall be published in the Federal Register.

Lois D. Cashell,

Secretary.

[FR Doc. 93–1540 Filed 1–21–93; 8:45 am]

BILLING CODE 6717–01–M

[Docket Nos. RP91–78–004 and CP92–108–002]

Midwestern Gas Transmission Co.; Report of Refunds

January 14, 1993.

Take notice that on October 13, 1992, Midwestern Gas Transmission Company (Midwestern) tendered its Report of Refunds in compliance with the settlement filed October 17, 1991 and modified June 30, 1992, as approved by Commission orders dated June 25, 1992 and August 25, 1992, in the above-referenced dockets. The settlement provides for refunds to Midwestern's customers for the period August 1988 through October 9, 1992, reflecting the differences between the actual take-or-pay allocations which had occurred during the refund period, and what would have been collected based upon the customer liabilities determined by the settlement.

Midwestern states that on October 9, 1992, it commenced disbursement of the refunds totalling $9,693,228.00, inclusive of interest, to all of its customers, either by check or invoice credit. It further states that it will serve a copy of its refund report on all of its affected customers, as well as affected state commissions.

Any person desiring to protest said filing should file a protest with the Federal Energy Regulatory Commission, 825 North Capitol Street, NE., Washington, DC 20426, in accordance with Rule 211 of the Commission's Rules of Practice and Procedure 18 CFR 385.211. All such protests should be filed on or before January 22, 1993. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Copies of this filing are on file with the Commission and are available for public inspection.

Lois D. Cashell,

Secretary.

[FR Doc. 93–1538 Filed 1–21–93; 8:45 am]

BILLING CODE 6717–01–M

[Docket No. RP91–111–008]

North Penn Gas Co.; Compliance Filing

January 14, 1993.

Take notice that North Penn Gas Company (North Penn) on January 12, 1993 tendered for filing Substitute Original Sheet No. 15H1b in compliance with the Federal Energy Regulatory Commission's (Commission) letter order dated December 28, 1992, in the above referenced dockets.

North Penn states the revised tariff sheet reflects language providing parties the option of selecting a lump sum payment of North Penn's final Account No. 191 disposition or a twelve-month amortization period for payment of the assigned costs, and reflects language providing for recovery of interest consistent with § 154.67(c)(2) of the Commission's regulations over the twelve-month amortization period.

While North Penn believes that no other waivers are necessary for this filing, as proposed, North Penn respectfully requests waiver of any of the Commission's Rules and Regulations as may be required for this filing.

North Penn states that copies of this letter of transmittal and all enclosures are being mailed to each of North Penn's jurisdictional customers and State Commissions shown on the attached service list.

Any person desiring to protest said filing should file a protest with the Federal Energy Regulatory Commission, 825 North Capitol Street, NE., Washington, DC 20426, in accordance with Rule 211 of the Commission's Rules of Practice and Procedure 18 CFR 385.211. All such protests should be filed on or before January 22, 1993. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Copies of this filing are on file with the Commission and are available for public inspection.

Lois D. Cashell,

Secretary.

[FR Doc. 93–1533 Filed 1–21–93; 8:45 am]

BILLING CODE 6717–01–M

[Docket No. RP92–120–000]

Panhandle Eastern Pipe Line Co.; Informal Settlement Conference

January 14, 1993.

Take notice that an informal settlement conference will be convened in this proceeding on Thursday, February 11, 1993, at 10 a.m. The conference will be held at the offices of the Federal Energy Regulatory Commission, 810 First Street, NE., Washington, DC, for the purpose of exploring the possible settlement of all issues raised in the above-referenced docket.

Any party, as defined in 18 CFR 385.102(c) or any participant, as defined in 18 CFR 385.102(b) is invited to attend. Persons wishing to become a party must move to intervene and receive intervenor status pursuant to the Commission's regulations, 18 CFR 385.214.

For additional information, contact Carmen Gastilo at (202) 208–2182 or Joanne Leveque at (202) 208–5705.

Lois D. Cashell,

Secretary.

[FR Doc. 93–1537 Filed 1–21–93; 8:45 am]

BILLING CODE 6717–01–M

[Docket No. RP93–64–000]

Texas Gas Transportation Corp.; Petition for Limited Waiver

January 14, 1993.

Take notice that on January 11, 1993, Texas Gas Transmission Corporation (Texas Gas) tendered for filing a petition seeking a limited waiver of section 9 of its FT Rate Schedule, in order to allow the assignment on a permanent basis of firm capacity held by Transok Gas Company (Transok) to Dow Corning Corporation, Carrollton, Kentucky Plant (Dow Corning).

Texas Gas states that it received a request for Transok for 1,500 MMBtu per day of firm transportation capacity on the Texas Gas system commencing

January 1, 1991, from a receipt point on Texas Gas's system known as Sohio/Terrebonne, to the "City of Carrollton" Delivery Meter in Texas Gas's Rate Zone Four. Texas Gas notes that on January 15, 1991, Texas Gas sent Transok, for execution, a firm transportation agreement for 1,200 MMBtu per day. Transok executed such agreement on February 15, 1991, and initial delivery was made under the agreement on April 1, 1991.

Therefore, Texas Gas is filing the instant petition to request the waiver of section 9 of its FT Rate Schedule, as contained in First Revised Volume No. 2–A of its FERC Gas Tariff, which may be necessary to allow the permanent assignment by Transok to Dow Corning of the agreement. Both Transok and Dow Corning have requested Texas Gas to seek the necessary authorizations to permit such an assignment.

Texas Gas states as support for the requested waiver that Dow Corning has always and will continue to be the ultimate consumer of the gas transported under the agreement. Texas Gas states that there will be no change in delivery point, volumes, or term of the agreement. Texas Gas further states that the permanent assignment of this agreement will not displace service to any other existing firm customers since the same volume of gas will continue to be delivered to the same delivery point.

Any person desiring to be heard or to protest said filing should file a motion to intervene or protest with the Federal Energy Regulatory Commission, 825 North Capitol Street, NE., Washington, DC 20426, in accordance with 18 CFR 385.214 and 385.211 of the Commission's Rules and Regulations. All such motions or protests should be filed on or before January 22, 1993. 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.

Lois D. Cashell,

Secretary.

[FR Doc. 93–1536 Filed 1–21–93; 8:45 am]

BILLING CODE 6717–01–M

[Docket No. TM93–5–29–001]

Transcontinental Gas Pipe Line Corp.; Tariff Filing

January 14, 1993.

Take notice that Transcontinental Gas Pipe Line Corporation (TGPL) on January 12, 1993 tendered for filing Substitute Fifth Revised Sheet No. 60 to its FERC Gas Tariff, Third Revised Volume No. 1, proposed to be effective January 1, 1993.

TGPL states that the purpose of the instant filing is to comply with the Commission's order issued December 31, 1992 in Docket No. TM93–2–48–000, *et al.* Such order directed TGPL to file revised tariff language which provides that TGPL will remit to GRI any portion of the surcharge it collects on discounted volumes.

TGPL is serving copies of the instant filing to customers and State Commissions served with TGPL's filing in Docket No. TM93–5–29–000. In accordance with provisions of § 154.16 of the Commission's Regulations, copies of this filing are available for public inspection, during regular business hours, in a convenient form and place at TGPL's main offices at 2800 Post Oak Boulevard in Houston, Texas.

Any person desiring to protest said filing should file a protest with the Federal Energy Regulatory Commission, 825 North Capitol Street, NE., Washington, DC 20426, in accordance with Rule 211 of the Commission's Rules of Practice and Procedure 18 CFR 385.211. All such protests should be filed on or before January 22, 1993. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Copies of this filing are on file with the Commission and are available for public inspection.

Lois D. Cashell,

Secretary.

[FR Doc. 93–1539 Filed 1–21–93; 8:45 am]

BILLING CODE 6717–01–M

Transwestern Pipeline Co.; Compliance Filing

[Docket Nos. RP89–48–023]

January 14, 1993.

Take notice that on January 8, 1993, Transwestern Pipeline Company (Transwestern) filed with the Federal Energy Regulatory Commission (Commission) Substitute 1st Revised Sheet No. 94 in Transwestern's FERC Gas Tariff Second Revised Volume No. 1 to replace Original Sheet No. 94 Transwestern filed August 21, 1992, in compliance with the Commission's order dated August 6, 1992 (60 FERC ¶ 61,150).

Transwestern states it filed this substitute tariff sheet at the request of Mewbourne Oil Co. (Mewbourne). Transwestern states that Mewbourne has advised Transwestern that it does not object to approval of the language in this sheet which is the same language contained in Transwestern's "Answer in Opposition to Motion for Evidentiary Hearing and in Support of Motion for Clarification", filed with the Commission on September 18, 1992 in Docket No. RP89–48–020.

Transwestern further states that Mewbourne has advised it that approval of the language contained in the substitute tariff sheet will moot its request for rehearing of the Commission's August 6, 1992 Order.

Any person desiring to protest said filing should file a protest with the Federal Energy Regulatory Commission, 825 North Capitol Street, NE., Washington, DC 20426, in accordance with Rule 211 of the Commission's Rules of Practice and Procedure 18 CFR 385.211. All such protests should be filed on or before January 27, 1993. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Copies of this filing are on file with the Commission and are available for public inspection.

Lois D. Cashell,

Secretary.

[FR Doc. 93–1534 Filed 1–21–93; 8:45 am]

BILLING CODE 6717–01–M

Office of Fossil Energy

[FE Docket No. 92–136–NG]

Order Granting Authorization To Import Natural Gas From Canada; Canton-Potsdam Hospital

AGENCY: Office of Fossil Energy, DOE.

ACTION: Notice of order.

SUMMARY: The Office of Fossil Energy of the Department of Energy gives notice that it has issued an order granting Canton-Potsdam Hospital authorization to import up to 34,310 Mcf of natural gas from Canada over a two-year period beginning on the date of first delivery of the imported gas.

A copy of this order is available for inspection and copying in the Office of Fuels Programs Docket Room, 3F–056, Forrestal Building, 1000 Independent Avenue, SW., Washington, DC 20585, (202) 586–9478. The docket room is open between the hours of 8 a.m. and

4:30 p.m., Monday through Friday, except Federal holidays.

Issued in Washington, DC, January 15, 1993.

Charles F. Vacek,

Deputy Assistant Secretary for Fuels Programs, Office of Fossil Energy.

[FR Doc. 93–1529 Filed 1–21–93; 8:45 am]

BILLING CODE 6450–01–M

[FE Docket No. 92–148–NG]

Order Granting Long-Term Authorization To Import Natural Gas from Canada; Rotterdam Generating Co., L.P.

AGENCY: Office of Fossil Energy, DOE.

ACTION: Notice of order.

SUMMARY: The Office of Fossil Energy of the Department of Energy gives notice that it has issued an order granting Rotterdam Generating Company, L.P., a long-term authorization to import from Canada up to 44,527 Mcf per day of natural gas over a 15-year term beginning on October 1, 1995, and ending September 30, 2010. The gas would be used at a new 244-megawatt cogeneration facility to be built in Rotterdam, New York.

A copy of this order is available for inspection and copying in the Office of Fuels Programs Docket Room, 3F–056, Forrestal Building, 1000 Independence Avenue, SW., Washington, DC 20585, (202) 586–9478. The docket room is open between the hours of 8 a.m. and 4:30 p.m., Monday through Friday, except Federal holidays.

Issued in Washington, DC, January 14, 1993.

Charles F. Vacek,

Deputy Assistant Secretary for Fuels Programs, Office of Fossil Energy.

[FR Doc. 93–1530 Filed 1–21–93; 8:45 am]

BILLING CODE 6450–01–M

ENVIRONMENTAL PROTECTION AGENCY

[ER–FRL–4555–1]

Environmental Impact Statements and Regulations; Availability of EPA Comments

Availability of EPA comments prepared January 04, 1993 Through January 08, 1993 pursuant to the Environmental Review Process (ERP), under Section 309 of the Clean Air Act and Section 102(2)(c) of the National Environmental Policy Act as amended. Requests for copies of EPA comments can be directed to the Office of Federal Activities at (202) 260–5076.

An explanation of the ratings assigned to draft environmental impact statements (EISs) was published in FR dated April 10, 1992 (57 FR 12499).

Draft EISs

ERP No. D–BLM–K65139–NV

Rating EO2, Stateline Resource Area, Land and Resource Management Plan, Implementation, Clark and Nye Counties, NV.

Summary: EPA expressed environmental objections with the preferred alternative due to potential impacts to water quality, riparian resources and other sensitive species and habitats. EPA urged the BLM to modify its preferred alternative or select another alternative that would provide greater protection for resources in the management area, including water quality, water quantity and biodiversity. EPA asked for more information in the FEIS on potential impacts to water quality and natural resources, mitigation measures to reduce or avoid adverse impacts, management of specially designated areas, and any contingency measures to meet the objectives of the preferred alternative.

ERP No. D–BLM–L65175–OR

Rating EO2, Coos Bay District Resource Management Plan, Implementation, Coos Bay District, Coos, Curry and Douglas Counties, OR.

Summary: EPA expressed environmental objections to the proposed project. EPA's objections included concerns about the lack of adequate safeguards to protect currently degraded watersheds; adequate riparian zone protection for first and second order streams which may cause violations of water quality standards and impacts to beneficial uses; direct health and safety effects to prescribed burning and firewood programs, and potential effects to non-attainment areas for particulates and Class I wilderness areas; potential for impacts to threatened species listed under the Endangered Species Act, including the northern spotted owl; and lack of direction regarding future environmental analysis for site-specific project proposals.

ERP No. D–BLM–L65176–OR

Rating EO2, Roseburg District Resource Management Plan, Implementation, Roseburg District, Coast Range, Benton, Curry, Douglas, Jackson, Josephine and Linn Counties, OR.

Summary: EPA expressed environmental objections to the proposed project. EPA's objections included concerns about the lack of adequate safeguards to protect currently degraded watersheds; adequate riparian zone protection for first and second order streams which may cause violations of water quality standards and impacts to beneficial uses; direct health and safety effects to prescribed burning and firewood programs, and potential effects to non-attainment areas for particulates and Class I wilderness areas; potential for impacts to threatened species listed under the Endangered Species Act, including the northern spotted owl; and lack of direction regarding future environmental analysis for site-specific project proposals.

ERP No. D–BLM–L65178–OR

Rating EO2, Eugene District Resource Management Plan, Implementation, Lane, Linn, Douglas and Benton Counties, OR.

Summary: EPA expressed environmental objections to the proposed project. EPA's objections included concerns about the lack of adequate safeguards to protect currently degraded watersheds; adequate riparian zone protection for first and second order streams which may cause violations of water quality standards and impacts to beneficial uses; direct health and safety effects to prescribed burning and firewood programs, and potential effects to non-attainment areas for particulates and Class I wilderness areas; potential for impacts to threatened species listed under the Endangered Species Act, including the northern spotted owl; and lack of direction regarding future environmental analysis for site-specific project proposals.

ERP No. D–BOP–E81034–SC

Rating EC2, Edgefield Low Security Federal Correctional Institution, Construction, Operation and Site Selection, Edgefield County, SC.

Summary: EPA expressed concern regarding potential impacts to water quality, wetlands and endangered species. EPA recommended the development of appropriate mitigation measures.

ERP No. D–BPA–L91009–WA

Rating EC2, Yakima River Basin Fisheries Project, Construction, Operation and Maintenance, Funding, COE Section 10/404 Permits and NPDES Permit, Yakima Indian Nation, WA.

Summary: EPA had environmental concerns based on the potential for adverse impacts to existing fisheries resources, water quality, wetlands and wildlife.

ERP No. D-FHW-E40330-TN

Rating EC2, I-40 Reconstruction, I-40/I-240 Directional (Midtown) Interchange to TN-300 Interchange, Funding and Possible COE 404 Permit, Shelby County, TN.

Summary: EPA had concerns regarding the air quality assessment performed on the proposed project. Potential noise impacts are also a concern.

ERP No. DS-BIA-L35003-WA

Rating EO2, Swinomish Marina and Support Facilities Development, New Information concerning Design Changes, Approval, COE Section 10/404 Permits and EPA National Pollution Discharge Elimination System Permit, Swinomish Indian Reservation, Skagit County, WA.

Summary: EPA expressed environmental objections regarding potential adverse resource impacts, both at the proposed site and to the larger Padilla Bay National Estuarine Research Reserve, which would result from the preferred alternative. Specific resources adversely impacted include aquatic habitat and fisheries, bird habitat (including threatened or endangered species), marine mammals, and water quality. EPA does not believe that the supplemental draft EIS sufficiently analyzed all potential project alternatives which may further avoid or minimize adverse environmental effects. The proposed mitigation would not fully compensate for the significant resource losses at the proposed project site.

ERP No. D1-AFS-J65105-CO

Rating EC2, Grand Mesa, Uncompahagre and Gunnison National Forests Land and Resource Management Plan Amendment, Availability of Lands for Oil and Gas Leasing, Garfield, Delta, Gunnison, Mesa, Montrose, Ouray and San Miguel Counties, CO.

Summary: EPA had environmental concerns with the proposed project due to potential impacts to water quality, air quality, wetlands and riparian areas, and terrestrial resources. Additionally, the DEIS did not provide sufficient information to fully assess environmental impacts that should be avoided and lacked information concerning monitoring requirements for protection of aquatic, terrestrial and air resources.

Final EISs

ERP No. F-FHW-E50288-AL

William S. Keller Bridge Replacement on US-31 across the Tennessee River, City of Decatur, Funding, Coast Guard Bridge Permit, COE Section 404 Permit and TVA Section 26a Permit, Morgan and Limestone Counties, AL.

Summary: EPA found that the wetland mitigation plan should have contained more detail and that the inclusion of structural toxic spill containment measures would have been desirable.

Dated: January 15, 1993.

William D. Dickerson,

Deputy Director, Office of Federal Activities.

[FR Doc. 93-1512 Filed 1-21-93; 8:45 am]

BILLING CODE 6560-50-M

[ER-FRL-4554-9]

Environmental Impact Statements; Notice of Availability

Responsible Agency: Office of Federal Activities, General Information (202) 260-5076 OR (202) 260-5075.

Availability of Environmental Impact Statements Filed January 11, 1993 Through January 15, 1993 Pursuant to 40 CFR 1506.9.

EIS No. 930008, DRAFT EIS, EPA, FL, Fort Pierce Harbor Offshore Ocean Dredged Material Disposal Site (ODMDs), Designation, Fort Pierce, FL, Due: March 08, 1993, Contact: Robert B. Howard (404) 347-1740.

EIS No. 930009, DRAFT EIS, BLM, CA, Hidden Valley Resources Residuals Repository, Construction and Operation, Right-of-Way Grants and Conditional Use Permit, San Bernardino County, CA, Due: March 19, 1993, Contact: Sharon Paris (619) 256-3591.

EIS No. 930010, DRAFT SUPPLEMENT, FHW, CA, Eastern Transportation Corridor (ETC), Construction, Updated Information, CA-231 between the Riverside (CA-91) and Santa Ana Freeways (I-5), Funding and Section 404 Permit, Orange County, CA, Due: March 08, 1993, Contact: James J. Bednar (916) 551-1310.

EIS No. 930011, FINAL EIS, AFS, UT, CO, Manti-La Sal National Forest, Land and Resource Management Plan, Implementation, Sanpete, Utah, Sevier, Juab, Emery, Carbon, Grand and San Juan Counties, UT and Mesa and Montrose Counties, CO, Due: February 28, 1993, Contact: Carter E. Reed (801) 637-2817.

EIS No. 930012, DRAFT EIS, COE, NJ, Atlantic Coast of New Jersey, Beach Erosion Control Project, Implementation, Sandy Hook to Barnegat Inlet within the Borough of Asbury Park to Manasquan, Monmouth County, NJ, Due: March 08, 1993, Contact: Mark H. Burlas (212) 264-4663.

EIS No. 930013, DRAFT SUPPLEMENT, APH, Nationwide Cooperative Animal Damage Control Program, Additional Information, Integrated Pest Management Approach, Implementation, Due: March 08, 1993, Contact: William H. Clay (301) 436-8281.

EIS No. 930014, DRAFT EIS, AFS, WA, ID, OR, CA, Pacific Yew (Taxus brevifolia) Harvesting Program, Implementation, WA, OR, ID and CA, Due: March 15, 1993, Contact: Sally Campbell (503) 326-7755.

EIS No. 930015, DRAFT EIS, AFS, ID, Steen Creek Salvage Timber Sale, Salvage Harvest Timber and Possible Road Construction, Payette National Forest, Adams County, ID, Due: March 09, 1993, Contact: Pete Johnson (208) 253-4215.

EIS No. 930016, DRAFT EIS, UAF, TX, Bergstrom Air Force Base (AFB) Disposal and Reuse, Implementation, Travis County, TX, Due: March 08, 1993, Contact: Ltc. Gary Baumgartel (512) 536-3869.

Amended Notices

EIS No. 920449, DRAFT EIS, FAA, NJ, Expanded East Coast Plan, Changes in Aircraft Flight Patterns over the State of New Jersey, Implementation, NJ, Due: March 05, 1993, Contact: Charles R. Reavis (202) 267-9367.

Published FR 11-12-92—Review period extended.

EIS No. 920498, DRAFT SUPPLEMENT, NOA, Atlantic Sea Scallop, Placopecten Magellanicus, (Gmelin), Fishery Management Plan (FMP), Additional Information, Amendment No. 4 , Due: February 23, 1993, Contact: William W. Fox, Jr. (301) 713-2239.

Published FR 12-17-92—Review period extended.

EIS No. 930001, DRAFT EIS, COE, LA, MS, LA, West Pearl River Navigation Project, Operation and Maintenance, Portions of West Pearl River to the vicinity of Bagalusa, Implementation, Washington and St. Tammany Parishes, LA and Pearl River County, MS, Due: March 01, 1993, Contact: Marvin Cannon (601) 631-5437.

Published FR 01-15-93—Due Date Correction.

Dated: January 15, 1993.

William D. Dickerson,

Deputy Director, Office of Federal Activities.

[FR Doc. 93-1513 Filed 1-21-93; 8:45 am]

BILLING CODE 6560-50-M

[FRL-4554-2]

Calmet Site, Fountain, Colorado; Notice of Proposed Administrative Settlement

AGENCY: U.S. Environmental Protection Agency (U.S. EPA).

ACTION: Proposed Administrative Settlement.

SUMMARY: In accordance with the requirements of section 122(i)(1) of the Comprehensive Environmental Response, Compensation, and Liability Act, as amended (CERCLA), notice is hereby given of a proposed Administrative Settlement under section 122(h) concerning the Calmet Site in Fountain Colorado. The proposed Administrative Settlement requires Cedar Lane Investments, Inc., David D. Jenkins, and Barry M. Martin, Potentially Responsible Parties at the site, to pay $7,500 in removal costs incurred by the U.S. EPA in cleaning up the site.

DATES: Comments must be submitted by February 22, 1993.

ADDRESSES: Comments should be addressed to Carol Pokorny (8 HWM-ER), U.S. Environmental Protection Agency, Region VIII, 999 18th Street, suite 500, Denver, Colorado 80202-2405, and should refer to the Calmet Site, Fountain, Colorado.

FOR FURTHER INFORMATION CONTACT: Tomus Wilson, Office of Regional Counsel, at (303) 293-1458.

Jack McGraw,

Acting Regional Administrator, U.S. Environmental Protection Agency, Region VIII.

[FR Doc. 93-1504 Filed 1-21-93; 8:45 am]

BILLING CODE 6560-50-M

[FRL 4554-1]

Public Water Supply Supervision Program; Program Revision for the States of Louisiana and New Mexico

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice.

SUMMARY: Notice is hereby given that the States of Louisiana and New Mexico are revising their approved State Public Water Supply Supervision Primacy Program. Louisiana and New Mexico have adopted drinking water regulations for (1) filtration, disinfection, turbidity, *Giardia Lamblia*, viruses, *Legionella*, and heterotrophic bacteria that correspond to the National Primary Drinking Water Regulations for filtration, disinfection, turbidity, *Giardia Lamblia*, viruses, *Legionella*, and heterotrophic bacteria promulgated by EPA on June 29, 1989 (54 FR 27486); and (2) total coliforms (including fecal coliforms and E. coli) that correspond to the National Primary Drinking Water Regulations for total coliforms (including fecal coliforms and E. coli) promulgated by EPA on June 29, 1989 (54 FR 27544). EPA has determined that these State program revisions are no less stringent than the corresponding Federal regulations. Therefore, EPA has tentatively decided to approve these state program revisions and EPA hereby approves any official determinations made by Louisiana or New Mexico with regard to filtration or ground water under the direct influence of surface water under the Federal Surface Water Treatment Rule.

All interested parties are invited to request a public hearing. A request for a public hearing must be submitted by February 22, 1993, to the Regional Administrator at the address shown below. Frivolous or insubstantial requests for a hearing may be denied by the Regional Administrator. However, if a substantial request for a public hearing is made by February 22, 1993, a public hearing will be held. If no timely and appropriate request for a hearing is received and the Regional Administrator does not elect to hold a hearing on his own motion, this determination shall become effective on February 22, 1993.

A request for a public hearing shall include the following: (1) The name, address, and telephone number of the individual, organization, or other entity requesting a hearing. (2) A brief statement of the requesting person's interest in the Regional Administrator's determination and of information that the requesting person intends to submit at such hearing. (3) The signature of the individual making the request; or, if the request is made on behalf of an organization or other entity, the signature of a responsible official of the organization or other entity.

ADDRESSES: All documents relating to this determination are available for inspection between the hours of 8 a.m. and 4:30 p.m., (c.s.t.) Monday through Friday, at the following offices:

Louisiana Department of Health and Hospitals, Office of Public Health—Engineering, 325 Loyola Avenue, New Orleans, Louisiana 70112

New Mexico Environmental Department, Health Program Manager—Drinking Water Section, 1190 St. Francis Drive, Santa Fe, New Mexico 87503

Regional Administrator, Environmental Protection Agency, Region 6, 1445 Ross Avenue, Dallas, Texas 75202-2733

FOR FURTHER INFORMATION CONTACT: O. Thomas Love, Jr., EPA, Region 6, Water Supply Branch, at the Dallas address given above; telephone (214) 655-7150.

Authority: Sec. 1413 of the Safe Drinking Water Act, as amended, (1986) and 40 CFR 142.10 of the National Primary Drinking Water Regulations.

Joe D. Winkle,

Acting Regional Administrator.

[FR Doc. 93-1326 Filed 1-21-93; 8:45 am]

BILLING CODE 6560-50-M

FEDERAL COMMUNICATIONS COMMISSION

Public Information Collection Requirement Submitted to Office of Management and Budget for Review

January 12, 1993.

The Federal Communications Commission has submitted the following information collection requirement to OMB for review and clearance under the Paperwork Reduction Act of 1980 (44 U.S.C. 3507).

Copies of this submission may be purchased from the Commission's copy contractor, Downtown Copy Center, 1990 M Street, NW., suite 640, Washington, DC 20036, (202) 452-1422. For further information on this submission contact Judy Boley, Federal Communications Commission, (202) 632-7513. Persons wishing to comment on this information collection should contact Jonas Neihardt, Office of Management and Budget, room 3235 NEOB, Washington, DC 20503, (202) 395-4814.

OMB Number: 3060-0057

Title: Application for Equipment Authorization (Report and Order, PR Docket No. 90-315)

Action: Revision of a currently approved collection

Respondents: Businesses or other for-profit

Frequency of Response: On occasion reporting

Estimated Annual Burden: 8,605 responses; 24 hours average burden per response; 206,520 hours total annual burden

Needs and Uses: This Report and Order amends part 87 of our Rules, to establish equipment technical standards and licensing procedures for aircraft earth stations (AES). Rules adopted in PR Docket No. 90-315 will require manufacturers of new aeronautical mobile-satellite equipment to complete FCC Form

731, Application for Equipment Authorization, provide descriptive information, and test data showing that the proposed equipment complies with technical standards established for the equipment operated under the applicable rule part. The information gathered will be used by the Commission to determine compliance of the proposed equipment. Following authorization of the equipment for marketing, the information may be used to determine that the operation of the equipment is consistent with the information supplied at the time of grant, and that the equipment marketed complies with the terms of the equipment authorization. The information collected is essential to controlling potential interference to radio communications.

Federal Communications Commission.

Donna R. Searcy,

Secretary.

[FR Doc. 93-1395 Filed 1-21-93; 8:45 am]

BILLING CODE 6712-01-M

[DA 93-34]

Comments Invited on Arkansas Public Safety Plan

January 13, 1993.

The Commission has received the public safety radio communications plan for Arkansas (Region 4).

In accordance with the Commission's Memorandum Opinion and Order in General Docket 87-112, Region 4 consists of the state of Arkansas. (General Docket No. 87-112, 3 FCC Rcd 2113 (1988)).

In accordance with the Commission's Report and Order in General Docket No. 87-112 implementing the Public Safety National Plan, interested parties may file comments on or before February 22, 1993, and reply comments on or before March 9, 1993. (See Report and Order, General Docket No. 87-112, 3 FCC Rcd 905 (1987), at paragraph 54.)

Commenters should send an original and five copies of comments to the Secretary, Federal Communications Commission, Washington, DC 20554 and should clearly identify them as submissions to PR Docket 93-3 Arkansas-Public Safety Region 4.

Questions regarding this public notice may be directed to Betty Woolford, Private Radio Bureau, (202) 632-6497 or Ray LaForge, Office of Engineering and Technology, (202) 653-8112.

Federal Communications Commission

Donna R. Searcy,

Secretary.

[FR Doc. 93-1394 Filed 1-21-93; 8:45 am]

BILLING CODE 6712-01-M

GENERAL SERVICES ADMINISTRATION

Information Collection Activities Under Office of Management and Budget Review

AGENCY: Federal Supply Service (FBP), GSA.

SUMMARY: The GSA hereby gives notice under the Paperwork Reduction Act of 1980 that it is requesting the Office of Management and Budget (OMB) to renew expiring information collection 3090-0023, Surplus Personal Property Mailing List Application. This information is provided by persons who wish to have their names placed on the Surplus Personal Property Bidders Mailing List maintained by GSA Regional Sales Activities.

ADDRESSES: Send comments to Ed Springer, GSA Desk Officer, room 3235, NEOB, Washington, DC 20503, and to Mary L. Cunningham, GSA Clearance Officer, General Services Administration (CAIR), 18th & F Street NW., Washington, DC 20405.

Annual Reporting Burden

Respondents: 50,000; *annual responses:* 1; *average hours per response:* 0.07; *burden hours:* 3,350.

FOR FURTHER INFORMATION CONTACT: William L. Tesh, Jr., (703) 305-7814.

Copy of Proposal: May be obtained from the Information Collection Management Branch (CAIR), 7102, GSA Building, 18th & F St. NW., Washington, DC 20405, by telephoning (202) 501-2691, or by faxing your request to (202) 501-2727.

Dated: January 7, 1993.

Emily C. Karam,

Director, Information Management Division.

[FR Doc. 93-1382 Filed 1-21-93; 8:45 am]

BILLING CODE 6820-24-M

[GSA Bulletins FTR 6, Supplement 3 and FTR 7, Supplement 2]

Federal Travel Regulation; Reimbursement for Actual Subsistence Expenses in Presidentially Declared Disaster Areas of Florida

AGENCY: Federal Supply Service, GSA.

ACTION: Notice of Bulletins.

SUMMARY: The attached bulletins inform agencies of the extension for an additional 90-day period of the special actual subsistence expense ceiling for official travel to certain Florida localities designated Presidentially declared disaster areas as a result of Hurricane Andrew.

EFFECTIVE DATES: The extended period applies to official travel performed during January 21, 1993 through April 20, 1993.

FOR FURTHER INFORMATION CONTACT: Jane E. Groat, General Services Administration, Transportation Management Division (FBX), Washington, DC 20406, telephone 703-305-5745.

SUPPLEMENTARY INFORMATION: The Administrator of General Services, pursuant to 41 CFR 301-8.3(c) and at the official request of the Director of the Federal Emergency Management Agency (FEMA) has extended for an additional 90 days the period during which agencies may approve actual and necessary subsistence expense reimbursement not to exceed 300 percent of the applicable maximum locality per diem rate for official travel to the Presidentially declared disaster areas in Florida named in GSA Bulletins FTR 6 and 7. The attached GSA Bulletin FTR 6, Supplement 3 and GSA Bulletin FTR 7, Supplement 2 are issued to extend the effective dates for these four Florida counties.

Dated: January 14, 1993.

Allan W. Beres,

Assistant Commissioner, Transportation and Property Management.

2 Attachments

ATTACHMENT 1

[GSA Bulletin FTR 6, Supplement 3]

To: Heads of Federal agencies

Subject: Reimbursement for actual subsistence expenses in Presidentially declared disaster areas of Florida.

1. *Purpose.* This supplement informs agencies of the extension for an additional 90-day period of the special actual subsistence expense ceiling described in GSA Bulletin FTR 6 (57 FR 40466, Sept. 3, 1992), as extended by Supplement 1 (57 FR 44751, Sept. 29, 1992) and Supplement 2 (57 FR 54793, Nov. 20, 1992) for official travel to certain Florida localities designated Presidentially declared disaster areas as a result of Hurricane Andrew.

2. *Explanation of change.* The Administrator of General Services, pursuant to 41 CFR 301-8.3(c) and at the official request of the Director of the Federal Emergency Management Agency (FEMA), has extended for an additional 90 days the period during which agencies may approve, in accordance

with paragraph 3 of GSA Bulletin FTR 6, actual and necessary subsistence expense reimbursement not to exceed 300 percent of the applicable maximum locality per diem rate for official travel to the Presidentially declared disaster areas in Florida named in paragraph 4 of GSA Bulletin FTR 6. For Florida counties named in GSA Bulletin FTR 6 the extended period covers January 21, 1993 through April 20, 1993.

3. *Expiration date.* This supplement expires on August 31, 1993.

4. *For further information contact.* Jane E. Groat, General Services Administration, Transportation Management Division (FBX), Washington, DC 20406, telephone 703–305–5745.

Dated: January 14, 1993

By delegation of the Commissioner, Federal Supply Service.
Allan W. Beres,
Assistant Commissioner, Transportation and Property Management

ATTACHMENT 2

[GSA Bulletin FTR 7, Supplement 2]

To: Heads of Federal agencies

Subject: Reimbursement for actual subsistence expenses in Presidentially declared Florida disaster area.

1. *Purpose.* This supplement informs agencies of the extension for an additional 90-day period of the special actual subsistence expense ceiling described in GSA Bulletin FTR 7 (57 FR 44751, Sept. 29, 1992), as extended by Supplement 1 (57 FR 54793, Nov. 20, 1992) for official travel to Collier County, Florida, designated a Presidentially declared disaster area as a result of Hurricane Andrew.

2. *Explanation of change.* The Administrator of General Services, pursuant to 41 CFR 301–8.3(c) and at the official request of the Director of the Federal Emergency Management Agency (FEMA), has extended for an additional 90 days the period during which agencies may approve, in accordance with paragraph 3 of GSA Bulletin FTR 7, actual and necessary subsistence expense reimbursement not to exceed 300 percent of the applicable maximum locality per diem rate for official travel to the Presidentially declared disaster area of Collier County, Florida named in paragraph 4 of GSA Bulletin FTR 7. For Collier County, Florida the extended period covers January 21, 1993 through April 20, 1993.

3. *Expiration date.* This supplement expires on August 31, 1993.

4. *For further information contact.* Jane E. Groat, General Services Administration, Transportation Management Division (FBX), Washington, DC 20406, telephone 703–305–5745.

Dated: January 14, 1993.

By delegation of the Commissioner, Federal Supply Service.
Allan W. Beres,
Assistant Commissioner, Transportation and Property Management.

[FR Doc. 93–1443 Filed 1–21–93; 8:45 am]
BILLING CODE 6820–24–F

Federal Supply Service; Paper Purchase and Delivery Orders Discontinuance; Notice of Intent

ACTION: Notice of Intent.

SUMMARY: The Federal Supply Service (FSS) intends to discontinue issuing paper purchase orders for small purchases made under Federal Acquisition Regulation (FAR) Part 13 and delivery orders placed under established contracts in favor of electronic distribution of these documents. The preferred and generally most cost-effective method of transmission shall be computer-to-computer electronic data interchange (EDI). Where direct computer-to-computer EDI is not practical, a method will be established to permit suppliers to receive facsimile transmission in lieu of either paper orders or computer-to-computer EDI.

DATES: Proposed implementation is planned by October 1, 1993.

FOR FURTHER INFORMATION CONTACT: Questions concerning the FSS plan to discontinue issuing paper orders and to provide EDI or an EDI to FAX link may be directed to Mr. Stuart Goulden at (703) 305–7741. Any written comments should be received on or before February 26, 1993.

ADDRESSES: Interested persons are invited to submit written comments to: General Services Administration, Federal Supply Service (FCO), Attn: Nicholas Economou, Washington, DC 20406.

SUPPLEMENTARY INFORMATION: FSS has entered into agreements with many of its suppliers to exchange data via the use of EDI. This data includes, but is not limited to, orders placed against existing contracts. FSS has found the use of EDI to be an effective method of dealing with its suppliers. To secure the benefits inherent in exchanging information electronically, FSS will expand the use of electronic purchasing methods. FSS plans to discontinue issuing paper purchase and delivery orders by October 1, 1993. After this date, all suppliers doing business with FSS must either be EDI capable or be capable of receiving facsimile transmissions on a Group III facsimile machine.

To minimize any adverse impact on small suppliers which may not be EDI capable, FSS plans to provide a facility for delivery of EDI orders to the supplier's facsimile machine. Under this EDI to FAX facility, FSS will transmit all orders to an independently operated value-added network (VAN). The VAN in turn will transmit each electronic order to either the supplier's computer via normal EDI interchange procedures or, for those suppliers which are not EDI capable, to the supplier's Group III facsimile machine.

Dated: January 11, 1993.

Nicholas Economou,
Director, Federal Supply Service, Acquisition Management Center.

[FR Doc. 93–1383 Filed 1–21–93; 8:45 am]
BILLING CODE 6820–24–M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Office of the Secretary

National Institutes of Health; Statement of Organization, Functions, and Delegations of Authority

Part H, Chapter HN (National Institutes of Health) of the Statement of Organization, Functions, and Delegations of Authority for the Department of Health and Human Services (40 FR 22859, May 27, 1975, as amended most recently at 57 FR 34147, August 3, 1992) is amended to reflect the following changes in the Office of the Director, National Institutes of Health (NIH) (HNA): (1) Retitle the Office of Science Policy and Legislation (OSPL) (HNA6) to the Office of Science Policy and Technology Transfer (OSPTT) (HNA6) and revise its functional statement, as well as the functional statement of the Office of the Director, OSPTT (HNA61); (2) establish the Science Policy Studies Center (SPSC) (HNA65) within the OSPTT; (3) transfer the functions of (a) the Science Policy Analysis and Development Branch (HNA632), Division of Science Policy (DSP) (HNA63), to the Science Policy Studies Center (HNA65); (b) the Office of Recombinant DNA Activities (HNA633); and the Office of Science Education Policy (HNA634) to the Division of Special Science Programs (HNA653), Science Policy Studies Center (HNA65); and (c) abolish the DSP (HNA63); (4) establish the Office for Alternative Medicine (HNA6532) and the Office of Rare Disease Research (HNA6533) within the Division of Special Science Programs (HNA653),

Science Policy Studies Center (HNA65); (5) establish the Office of Strategic Planning and Evaluation (OSPE) (HNA66) within the OSPTT; (6) transfer the functions of the Division of Planning and Evaluation (DPE) (HNA62) to the Office of Strategic Planning and Evaluation (OSPE) (HNA66) and abolish the DPE; (7) establish the Office of Legislative Policy and Analysis (OSPA) (HNA67) within the OSPTT; (8) transfer the functions of the Division of Legislative Analysis (DLA) (HNA64) to the Office of Legislative Policy and Analysis (HNA67) and abolish the DLA; (9) retitle the Division of Technology Transfer (HNA68) to the Office of Technology Transfer (OTT) (HNA68); (10) establish the Office of Management (OM) (HNA9) and the Office of the Director, OM (OD/OM) (HNA91); (11) transfer the Office of Administration (HNA7) to the OM and change its Standard Administrative Code (SAC) to (HNA92); (12) transfer the Office of Research Services (HNAA) to the OM and change its SAC to (HNA93); (13) transfer the Office of Information Resources Management (HNA79) from the Office of Administration to the OM and change its SAC to (HNA94); (14) establish the Office of Management Assessment and Internal Control (HNA95) within the OM; and (15) transfer the functions of the Division of Management Survey and Review (DMSR) (HNA78) from the Office of Administration to the OM and abolish the DMSR. This reorganization will further strengthen the NIH management and science policy activities, and create new emphasis in the areas of information resources management (IRM), internal control, strategic planning, and technology transfer, as well as improve the organizational arrangement for carrying out both policy and operations functions.

Section HN–B, Organization and Functions, is amended as follows: (1) After the heading *Office of the Director, NIH (HNA), Office of Science Policy and Legislation (HNA6),* delete the title and functional statements in their entirety and substitute the following:

Office of Science Policy and Technology Transfer (HNA6). (1) Advises the NIH Director and immediate staff on science policy, strategic planning, program planning and evaluation, health economics, legislative analysis, technology transfer, and special programs, and represents NIH in these areas to the Department and Congress; (2) provides leadership and guidance to NIH programs on science policy and legislation; (3) engages in strategic planning for the NIH; (4) facilitates and coordinates program planning and program evaluation activities carried out in the Institutes and Divisions; (5) coordinates technology management and technology transfer activities of the NIH/CDC/FDA; and (6) provides staff direction and support to the Advisory Committee to the Director, NIH.

Office of the Director, OSPTT (HNA61). Provides leadership, direction, and coordination on all phases of science policy and technology transfer.

Science Policy Studies Center (HNA65). (1) Serves as the principal staff resource in the Office of the Director, NIH, to provide a central capability to address in an organized and systematic manner major cross-cutting science policy issues that bear upon the entire NIH research enterprise; (2) advises the NIH Director, senior Office of the Director, NIH, staff, and Institute, Center, and Division (ICD) Directors by identifying and providing insight into developments and emerging trends across the range of scientific, academic, public policy, economic, social, ethical, and international issues relevant to the further evolution of NIH, its programs and policies, and the form of its operations; (3) ensures that the policy studies of the Center represent the vanguard of thinking and ideas relative to biomedical research and science policy issues; (4) directs the interaction between the Federal staff of the Division of Science Policy Analysis and Development and outside scholars invited to pursue research on science policy issues identified by the Center; (5) complements, coordinates, and collaborates with the policy function of other discrete components within NIH; and (6) serves as the principal staff resource for special science programs at NIH.

Following a statement for the *Division of Special Science Programs (HNA653),* add the following:

Office for Alternative Medicine (HNA6532). (1) Advises the Office of the Director, NIH, on the study of alternative medicine; (2) guides and coordinates NIH-wide activities involving alternative medicine; (3) responds to requests for information on highly technical matters and matters of public policy relative to alternative medicine; (4) identifies specific research efforts receiving support that are related to the assessment or validation of alternative medicine; and (5) determines the appropriate studies needed to evaluate alternative medicine.

Office of Rare Disease Research (HNA6533). (1) Guides and coordinates NIH-wide activities involving research into combating and treating the broad array of rare diseases (orphan diseases); (2) manages the NIH Rare Diseases and Orphan Products Coordinating Committee; (3) develops and maintains a centralized database on rare diseases; (4) coordinates and provides liaison with Federal and non-Federal national and international organizations concerned with rare disease research and orphan products development; (5) advises the Office of the Director, NIH, on matters relating to rare diseases and orphan products; (6) prepares the Director's annual report to Congress on rare disease and condition research activities sponsored by NIH; and (7) responds to requests for information on highly technical matters and matters of public policy relative to rare diseases and orphan products.

Office of Strategic Planning and Evaluation (HNA66). (1) Advises the NIH Director on program planning issues and policies, and the evaluation of the programs of the operating organizations of NIH; (2) plans and directs a comprehensive program of strategic and program planning, policy research and evaluation, and economic and resource analyses; and (3) carries out staff functions relating to strategic planning, program development, economic and resource analysis, and program evaluation.

Office of Legislative Policy and Analysis (HNA67). (1) Advises the NIH Director and staff and provides leadership and direction for NIH legislative analysis, development, and liaison; (2) identifies, analyzes, and reports on legislative developments relevant to NIH programs and activities; (3) assesses the need for and proposes changes in the statutory base of NIH activities; (4) plans and develops new legislative proposals; (5) coordinates and controls NIH Congressional communications; (6) provides coordination on NIH legislative matters with the Office of the Assistant Secretary for Health, the Department, the Congress, Federal and non-Federal national and international organizations concerned with health, and other bodies; (7) coordinates the preparation of testimony or statements for the Office of the Director, NIH, before Congressional committees or other groups; and (8) develops special reports, staff documents, or other studies concerning NIH interests, activities, and relationships.

Office of Technology Transfer (HNA63). (1) Develops policy and procedures for NIH, CDC, and FDA to follow for the implementation of Cooperative Research and Development Agreements (CRADAs), patent licenses, and other technology transfers; (2)

implements Patent Policy Board decisions and policies; (3) drafts, negotiates, and periodically revises model forms and agreements; (4) provides advice to ICDs on problem licenses and agreements; (5) develops policy statements on various technology transfer issues such as conflicts of interest; (6) tracks the OTT budget and prepares an annual status report to the OD/NIH; (7) provides coordination and management of the goals, functions, and operations of the Division of Technology Licensing, Division of Technology Management, Division of Technology Transfer Coordination, and the Division of Technology Patenting; (8) coordinates and provides planning and liaison support for international CRADAs and technology transfers; (9) creates and implements special programs relating to technology transfer by State and local governments and universities; (10) drafts and presents Congressional testimony, and drafts technology transfer-related responses to other Congressional inquiries; (11) provides operational management activities; (12) assists the Office of the General Counsel (OGC) in evaluating patent-related litigation matters; (13) participates with OGC or independently negotiates settlements or contested matters with licensees or other parties involved with NIH/CDC/FDA in technology transfer or utilization matters; (14) represents the NIH/CDC/FDA in technology transfer or utilization matters; (15) represents the above agencies at a variety of professional conferences and other public fora; (16) investigates special issues; (17) evaluates the need for and develops new programs in technology management and technology transfer for the above agencies; (18) develops licensing strategies for NIH/CDC/FDA intramural and CRADA inventions; (19) negotiates licenses and other technology transfers; (20) works with scientist inventors, contract attorneys, and others in preparing patent applications and prosecuting these applications at the Patent Office level; (20) handles infringements in consultation with the OGC at the Patent Office level; and (21) makes recommendations to the OGC for referral or matters to the Department of Justice.

Office of the Director (HNA681). (1) Advises the NIH Director and staff on all aspects of technology transfer policy and development, technology management, technology licensing activities; and patent administration and prosecution activities; and (2) plans and directs the activities of the Office.

(1) Delete the titles and functional statements for the *Office of Administration (HNA7)* and the *Office of Research Services (HNAA)*, in their entirety.

(2) After the title *Office of Communications (HNA8), Division of Public Information (HNA82)*, insert the following:

Office of Management (HNA9). (1) Advises the NIH Director and staff on all phases of administration and management; (2) provides leadership focus and direction to all aspects of management; (3) oversees the management of functions in the areas of information resources management, budget and financial management, personnel management, management policy, management assessment and internal control, grant and contract management, procurement, logistics, engineering services, safety, space and facility management, support services, and security operations.

Office of the Director, OM (HNA91). Provides leadership, direction, and coordination on all phases of administration and management.

Office of Administration (HNA92). (1) Advises the Deputy Director for Management and staff on administration and management; (2) provides leadership and guidance on all aspects of administrative management; and (3) directs staff and service functions in the areas of budget and financial management, personnel management, management policy, grant and contract management, procurement, and logistics.

Office of Research Services (HNA93). (1) Advises the Deputy Director for Management and staff on the management and provision of technical and administrative services to all components of NIH in support of the research mission; and (2) plans and directs service programs for engineering services, safety, space and facility management, support services, and security operations.

Office of Information Resources Management (HNA94). The Office of Information Resources Management advises the Deputy Director for Management on the direction and management of NIH IRM program activities under the Paperwork Reduction Act; the Computer Security Act; and OMB Circular A–130 by serving as a focal point for: (1) Implementing, managing, and overseeing NIH IRM activities related to: IRM policy, planning and budgeting; Federal Information Processing (FIP) resources user requirements; IRM reviews; clearance of FIP resources and monitoring compliance with Delegated Procurement Authorities (DPAs); FIP and automated systems inventories; capacity management and planning; security; FIP standards; and FIP resources obsolescence and excess equipment; (2) collaborating with NIH components responsible for: acquisition of FIP resources; major information systems; telecommunications management; printing management; computer matching; FIP accommodations for the disabled; records and forms management including the Privacy Act; information collection; and information dissemination; (3) serving as the NIH liaison to the Public Health Service and the Department on all IRM matters; (4) participating with appropriate NIH components in assessing and enhancing the level of knowledge and skill of users of FIP resources; (5) coordinating with appropriate NIH components in developing an NIH-wide plan for standardizing networking, cabling, and electrical facilities for FIP resources; (6) ensuring that oversight measures are appropriate for the diversity, complexity, and size of the major providers and the individual Institutes, Centers, and Division (ICDs); (7) overseeing and initiating necessary improvements in the FIP clearance and acquisition process; and (8) assisting the major providers/individual ICDs in enhancing/strengthening their individual IRM program management to allow maximum delegation of FIP resources clearance authority.

Office of Management Assessment and Internal Control (HNA95). (1) Has overall responsibility for all matters related to internal controls to prevent fraud, waste, abuse, and conflict of interest or the appearance of these, and develops a planned management oversight activity that focuses on early identification and prevention of such occurrences; (2) provides broad management oversight and advice the Deputy Director for Management (DDM) on strategies for management reviews, preventive maintenance strategies, and corrective action; (3) keeps abreast of activities within the Institutes, Centers, and Divisions (ICDs), advising them on the implementation of necessary internal controls; (4) in consultation with the Director, NIH, and the Deputy Director for Management, develops internal control policy for the entire NIH and ensures that policy changes are implemented; (5) serves as NIH's central liaison on matters involving the DHHS Office of the Inspector General, the General Accounting Office, the DHHS Office of Audit, the Federal Bureau of Investigation, congressional staff members, etc., related to internal controls and audits; (6) develops and

implements the Annual Internal Control Plan; and (7) advises NIH's top management staff on major management decisions in the field of current operations and long-range policy involving NIH management controls.

DELEGATIONS OF AUTHORITY STATEMENT: All relevant delegations and redelegations of authority of and to the affected components which were in effect immediately prior to the effective date of this reorganization and which are consistent with this reorganization, shall continue in effect until modified, rescinded or superseded.

Dated: January 5, 1993.

Louis W. Sullivan,

Secretary.

[FR Doc. 93–1286 Filed 1–21–93; 8:45 am]

BILLING CODE 4140–01–M

Agency for Health Care Policy and Research

Notice of Meetings

In accordance with section 10(a) of the Federal Advisory Committee Act (Title 5, U.S.C., Appendix 2) announcement is made of the following advisory committees scheduled to meet during the month of February 1993:

Name: Health Care Technology Study Section.

Date and Time: February 8–10, 1993, 8 a.m.

Place: Marriott Residence Inn, 7335 Wisconsin Avenue, Montgomery II Room, Bethesda, Maryland 20814.

Open February 8, 8 a.m. to 9 a.m.

Closed for remainder of meeting.

Purpose: The Study Section is charged with conducting the initial review of health services research grant applications addressing the utilization and effects of health care technologies and procedures as well as applications in the area of information and decision sciences relating to health care delivery.

Agenda: The open session on February 8 from 8 a.m. to 9 a.m. will be devoted to a business meeting covering administrative matters and reports. There will also be a presentation by the Administrator, Agency for Health Care Policy and Research (AHCPR). The closed sessions of the meeting will be devoted to a review of health services research grant applications emphasizing medical care technologies and procedures, and relating to the delivery, organization, and financing of health services. In accordance with the Federal Advisory Committee Act, Title 5, U.S.C., Appendix 2 and Title 5, U.S.C. 552b(c)(6), the Administrator, AHCPR, has made a formal determination that these latter sessions will be closed because the discussions are likely to reveal personal information concerning individuals associated with the applications. This information is exempt from mandatory disclosure.

Anyone wishing to obtain a roster of members, minutes of the meeting, or other relevant information should contact Alan E. Mayers, Ph.D., Agency for Health Care Policy and Research, suite 602, Executive Office Center, 2101 East Jefferson Street, Rockville, Maryland 20852, Telephone (301) 227–8449.

Name: Health Services Developmental Grants Review Subcommittee.

Date and Time: February 10–12, 1993, 8 a.m.

Place: Ramada Inn, 8400 Wisconsin Avenue, Conference Room TBA; Bethesda, Maryland 20814.

Open February 11, 1 p.m. to 2 p.m.

Closed for remainder of meeting.

Purpose: The Subcommittee is charged with the initial review of grant applications proposing experimental, analytical and theoretical research on costs, quality, access, effectiveness, and efficiency of the delivery of health services for the research grant program administered by AHCPR.

Agenda: The open session of the meeting on February 11 from 1 p.m. to 2 p.m. will be devoted to a business meeting covering administrative matters and reports. There will also be a presentation by the Administrator, AHCPR. During the closed session, the Subcommittee will be reviewing research and demonstration grant applications relating to the delivery, organization, and financing of health services. In accordance with the Federal Advisory Committee Act, Title 5, U.S.C., Appendix 2 and Title 5, U.S.C., 552b(c)(6), the Administrator, AHCPR, has made a formal determination that these latter sessions will be closed because the discussions are likely to reveal personal information concerning individuals associated with the applications. This information is exempt from mandatory disclosure.

Anyone wishing to obtain a roster of members, minutes of the meeting, or other relevant information should contact Gerald E. Calderone, Ph.D., Agency for Health Care Policy and Research, suite 602, Executive Office Center, 2101 East Jefferson Street, Rockville, Maryland 20852, Telephone (301) 227–8449.

Name: Health Services Research Review Subcommittee.

Date and Time: February 18–19, 1993, 8:30 a.m.

Place: Marriott Residence Inn, 7335 Wisconsin Avenue, Calvert I and II, Bethesda, MD 20814.

Open February 18, 8:30 a.m. to 9:15 a.m.

Closed for remainder of meeting.

Purpose: The Subcommittee is charged with the initial review of grant applications proposing analytical and theoretical research on costs, quality, access, and efficiency of the delivery of health services for the research grant program administered by AHCPR.

Agenda: The open session of the meeting on February 18 from 8:30 a.m. to 9:15 p.m. will be devoted to a business meeting covering administrative matters and reports. There will also be a presentation by the Administrator, AHCPR. During the closed sessions, the Subcommittee will be reviewing analytical and theoretical research grant applications relating to the delivery, organization, and financing of health services. In accordance with the Federal Advisory Committee Act, Title 5, U.S.C. Appendix 2 and Title 5, U.S.C., 552b(c)(6), the Administrator, AHCPR, has made a formal determination that these latter sessions will be closed because the discussions are likely to reveal personal information concerning individuals associated with the applications. This information is exempt from mandatory disclosure.

Anyone wishing to obtain a roster of members, minutes of the meeting, or other relevant information should contact Patricia G. Thompson, Ph.D., Agency for Health Care Policy and Research, suite 602, Executive Office Center, 2101 East Jefferson Street, Rockville, Maryland 20852, Telephone (301) 227–8449.

Name: Health Services Research Dissemination Study Section.

Date and Time: February 25–26, 1993, 8:30 a.m.

Place: Marriott Residence Inn, 7335 Wisconsin Avenue, Montgomery I, Bethesda, Maryland 20814.

Open February 26, 8:30–9:30 a.m.

Closed for remainder of meeting.

Purpose: The Study Section is charged with the review of and making recommendations on grant applications for Federal support of conferences, workshops, meetings, or projects related to dissemination and utilization of research findings, and AHCPR liaison with health care policy makers, providers, and consumers.

Agenda: The open session of the meeting on February 26 from 8:30 a.m. to 9:30 a.m. will be devoted to a business meeting covering administrative matters and reports. There will also be a presentation by the Administrator, AHCPR. During the closed portions of the meeting, the Study Section will be reviewing grant applications relating to the dissemination of research on the organization, costs, and efficiency of health care. In accordance with the Federal Advisory Committee Act, Title 5, U.S.C., Appendix 2 and Title 5, U.S.C., 552b(c)(6), the Administrator, AHCPR, has made a formal determination that these latter sessions will be closed because the discussions are likely to reveal personal information concerning individuals associated with the grant applications. This information is exempt from mandatory disclosure.

Anyone wishing to obtain a roster of members, minutes of the meeting, or other relevant information should contact Mrs. Linda Blankenbaker, Agency for Health Care Policy and Research, suite 602, 2101 East Jefferson Street, Rockville, Maryland 20852, Telephone (301) 227–8449.

Agenda items for all meetings are subject to change as priorities dictate.

Dated: January 14, 1993.

J. Jarrett Clinton,

Administrator.

[FR Doc. 93–1522 Filed 1–21–93; 8:45 am]

BILLING CODE 4160–90–M

Centers for Disease Control and Prevention (CDC)

[CRADA 93–002]

Cooperative Research and Development Agreement

AGENCY: Centers for Disease Control and Prevention (CDC), Public Health Service, HHS.

ACTION: Notice.

SUMMARY: The Centers for Disease Control and Prevention (CDC) announces the opportunity for potential collaborators to enter into a Cooperative Research and Development Agreement (CRADA) to develop DNA detection-based diagnostic tests for fungal septicemia.

It is anticipated that all inventions which arise from this CRADA will be jointly owned and licensed on a royalty-bearing basis exclusively to the collaborator with which the CRADA is made.

Because CRADAs are designed to facilitate the development of scientific and technological knowledge into useful, marketable products, a great deal of freedom is given to Federal agencies in implementing collaborative research. The CDC may accept staff, facilities, equipment, supplies, and money from the other participants in a CRADA. CDC may provide staff, facilities, equipment, and supplies to the project. A single restriction applies to this exchange: CDC may not provide funds to the other participants in the CRADA.

DATES: This opportunity is available until February 22, 1993. Respondents may be provided a longer period of time to furnish additional information if CDC finds this necessary.

FOR FURTHER INFORMATION CONTACT:

Technical: Dr. Christine J. Morrison, Chief, Molecular Immunology Laboratories, National Center for Infectious Diseases, Centers for Disease Control and Prevention (CDC): 1600 Clifton Road, NE., mailstop G–11, Atlanta, GA 30333. Telephone (404) 639–3128.

Business: Greg Jones, Technology Transfer Representative, National Center for Infectious Diseases, Centers for Disease Control and Prevention (CDC): 1600 Clifton Road, NE., mailstop C–19, Atlanta, GA 30333. Telephone (404) 639–2434.

SUPPLEMENTARY INFORMATION: The collaborator and CDC will jointly support research aimed at the development of DNA detection-based diagnostic tests for fungal septicemia. CDC has developed a method to disrupt *Candida albicans* and to isolate and purify its DNA from whole blood. Purified DNA has been found to be suitable for amplification and subsequent detection. CDC has developed primers and probes for amplification and detection of candidal DNA.

The collaborator will provide technology and staff to develop methods to increase the sensitivity and rapidity of DNA detection. The collaborator will provide any additional equipment and/or supplies currently unavailable in the CDC laboratory that may be necessary for the implementation of this work.

CDC will provide animal models of disseminated candidiasis to facilitate determination of the sensitivity of DNA detection-based diagnostic tests for *Candida* in whole blood.

Applicants will be judged according to the following criteria:

1. Soundness of the research plan;
2. Adequacy of the staff to develop the diagnostic test(s);
3. Adequacy of availability of the facilities and equipment;
4. Evidence of scientific credibility; and
5. Evidence of commitment and ability to develop DNA detection-based diagnostic tests for fungal septicemia.

This CRADA is proposed and implemented under the Federal Technology Transfer Act of 1986, Public Law 99–502.

The responses must be made to: Nancy C. Hirsch, Technology Transfer Coordinator, National Center for Infectious Diseases, Centers for Disease Control and Prevention (CDC), 1600 Clifton Road, NE., mailstop C–19, Atlanta, GA 30333.

Dated: January 13, 1993.

Robert L. Foster,

Acting Associate Director for Management and Operations, Centers for Disease Control and Prevention (CDC).

[FR Doc. 93–1438 Filed 1–21–93; 8:45 am]

BILLING CODE 4160–18–M

National Committee on Vital and Health Statistics (NCVHS) Subcommittee on Health Statistics for Minority and Other Special Populations: Meeting

Pursuant to Public Law 92–463, the National Center for Health Statistics (NCHS), Centers for Disease Control and Prevention (CDC), announces the following committee meeting.

Name: NCVHS Subcommittee on Health Statistics for Minority and Other Special Populations.

Times and Dates: 1 p.m.–5 p.m., February 9, 1993; 8 a.m.–4 p.m., February 10, 1993.

Place: Room 339A, Hubert H. Humphrey Building, 200 Independence Avenue SW, Washington, DC 20201.

Status: Open.

Purpose: The purpose of the subcommittee meeting is to review the collection of minority health data within the federal government, including the Social Security Administration, the Bureau of the Census, and CDC, in order to better understand data collection issues and to serve as a basis for future recommendations.

Contact Person for More Information: Substantive program information as well as summaries of the meeting and a roster of committee members may be obtained from Gail F. Fisher, Ph.D., Executive Secretary, NCVHS, NCHS, room 1100, Presidential Building, 6525 Belcrest Road, Hyattsville, Maryland 20782, telephone 301/436–7050.

Dated: January 13, 1993.

Robert L. Foster,

Assistant Director, Office of Program Support Centers for Disease Control and Prevention (CDC).

[FR Doc. 93–1435 Filed 1–21–93; 8:45 am]

BILLING CODE 4160–18–M

National Committee on Vital and Health Statistics (NCVHS) Subcommittee on Mental Health Statistics: Meeting

Pursuant to Public Law 92–463, the National Center for Health Statistics (NCHS), Centers for Disease Control and Prevention (CDC), announces the following committee meeting.

Name: NCVHS Subcommittee on Mental Health Statistics.

Time and Date: 9 a.m.–4:30 p.m., February 16, 1993.

Place: Room 337A–339A, Hubert H. Humphrey Building, 200 Independence Avenue, SW., Washington, DC 20201.

Status: Open.

Purpose: The subcommittee will hold discussions around potential future subcommittee activities including the collection and analysis of institutional and person-oriented longitudinal data on children and youth with mental disorders, and recent developments in the area of disability statistics.

Contact Person for more information: Substantive program information as well as summaries of the meeting and a roster of committee members may be obtained from Gail F. Fisher, Ph.D., Executive Secretary, NCVHS, NCHS, room 1100, Presidential Building, 6525 Belcrest Road, Hyattsville, Maryland 20782, telephone number 301/436–7050.

Dated: January 14, 1993.

Elvin Hilyer,

Associate Director for Policy Coordination, Centers for Disease Control and Prevention (CDC).

[FR Doc. 93-1436 Filed 1-21-93; 8:45 am]

BILLING CODE 4160-18-M

Food and Drug Administration

[Docket No. 82F-0228]

DeTer Co., Inc.; Withdrawal of Food Additive Petition

AGENCY: Food and Drug Administration, HHS.

ACTION: Notice.

SUMMARY: The Food and Drug Administration (FDA) is announcing the withdrawal, without prejudice to a future filing, of a food additive petition (FAP 1A3549) proposing that the food additive regulations be amended to provide for the safe use of sodium lauryl sulfate as a surfactant on raw agricultural commodities to control respirable and explosive dust.

FOR FURTHER INFORMATION CONTACT: Wesley R. Long, Center for Food Safety and Applied Nutrition (HFF-334), Food and Drug Administration, 200 C St. SW., Washington, DC 20204, 202-254-9519.

SUPPLEMENTARY INFORMATION: In a notice published in the **Federal Register** of August 27, 1982 (47 FR 37959), FDA announced that a food additive petition (FAP 1A3549) had been filed by DeTer Co., Inc., P.O. Box S, Burgin, KY 40310 (formerly Eight Great Meadow Lane, East Hanover, NJ 07936). This petition proposed that the food additive regulations be amended to provide for the safe use of sodium lauryl sulfate as a surfactant on raw agricultural commodities to control respirable and explosive dust. DeTer Co., Inc., has now withdrawn the petition without prejudice to a future filing (21 CFR 171.7).

Dated: January 11, 1993.

Fred R. Shank,

Director, Center for Food Safety and Applied Nutrition.

[FR Doc. 93-1375 Filed 1-21-93; 8:45 am]

BILLING CODE 4160-01-F

[Docket No. 92G-0432]

Yandilla Mustard Oil Enterprise Pty. Ltd.; Filing of Petition for Affirmation of GRAS Status

AGENCY: Food and Drug Administration, HHS.

ACTION: Notice.

SUMMARY: The Food and Drug Administration (FDA) is announcing that Yandilla Mustard Oil Enterprise Pty. Ltd., has filed a petition (GRASP 0G0359), proposing that low erucic acid mustard seed oil be affirmed as generally recognized as safe (GRAS) as a direct human food ingredient.

DATES: Written comments by March 23, 1993.

ADDRESSES: Submit written comments to the Dockets Management Branch (HFA-305), Food and Drug Administration, rm. 1-23, 12420 Parklawn Dr., Rockville, MD 20857.

FOR FURTHER INFORMATION CONTACT: Nega Beru, Center for Food Safety and Applied Nutrition (HFS-206), Food and Drug Administration, 200 C St. SW., Washington, DC 20204, 202-254-9523.

SUPPLEMENTARY INFORMATION: Under the Federal Food, Drug, and Cosmetic Act (secs. 201(s), 409(b)(5) (21 U.S.C. 321(s), 348(b)(5))) and the regulations for affirmation of GRAS status in § 170.35 (21 CFR 170.35), notice is given that Yandilla Mustard Oil Enterprise Pty. Ltd., Wallendbeen, NSW 2588, Australia, has filed a petition (GRASP 0G0359), proposing that low erucic acid mustard seed oil be affirmed as GRAS as a direct human food ingredient.

The petition has been placed on display at the Dockets Management Branch (address above).

Any petition that meets the requirements outlined in §§ 170.30 (21 CFR 170.30) and 170.35 is filed by the agency. There is no prefiling review of the adequacy of data to support a GRAS conclusion. Thus, the filing of a petition for GRAS affirmation should not be interpreted as a preliminary indication of suitability for GRAS affirmation.

The potential environmental impact of this action is being reviewed. If the agency finds that an environmental impact statement is not required and this petition results in a regulation, the notice of availability of the agency's finding of no significant impact and the evidence supporting that finding will be published with the regulation in the **Federal Register** in accordance with 21 CFR 25.40(c).

Interested persons may, on or before March 23, 1993, review the petition and/or file comments (two copies, identified with the docket number found in brackets in the heading of this document) with the Dockets Management Branch (address above). Comments should include any available information that would be helpful in determining whether the substance is, or is not, GRAS for the proposed use. A copy of the petition and received comments may be seen in the Dockets Management Branch between 9 a.m. and 4 p.m., Monday through Friday.

Dated: January 11, 1993.

Fred R. Shank,

Director, Center for Food Safety and Applied Nutrition.

[FR Doc. 93-1439 Filed 1-21-93; 8:45 am]

BILLING CODE 4160-01-F

Health Resources and Services Administration

Final Funding Priorities and Special Consideration for Grants for Faculty Development in Family Medicine

The Health Resources and Services Administration (HRSA), announces the final funding priorities and special consideration for fiscal year (FY) 1993 for Grants for Faculty Development in Family Medicine authorized under the authority of section 747(a) (previously section 786(a)), title VII of the Public Health Service (PHS) Act, as amended by the Health Professions Education Extension Amendments of 1992, Public Law 102-408, dated October 13, 1992.

Since this program was announced on August 7, 1992, the Health Professions Education Extension Amendments of 1992, Public Law 102-408, were passed by the Congress and signed by the President.

Purpose

Section 747(a)(3) of the PHS Act authorizes the award of grants to public or nonprofit private hospitals, schools of medicine or osteopathic medicine, or other public or private nonprofit entities to assist in meeting the cost of planning, developing and operating programs for the training of physicians who plan to teach in family medicine training programs. In addition, section 747(a)(4) authorizes assistance in meeting the cost of supporting physicians who are trainees in such programs and who plan to teach in a family medicine training program.

Section 791(a) of the Act, as amended, includes a general funding preference for selected grant programs under title VII, including section 747(a), Grants for Faculty Development in Family Medicine. Section 791(b) includes new information requirements for applicants under this program.

Statutory General Funding Preference

Under section 791(a) of the Act, preference will be given to any qualified applicant that—

(A) Has a high rate for placing graduates in practice settings having the principal focus of serving residents of medically underserved communities; or

(B) During the 2-year period preceding the fiscal year for which such an award is sought, has achieved a significant increase in the rate of placing graduates in such settings.

Preference may be given only for applications ranked above the 20th percentile of applications that have been recommended for approval by the appropriate peer review group. The Secretary may not give an applicant preference if the proposal of the applicant is ranked in or below the 20th percentile of proposals that have been recommended for approval by peer review groups.

Additional information concerning the implementation of this preference is under development and a separate notice was published in the **Federal Register** dated December 18, 1992, at 57 FR 60212, requesting comments on the methodology for implementation of this new statutory funding preference.

Information Requirements Provision

The following new information requirements will not apply in FY 1993 but will take effect in FY 1994. Under section 791(b) of the Act, the Secretary may make an award under the Grants for Faculty Development in Family Medicine Program only if the applicant for the award submits to the Secretary the following information regarding the programs of the applicant:

(1) A description of rotations or preceptorships for students, or clinical training programs for residents, that have the principal focus of providing health care to medically underserved communities.

(2) The number of faculty on admissions committees who have a clinical practice in community-based ambulatory settings in medically underserved communities.

(3) With respect to individuals who are from disadvantaged backgrounds or from medically underserved communities, the number of such individuals who are recruited for academic programs of the applicant, the number of such individuals who are admitted to such programs, and the number of such individuals who graduate from such programs.

(4) If applicable, the number of recent graduates who have chosen careers in primary health care.

(5) The number of recent graduates whose practices are serving medically underserved communities.

(6) A description of whether and to what extent the applicant is able to operate without Federal assistance under title VII of the Act.

Approximately $5.8 million will be available in FY 1993 for this program. Total continuation support recommended is $3.8 million. It is anticipated that $2.0 million will be available to support eight competing awards averaging $250,000.

Special Consideration

In accordance with the statute in effect at the time applications for this program were due, special consideration will be given to applicants that demonstrate to the satisfaction of the Secretary a commitment to family medicine in their medical education training programs.

Final Funding Priorities and Special Consideration for FY 1993

Proposed funding priorities and a special consideration were published in the **Federal Register** dated August 7, 1992, at 57 FR 34937, for public comment. No comments were received during the 30-day comment period.

Therefore, the proposed funding priorities and special consideration will be retained as follows:

In making awards for fiscal year 1993, a funding priority will be given to:

(1) Applications that currently have or propose to develop projects to provide instruction in clinical teaching skills (may also include other critical academic skills) to medical staff who are working in facilities in underserved areas and who hold academic appointments from a medical school.

(2) Applications that can demonstrate either substantial progress over the last 3 years or a significant experience of 10 or more years in enrolling and graduating trainees from those minority or low-income populations identified as at risk of poor health outcomes.

Special consideration will be given to the extent to which applicants enroll and graduate trainees from underserved areas.

Additional Information

If additional programmatic information is required, contact: Ms. Joan Harrison, Resources Development Section, Primary Care Medical Education Branch, Division of Medicine, Bureau of Health Professions, Health Resources and Services Administration, 5600 Fishers Lane, room 4C–04, Rockville, Maryland 20857, Telephone: (301) 443–3614. FAX: (301) 443–8890.

This program is listed at 93.895 in the Catalog of Federal Domestic Assistance. It is not subject to the provisions of Executive Order 12372, Intergovernmental Review of Federal Programs (as implemented through 45 CFR part 100).

This program is not subject to the Public Health System Reporting Requirements.

Dated: January 14, 1993.

Robert G. Harmon,

Administrator.

[FR Doc. 93–1516 Filed 1–21–93; 8:45 am]

BILLING CODE 4160–15–M

Final Funding Priorities and Special Consideration for Grants for Faculty Development in General Internal Medicine and General Pediatrics

The Health Resources and Services Administration announces the final funding priorities and special consideration for Grants for Faculty Development in General Internal Medicine and General Pediatrics authorized under section 748(a), (previously section 784(a)), title VII of the Public Health Service (PHS) Act, as amended by the Health Professions Education Extension Amendments of 1992, Public Law 102–408, dated October 13, 1992.

Purpose

Section 748(a) of the PHS Act authorizes financial assistance to schools of medicine and osteopathic medicine, public or private nonprofit hospitals or other public or private nonprofit entities for planning, developing and operating programs for the training of physicians who plan to teach in general internal medicine or general pediatrics training programs. These grants are intended to promote the development of faculty skills in physicians who are currently teaching or who plan teaching careers in general internal medicine or general pediatrics training programs. These grants also provide financial assistance in meeting the cost of supporting physicians who are trainees in such programs.

Since this program was announced on August 7, 1992, the Health Professions Education Extension Amendments of 1992, Public Law 102–408, were passed by the Congress and signed by the President.

Section 791(a) of the Act, as amended, includes a general funding preference for selected grant programs under title VII, including section 748, Grants for Faculty Development in General Internal Medicine and General Pediatrics. Section 791(b) includes new information requirements for applicants under this program.

Statutory General Funding Preference

Under section 791(a) of the Act, preference will be given to any qualified applicant that—

(A) Has a high rate for placing graduates in practice settings having the principal focus of serving residents of medically underserved communities; or

(B) During the 2-year period preceding the fiscal year for which such an award is sought, has achieved a significant increase in the rate of placing graduates in such meetings.

Preference may be given only for applications ranked above the 20th percentile of applications that have been recommended for approval by the appropriate peer review group. The Secretary may not give an applicant preference if the proposal of the applicant is ranked in or below the 20th percentile of proposals that have been recommended for approval by peer review groups.

Additional information concerning the implementation of this preference is under development and a separate notice was published in the **Federal Register** dated December 18, 1992, at 57 FR 60212, requesting comments on the methodology for implementation of this new statutory funding preference, for this program, in FY 1994.

Information Requirements Provision

The following new information requirements will not apply in FY 1993 but will also take effect in FY 1994. Under section 791(b) of the Act, the Secretary may make an award under the Grants for Faculty Development in General Internal Medicine and General Pediatrics program only if the applicant for the award submits to the Secretary the following information regarding the programs of the applicant:

(1) A description of rotations or preceptorship for students, or clinical training programs for residents, that have the principal focus of providing health care to medically underserved communities.

(2) The number of faculty on admissions committees who have a clinical practice in community-based ambulatory settings in medically underserved communities.

(3) With respect to individuals who are from disadvantaged backgrounds or from medically underserved communities, the number of such individuals who are recruited for academic programs of the applicant, the number of such individuals who are admitted to such programs, and the number of such individuals who graduate from such programs.

(4) If applicable, the number of recent graduates who have chosen careers in primary health care.

(5) The number of recent graduates whose practices are serving medically underserved communities.

(6) A description of whether and to what extent the applicant is able to operate without Federal assistance under title VII of the Act.

Approximately $3.2 million will be available in FY 1993 for this program. Total continuation support recommended is $1.7 million. It is anticipated that $1.5 million will be available to support 10 competing awards averaging $150,000.

Final Funding Priorities and Special Consideration for FY 1993

Proposed funding priorities and a special consideration were published in the **Federal Register** dated August 7, 1992, at 57 FR 34939, for public comment. No comments were received during the 30-day comment period. Therefore, as proposed the final funding priorities and special consideration will be retained as follows:

In making awards for fiscal year 1993, funding priority will be given to:

(1) Applications that currently have or propose to develop projects to provide instruction in clinical teaching skills (may also include other critical academic skills) to medical staff who are working in facilities in underserved areas and who hold academic appointments from a medical school.

(2) Applications that can demonstrate either substantial progress over the last 3 years or a significant experience of 10 or more years in enrolling and graduating trainees from those minority or low-income populations identified as at risk of poor health outcomes.

Special consideration will be given to the extent to which applicants enroll and graduate trainees from underserved areas.

Additional Information

If additional programmatic information is required, contract: Ms. Dianne Harbison, Resources Development Section, Primary Care Medical Education Branch, Division of Medicine, Bureau of Health Professions, Health Resources and Services Administration, 5600 Fishers Lane, room 4C–04, Parklawn Building, Rockville, Maryland 20857. Telephone: (301) 443–3614. FAX: (301) 443–8890.

This program is listed at 93.900 in the Catalog of Federal Domestic Assistance. Applications submitted in response to this announcement are not subject to the provisions of Executive Order 12372, Intergovernmental Review of Federal Programs, (as implemented through 45 CFR part 100).

This program is not subject to the Public Health System Reporting Requirements.

Dated: January 14, 1993.

Robert G. Harmon,

Administrator.

[FR Doc. 93–1518 Filed 1–21–93; 8:45 am]

BILLING CODE 4160–50–M

Availability of Funds to Provide Technical and Non-Financial Assistance to Migrant Health Centers on Environmental and Occupational Health Services for Migrant and Seasonal Farmworkers

AGENCY: Health Resources and Services Administration, HHS.

ACTION: Notice.

SUMMARY: The Health Resources and Services Administration (HRSA) anticipates that approximately $340,000 will be available in FY 1993 to support one cooperative agreement for the provision of technical and non-financial assistance to migrant health centers and to community health centers receiving funding under Section 329 of the Public Health Service (PHS) Act to provide environmental and occupational health services to migrant and seasonable farmworkers and their families. This cooperative agreement will be awarded under section 329(g)(1) of the PHS Act (42 U.S.C. 254b) with a budget period of one year and a project period of up to three years.

The PHS is committed to achieving the health promotion and disease prevention objectives of Healthy People 2000, a PHS-led national activity. The migrant health center program directly addresses the Healthy People 2000 objectives by improving access to preventive and primary care services and environmental health services for underserved populations, especially minority and other disadvantaged populations. Potential applicants may obtain a copy of Healthy People 2000 (Full Report: Stock No. 017–001–00474–0) or Healthy People 2000 (Summary Report: Stock No. 017–001–00473–01) through the Superintendent of Documents, Government Printing Office, Washington, DC 20402–9325 (Telephone 202–783–3228).

DATES: The deadline date for receipt of application is February 22, 1993. Competing applications will be considered to be "on time" if they are: (1) Received on or before the established deadline date; or (2) sent on or before the established deadline date and received in time for orderly processing. (Applicants should request a legibly dated U.S. Postal Service postmark or legibly dated receipt from a commercial carrier or U.S. Postal Service. Private metered postmarks shall not be

acceptable as proof of timely mailing.) Late applications not accepted for processing will be returned to the applicant.

ADDRESSES: Alice Thomas, Grants Management Officer (GMO), Bureau of Primary Health Care, HRSA, 12100 Parklawn Drive, Rockville, Maryland 20857, is responsible for distributing application kits and guidance (Form PHS 5161–1 with Standard Form 424, as approved by the OMB under control numbers 0937–0189), and completed applications must be submitted to that office. The GMO can also provide assistance on business management issues.

FOR FURTHER INFORMATION CONTACT: For general program information and information about these technical assistance funds, contact Jack Egan, Deputy Director, Migrant Health Program, 5600 Fishers Lane, room 7A–55, Rockville, MD 20857 (301) 443–1153.

SUPPLEMENTARY INFORMATION: Migrant farmworkers frequently live in areas with poor housing conditions and inadequate sanitation. These living conditions result in the high risk of accidents and illnesses and often lead to the transmission of communicable diseases. The purpose of the technical assistance is to increase the skill levels of migrant health centers in the development and initiation of activities that address the environmental health needs of migrant and seasonal farmworkers and their families in their catchment area through the assistance of a migrant farmworker environmental resource center. These efforts will focus on assisting migrant health centers identify, plan and complete projects to resolve problems of inadequate housing, water supply, wastewater disposal, solid waste management and pesticide protection.

There are 104 Migrant Health Centers which provide comprehensive primary health are to migrant and seasonal farmworkers and their families in their home base or as they work along one of the three migrant streams. Legislation governing this program can be found at section 329 of the PHS Act. Section 329(a)(1)(D) describes the environmental health services to be provided by migrant health centers as follows: "Environmental health services, including, as may be appropriate for particular centers (as determined by the centers), the detection and alleviation of unhealthful conditions associated with water supply, sewage treatment, solid waste disposal, rodent and parasitic infestation, field sanitation, housing, and other environmental factors related to health."

The technical and nonfinancial assistance will be arranged for or provided within available resources by a national resource center in response to migrant health center requests for information and support in the following areas: (1) The promotion, development and implementation of environmental and occupational health services for migrant and seasonal farmworkers, such as, the detection and alleviation of unhealthful conditions, accident prevention, including pesticide exposures, and infection and parasitic disease screening and control; and (2) the development or migrant health center specific patent and provider educational and guidance materials and technical publications by migrant health centers for farmwokers and growers.

Technical assistance in alleviating and correcting conditions among migrant and seasonal farmworkers and their families should be provided in the following areas:

(1) Field sanitation;
(2) Safe drinking water;
(3) Housing;
(4) Rodent and parasitic infestation;
(5) Solid waste disposal;
(6) Sewage treatment; and
(7) Other environmental areas related to health. Examples of the technical and non-financial assistance to be provided in addressing these problems include: (a) Well water testing, and outreach to educate growers and farmworkers on the importance of safe drinking water and handwashing facilities to prevent environmentally induced illness and (b) assistance to migrant health centers by providing expert advice on local, State and federal laws and regulations and referral to private and public funding which may be available to improve housing and environmental health conditions for migrant farmworkers.

Eligible Applicants

Eligible applicants for section 329(g)(1) funds include public and private nonprofit entities. (See section on Criteria for Evaluating Applications.)

Federal Responsibilities

Federal responsibilities will include the following: (1) Coordination of cooperative agreement activities with other federally-funded primary care activities, (including State and Regional Primary Care Associations, migrant health centers and the State primary care agreements) with appropriate groups such as the National Governors Association, Association of State and Territorial Health Officers, U.S. Conferences of State and Local Health Organizations, and the National Association of County Health Officials; and (2) participation in the design, planning, setting target task completion dates and final approval of workplans for activities under the cooperative agreement, including the selection of migrant health centers which will receive technical and non-financial assistance.

Criteria for Evaluating Applications

Applications will be reviewed and rated on the applicant's ability to meet the following:

(1) The extent to which the applicant demonstrates an adequate understanding of the environmental health needs of migrant and seasonal farmworkers;

(2) The extent to which the applicant demonstrates a capability to serve as a resource to federally funded Migrant Health Center/Projects and local environmental agencies to maximize collaboration, identify and integrate resources in assisting migrant farmworkers;

(3) Experience of the proposed project personnel in working with migrant farmworker environmental health issues;

(4) The adequacy and appropriateness of the proposed plan, with project approaches that will support the initiation or completion of specific environmental health activities in local, State, and regional areas served by migrant health centers;

(5) An implementation plan which focuses on the outcomes as well as the methodology to be employed; and

(6) The capability of the applicant to conduct the proposed activities in a cost efficient manner.

Other Award Information

The cooperative agreement awarded under this notice is not subject to the provisions of Executive Order 12372 or the Public Health System Reporting Requirements.

In the OMB Catalog of Federal Domestic Assistance, the Migrant Health Center program is Number 93.246.

Dated: January 14, 1993.

Robert G. Harmon,

Administrator.

[FR Doc. 93–1520 Filed 1–21–93; 8:45 am]

BILLING CODE 4160–15–M

Final Funding Priorities and Special Consideration for Grants for Predoctoral Training in Family Medicine

The Health Resources and Services Administration (HRSA), announces the

final funding priorities and special consideration for fiscal year (FY) 1993 for Grants for Predoctoral Training in Family Medicine authorized under the authority of section 747(a) (previously section 786(a)), title VII of the Public Health Service (PHS) Act, as amended by the Health Professions Education Extension Amendments of 1992, Public Law 102–408, dated October 13, 1992.

Since this program was announced on August 28, 1992, the Health Professions Education Extension Amendments of 1992, Public Law 102–408, were passed by the Congress and signed by the President.

Purpose

Section 747(a)(1) of the PHS Act authorizes the award of grants to assist in meeting the cost of planning, developing and operating or participating in approved predoctoral training programs in the field of family medicine. Grants may include support for the program only or support for both the program and the trainees.

Approximately $11.5 million will be available in FY 1993 for this program. Total continuation support recommended is $7.6 million. It is anticipated that $3.9 million will be available to support 35 competing awards averaging $110,000 each.

Section 791(a) of the Act, as amended, includes a general funding preference for selected grant programs under title VII, including section 747(a), Grants for Predoctoral Training in Family Medicine. Section 791(b) includes new information requirements for applicants under this program.

Statutory General Funding Preference

Under section 791(a) of the Act, preference will be given to any qualified applicant that—

(A) Has a high rate for placing graduates in practice settings having the principal focus of serving residents of medically underserved communities; or

(B) During the 2-year period preceding the fiscal year for which such an award is sought, has achieved a significant increase in the rate of placing graduates in such settings.

Preference may be given only for applications ranked above the 20th percentile of applications that have been recommended for approval by the appropriate peer review group. The Secretary may not give an applicant preference if the proposal of the applicant is ranked in or below the 20th percentile of proposals that have been recommended for approval by peer review groups.

Additional information concerning the implementation of this preference is under development and a separate notice was published in the **Federal Register** dated December 18, 1992, at 57 FR 60212, requesting comments on the methodology for implementation of this new statutory funding preference.

(Note: The preference will not be implemented in FY 1993 if sufficient funds are available to fund the top 80 percent of approved applications.)

Information Requirements Provision

The following new information requirements will not apply in FY 1993 but will take effect in FY 1994. Under section 791(b) of the Act, the Secretary may make an award under the Grants for Predoctoral Training in Family Medicine program only if the applicant for the award submits to the Secretary the following information regarding the programs of the applicant:

(1) A description of rotations or preceptorships for students, or clinical training programs for residents, that have the principal focus of providing health care to medically underserved communities.

(2) The number of faculty on admissions committees who have a clinical practice in community-based ambulatory settings in medically underserved communities.

(3) With respect to individuals who are from disadvantaged backgrounds or from medically underserved communities, the number of such individuals who are recruited for academic programs of the applicant, the number of such individuals who are admitted to such programs, and the number of such individuals who graduate from such programs.

(4) If applicable, the number of recent graduates who have chosen careers in primary health care.

(5) The number of recent graduates whose practices are serving medically underserved communities.

(6) A description of whether and to what extent the applicant is able to operate without Federal assistance under title VII of the Act.

Established Funding Preference

The following funding preference was established in FY 1992 after public comment dated October 28, 1991 at 56 FR 55504 and is continued in FY 1993.

A funding preference will be given to applicants that have an established, required third year family medicine clerkship or preceptorship (at least 4 weeks in duration); or provide credible evidence that such a clerkship or preceptorship will be initiated no later than academic year 1994–95.

Special Consideration

In accordance with the statute in effect at the time applications for this program were due, special consideration will be given to applicants that demonstrate to the satisfaction of the Secretary a commitment to family medicine in their medical education training programs.

Final Funding Priorities and Special Consideration for FY 1993

Proposed funding priorities and a special consideration were published in the **Federal Register** dated August 28, 1992, at 57 FR 39206, for public comment. No comments were received during the 30-day comment period.

Therefore, the proposed funding priorities and special consideration will be retained as follows:

In making awards for fiscal year 1993, a funding priority will be given to:

1. Applicants that provide substanial training experience in:

(1) Inpatient or outpatient health care facilities located in a Health Professional Shortage Area (HPSA), PHS Act, section 332 or in a Medically Underserved Area (MUA) designated under provisons of PHS Act, section 330(b)(3);

(2) Health care facilities that have a substantial portion of their patient visits/hospital admissions that are uncompensated or are compensated under the State Medicaid program and/or other State and local health services assistance programs; or

(3) Community Health Centers currently supported under PHS Act, section 330, Migrant Health Centers currently supported under PHS Act, section 329, Homeless Health Centers supported under PHS Act, section 340, facilities that have formal arrangements to provide primary health services to public housing communities, facilities operated by state or local health departments, and/or hospitals and other health care facilities of the Indian Health Service.

2. Applicants that have a required primary care preceptorship with community-based physicians (family physicians, general internists, or general pediatricians) in ambulatory care settings which (a) occurs in the 1st or 2nd year and is at least 4 weeks duration or (b) is a longitudinal experience of at least 5 days per semester in both the 1st and 2nd years, and have an active family medicine student interest group with active support from the predoctoral coordinator.

3. Applicants that document that 20 percent or more of the previous medical

school graduating class or of the combined last three graduating classes entered accredited family medicine residency training programs or internship training programs in osteopathic medicine which emphasize family medicine and are approved by the American Osteopathic Association.

4. Applications that can demonstrate either substantial progress over the last 3 years or a significant experience of 10 or more years in influencing graduates from those minority or low-income populations identified as at risk of poor health outcomes to enter family medicine residency training.

In making awards for fiscal year 1993, a special consideration will be given to the extent to which applicants enroll and graduate trainees from underserved areas.

Additional Information

If additional programmatic information is needed, please contact: Mrs. Betty Ball, Resources Development Section, Primary Care Medical Education Branch, Division of Medicine, Bureau of Health Professions, Health Resources and Services Administration, 5600 Fishers Lane, room 4C–04, Parklawn Building, Rockville, Maryland 20857. Telephone: (301) 443–3614.

This program is listed at 93.896 in the Catalog of Federal Domestic Assistance. It is not subject to the provisions of Executive Order 12372, Intergovernmental Review of Federal Programs, (as implemented through 45 CFR part 100).

This program is not subject to the Public Health System Reporting Requirements.

Dated: January 14, 1993.

Robert G. Harmon,

Administrator.

[FR Doc. 93–1517 Filed 1–21–93; 8:45 am]

BILLING CODE 4160–15–M

Amended Program Announcement and Final Funding Priority and Special Consideration for Grants for Interdisciplinary Training for Health Care for Rural Areas for FY 1993

The Health Resources and Services Administration (HRSA) announces the final funding priority and special consideration for fiscal year (FY) 1993, Grants for Interdisciplinary Training for Health Care for Rural Areas, under the authority of section 778, title VII, of the Public Health Service (PHS) Act, as amended by the Health Professions Education Extension Amendments of 1992, Public Law 102–408, dated October 13, 1992.

This program was announced in the **Federal Register** at 57 FR 44191 on September 24, 1992. The announcement included a proposed funding priority and a proposed special consideration. A comment period of 30 days was established to allow public comment concerning the proposed funding priority and special consideration. No comments were received. This notice includes the final funding priority and final special consideration.

In addition, since this program was announced on September 24, 1992, the Health Professions Education Extension Amendments of 1992 were passed by the Congress and signed by the President. These amendments resulted in changes in terminology under eligibility, in the definition of rural and in the way funds may be used in this program. In addition, the section number has been changed from 799A to 778. This notice will describe these changes.

Approximately $3,763,000 will be available in FY 93 for grants for Interdisciplinary Training for Health Care for Rural Areas. Total continuation support recommended is $2,563,000. It is anticipated that $1,200,000 will be available to support 5 to 7 competing awards averaging $200,000.

Purposes

Section 778 of the Public Health Service Act, as amended by Public Law 102–408, authorizes the Secretary to award grants for interdisciplinary training projects designed to provide or improve access to health care in rural areas. Specifically, projects funded under this authority shall be designed to:

(a) Use new and innovative methods to train health care practitioners to provide services in rural areas;

(b) Demonstrate and evaluate innovative interdisciplinary methods and models designed to provide access to cost-effective comprehensive health care;

(c) Deliver health care services to individuals residing in rural areas;

(d) Enhance the amount of relevant research conducted concerning health care issues in rural areas; and

(e) Increase the recruitment and retention of health care practitioners in rural areas and make rural practice a more attractive career choice for health care practitioners.

A recipient of funds may use various methods in carrying out the projects described above. The legislation cites the following methods as examples:

(a) The distribution of stipends to students of eligible applicants;

(b) The establishment of a postdoctoral fellowship program;

(c) The training of faculty in the economic and logistical problems confronting rural health care delivery systems; or

(d) The purchase or rental of transportation and telecommunication equipment where the need for such equipment due to unique characteristics of the rural area is demonstrated by the recipient.

Eligibility

In the Health Professions Education Extension Amendments of 1992, the term mental health practice is substituted for clinical psychology, clinical social work, and marriage and family therapy in the list of disciplines eligible for training assistance under this program.

To be eligible for a Grant for Interdisciplinary Training for Health Care for Rural Areas, each applicant must be located in a State and be:

1. A local health department, or
2. A nonprofit organization, or
3. A public or nonprofit college, university or school of, or program that specializes in nursing, mental health practice, optometry, public health, dentistry, osteopathic medicine, physicians assistants, pharmacy, podiatric medicine, allopathic medicine, chiropractic, or allied health professions.

For-profit entities are not eligible to obtain funds under section 778 either directly or through subgrants or subcontracts.

Each application must be jointly submitted by at least two eligible applicants. One of the applicants must be an academic institution. Each application must demonstrate the need and demand for health care services, knowledge of available resources and the most significant service and educational gaps within its targeted geographic area. One applicant must be designated the principal organization responsible and accountable for the conduct of the proposed project.

Definition

In the Health Professions Education Extension Amendments of 1992, the term rural is defined as follows:

"Rural" means geographic areas that are located outside of standard metropolitan statistical areas.

Statutory Project Requirements

Interdisciplinary training projects funded under section 778 must:

1. Assist individuals in academic institutions in establishing long-term collaborative relationships with health

care facilities and providers in rural areas, and;

2. Designate a rural health care agency or agencies for clinical treatment or training, including hospitals, community health centers, migrant health centers, rural health clinics, community mental health centers, long-term care facilities, Native Hawaiian health centers, or facilities operated by the Indian Health Service or an Indian tribe or tribal organization or Indian organization under a contract with the Indian Health Service under the Indian Self-Determination Act.

Not more than 10 percent of the individuals receiving training with section 778 funds shall be trained as doctors of medicine or osteopathic medicine. A grantee may not use more than 10 percent of the grant funds for administrative costs. The Health Professions Education Extension Amendments of 1992 have added a limitation to the use of grant funds. Grant funds received under section 778 must be used to supplement, not supplant, amounts made available by applicant institutions for these activities in the preceding fiscal year.

Established Funding Preference

The following funding preference was established in FY 1990, after public comment (55 FR 24321, dated June 15, 1990), and the Administration is extending it in FY 1993.

A funding preference will be given to interdisciplinary training involving three or more disciplines. This funding preferenc will be given to applicants that propose and implement training for health care practitioners, faculty or students representing three or more disciplines.

Final Funding Priority

No comments regarding this funding priority were received. Therefore, the final funding priority for FY 1993 is as follows. A funding priority will be given to applicant institutions (academic) which demonstrate either substantial progress over the last three years or a significant experience of ten or more years in enrolling and graduating trainees from those minority or low-income populations identified as at risk of poor health outcomes. This priority is consistent with a HRSA strategy to increase the number of health professionals from minority and other at risk populations, to assure equal access to health professions education for all population groups, and ultimately, to provide a greater volume of health care in underserved areas.

Final Special Consideration

No comments regarding this special consideration were received. Therefore, the final special consideration for FY 1993 is as follows. Special consideration will be given to the extent to which applicants enroll and graduate trainees from underserved areas. This special consideration is intended to recognize applicants that enroll and graduate trainees from underserved areas because health professionals who come from underserved areas are more likely to return there upon completion of training to provide needed health services.

Additional Information

If additional programmatic information is needed, please contact: Dr. Marcia Brand, Program Officer, Division of Associated, Dental and Public Health Professions, Bureau of Health Professions, HRSA, Parklawn Building, room 8C–02, 5600 Fishers Lane, Rockville, MD 20857. Telephone: 301–443–6763. FAX: 301–443–1164.

This program, Grants for Interdisciplinary Training for Health Care for Rural Areas, is listed at 93.192 in the Catalog of Federal Domestic Assistance. It is not subject to the provisions of Executive Order 12372, Intergovernmental Review of Federal Programs (as implemented through 45 CFR part 100). This program is not subject to the Public Health System Reporting Requirements.

Dated: January 14, 1993.

Robert G. Harmon,

Administrator.

[FR Doc. 93–1519 Filed 1–21–93; 8:45 am]

BILLING CODE 4160–15–M

Advisory Council; Meeting

In accordance with section 10(a)(2) of the Federal Advisory Committee Act (Public Law 92–463), announcement is made of the following National Advisory body scheduled to meet during the month of February 1993:

Name: Council on Graduate Medical Education.

Time: February 10–11, 1993, 8:30 a.m.

Place: Conference Room G & H, Parklawn Conference Center, 5600 Fishers Lane, Rockville, MD 20857. Open for entire meeting.

Purpose: Provides advice and recommendations to the Secretary and to the Committees on Labor and Human Resources, and Finance of the Senate and the Committees on Energy and Commerce and Ways and Means of the House of Representatives, with respect to (A) the supply and distribution of physicians in the United States; (B) current and future shortages of physicians in medical and surgical specialties and subspecialties; (C) issues relating to foreign medical graduates; (D) appropriate Federal policies regarding (A), (B), and (C) above; (E) appropriate efforts to be carried out by medical and osteopathic schools, public and private hospitals and accrediting bodies regarding matters in (A), (B), and (C) above; (F) deficiencies in the needs for improvements in, existing data bases concerning supply and distribution of, and training programs for physicians in the United States.

Agenda: There will be presentations and discussions regarding the Third Report and Health Reform: A Public Policy Perspective; health professions activities and the Third Report: reauthorization of the Disadvantaged Minority Health Improvement Act; Health Professions Reform in the Public Eye; the increasing State involvement in physician supply and distribution; the changing environment for academic health centers; a discussion of future issues and activities for council deliberation. Also a period of public comment on the Third Report of the Council on Graduate Medical Evaluation.

Anyone requiring information regarding the subject Council should contact Marc L. Rivo, M.D., M.P.H., Executive Secretary, telephone (301) 443–6190; or F. Lawrence Clare, M.D., M.P.H., Deputy Executive Secretary, telephone (301) 443–6326, Council on Graduate Medical Education, Division of Medicine, Bureau of Health Professions, Health Resources and Services Administration, room 4C–25, Parklawn Building, 5600 Fishers Lane, Rockville, Maryland 20857.

Agenda items are subject to change as priorities dictate.

Dated: January 14, 1993.

Jackie E. Baum,

Advisory Committee Management Officer, HRSA.

[FR Doc. 93–1374 Filed 1–21–93; 8:45 am]

BILLING CODE 4160–15–M

Advisory Council; Notice of Meeting

In accordance with section 10(a)(2) of the Federal Advisory Committee Act (Pub. L. 92–463), announcement is made of the following National Advisory body scheduled to meet during the month of February 1993:

Name: National Advisory Council on the National Health Service Corps.

Date and Time: February 6–8, 1993.

Place: Cabot Lodge, 2375 North State Street, Jackson, Mississippi 39202–1196. The meeting is open to the public.

Purpose: The Council will advise and made appropriate recommendations on the National Health Service Corps (NHSC) program as mandated by legislation. It will also review and comment on proposed regulations promulgated by the Secretary under provision of the legislation.

Agenda: The meeting will begin at 4 p.m. on Saturday, February 6, and adjourn at 6 p.m. On Sunday, February 7, the meeting

will be from 8:30 a.m. to 6 p.m. On Monday, February 8, the Council will leave the hotel at 8 a.m. to make site visits to the Birthing Center and Jackson Hinds Community Health Center in Jackson; Centers in Vicksburg, Greenville, Mound Bayou, Clarksdale, Tutweiler, Belzoni, Brandon, Laurel, Seminary and Mendenhall, Mississippi. The Council will continue their business meeting on Tuesday, February 9, at 8:30 a.m. and adjourn around 12 noon. The agenda will include a Bureau and Division update, Scholarship and Loan Repayment Programs and NHSC placement activities.

The meeting is open to the public, however, no transaction will be provided to the sites.

Anyone requiring information regarding the subject Council should contact Ms. Anne Mae Voigt, National Advisory Council on the National Health Service Corps, room 7A–39, Parklawn Building, 5600 Fishers Lane, Rockville, Maryland 20857, Telephone (301) 443–1470.

Agenda Items are subject to change as priorities dictate.

Dated: January 14, 1993.

Jackie E. Baum,

Advisory Committee Management Officer, HRSA.

[FR Doc. 93–1521 Filed 1–21–93; 8:45 am]

BILLING CODE 4160–15–M

Advisory Council; Notice of Meeting

In accordance with section 10(a)(2) of the Federal Advisory Committee Act (Pub. L. 92–463), announcement is made of the following National Advisory body scheduled to meet during the month of March 1993:

Name: National Advisory Council on Migrant Health.

Date and Time: March 3–5, 1993—8 a.m.

Place: Omni Georgetown Hotel, 2121 P Street, NW., Washington, DC 20037.

The meeting is open to the public.

Purpose: The Council is charged with advising, consulting with, and making recommendations to the Secretary and the Administrator, Health Resources and Services Administration, concerning the organization, operation, selection, and funding of Migrant Health Centers and other entities under grants and contracts under section 329 of the Public Health Service Act.

Agenda: The agenda includes a overview of Council general business activities and priorities. Also, a review and discussion of 1993 National Advisory Council on Migrant Health Recommendations with federal representatives.

The Council meeting is being held in conjunction with the National Association of Community Health Centers, Policy and Issues Forum, March 5–9, 1993.

Anyone requiring information regarding the subject Council should contact Mr. Antonio E. Duran, Executive Secretary, National Advisory Council on Migrant Health, Bureau of Primary Care, Health Resources and Services Administration room 7A–55, Parklawn Building, 5600 Fishers Lane, Rockville, Maryland 20857, Telephone (301) 443–1153.

Agenda Items are subject to change as priorities dictate.

Dated: January 15, 1993.

Jackie E. Baum,

Advisory Committee Management Officer, HRSA.

[FR Doc. 93–1523 Filed 1–21–93; 8:45 am]

BILLING CODE 4160–15–M

National Institutes of Health

National Cancer Institute: Opportunity for a Cooperative Research and Development Agreement (CRADA) for the Biomedical Use of Stabilized Nitric Oxide Complexes

AGENCY: National Institutes of Health, PHS, DHHS.

ACTION: Notice.

SUMMARY: The Department of Health and Human Services (DHHS) seeks an agreement with a pharmaceutical or biotechnology company for the joint research, development, evaluation and possible commercialization of nucleophile/nitric oxide complexes. Any CRADA to use the controlled release of nitric oxide as a research tool or in drug design will be considered.

ADDRESSES: Proposals and questions about this opportunity may be addressed to Dr. Raphe Kantor, Office of Technology Development, National Cancer Institute—Frederick Cancer Research and Development Center, Building 427, rm. 35, Frederick, MD 21702–1201 (301–846–5465).

DATES: Proposals must be received by February 5, 1993.

SUPPLEMENTARY INFORMATION: Nitric oxide (NO) has been implicated as an important bioregulatory mediator in a variety of processes including the normal physiological control of blood pressure, inhibition of platelet aggregation/adhesion, bronchodilation, penile erection, immunologically induced cytostasis and neurotransmission. Scientists at the National Cancer Institute—Frederick Cancer Research and Development Center have discovered that complexes of nitric oxide with various nucleophiles can be used for the controlled biological release of NO and that this spontaneous, nonenzymatic release of NO can be used to mediate a number of biological responses. For example, selected members of this series have been shown to compare favorably as vasodilators and antiplatelet agents with pharmaceutical preparations used clinically for these purposes. Background information including reprints and issued patents is available from the above-referenced address. Patent applications and pertinent information not yet publicly described can be obtained under a Confidential Disclosure Agreement.

To speed the research, development and commercialization of this new class of drugs, the Government is seeking an agreement with a pharmaceutical or biotechnology company in accordance with the regulations governing the transfer of Government-developed agents (37 CFR 404.8). Proposals relating to any biomedical area will be considered.

CRADA aims include the rapid publication of research results and the timely exploitation of commercial opportunities. The CRADA partner will enjoy rights of first negotiation for licensing Government rights to any inventions arising under the agreement and will advance funds payable upon signing the CRADA to help defray Government expenses for patenting such inventions and other CRADA-related costs.

The role of the Division of Cancer Etiology, NCI-FCRDC, in this CRADA will be as follows:

1. Provide the Collaborator with samples of the subject compounds for pharmaceutical evaluation.

2. Synthesize structural variants of these subject compounds to optimize desired effects.

3. Continue the detailed physicocohemical characterization of the test compounds as well as reserach on their mechanism of biological action. Publish these results and provide all data to the Collaborator as soon as they become available.

The role of the Collaborator will be to perform an exhaustive evaluation of nucleophile/NO adducts and derivatives thereof with respect to the biological activities covered in the CRADA. The Collaborator will supply these data to the NCI in a timely fashion.

Selection criteria for choosing the CRADA partner will include but not be limited to:

1. Ability to complete the quality pharmacological evaluations required according to an appropriate timetable to be outlined in the Collaborator's proposal. The target commercial application as well as the strategy for evaluating the test agents' potential in

that capacity must be clearly delineated therein.

2. The level of financial support the Collaborator will supply for CRADA-related Government activities.

3. A willingness to cooperate with the National Cancer Institute in the publication of research results.

4. An agreement to be bound by the DHHS rules involving human subjects, patent rights and ethical treatment of animals.

5. Provisions of equitable distribution of patent rights to any inventions. Generally, the rights of ownership are retained by the organization which is the employer of the inventor, with (1) an irrevocable, nonexclusive, royalty-free license to the Government (when a company employee is the sole inventor) or (2) an exclusive or nonexclusive license to the company on terms that are appropriate (when the Government employee is the sole inventor).

The following is a listing of Dr. Keefer's patent portfolio for the stabilized nitric oxide compound technology which is available for licensing or further development under a CRADA:

Anti-Hypertensive Compositions of Secondary Amine-Nitric Oxide Adducts and use Thereof
Keefer, L.K., Wink, D.A., Dunams, T.M., Hrabie, J.A. (NCI)
Filed 12 Aug 91
Serial No. 07/743,892 (CIP of 07/409,552)

Therapeutic Inhibition of Platelet Aggregation by Nucleophile-Nitric Oxide Complexes and Derivatives Thereof
Diodati, J.G., Keefer, L.K. (NHLBI)
Filed 24 Sep 91
Serial No. 07/764,906

Prodrug Derivatives of Nucleophile-Nitric Oxide Adducts as Agents for the Treatment of Cardiovascular Disorders
Keefer, L.K., Dunams, T.M., Saavedra, J.E. (NCI)
Filed 22 Sep 92
DHHS Case No. E-048-91/1 (CIP of Serial No. 07/764,908)

Mixed Ligand Metal Complexes of Nitric Oxide Nucleophile Adducts Useful as Cardiovascular Agents
Christodoulou, D.D., Wink, D.A., Keefer, L.K. (NCI)
Filed 27 Mar 92
Serial No. 07/858,885

Method of Controlling Cell Proliferation and Pharmaceutical Composition Therefor
Maragos, C.M., Wang, J.M., Keefer, L.K., Oppenheim, J.J. (NCI)
Filed 13 Apr 92
Serial No. 07/867,759

Complexes of Nitric Oxide With Polyamines
Keefer, L.K., Hrabie, J.A. (NCI)
Issued 10/13/92
U.S. Patent No. 5,155,173

Complexes of Nitric Oxide With Polyamines
Keefer, L.K., Hrabie, J.A. (NCI)
Filed 30 June 92
Serial No. 07/906,479 (CIP of 07/585,793)

Antihypertensive Compositions and Use Thereof
Keefer, L.K., Wink, D.A., Dunams, T.M., Hrabie, J.A. (NCI)
Filed 18 Oct 89
Serial No. 07/423,279

Anti-hypertensive Compositions of secondary Amine-Nitric Oxide Adducts and Use Thereof
Keefer, L.K., Wink, D.A., Dunams, T.M., Hrabie, J.A. (NCI)
Serial No. 07/409,552
Patent Issued 13 August 91
U.S. Patent No. 5,039,705

Stabilized Nitric Oxide-Primary Amine Complexes Useful as Cardiovascular Agents
Keefer, L.K., Wink, D.A., Dunams, T.M., Hrabie, J.A. (NCI)
Serial No. 07/316,958
Patent Issued 4 Sep 90
U.S. Patent No. 4,954,526

Polymer-Bound Nitric Oxide/Nucleophile Adduct Compositions, Pharmaceutical Compositions Incorporating Same and Methods of Treating Biological Disorders Using Same
Keefer, L.K. and Hrabie, J.A. (NCI)
Filed 24 Aug 92
Serial No. 07/935,565

Dated: January 12, 1993.

Reid G. Adler,

Director, Office of Technology Transfer, National Institutes of Health.

[FR Doc. 93-1426 Filed 1-21-93; 8:45 am]
BILLING CODE 4140-01-M

National Institute on Alcohol Abuse and Alcoholism; Meetings

Pursuant to Pub. L. 92-463, notice is hereby given of meetings of the National Institute on Alcohol Abuse and Alcoholism.

These meetings will be open to the public to discuss administrative details or other issues relating to committee activities as indicated in the notices. Attendance by the public will be limited to space available.

These meetings will be closed to the public as indicated below in accordance with the provisions set forth in sections 552b(c)(4) and 552(c)(6), title 5, U.S.C. and section 10(d) of Pub. L. 92-463, for the review, discussion and evaluation of individual research grant applications. These applications and the discussions could reveal confidential trade secrets or commercial property such as patentable material, and personal information concerning individuals associated with the applications, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

Summaries of the meetings and the rosters of committee members may be obtained from: Ms. Diana Widner, NIAAA Committee Management Officer, National Institute on Alcohol Abuse and Alcoholism, Parklawn Building, room 16C-20, 5600 Fishers Lane, Rockville, MD 20857, Telephone: 301/443-4375. Other information pertaining to the meetings can be obtained from the Scientific Review Administrator indicated.

Name of Committee: Biochemistry, Physiology, and Medicine Subcommittee of the Alcohol Biomedical Research Review Committee.

Scientific Review Administrator: Ronald Suddendoff, Ph.D.

Dates of Meeting: February 1-2, 1993.

Place of Meeting: Hyatt Regency Bethesda, One Bethesda Metro Center, Bethesda, MD 20814.

Open: February 1, 9 a.m. to 9:30 a.m.

Agenda: Reports by Division Directors, Branch Chief, and Scientific Review Administrator on Committee concerns followed by open discussion and review of administrative details.

Closed: February 1, 9:30 a.m. to recess; February 2, 9 a.m. to adjournment.

Name of Committee: Neuroscience and Behavior Subcommittee, Alcohol Biomedical Research Review Committee.

Scientific Review Administrator: Antonio Noronha, Ph.D.

Dates of Meeting: February 15-17, 1993.

Place of Meeting: Hyatt Regency Bethesda, One Bethesda Metro Center, Bethesda, MD 20814.

Open: February 15, 9 a.m. to 11 a.m.

Agenda: Reports by Division Directors, Branch Chief, and Scientific Review Administrator on Committee concerns followed by open discussion and review of administrative details.

Closed: February 15, 11 a.m. to recess; February 16, 9 a.m. to recess; February 17, 9 a.m. to adjournment.

Name of Committee: Clinical and Prevention Subcommittee of the Alcohol Psychosocial Research Review Committee.

Scientific Review Administrator: Thomas D. Sevy, M.S.W.

Dates of Meeting: February 22-24, 1993.

Place of Meeting: Ramada Inn at Congressional Park, 1775 Rockville Pike, Rockville, MD 20852.

Open: February 22, 9 a.m. to 10 a.m.

Agenda: Reports by Division Directors, Branch Chief, and Scientific Review Administrator on Committee concerns followed by open discussion and review of administrative details.

Closed: February 22, 10 a.m. to recess; February 23, 9 a.m. to recess; February 24, 9 a.m. to adjournment.

Name of Committee: Epidemiology and Prevention Subcommittee of the Alcohol Psychosocial Research Review Committee.

Scientific Review Administrator: Lenore S. Radloff.

Dates of Meeting: February 22–24, 1993.

Place of Meeting: The River Inn, 924 25th Street, NW., Washington, DC 20037.

Open: February 22, 8 a.m. to 10 a.m.

Agenda: Reports by Division Directors, Branch Chief, and Scientific Review Administrator on Committee concerns followed by open discussion and review of administrative details.

Closed: February 22, 10 a.m. to recess; February 23, 9 a.m. to recess; February 24, 9 a.m. to adjournment.

Name of Committee: Immunology and AIDS Subcommittee of the Alcohol Biomedical Research Review Committee.

Scientific Review Administrator: Barbara Smothers, Ph.D.

Dates of Meeting: March 4–5, 1993.

Place of Meeting: Ramada Inn at Congressional Park, 1775 Rockville Pike, Rockville, MD 20852.

Open: March 4, 9 a.m. to 10 a.m.

Agenda: Reports by Division Directors, Branch Chief, and Scientific Review Administrator on Committee concerns followed by open discussion and review of administrative details.

Closed: March 4, 10 a.m. to recess; March 5, 9 a.m. to adjournment.

(Catalog of Federal Domestic Assistance Program No. 13.242, 13.272, 13.273, 13.278, 13.279, 13.282, 93.271, 93,272, 93.273, 93.277, 93.278, 93.281, 93.282, National Institutes of Health).

Dated: January 8, 1993.

Susan K. Feldman,

Committee Management Officer, NIH.

[FR Doc. 93–1424 Filed 1–21–93; 8:45 am]

BILLING CODE 4140–01–M

Communication Disorders Review Committee; Meeting

Pursuant to Pub. L. 92–463, notice is hereby given of the meeting of the Communication Disorders Review Committee on February 24–26, 1993. The Committee will meet at the Hyatt Regency-Bethesda, One Bethesda Metro Center, Bethesda, Maryland 20814. Notice of the meeting room will be posted in the hotel lobby.

The Committee meeting will be open to the public on February 24 from 8 a.m. until 8:30 a.m. to discuss administrative details relating to Committee business. Attendance by the public will be limited to space available.

The meeting of the Committee will be closed to the public on February 24 from 8:30 a.m. until recess, on February 25 from 8 a.m. until recess and on February 26 from 8 a.m. until adjournment at approximately 2 p.m. in accordance with provisions set forth in sections 552b(c)(4) and 552b(c)(6), title 5 U.S.C. and section 10(d) of Pub. L. 92–463, for the review, discussion, and evaluation of individual grant applications. These deliberations could reveal confidential trade secrets or commercial property, such as patentable material, and personal information concerning individuals associated with the applications, disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

Further information concerning the Committee meeting may be obtained from Dr. Craig Jordan, Scientific Review Administrator, National Institute on Deafness and Other Communication Disorders, room 400B Executive Plaza South, Bethesda, Maryland 20892, 301–496–8683.

(Catalog of Federal Domestic Assistance Program No. 93.173 Biological Research Related to Deafness and Other Communicative Disorders).

Dated: January 8, 1993.

Susan K. Feldman,

Committee Management Officer, NIH.

[FR Doc. 93–1422 Filed 1–21–93; 8:45 am]

BILLING CODE 4140–01–M

General Clinical Research Centers Committee; Meeting

Pursuant to Pub. L. 92–463, notice is hereby given of the meeting of the General Clinical Research Centers (GCRC) Committee, National Center for Research Resources (NCRR), National Institutes of Health.

The meeting will be open to the public as indicated below during which time there will be comments by the Acting Director, NCRR; and an update on the GCRC Program by Dr. Bernard Talbot, Acting Director, GCRC Program, NCRR. Attendance by the public will be limited to space available.

In accordance with the provisions set forth in sections 552b(c)(4) and 552b(c)(6), title 5, U.S. Code and section 10(d) of Pub. L. 92–463, the meeting will be closed to the public as indicated below for the review, discussion, and evaluation of individual grant applications. These applications and the discussions could reveal confidential trade secrets or commercial property, such as patentable material, and personal information concerning individuals associated with the applications, disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

Ms. Maureen Mylander, Information Officer, NCRR, National Institutes of Health, Westwood Building, room 10A15, Bethesda, Maryland 20892, (301) 496–5545, will provide a summary of the meeting, and a roster of the Committee members upon request. Other information pertaining to the meeting may be obtained from the Scientific Review Administrator.

Name of Committee: General Clinical Research Centers Committee.

Scientific Review Administrator: Dr. Bela J. Gulays, National Center for Research Resources, National Institutes of Health, Westwood Building, room 10A16, 5333 Westbard Avenue, Bethesda, MD 20892, Telephone: (301) 402–0627.

Dates of Meeting: February 23–24, 1993.

Place of Meeting: Holiday Inn, Bethesda, 8120 Wisconsin Avenue, Bethesda, MD 20814.

Open: February 23, 8 a.m.–9:30 a.m.

Agenda: Report and review of administrative details.

Closed: February 23, 9:30 a.m.–Adjournment.

Closure Reason: To review grant applications.

(Catalog of Federal Domestic Assistance Program No. 93.333, Clinical Research, National Institutes of Health).

Dated: January 8, 1993.

Susan K. Feldman,

Committee Management Officer, NIH.

[FR Doc. 93–1421 Filed 1–21–93; 8:45 am]

BILLING CODE 4140–01–M

National Heart, Lung, and Blood Institute; Meeting

Pursuant to Pub. L. 92–463, notice is hereby given of the meeting of the following Heart, Lung, and Blood Special Emphasis Panel.

The meeting will be closed in accordance with the provisions set forth in sections 552b(c)(4) and 552b(c)(6), title 5, U.S.C. and section 10(d) of Pub. L. 92–463, for the review, discussion and evaluation of individual grant applications, contract proposals, and/or cooperative agreements. These applications and/or proposals and the discussions could reveal confidential trade secrets or commercial property such as patentable material, and personal information concerning individuals associated with the applications and/or proposals, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

Name of Panel: NHLBI SEP on the Acquisition of an HIV Hyperimmune Intravenous Immunoglobulin (HIVIG IV).

Dates of Meeting: January 29, 1993.

Time of Meeting: 8:30 a.m.

Place of Meeting: Holiday Inn Chevy Chase, Chevy Chase, Maryland.

Agenda: To review contract proposals.
Contact Person: Dr. Kathryn W. Ballard, (301) 496–7361.

(Catalog of Federal Domestic Assistance Program Nos. 93.837, Heart and Vascular Diseases Research; 93: 838, Lung Diseases Research; and 93.839, Blood Diseases and Resources Research, National Institutes of Health.)

Dated: January 8, 1993.

Susan K. Feldman,

Committee Management Officer, NIH.

[FR Doc. 93–1425 Filed 1–21–93; 8:45 am]

BILLING CODE 4140–01–M

National Center for Research Resources; Meeting of the Biomedical Research Technology Review Committee

Pursuant to Public Law 92–463, notice is hereby given of the meeting of the Biomedical Research Technology Review Committee, National Center for Research Resources, National Institutes of Health.

This meeting will be open to the public as listed below for a brief staff presentation on the current status of the Biomedical Research Technology Program and the selection of future meeting dates. Attendance by the public will be limited to space available.

In accordance with the provisions set forth in sections 552b(c)(4) and 552b(c)(6), title 5, U.S.C. and section 10(d) of Public Law 92–463, the meeting will be closed to the public as listed below for the review, discussion and evaluation of individual grant applications submitted to the Biomedical Research Technology Program. These applications and the discussions could reveal confidential trade secrets or commercial property such as patentable material and personal information concerning individuals associated with the applications, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

Ms. Maureen Mylander, Information Officer, National Center for Research Resources, National Institutes of Health, Westwood Building, Room 10A15, Bethesda, Maryland 20892, (301) 496–5545, will provide a summary of the meeting and a roster of the committee members upon request. Other information pertaining to the meeting can be obtained from the Scientific Review Administrator.

Name of Committee: Biomedical Research Technology Review Committee
Scientific Review Administrator: Dr. Chhanda L. Ganguly, Office of Review, National Center for Research Resources, National Institutes of Health, Westwood Building, Room 10A14, 5333 Westbard Avenue, Bethesda, Maryland 20892. Telephone: (301) 496–9971.
Date of Meeting: February 25–26, 1993.
Place of Meeting: Residence Inn, 7335 Wisconsin Avenue, Bethesda, MD 20852.
Open: February 25, 8:30 a.m.–10 a.m.
Agenda: Report and review of administrative details.
Closed: February 25, 10 a.m.–Adjournment.
Closure Reason: To review grant applications.

(Catalog of Federal Domestic Assistance Program Nos. 93.371, Biomedical Research Technology, National Institutes of Health.)

Dated: January 8, 1993.

Susan K. Feldman,

Committee Management Officer, NIH.

[FR Doc. 93–1420 Filed 1–21–93; 8:45 am]

BILLING CODE 4140–01–M

National Center for Research Resources; Meeting of the Comparative Medicine Review Committee

Pursuant to Public Law 92–463, notice is hereby given of a meeting of the Comparative Medicine Review Committee, National Center for Research Resources, National Institutes of Health.

The meeting will be open to the public as listed below for a brief staff presentation on the current status of the Comparative Medicine Program and the selection of future meeting dates. Attendance by the public will be limited to space available.

In accordance with the provisions set forth in secs. 552b(c)(4) and 552b(c)(6), title 5, U.S.C. and section 10(d) of Public Law 92–463, the meeting will be closed to the public as indicated below for the review, discussion and evaluation of individual grant applications. These applications and the discussions could reveal confidential trade secrets or commercial property such as patentable material and personal information concerning individuals associated with the applications, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

Ms. Maureen Mylander, Information Officer, NCRR, National Institutes of Health, Westwood Building, Room 10A15, Bethesda, Maryland 20892, (301) 496–5545, will provide a summary of the meeting and a roster of the committee members upon request. Other information pertaining to the meeting can be obtained from the Scientific Review Administrator.

Name of Committee: Comparative Medicine Review Committee
Scientific Review Administrator: Dr. Bernadette Tyree, Office of Review, National Center for Research Resources, National Institutes of Health, 5333 Westbard Avenue, room 10A16, Bethesda, MD 20892. Telephone: (301) 496–4390.
Date of Meeting: February 28–March 2, 1993.
Place of Meeting: Residence Inn, 7335 Wisconsin Avenue, Bethesda, Maryland 20814.
Open: February 28—6:30 p.m.–7:30 p.m.
Agenda: Report and review of administrative details.
Place of Meeting: Residence Inn, 7335 Wisconsin Avenue, Bethesda, Maryland 20814.
Closed: February 28—7:30 p.m. until adjournment.
Closure Reason: To review grant applications.

(Catalog of Federal Domestic Assistance Programs No. 93.306, Laboratory Animal Sciences, National Institutes of Health)

Dated: January 8, 1993.

Susan K. Feldman,

Committee Management Officer, NIH.

[FR Doc. 93–1419 Filed 1–21–93; 8:45 am]

BILLING CODE 4140–01–M

National Advisory Research Resources Council; Meeting

Pursuant to Pub. L. 92–463, notice is hereby given of the meeting of the National Advisory Research Resources Council (NARRC), National Center for Research Resources (NCRR), at the National Institutes of Health.

This meeting will be open to the public, as indicated below, during which time there will be discussions on administrative matters such as previous meeting minutes; the report of the Director, NCRR; and review of budget and legislative updates. Attendance by the public will be limited to space available.

In accordance with provisions set forth in Sections 552b(c)(4) and 552b(c)(6), title 5, U.S. Code and Section 10(d) of Pub. L. 92–463, the meeting will be closed to the public as listed below for the review, discussion and evaluation of individual grant applications. The applications and the discussions could reveal confidential trade secrets or commercial property such as patentable material, and personal information concerning individuals associated with the applications, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

Name of Committee: National Advisory Research Resources Council.
Date of Meeting: February 17–19, 1993.
Place of Meeting: Residence Inn, Bethesda, 7335 Wisconsin Avenue, Bethesda, Maryland 20814.
Open: February 17, 7 p.m. until recess, Strategic Planning Meeting-Orientation, Montgomery II Conference Room.

Place of Meeting: National Institutes of Health, 9000 Rockville Pike, Bethesda, Maryland 20892.

Open: February 18, 8 a.m. until recess, Conference Room 10, Building 31C.

Closed: February 19, 8 a.m. until 10 a.m., Conference Room 10, Building 31C.

Open: February 19, 10 a.m. until adjournment, Conference Room 10, Building 31C.

Ms. Maureen Mylander, Information Officer, NCRR, Westwood Building, room 10A15, National Institutes of Health, Bethesda, Maryland 20892, (301) 496–5545, will provide a summary of meeting and a roster of the Council members upon request. Dr. Judith L. Vaitukaitis, Deputy Director for Extramural Research Resources, NCRR, Building 12A, room 4011, National Institutes of Health, Bethesda, Maryland 20892, (301) 496–6023, will furnish substantive program information upon request, and will receive any comments pertaining to this announcement. Individuals who need sign language interpretation or other assistance should contact the Committee Management Office, (301) 496–9567, in advance of the meeting.

(Catalog of Federal Domestic Assistance Program Nos. 93.306, Laboratory Animal Sciences and Primate Research; 93.333, Clinical Research; 93.337, Biomedical Research Support; 93.371, Biomedical Research Technology; 93.389, Research Centers in Minority Institutions; 93.198, Biological Models and Materials Research; 93.167, Research Facilities Improvement Program; National Institutes of Health.)

Dated: January 8, 1993.

Susan K. Feldman,

Committee Management Officer, NIH.

[FR Doc. 93–1423 Filed 1–21–93; 8:45 am]

BILLING CODE 4140–01–M

Social Security Administration

Agency Forms Submitted to the Office of Management and Budget for Clearance

Normally on Fridays, the Social Security Administration publishes a list of information collection packages that have been submitted to the Office of Management and Budget (OMB) for clearances in compliance with Pub. L. 96–511, The Paperwork Reduction Act. The following clearance packages have been submitted to OMB since the last list was published in the Federal Register on Friday, December 11, 1992. (Call Reports Clearance Officer on (410) 965–4142 for copies of package)

1. Request for Workers' Compensation/Public Disability Benefit Information—0960–0098. The information on form SSA–1709 is used by the Social Security Administration to request and/or verify the amount of workers' compensation or other disability benefit received by a claimant for Social Security Disability Benefits. The respondents are State and local governments and businesses which administer workers' compensation or other disability benefits.

Number of Respondents: 32,500
Frequency of Response: 1
Average Burden Per Response: 15 minutes
Estimated Annual Burden: 8,125 hours

2. Employee Work Activity Questionnaire—0960–0483. The information on form SSA–3033 is used by the Social Security Administration to determine if a claimant for disability benefits has engaged in substantial gainful activity or received a nonspecific subsidy. The respondents are current or former employers of disability claimants.

Number of Respondents: 12,500
Frequency of Response: 1
Average Burden Per Response: 15 minutes
Estimated Annual Burden: 3,125 hours

3. Record of SSI Inquiry—0960–0140. The information on form SSA–3462 is used by the Social Security Administration to determine potential eligibility to Supplemental Security Income (SSI) payments. The respondents are individuals who inquire about SSI eligibility for themselves or third parties.

Number of Respondents: 650,000
Frequency of Response: 1
Average Burden Per Response: 5 minutes
Estimated Annual Burden: 54,167 hours

4. Statement for Determining Continuing Eligibility for Supplemental Security Income Benefits—0960–0145. The information on form SSA–8202 is used by the Social Security Administration to reevaluate factors of eligibility and to determine correct payment amount for recipients of Supplemental Security Income (SSI). The affected public consists of SSI recipients whose eligibility is being redetermined.

Number of Respondents: 1,600,000
Frequency of Response: 1
Average Burden Per Response: 8 minutes
Estimated Annual Burden: 213,333 hours

5. Quarterly Statistical Report on Recipients and Payments Under State Administered State Assistance Programs for Aged, Blind and Disabled (Individuals and Couples) Recipients—0960–0130. The information on form SSA–9741 is used by the Social Security Administration to provide statistical data on recipients and payments under the State administered supplemental programs.

Number of Respondents: 23
Frequency of Response: 4
Average Burden per Response: 1 hour
Estimated Annual Burden: 92 hours
OMB Desk Officer: Laura Oliven

Written comments and recommendations regarding these information collections should be sent directly to the appropriate OMB Desk Officer designated above at the following address: OMB Reports Management Branch, New Executive Office Building, room 3208, Washington, DC 20503.

Dated: January 14, 1993.

Nicholas E. Tagliareni,

Acting Reports Clearance Officer, Social Security Administration.

[FR Doc. 93–1370 Filed 1–21–93; 8:45 am]

BILLING CODE 4190–29–M

Substance Abuse and Mental Health Services Administration

Peer Review and Advisory Council Review of Grant and Cooperative Agreement Applications and Contract Proposals

AGENCY: Substance Abuse and Mental Health Services Administration, HHS.

ACTION: Notice.

SUMMARY: This notice provides the policy and procedures that the Substance Abuse and Mental Health Services Administration (SAMHSA) will use to implement the provisions of Public Law 102–321 for the peer and Advisory Council review of applications and proposals for substance abuse and mental health services prevention and treatment grants and contracts. SAMHSA was established by Public Law 102–321, the ADAMHA Reorganization Act of 1992.

ADDRESSES: The public is invited to provide written comments on this policy; these should be sent to Jane A. Taylor, Ph.D., Deputy Director for Review Policy and Extramural Operations, Office of Extramural Programs, Substance Abuse and Mental Health Services Administration, 12C–26 Parklawn Building, 5600 Fishers Lane, Rockville, MD 20857; telephone 301–443–4266.

SUPPLEMENTARY INFORMATION: Public Law 102–321, the ADAMHA Reorganization Act of 1992, enacted on July 10, 1992, amended the Public Health Service (PHS) Act to establish

the Substance Abuse and Mental Health Services Administration (SAMHSA). Section 504 of the PHS Act, as amended, provides for the conduct of peer and Advisory Council review of grants, cooperative agreements, and prevention and treatment programs in SAMHSA.

The purpose of SAMHSA is to establish and implement a comprehensive program to improve the provision of treatment and related services to individuals with respect to substance abuse and mental illness and to improve substance abuse and mental health prevention services.

The Administrator is authorized to award grants to, and enter into cooperative agreements with, public and private nonprofit entities to support demonstration projects, evaluations, systems improvements, services delivery, and the dissemination of information on substance abuse and mental health services for the delivery of these services. The Administrator may also enter into contracts with public and private nonprofit entities.

This policy establishes SAMHSA's procedures for peer and Advisory Council review of applications for grants and cooperative agreements and proposals for contracts for treatment, prevention, and related programmatic activities. Proposals for administrative and program support activities, including, for example, purchase of supplies and equipment, logistical support services, or data processing, are not subject to peer and Advisory Council review.

The policy also provides criteria for the Administrator to make statutorily permitted, limited exceptions to the one-fourth Federal staff limit on peer review group membership and the requirement for Council review. Additionally, the policy provides the generic technical merit review criteria for grant and cooperative agreement applications and proposals for contracts. Specific criteria for individual programs are included in program announcements, requests for applications, or requests for proposals. However, these criteria will fall under the general criteria stated here.

Peer and Advisory Council Review of Substance Abuse and Mental Health Prevention and Treatment Grant Applications and Contract Projects

1. Applicability

The policy applies to competing applications for grants, cooperative agreements, and proposals for contracts received and/or reviewed since October 1, 1992, under mental health and substance abuse prevention and treatment programs administered by the Substance Abuse and Mental Health Services Administration or any of its components. The policy does not apply to applications for:

(1) Continuation funding for budget periods within an approved project period; or

(2) Supplemental funding within a project period.

2. Definitions

As used in this policy:

(a) "Act" means the Public Health Service Act, as amended.

(b) "Administrator" means the Administrator of the Substance Abuse and Mental Health Services Administration.

(c) "Awarding official" means the Secretary of Health and Human Services and any other officer or employee of the Department of Health and Human Services to whom the authority involved has been delegated.

(d) "Budget period" means the interval of time (usually 12 months) into which the project Period is divided for budgetary and reporting purposes.

(e) "Contract project" means an identified, circumscribed activity, involving a single contract or two or more similar, related, or interdependent contracts, intended and designed to promote the mission of the agency. This includes (but is not limited to): Services systems development projects, surveys, demonstrations, and evaluation of services or services demonstration activity. "Contract project" does not include contracts for logistical management, technical assistance, and purchase of supplies.

(f) "Contract proposal" means a written offer to enter into a contract, solicited by and submitted to an awarding official by an individual or non-Federal organization, and including at a minimum, a description of the nature, purpose, duration, and cost of the project and the methods, personnel, and facilities to be utilized in carrying it out.

(g) "Department" means the U.S. Department of Health and Human Services.

(h) "Peer review group" means a group of experts qualified by training and experience in particular programmatic, technical, or scientific fields to give expert advice, in accordance with the provisions of this part, on the programmatic and technical merit of grant or cooperative agreement applications or contract projects in those fields.

(i) "Project approach" means the methodology to be followed.

(j) "Project concept" means the basic purpose, scope, and objectives of the project.

(k) "Project period" means the total time for which support of a project has been programmatically approved. A project period may consist of one or more budget periods. The total project period comprises the original project period and any extensions.

(l) "Request for proposals" means a Government solicitation to prospective offerors under procedures for negotiated contracts, to submit a proposal to fulfill specific agency requirements based on terms and conditions defined in the request for proposals. The request for proposals contains information sufficient to enable all offerors to prepare competitive proposals, and is as complete as possible with respect to: The nature of work to be performed; descriptions and specifications of items to be delivered; performance schedule; special requirements clauses, or other circumstances affecting the contract; format for cost proposals; and evaluation criteria by which the proposals will be evaluated.

(m) "Unsolicited contract proposal" has the same meaning as in 48 CFR 15.501.

3. Establishment and Operation of Peer Review Groups

(a) To the extent applicable, the Federal Advisory Committee Act (5 U.S.C. App. I), Department implementing regulations (45 CFR part 11), and Chapter 9 of the Department's General Administration Manual [1] will govern the establishment and operation of peer review groups, including that meetings shall be open to the public except as determined by the Secretary.

(b) Subject to section 5 and paragraph (a) of this section, the Administrator of the Substance Abuse and Mental Health Services Administration will adopt procedures for the conduct of reviews and the formulation of recommendations under Sections 6, 7, 8 and 9 within said agency.

4. Composition of Peer Review Groups

(a) To the extent applicable, the selection and appointment of members of peer review groups and their terms of service will be governed by Chapter 9 of the Department's General Administration Manual. (See Footnote 1).

[1] The Department of Health and Human Services General Administration Manual is available for public inspection and copying at the Department's and Regional Offices' information centers listed in 45 CFR 5.31 and may be purchased from the Superintendent of Documents, U.S. Government Printing Office, Washington, DC 20402.

(b) Subject to paragraph (a) of this section, members will be selected based upon their training and experience in relevant professional, technical, and/or scientific fields, taking into account, among other factors:

(1) The level of formal professional, technical, and/or scientific education completed or experience acquired by the individual;

(2) The extent to which the individual has engaged in relevant activities, the capacities (e.g., project director, administrator) in which the individual has done so, and the quality of such activities;

(3) Recognition as reflected by awards and other honors received from professional or scientific organizations outside the Department; and

(4) The need for the group to have included within its membership experts from various areas of specialization within relevant professional, technical, or scientific fields.

(c) Except as determined in accordance with section 12, not more than one-fourth of the members of any peer review group established pursuant to this part may be officers or employees of the United States. For purposes of the preceding sentence, membership on such groups does not make an individual an officer or employee of the United States.

5. Conflict of Interest

(a) Members of peer review groups established pursuant to this part are subject to relevant provisions in title 18 of the United States Code relating to criminal activity, the Office of Government Ethics Standards of Ethical Conduct for Employees of the Executive Branch (5 CFR part 2635), and Executive Order 11222, as amended.

(b) In addition to any restrictions imposed under paragraph (a) of this section:

(1) No member of a peer review group established pursuant to this part may participate in or be present during any review by that group of a grant application, cooperative agreement application, contact project, or contract proposal in which, to the member's knowledge, any of the following has a financial interest: (i) The member or his or her spouse, parent, child, or partner; (ii) any organization in which the member or his or her spouse, parent, child, or partner is serving as an officer, director, trustee, partner, or employee, or is otherwise similarly associated; or (iii) any organization with which the member or his or her spouse, parent, child, or partner is negotiating or has any arrangement concerning prospective employment or other similar association.

(2) In the event any member of a peer review group or his or her spouse, parent, child, or partner is currently or expected to be the project director, evaluator, or member of the staff responsible for carrying out any activities contemplated as part of a grant application, contract project, or contract proposal, that group is disqualified and the review will be conducted by another group with the expertise to do so. If there is no other group with the requisite expertise, the review will be conducted by an ad hoc group no more than 50 percent of whose members may be from the disqualified group. The composition of any such ad hoc group will be determined in accordance with Sections 4(b) and 4(c) of this part and, to the extent feasible, Section 4(a) of this part.

(3) Where a member of a peer review group participates in or is present during: (i) Development or review of a project approach or request for proposals by that group; or (ii) review of a contract proposal by that group (under section 9(c), i.e., after the issuance of a request for proposals); no contract may thereafter be awarded as the result of such development or review to said member, his or her spouse, parent, child, or partner or any organization in which the member, his or her spouse, parent, child, or partner was serving as officer, director, trustee, partner, or employee at the time of such development or review or with which the member, his or her spouse, parent, child, or partner was negotiating or had any arrangement concerning prospective employment at said time.

(4) No member of a peer review group may participate in any review under this part of a specific grant application or contract project for which the member has had or is expected to have any other responsibility or involvement (whether preaward or postaward) as an officer or employee of the United States.

(c) Where permissible under the statutes, standards, and order cited in paragraph (a) of this section, the Administrator or his or her designee may waive the requirements in paragraph (b) of this section if he or she determines that the potential conflict is minimal and there is no other practical means for securing appropriate expert advice on a particular grant application, contract project, or contract proposal.

6. Grants; Matters To Be Reviewed

(a) No awarding official will make a grant based upon an application covered by this part unless the application has been reviewed by a peer review group in accordance with the provisions of this part and that group has made a recommendation for approval concerning the technical merit of such application.

(b) The peer review group to which an application has been submitted under this paragraph shall make a written report on each application which shall contain the following parts:

(1) The first part of the report shall consist of a factual summary of the proposed project, including a description of its purpose, approach, location, and total budget.

(2) The second part of the report shall address the technical merit of the proposed project and shall consist of a critique of the proposed project with regard to the factors described in section 7 and such other factors as specified in the program announcement. This portion of the report shall include a set of recommendations with respect to the disposition of the application based upon its technical merit.

(3) For applications recommended for consideration of funding, the peer review panel shall, at the end of its deliberations, provide both a priority score, based upon the technical merit of the proposed project, and its recommendation regarding the appropriate project period and level of support for the proposed project.

(c) Recommendations are advisory and shall not bind the awarding official or Advisory Council, except that recommendations of the peer review group for disapproval shall be binding on the awarding official or Advisory Council.

(d) All grant and cooperative agreement applications shall be reviewed by the cognizant Advisory Council, except where:

(1) Direct costs do not exceed $50,000, or other amount as provided by statute; or

(2) The Administrator approves an exception in accordance with Section 11.

(e) No application shall be reviewed by an Advisory Council until it has been reviewed and recommended for approval by a peer review group in accordance with the provisions of this part.

7. Grants; Review Criteria

In carrying out its review under Section 6, the peer review group will take into account, among other factors as specified in the program announcement:

(a) The potential significance of the proposed project;

(b) The appropriateness of the applicant's proposed objectives to the goals of the program announcement;

(c) The adequacy and appropriateness of the proposed approach and activities;

(d) The adequacy of available resources, such as facilities and equipment;

(e) The qualifications and experience of the applicant organization, the project director, and other key personnel; and

(f) The reasonableness of the proposed budget.

8. Unsolicited Contract Proposal; Matters To Be Reviewed

(a) No awarding official shall award a contract based upon an unsolicited contract proposal covered by this part unless the proposal has been reviewed and recommended for approval by a peer review group in accordance with the provisions of this part and the procedures set forth in 41 CFR subpart 3–4.52.

9. Solicited Contract Proposals; Matters To Be Reviewed

(a) Where the approach of a solicited contract proposed is defined in the agency's request for contract proposals, no awarding official shall issue such a request unless the project approach has been reviewed and recommended for approval by a peer review group in accordance with the provisions of this part.

(b) Where the approach of a solicited contract proposal is to be defined in the proposal, no awarding official shall award such a contract unless the proposal has been reviewed and recommended for approval by a peer review group in accordance with this part.

(c) The awarding official may waive the requirements of paragraph (a) of this section for peer review before issuing a request for contract proposals if he or she determines that the accomplishments of essential program's objectives would be replaced in jeopardy by delay, or that such review is not in the best interest of the Government. The awarding official shall specify in wiring the grounds on which this determination is based. Under such circumstances, the awarding official will not award a contract based on the request for contract proposals unless a peer review group has made recommendations concerning the technical merit of the project approach as defined in the request for proposals, and the proposals received in response to the request have been reviewed by a peer review group. The request for proposals will indicate that the project approach has not been reviewed by a peer review group and that no award will be made until a peer review of the approach is conducted and recommendations made based on such review.

(d) Contract proposals shall be reviewed by the appropriate Advisory Council, except where:

(1) Direct costs do not exceed the amount specified in Section 6(d)(1); or

(2) The Administrator approves an exception in accordance with Section 11.

(e) Except to the extent otherwise provided for by law, Advisory Council recommendations are advisory and not binding on the awarding official.

10. Contract Projects and Proposals; Review Criteria

(a) In carrying out its review of a project approach under Section 9(a) or 9(b), the peer review group will take into account, among other factors, the following general review criteria:

(1) The merit from a technical standpoint of the goals of the proposed activity;

(2) The adequacy of the methodology to be utilized in carrying out the activity; and

(3) The availability and adequacy of the expertise, facilities, and other resources necessary to achieve these goals.

(b) In carrying out its review of unsolicited contract proposals under Section 8, the peer review group will take into account, among other factors, those criteria in Section 7 which are relevant to the particular proposals, as well as the extent to which there are identified, practical uses for the anticipated results of the activity.

(c) In carrying out its review of solicited contract proposals under Section 9(c) the peer review group will evaluate each proposal in accordance with the criteria set forth in the request for proposals.

11. Exceptions

The Administrator may make exceptions to the one-fourth Federal staff limit on peer review groups and the Advisory Council review requirement where:

(a) Awards are mandatory, or awarded on a formal or block grant basis;

(b) Awards are made to meet public health emergencies or other urgent health problems such as disaster assistance or significant increases in use of a particular abusable substance; and

(c) Other situations exist where such review is not appropriate.

Such exceptions may be made at the discretion of the Administrator who may also approve or impose alternate review procedures, as appropriate.

12. Applicability of Other Regulations

This policy is in addition to, and does not supersede regulations concerning any applications, contract projects, or contract proposals appearing elsewhere in title 41, title 42, or title 45 of the Code of Federal Regulations.

Joseph R. Leone,

Acting Deputy Administrator, SAMHSA.

[FR Doc. 93–1442 Filed 1–21–93; 8:45 am]

BILLING CODE 4160–20–M

DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT

Office of the Assistant Secretary for Community Planning and Development

[Docket No. N–92–1917; FR–3350–N–15]

Federal Property Suitable as Facilities To Assist the Homeless

AGENCY: Office of the Assistant Secretary for Community Planning and Development, HUD.

ACTION: Notice.

SUMMARY: This Notice identifies unutilized, underutilized, excess, and surplus Federal property reviewed by HUD for suitability for possible use to assist the homeless.

ADDRESSES: For further information, contact James N. Forsberg, room 7262, Department of Housing and Urban Development, 451 Seventh Street SW., Washington, DC 20410; telephone (202) 708–4300; TDD number for the hearing- and speech-impaired (202) 708–2565 (these telephone numbers are not toll-free), or call the toll-free Title V information line at 1–800–927–7588.

SUPPLEMENTARY INFORMATION: In accordance with 56 FR 23789 (May 24, 1991) and section 501 of the Stewart B. McKinney Homeless Assistance Act (42 U.S.C. 11411), as amended, HUD is publishing this Notice to identify Federal buildings and other real property that HUD has reviewed for suitability for use to assist the homeless. The properties were reviewed using information provided to HUD by Federal landholding agencies regarding unutilized and underutilized buildings and real property controlled by such agencies or by GSA regarding its inventory of excess or surplus Federal property. This Notice is also published in order to comply with the December 12, 1988 Court Order in *National Coalition for the Homeless* v. *Veterans Administration*, No. 88–2503–OG (D.D.C.).

Properties reviewed are listed in this Notice according to the following

categories: Suitable/available, suitable/unavailable, suitable/to be excess, and unsuitable. The properties listed in the three suitable categories have been reviewed by the landholding agencies, and each agency has transmitted to HUD: (1) Its intention to make the property available for use to assist the homeless; (2) its intention to declare the property excess to the agency's needs, or (3) a statement of the reasons that the property cannot be declared excess or made available for use as facilities to assist the homeless.

Properties listed as suitable/available will be available exclusively for homeless use for a period of 60 days from the date of this Notice. Homeless assistance providers interested in any such property should send a written expression of interest to HHS, addressed to Judy Breitman, Division of Health Facilities Planning, U.S. Public Health Service, HHS, room 17A–10, 5600 Fishers Lane, Rockville, MD 20857; (301) 443–2265. (This is not a toll-free number.) HHS will mail to the interested provider an application packet, which will include instructions for completing the application. In order to maximize the opportunity to utilize a suitable property, providers should submit their written expressions of interest as soon as possible. For complete details concerning the processing of applications, the reader is encouraged to refer to the interim rule governing this program, 56 FR 23789 (May 24, 1991).

For properties listed as suitable/to be excess, that property may, if subsequently accepted as excess by GSA, be made available for use by the homeless in accordance with applicable law, subject to screening for other Federal use. At the appropriate time, HUD will publish the property in a Notice showing it as either suitable/available or suitable/unavailable.

For properties listed as suitable/unavailable, the landholding agency has decided that the property cannot be declared excess or made available for use to assist the homeless, and the property will not be available.

Properties listed as unsuitable will not be made available for any other purpose for 20 days from the date of this Notice. Homeless assistance providers interested in a review by HUD of the determination of unsuitability should call the toll free number information line at 1–800–927–7588 for detailed instructions or write a letter to James N. Forsberg at the address listed at the beginning of this Notice. Included in the request for review should be the property address (including zip code), the date of publication in the **Federal Register**, the landholding agency, and the property number.

For more information regarding particular properties identified in this Notice (*i.e.*, acreage, floor plan, existing sanitary facilities, exact street address), providers should contact the appropriate landholding agencies at the following addresses: U.S. Navy: John J. Kane, Deputy Division Director, Dept. of Navy, Real Estate Operations, Naval Facilities Engineering Command, 200 Stovall Street, Alexandria, VA 22332–2300; (703) 325–0474; GSA: Ronald Rice, Federal Property Resources Services, GSA, 18th and F Streets NW., Washington, DC 20405; (202) 501–0067; Dept. of Transportation: Ronald D. Keefer, Director, Administrative Services & Property Management, DOT, 400 Seventh St. SW., room 10319, Washington, DC 20590; (202) 366–4246; (These are not toll-free numbers).

Dated: January 13, 1993.

Paul Roitman Bardack,

Deputy Assistant Secretary for Economic Development.

Title V, Federal Surplus Property Program Federal Register Report for 01/22/93

Suitable/Available Properties

Land (by State)

Florida

Former US Army Reserve Center
Belvedere Rd. and Clubhouse Dr.
West Palm Beach Co: Palm Beach FL 33409–
Landholding Agency: GSA
Property Number: 549310005
Status: Unutilized
Comment: 3.10 acres, utilities, previously leased by non-profit for homeless assistance use
GSA Number 2–GR–FL–682A

Ohio

Portion, Camp Sherman Range
Approximately 1 mile north of Chillicothe
Springfield Co: Ross OH
Landholding Agency: GSA
Property Number: 549310004
Status: Unutilized
Comment: 4.674 acres, potential utilities, previously leased by non-profit for homeless assistance use
GSA Number: 2–GR–OH–433B

Unsuitable Properties

Buildings (by State)

Alaska

Bldg. 10196
Naval Security Group Activity
Adak Co: Adak AK 98791–
Landholding Agency: Navy
Property Number: 779310021
Status: Unutilized
Reason: Secured area.

Bldg. 10517
Naval Security Group Activity
Adak Co: Adak AK 98791–
Landholding Agency: Navy
Property Number: 779310022
Status: Unutilized
Reason: Secured area.

Bldg. 10518
Naval Security Group Activity
Adak Co: Adak AK 98791–
Landholding Agency: Navy
Property Number: 779310023
Status: Unutilized
Reason: Secured area.

Bldg. 10535
Naval Security Group Activity
Adak Co: Adak AK 98791–
Landholding Agency: Navy
Property Number: 779310024
Status: Unutilized
Reason: Secured area.

Bldg. 10538
Naval Security Group Activity
Adak Co: Adak AK 98791–
Landholding Agency: Navy
Property Number: 779310025
Status: Unutilized
Reason: Secured area.

Bldg. 10539
Naval Security Group Activity
Adak Co: Adak AK 98791–
Landholding Agency: Navy
Property Number: 779310026
Status: Unutilized
Reason: Secured area.

Bldg. 10540
Naval Security Group Activity
Adak Co: Adak AK 98791–
Landholding Agency: Navy
Property Number: 779310027
Status: Unutilized
Reason: Secured area.

Bldg. 10603
Naval Security Group Activity
Adak Co: Adak AK 98791–
Landholding Agency: Navy
Property Number: 779310028
Status: Unutilized
Reason: Secured area.

Rhode Island

Station Point Judith Pier
Narranganset Co: Washington RI 02882–
Landholding Agency: DOT
Property Number: 879310002
Status: Unutilized
Reason: Other
Comment: Extensive deterioration.

Land (by State)

Oregon

Reedsport Substation
North 22nd Street
Reedsport Co: Douglas OR 97467–
Landholding Agency: GSA
Property Number: 549310003
Status: Excess
Reason: Other
Comment: Inaccessible GSA Number: 9–B–OR–701

[FR Doc. 93–1222 Filed 1–21–93; 8:45 am]

BILLING CODE 4210–29–M

DEPARTMENT OF THE INTERIOR

Bureau of Land Management

[ID-011-03-4320-01-ADVB]

Meeting

AGENCY: Boise District, Bureau of Land Management, Interior.

ACTION: Notice of meeting.

SUMMARY: The Boise District Grazing Advisory Board will meet on Tuesday, February 23, 1993 to discuss the expenditure of Grazing Advisory Board (7121) and Range Improvement (8100) funds for fiscal year 1993. The meeting is open to the public and a comment period will be held at 2 p.m.

DATES: The meeting will begin at 9 a.m. on Tuesday, February 23, 1993 in the District Office conference room.

ADDRESSES: The Boise District Office is located at 3948 Development Avenue, Boise, Idaho 83705.

FOR FURTHER INFORMATION CONTACT: Fred Schley, Boise District, BLM (208) 384-3300.

Dated: January 8, 1993.

Barry G. Cushing,

Acting District Manager.

[FR Doc. 93-1381 Filed 1-21-93; 8:45 am]

BILLING CODE 4310-GG-M

[CA-050-282-4210-04; CACA 31254FD]

Exchange of Public and Private Lands in Siskiyou, Shasta, Trinity, Tehama and Butte Counties, CA; Realty Action

AGENCY: Bureau of Land Management, Interior.

ACTION: Notice of realty action; Exchange of public and private lands in Siskiyou, Shasta, Trinity, Tehama and Butte Counties, CA.

SUMMARY: The public lands described below have been determined to be suitable for disposal by exchange under section 206 of the Federal Land Policy and Management Act of 1976, 43 U.S.C. 1716. These public lands have been identified for disposal in the Proposed Redding Resource Management Plan. These descriptions apply only to lands managed by the Bureau of Land Management.

Mount Diablo Meridian

T. 23 N., R. 2 W.,
Foster Island
T. 23 N., R. 4 W.,
Sec. 10: All
T. 23 N., R. 6 W.,
Sec 3: All
T. 23 N., R. 7 W.,
Sec. 2: All
Sec. 10: All
Sec. 12: All
Sec. 14: All
T. 24 N., R. 6 W.,
Sec. 15: All
T. 24 N., R. 7 W.,
Sec. 2: All
Sec. 4: All
Sec. 10: All
Sec. 12: All
Sec. 14: All
Sec. 22: All
Sec. 26: All
Sec. 34: All
T. 25 N., R. 6 W.,
Sec. 30: All
T. 25 N., R. 7 W.,
Sec. 2: All
Sec. 4: All
Sec. 10: All
Sec. 14: All
Sec. 22: All
Sec. 28: All
Sec. 34: All
T. 26 N., R. 2 W.,
Todd Island
T. 26 N., R. 7 W.,
Sec. 2: All
Sec. 4: All except the N½NE¼
Sec. 8: All
Sec. 10: All
Sec. 14: All
Sec. 18: All
Sec. 20: All
Sec. 22: All
Sec. 24: All
Sec. 26: All
Sec. 28: All
Sec. 30: All
Sec. 32: All
Sec. 34: All
T. 26 N., R. 8 W.,
Sec. 8: All except the SE¼
Sec. 10: S½
Sec. 14: All
Sec. 20: S½
Sec. 22: NE¼NE¼
Sec. 24: All
T. 27 N., R. 1 W.,
Sec. 6: All
T. 27 N., R. 2 W.,
Sec. 4: All
Sec. 8: All
T. 27 N., R. 3 W.,
Sec. 2: All
Sec. 6: All
T. 27 N., R. 5 W.,
Sec. 10: All
T. 27 N., R. 7 W.,
Sec. 18: All
Sec. 32: All
T. 27 N., R. 8 W.,
Sec. 4: All
Sec. 6: All
Sec. 8: All
Sec. 10: All
Sec. 14: All
Sec. 18: All
Sec. 20: All except the S½S½
Sec. 22: All
Sec. 24: All
Sec. 26: All except the S½SW¼
T. 27 N., R. 9 W.,
Sec. 12: All
T. 28 N., R. 2 W.,
Sec. 4: All
Sec. 8: SE¼SE¼
Sec. 20: All except the NW¼NW¼
Sec. 30: All
T. 28 N., R. 3 W.,
Sec. 20: All
Sec. 32: SW¼SW¼
T. 28 N., R. 5 W.,
Sec. 10: All
T. 28 N., R. 8 W.,
Sec. 32: All
T. 28 N., R. 9 W.,
Sec. 2: All
Sec. 22: All
Sec. 26: All
Sec. 27: All
Sec. 28: NE¼
Sec. 33: NW¼NE¼
Sec. 34: All
T. 29 N., R. 1 W.,
Sec. 4: SE¼SE¼
Sec. 2: All
Sec. 28: All
T. 29 N., R. 2 W.,
Sec. 2: All
Sec. 8: All
Sec. 18: All
T. 29 N., R. 4 W.,
Sec. 12: All
T. 29 N., R. 8 W.,
Sec. 6: All
Sec. 28: All
Sec. 34: All
T. 29 N., R. 9 W.,
Sec. 9: E½SE¼
Sec. 10: All
Sec. 14: All
Sec. 15: All
T. 30 N., R. 1 W.,
Sec. 2: All
Sec. 4: All
Sec. 6: All
Sec. 10: All
Sec. 12: All
Sec. 26: All
T. 30 N., R. 2 W.,
Sec. 28: All
Sec. 34: All
T. 30 N., R. 3 W.,
Sec. 5: All
Sec. 9: All
Sec. 12: All
Sec. 26: All
T. 30 N., R. 6 W.,
Sec. 4: All
T. 30 N., R. 7 W.,
Sec. 6: E½
T. 30 N., R. 8 W.,
Sec. 1: All
Sec. 4: All
Sec. 6: All
Sec. 8: All
Sec. 10: All
Sec. 12: All
Sec. 14: All
Sec. 18: All
Sec. 20: All
Sec. 22: All
Sec. 28: All
Sec. 32: SW¼
T. 30 N., R. 9 W.,
Sec. 10: All
Sec. 12: All
Sec. 22: All
Sec. 24: All
Sec. 26: All except the SE¼
Sec. 28: All
Sec. 32: All
T. 31 N., R. 1 W.,

Sec. 10: All
Sec. 14: All
Sec. 32: All
T. 31 N., R. 2 W.,
Sec. 8: All
Sec. 22: E½NW¼
T. 31 N., R. 5 W.,
Sec. 5: All
Sec. 6: All
Sec. 7: N½N½
Sec. 8: All
Sec. 14: All
Sec. 17: All
Sec. 21: All
Sec. 29: S½
Sec. 31: N½
Sec. 32: All
T. 31 N., R. 6 W.,
Sec. 1: All
Sec. 7: All
Sec. 16: All
Sec. 17: All
Sec. 18: All
Sec. 19: All
Sec. 20: All
Sec. 23: SE¼
Sec. 24: E½
Sec. 29: All
Sec. 34: All
Sec. 36: NE¼
T. 31 N., R. 7 W.,
Sec. 12: All
Sec. 20: All
T. 31 N., R. 8 W.,
Sec. 4: All
Sec. 6: All
Sec. 8: All
Sec. 9: All
Sec. 10: All
Sec. 12: All
Sec. 14: All
Sec. 18: All
Sec. 22: All
Sec. 26: All
Sec. 28: All
Sec. 32: All
Sec. 35: All
T. 31 N., R. 9 W.,
Sec. 2: All
Sec. 6: All
Sec. 26: All
Sec. 30: All
Sec. 34: All
T. 31 N., R. 11 W.,
Sec. 2: All
Sec. 3: All
Sec. 6: All
Sec. 7: All
Sec. 18: All
T. 31 N., R. 12 W.,
Sec. 1: All
Sec. 13: All
Sec. 24: All
T. 32 N., R. 5 W.,
Sec. 3: All except the W½SW¼
Sec. 10: All except the W½NW¼
Sec. 11: All
Sec. 12: All
Sec. 14: All
Sec. 15: All
Sec. 18: S½SW¼
Sec. 19: All
Sec. 20: SW¼
Sec. 22: All
Sec. 29: All except the NE¼NE¼
Sec. 30: All
Sec. 31: All
Sec. 32: All
Sec. 33: All
T. 32 N., R. 6 W.,
Sec. 24: All
Sec. 25: All
T. 32 N., R. 7 W.,
Sec. 6: All
Sec. 8: All
T. 32 N., R. 8 W.,
Sec. 12: All
Sec. 28: All
Sec. 30: All
Sec. 32: All
Sec. 34: All
T. 32 N., R. 9 W.,
Sec. 18: All except the N½NE¼
Sec. 20: All except the N½
Sec. 25: All
Sec. 27: S½
Sec. 28: All
Sec. 30: All
Sec. 31: All
Sec. 32: All
Sec. 33: All
Sec. 34: All
T. 32 N., R. 10 W.,
Sec. 10: All
Sec. 12: SE¼SE¼
Sec. 14: All
Sec. 19: All
Sec. 26: All
T. 32 N., R. 11 W.,
Sec. 26: All
Sec. 27: All
Sec. 31: All
Sec. 32: All
Sec. 33: All
Sec. 34: All
Sec. 35: All
Sec. 36: All
T. 33 N., R. 1 W.,
Sec. 8: All
T. 33 N., R. 2 W.,
Sec. 8: All
Sec. 10: All
Sec. 11: All
Sec. 12: All
Sec. 16: All
Sec. 18: All
Sec. 20: All
Sec. 22: All
Sec. 28: All
Sec. 32: All
T. 33 N., R. 3 W.,
Sec. 26: All
Sec. 32: All
T. 33 N., R. 4 W.,
Sec. 14: All
Sec. 18: All
Sec. 30: All
T. 33 N., R. 5 W.,
Sec. 22: SE¼
Sec. 24: All
Sec. 26: All
Sec. 27: All
Sec. 28: E½E½
Sec. 34: All
Sec. 35: All
T. 33 N., R. 7 W.,
Sec. 32: S½
T. 33 N., R. 8 W.,
Sec. 20: All
Sec. 30: W½NW¼
T. 33 N., R. 9 W.,
Sec. 5: All
Sec. 6: All
Sec. 7: All
Sec. 8: All
Sec. 12: All
Sec. 17: All
Sec. 18: All
Sec. 19: N½
Sec. 20: NW¼NW¼
Sec. 24: S½SW¼
Sec. 26: All
Sec. 30: NW¼
T. 33 N., R. 10 W.,
Sec. 3: SE¼SE¼
Sec. 11: All
Sec. 12: All
Sec. 13: All
Sec. 14: All except the S½SW¼
Sec. 24: All except the SW¼
Sec. 25: All
T. 34 N., R. 1 W.,
Sec. 2: All
Sec. 21: All
Sec. 30: All
T. 34 N., R. 7 W.,
Sec. 2: All
T. 35 N., R. 1 W.,
Sec. 4: All
Sec. 14: All
Sec. 34: All
T. 36 N., R. 1 W.,
Sec. 2: All
Sec. 10: All
Sec. 14: All
Sec. 28: All
T. 37 N., R. 4 W.,
Sec. 4: All
T. 39 N., R. 3 W.,
Sec. 6: All
T. 40 N., R. 8 W.,
Sec. 2: All
Sec. 6: All
Sec. 7: All
Sec. 8: All
Sec. 10: All
Sec. 17: All
Sec. 21: All
Sec. 22: All
T. 40 N., R. 9 W.,
Sec. 12: All
T. 41 N., R. 7 W.,
Sec. 4: All
Sec. 6: All
Sec. 7: All
Sec. 8: All
Sec. 10: All
T. 41 N., R. 8 W.,
Sec. 2: All
Sec. 10: All
Sec. 12: All
Sec. 13: All
Sec. 14: All
Sec. 20: All
Sec. 22: All
Sec. 28: All
Sec. 32: All
Sec. 34: All
T. 41 N., R. 9 W.,
Sec. 4: All
Sec. 10: All
Sec. 20: All
Sec. 27: All
Sec. 34: All
T. 42 N., R. 5 W.,
Sec. 18: All
Sec. 24: All
T. 42 N., R. 6 W.,

Sec. 6: All
Sec. 20: All
Sec. 22: All
Sec. 26: All
T. 42 N., R. 7 W.,
Sec. 6: All
Sec. 8: All
Sec. 10: All
Sec. 12: All
Sec. 14: All
Sec. 20: All
Sec. 22: All
Sec. 26: All
Sec. 28: All
Sec. 30: All
Sec. 32: All
T. 42 N., R. 8 W.
Sec. 2: All
Sec. 4: All
Sec. 6: All
Sec. 10: All
Sec. 12: All
Sec. 14: All
Sec. 18: All
Sec. 20: All
Sec. 22: All
Sec. 24: All
Sec. 26: All
Sec. 28: All
Sec. 30: All
Sec. 34: All
T. 42 N., R. 9 W.,
Sec. 12: All
T. 42 N., R. 10 W.,
Sec. 2: All
Sec. 22: All
Sec. 24: All
T. 43 N., R. 3 W.,
Sec. 6: All
Sec. 8: All
Sec. 18: All
T. 43 N., R. 4 W.,
Sec. 2: All
Sec. 4: All
Sec. 18: All
T. 43 N., R. 5 W.,
Sec. 12: All
T. 43 N., R. 6 W.,
Sec. 18: All
T. 43 N., R. 7 W.,
Sec. 2: All
Sec. 4: All
Sec. 6: All
Sec. 10: All
Sec. 14: All
Sec. 18: All
Sec. 22: All
Sec. 34: All
T. 43 N., R. 8 W.,
Sec. 6: All
Sec. 10: All
Sec. 12: All
Sec. 26: All
Sec. 28: All
Sec. 34: All
T. 43 N., R. 9 W.,
Sec. 6: All
Sec. 7: All
Sec. 12: All
Sec. 18: All
Sec. 20: All
T. 43 N., R. 10 W.,
Sec. 1: All
Sec. 11: All
Sec. 12: All
Sec. 13: All
Sec. 14: All
Sec. 32: All
T. 44 N., R. 4 W.,
Sec. 2: All
Sec. 10: All
Sec. 22: All
Sec. 26: All
T. 44 N., R. 5 W.,
Sec. 18: All
Sec. 22: All
T. 44 N., R. 7 W.,
Sec. 32: All
T. 44 N., R. 8 W.,
Sec. 14: All
Sec. 18: All
Sec. 30: All
Sec. 32: All
Sec. 34: All
T. 44 N., R. 9 W.,
Sec. 3: All
Sec. 11: All
Sec. 12: All
Sec. 14: All
Sec. 18: All
Sec. 22: All
Sec. 32: All
T. 44 N., R. 10 W.,
Sec. 8: All
Sec. 12: All
Sec. 24: All
Sec. 26: All
Sec. 30: All
Sec. 36: All
T. 45 N., R. 4 W.,
Sec. 8: All
Sec. 10: All
Sec. 28: All
Sec. 34: All
T. 45 N., R. 6 W.,
Sec. 4: All
T. 45 N., R. 7 W.,
Sec. 11: All
Sec. 12: All
Sec. 21: All
Sec. 30: All
T. 46 N., R. 5 W.,
Sec. 6: All
T. 46 N., R. 6 W.,
Sec. 2: All
Sec. 4: All
Sec. 6: All
Sec. 10: All
Sec. 20: All
Sec. 32: All
T. 46 N., R. 7 W.,
Sec. 12: All
T. 47 N., R. 2 W.,
Sec. 10: All
Sec. 22: All
Sec. 28: All
Sec. 30: All
T. 47 N., R. 4 W.,
Sec. 2: All
Sec. 9: All
Sec. 10: All
T. 47 N., R. 5 W.,
Sec. 4: All
Sec. 6: All
Sec. 8: All
Sec. 20: All
Sec. 30: All
T. 47 N., R. 6 W.,
Sec. 8: All
Sec. 12: All
Sec. 18: All
Sec. 29: All
Sec. 30: All
Sec. 31: All
Sec. 32: All except the W½SE¼
T. 47 N., R. 7 W.,
Sec. 13: All
T. 47 N., R. 8 W.,
Sec. 1: All
Sec. 2: All
T. 48 N., R. 1 W.,
Sec. 14: All
Sec. 24: All
Sec. 28: All
Sec. 30: All
T. 48 N., R. 2 W.,
Sec. 24: All
Sec. 26: All
Sec. 28: All
Sec. 30: All
T. 48 N., R. 3 W.,
Sec. 14: S¼
Sec. 23: All
Sec. 24: All
Sec. 34: All
T. 48 N., R. 4 W.,
Sec. 18: All
Sec. 22: All
Sec. 30: All
Sec. 32: All
Sec. 34: All
Sec. 35: All
T. 48 N., R. 5 W.,
Sec. 22: All
Sec. 34: All
T. 48 N., R. 7 W.,
Sec. 34: All
T. 48 N., R. 8 W.,
Sec. 35: All
T. 19 N., R. 5 E.,
Sec. 3: All
Sec. 4: All
Sec. 10: All
Sec. 14: All
Sec. 22: All
Sec. 28: All
T. 19 N., R. 6 E.,
Sec. 6: All
Sec. 10: Lot 8
Sec. 17: All
Sec. 20: All
T. 20 N., R. 4 E.,
Sec. 2: All
Sec. 3: All
Sec. 4: All
Sec. 9: All
Sec. 10: All
Sec. 12: All
Sec. 14: All
Sec. 28: All
Sec. 32: All
Sec. 33: All
Sec. 34: All
T. 20 N., R. 5 E.,
Sec. 13: All
Sec. 20: All
Sec. 22: All
Sec. 23: All
Sec. 24: All
Sec. 27: All
Sec. 28: All
Sec. 29: All
Sec. 32: All
Sec. 33: All
Sec. 35: All
T. 20 N., R. 6 E.,
Sec. 4: W½
Sec. 6: All

Sec. 8: All
Sec. 18: All
Sec. 20: All
Sec. 28: All
Sec. 30: All
Sec. 31: All
T. 21 N., R. 3 E.,
Sec. 6: All
Sec. 10: All
T 21 N., R. 4 E.,
Sec. 4: All
Sec. 6: All
Sec. 12: All
Sec. 14: All
Sec. 22: All
Sec. 23: All
Sec. 26: All
Sec. 28: All
Sec. 29: All
Sec. 32: All
Sec. 33: All
T. 22 N., R. 2 E.,
Sec. 10: All
Sec. 26: All
Sec. 36: All
T. 22 N., R. 3 E.,
Sec. 2: All
Sec. 3: All
Sec. 4: All
Sec. 8: All
T. 22 N., R. 4 E.,
Sec. 4: All
Sec. 6: All
Sec. 8: All
Sec. 18: All
Sec. 20: All
Sec. 28: All
Sec. 30: All
Sec. 32: All
T 23 N., R. 2 E.,
Sec. 2: All
Sec. 4: All
Sec. 6: All
Sec. 8: All
Sec. 10: All
Sec. 24: All
Sec. 26: All
T. 23 N., R. 3 E.,
Sec. 8: All
Sec. 13: All
Sec. 14: All
Sec. 18: All
Sec. 32: All except the NE¼NW¼
Sec. 34: All except the NW¼NW¼
T. 23 N., R. 4 E.,
Sec. 8: All
Sec. 9: All
Sec. 29: All
Sec. 30: All
T. 23½ N., R. 2 E.,
Sec. 2: All
T. 24 N., R. 1 E.,
Sec. 22: All
T. 24 N., R. 2 E.,
Sec. 2: All
Sec. 4: All
Sec. 10: All
Sec. 18: All
Sec. 22: All
T. 24 N., R. 3 E.,
Sec. 4: All
Sec. 12: All
Sec. 24. All
Sec. 32: All
Sec. 36: All
T. 24 N., R. 4 E.,
Sec. 12: All
Sec. 34: All
T. 24 N., R. 5 E.,
Sec. 17: All
T. 25 N., R. 2 E.,
Sec. 14: All
T. 25 N., R. 4 E.,
Sec. 4: All
Sec. 29: All
T 27 N., R. 3 E.,
Sec. 24: All
T. 29 N., R. 1 E.,
Sec. 24: All
T. 29 N., R. 2 E.,
Sec. 6: All
Sec. 32: All
T. 29 N., R. 3 E.,
Sec. 19: All
Sec. 20: All
T. 30 N., R. 1 E.,
Sec. 8: All
Sec. 10: All
T. 30 N., R. 2 E.,
Sec. 18: All
T. 31 N., R. 1 E.,
Sec. 8: All
Sec. 24: All
T. 32 N., R. 1 E.,
Sec. 4: All
Sec. 6: All
T. 33 N., R. 2 E.,
Sec. 3: NE¼SW¼
Sec. 8: S½
Sec. 9: All
Sec. 10: All
Sec. 17: All
Sec. 25: All
T. 34 N., R. 2 E.,
Sec. 13: All
T. 34 N., R. 3 E.,
Sec. 7: All
T. 35 N., R. 1 E.,
Sec. 2: All
Sec. 6: All
Sec. 32: All
T. 35 N., R. 2 E.,
Sec. 7: All
Sec. 18: All
Sec. 30: All
T. 36 N., R. 1 E.,
Sec. 6: All
Sec. 28: All
T. 48 N., R. 1 E.,
Sec. 19: All
Sec. 30: All

The purpose of the exchange of these public lands is to acquire non-Federal lands which have high public values for wildlife habitat, recreation, timber management, etc. The public interest will be served by completing the exchange.

Exchange of public lands contained within the descriptions above will not be undertaken without full National Environmental Policy Act (NEPA) compliance. Lands to be transferred from the United States will be subject to standard reservations, terms and conditions.

SUPPLEMENTARY INFORMATION: Publication of this notice segregates the public land described above from settlement, location, and entry under the public land laws and the general mining laws, except for leasing under the mineral leasing laws.

DATE: Interested parties may submit comments regarding the proposed exchange on or before March 8, 1993 to the Area Manager, Redding Resource Area, 355 Hemsted Drive, Redding, California 96002.

FOR FURTHER INFORMATION CONTACT: Michael Truden, Supervisory Realty Specialist, at the address listed above.

Kelly Williams,

Acting Area Manager.

[FR Doc. 93–1393 Filed 1–21–93; 8:45 am]

BILLING CODE 4310–40–M

[ID–010–03–4210–04; IDI–28152]

Realty Action, Idaho

AGENCY: Bureau of Land Management, Interior.

ACTION: Notice of realty action—IDI–28152; exchange of public and private lands in Owyhee County, ID.

SUMMARY: The following described public lands have been determined to be suitable for disposal by exchange under Sec. 206 of the Federal Land Policy and Management Act of October 21, 1976 (43 U.S.C. 1716):

Boise Meridian, Idaho

T. 4 S., R. 2 E.,
Sec. 19, Lots 1–4, E½NE¼, W½E½NW¼, E½SW¼, SE¼,
Containing 502.68 acres, more or less. In exchange for the above described public lands, BLM will acquire the following described private lands from Envirosafe Services of Idaho, Inc. (ESII):

Boise Meridian, Idaho

T. 5 S., R. 3 E.,
Sec. 14, Lot 8,
Sec. 15, Lot 8, 9,
Sec. 22, Lot 3,
Sec. 23, Lot 2,
Containing 118.16 acres, more or less. Together with all water and mineral rights, and a 50-foot wide easement providing access across adjacent private lands to the said property.

The purpose of this exchange is to dispose of public lands that have very little public resource value, are uneconomic to manage, and would be better managed in private ownership, in exchange for a privately owned island in the Snake River that contains important big game, upland bird, waterfowl, and other nongame habitat, as well as a known bald eagle nesting site. The island also contains important recreation opportunities and potential, and riparian values. The public interest will be well served by the completion of this exchange, as the consummation

thereof will fulfill the Secretary's Fish and Wildlife 2000, Recreation 2000, and riparian management initiatives.

The exchange will be consummated on an equal value basis. Full equalization of values will be accomplished through acreage adjustment and/or cash payment in an amount not to exceed 25 percent of the value of the lands being transferred out of public ownership. ESII may elect to waive value equalization if the private lands are appraised for more than the public lands.

DATES: Interested parties may submit comments to the District Manager, Bureau of Land Management, Boise District, 3948 Development Avenue, Boise, Idaho 83705 on or before March 8, 1993. Objections to this proposal will be reviewed by the State Director, who may sustain, modify, or vacate this realty action. In the absence of any adverse comments, this realty action will become the final determination of the Department of Interior.

FOR FURTHER INFORMATION CONTACT: John Sullivan, Bruneau Resource Area Realty Specialist at (208) 384–3338. The Environmental Assessment is available for review at the above address.

SUPPLEMENTARY INFORMATION: Publication of this notice in the **Federal Register** segregates the public lands from operation of the public land laws, except the exchange provisions of the Federal Land Policy and Management Act, and the mining laws, but not the mineral laws. The segregative effect will end upon issuance of patent or two (2) years from the date of publication, whichever occurs first.

Lands to be transferred from the United States will be subject to the following reservations, terms, and conditions:

Excepting and Reserving to the United States

1. A right-of-way thereon for ditches or canals constructed by the authority of the United States, Act of August 30, 1890 (43 U.S.C. 945).

Subject To

2. Those rights for transmission line purposes granted to Idaho Power Company, its successors or assigns, by Right-of-Way No. IDI–012877, under the Act of March 4, 1911 (43 U.S.C. 961).

3. Those rights for powerline purposes granted to Idaho Power Company, its successors or assigns, by Right-of-Way No. IDI–011478, under the Act of March 4, 1911 (43 U.S.C. 961).

4. Those rights for road purposes held by the Owyhee County Road and Bridge Department, its successors or assigns, under section 8 of the Act of July 26, 1866; Revised Statue 2477 (43 U.S.C. 932; 14 Stat. 253). Serial No. IDI–20724.

5. Those rights for buried telephone line purposes granted to Gem State Utilities Corporation, its successors or assigns, by Right-of-Way No. IDI–012260, under the Act of December 15, 1901 (43 U.S.C. 959).

Dated: January 8, 1993.

Roger E. Schmitt,

Associate District Manager.

[FR Doc. 93–1380 Filed 1–21–93; 8:45 am]

BILLING CODE 4310–GG–M

Office of Surface Mining Reclamation and Enforcement

Information Collection Submitted to the Office of Management and Budget for Review Under the Paperwork Reduction Act

The proposal for the collection of information listed below has been submitted to the Office of Management and Budget for approval under the provisions of the Paperwork Reduction Act (44 U.S.C. chapter 35). Copies of the proposed collection of information and related form 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 directly to the bureau clearance officer and to the Office of Management and Budget, Paperwork Reduction Project (1029–0095), Washington, DC 20503, telephone 202–395–7340.

Title: Initial Regulatory Program; 30 CFR part 710.

OMB Approval Number: 1029–0095.

Abstract: Information collected in part 710 is used to ensure States are conducting minesite inspections under the initial regulatory program established by the Surface Mining Control and Reclamation Act of 1977 (SMCRA). Information collected is also used to bring pre-existing, nonconforming structures into compliance during the phase-in of the initial regulatory program under SMCRA, and to grant small operators exemptions from some of the initial regulatory program requirements.

Bureau Form Number: None.

Frequency: On occasion.

Description of Respondents: State regulatory authorities and surface coal mining operators.

Annual Responses: One.

Annual Burden Hours: One.

Average Burden Hours Per Response: One.

Bureau Clearance Officer: John A. Trelease (202) 343–1475.

Dated: October 16, 1992.

John Mosesso,

Chief, Division of Technical Services.

[FR Doc. 93–1369 Filed 1–21–93; 8:45 am]

BILLING CODE 4310–05–M

INTERNATIONAL TRADE COMMISSION

[Investigation 337–TA–317 (Remand)]

Initial Determination Terminating Respondents on the Basis of Settlement Agreement

In the Matter of Certain Internal Mixing Devices and Components Thereof

AGENCY: U.S. International Trade Commission.

ACTION: Notice is hereby given that the Commission has received an initial determination from the presiding officer in the above captioned investigator terminating the following respondents on the basis of a settlement agreement: Pomini S.p.A. and Pomini, Inc.

SUPPLEMENTARY INFORMATION: This investigation is being conducted pursuant to section 337 of the Tariff Act of 1930 (19 U.S.C. 1337). Under the Commission's rules, the presiding officer's initial determination will become the determination of the Commission thirty (30) days after the date of its service upon the parties, unless the Commission orders review of the initial determination. The initial determination in this matter was served upon parties on January 14, 1993.

Copies of the initial determination, the settlement agreement, and all other nonconfidential documents filed in connection with this investigation are 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, SW., Washington, DC 20436, telephone (202) 205–2000. Hearing impaired individuals are advised that information on this matter can be obtained by contacting the Commission's TDD terminal on (202) 205–1810.

WRITTEN COMMENTS: Interested persons may file written comments with the Commission concerning termination of the aforementioned respondents. The original and 14 copies of all such documents must be filed with the Secretary to the Commission, 500 E Street, SW., Washington, DC 20436, no later than 10 days after publication of this notice in the **Federal Register**. Any person desiring to submit a document (or portions thereof) to the Commission in confidence must request confidential

treatment. Such requests should be directed to the Secretary to the Commission and must include a full statement of the reasons why confidential treatment should be granted. The Commission will either accept the submission in confidence or return it.

FOR FURTHER INFORMATION CONTACT: Ruby J. Dionne, Office of the Secretary, U.S. International Trade Commission, Telephone (202) 205–1802.

Issued: January 14, 1993.

By order of the Commission.

Paul R. Bardos,

Acting Secretary.

[FR Doc. 93–1495 Filed 1–21–93; 8:45 am]

BILLING CODE 7020–02–M

INTERSTATE COMMERCE COMMISSION

[Finance Docket No. 32225]

Chicago and North Western Transportation Co.; and Chicago & Illinois Midland Railway Co. Joint Relocation Project Exemption

On January 4, 1993, Chicago and North Western Transportation Company (CNW) and Chicago & Illinois Midland Railway Company (CIM) jointly filed a notice of exemption under 49 CFR 1180.2(d)(5) to relocate certain operations in Peoria and Tazewell Counties, IL. CNW and CIM presently interchange freight at Barr and Peoria, IL. Under the joint proposal, applicants will interchange freight at Crescent, IL, an intermediate point between the two existing interchange points.

The joint relocation project involves: (1) A grant of overhead trackage rights by CNW to CIM between milepost 9.0 plus 1,500 feet at Crescent, IL, and milepost 4.3 at Somer, IL, a distance of approximately 5 miles; (2) a grant of overhead trackage rights by CIM to CNW between CIM's milepost 12.18 and milepost 12.8 plus 1,504 feet in Tazewell County, IL, extending to the connecting track owned by CNW, a distance of approximately 0.3 miles; and (3) the joint construction of a connecting track at CNW's milepost 9.5. Parties anticipated consummating the transaction on the effective date.[1]

The joint relocation will provide direct routing of freight interchanged between the carriers. The direct route will improve service to shippers by eliminating circuitous routes. The joint relocation will also improve public safety, reduce fuel consumption, and enhance operating efficiencies.

Service to shippers will not be disrupted. There will be no expansion into new territory; nor will there be a change in the existing competitive situation.

The Commission will exercise jurisdiction over the construction component of a relocation project only where the proposal involves, for example, a change in service to shippers, expansion into new territory, or a change in existing competitive situations. See, generally, Denver & R.G.W.R. Co.—Jt. Proj.—Relocation over BN, 4 I.C.C.2d 95 (1987). Under these standards, the construction of track are not subject to the Commission's jurisdiction. The remainder of the joint relocation project involving the acquisition of overhead trackage rights qualifies for the class exemption at 49 CFR 1180.2(d)(5) and (7). The Commission has determined that joint relocations embrace trackage rights transactions such as the one proposed here. See D.T. & I.R.—Trackage Rights, 363 I.C.C. 878 (1981).

As a condition to the use of this exemption, any employees affected by the trackage rights agreement will be protected by the conditions in Norfolk and Western Ry. Co.—Trackage Rights—BN, 354 I.C.C. 605 (1978), as modified in Mendocino Coast Ry., Inc.—Lease and Operate, 360 I.C.C. 653 (1980).

Petitions to revoke the exemption under 49 U.S.C. 10505(d) may be filed at any time. The filing of a petition to revoke will not stay the transaction. Pleadings must be filed with the Commission and served on: John C. Danielson, Chicago & Illinois Midland Railway Company, 2484 Rosa Lane, Punta Gorda, FL 33950; and Stuart F. Gassner, Chicago and North Western Transportation Company, 165 North Canal Street, Chicago, IL 60606.

Decided: January 11, 1993.

By the Commission, David M. Konschnik, Director, Office of Proceedings.

Sidney L. Strickland, Jr.,

Secretary.

[FR Doc. 93–1532 Filed 1–21–93; 8:45 am]

BILLING CODE 7035–01–M

[1] Under 49 CFR 1180.4(g) a verified notice of exemption must be filed with the Commission at least one week before the transaction is consummated. Because the notice of exemption was not filed until January 4, 1993, the effective date was to be January 11, 1993, rather than January 7, 1993, as indicated in the verified notice of exemption. The parties have confirmed the change in the consummation date.

[Finance Docket No. 32223]

State of Oklahoma, By and Through the Oklahoma Department of Transportation, and Farmrail Corp., Acquisition and Operation Exemption; Lines of Texas and Oklahoma R. R. Co.

The State of Oklahoma, by and through the Oklahoma Department of Transportation (ODOT), a noncarrier, and Farmrail Corporation (Farmrail) have filed a notice of exemption for ODOT to acquire and Farmrail to operate: (1) 88.955 miles of certain rail lines owned by Texas and Oklahoma R. R. Co. (TXOR); and (2) incidental trackage rights over 12.735 miles of track owned by Grainbelt Corporation. The proposed transaction was expected to be consummated on or after December 31, 1992.

ODOT will acquire from TXOR and Farmrail will operate rail lines: (1) Between milepost 378.00 (Engineering Profile Station (EPS) 2665+25) at or near Thomas, OK, and milepost 386.03 (also known as milepost 386+0159) at or near Custer City (Foley), OK, a distance of 8.03 route miles; and (2) between milepost 398.765 (also known as milepost 398+4047.1) at or near Clinton (Ewing), OK, and milepost 479.69 (EPS 4028+00) at or near Elmer, OK, a distance of 80.925 route miles. ODOT will also acquire and Farmville will operate incidental trackage rights, by assignment from TXOR, over Grainbelt Corporation's line between former Santa Fe milepost 386.03 (also known as milepost 386+0159) at or near Custer City (Foley), OK, and former Santa Fe milepost 398.765 (also known as 398+4047.1) at or near Clinton (Ewing), OK, a distance of 12.735 miles. ODOT will not conduct operations and will continue to be a noncarrier after its acquisition of the properties.

Any comments must be filed with the Commission and served on: Eric M. Hocky, Rubin Quinn Moss & Paterson, P.C., 1800 Penn Mutual Tower, 510 Walnut Street, Philadelphia, PA 19106.

This notice is filed under 49 CFR 1150.31. If the notice contains false or misleading information, the exemption is void *ab initio*. Petitions to revoke the exemption under 49 U.S.C. 10505(d) may be filed at any time. The filing of a petition to revoke will not automatically stay the transaction.

Decided: January 14, 1993.

By the Commission, David M. Konschnik, Director, Office of Proceedings.

Sidney L. Strickland, Jr.,

Secretary.

[FR Doc. 93–1531 Filed 1–21–93; 8:45 am]

BILLING CODE 7035–01–M

JUDICIAL CONFERENCE OF THE UNITED STATES

Hearing and Meeting of the Judicial Conference Advisory Committee on Appellate Rules

AGENCY: Advisory Committee on Appellate Rules, Judicial Conference of the United States.

ACTION: Notice of open hearing and meeting.

SUMMARY: The Advisory Committee on Federal Rules of Appellate Procedure has proposed amendments to Appellate Rules 3, 5, 5.1, 9, 13, 21, 25, 26.1, 27, 28, 30, 31, 32, 33, 35, 38, 40, 41, and a new rule 49. The Judicial Conference Standing Committee on Rules of Practice and Procedure submits these rules for public comment. All comments and suggestions with respect to them shall be placed in the hands of the Secretary as soon as convenient and, in any event, no later than April 15, 1993.

A hearing on the proposed amendments will be held by the Advisory Committee on Appellate Rules at the United States Court of Appeals, room 2721, 219 South Dearborn Street, Chicago, Illinois, on February 17, 1993, at 3:30 p.m.

Anyone interested in testifying should write to Mr. Peter G. McCabe, Secretary, Committee on Rules of Practice and Procedure, Administrative Office of the United States Courts, Washington, DC 20544, at least 10 days before the hearing. For additional information contact John Rabiej, Chief, Rules Committee Support Office at 202–273–1820.

Also, a two-day meeting of the Advisory Committee on Appellate Rules will be held at the Federal Judiciary Building, Agency Conference Room, 4th Floor, One Columbus Circle, NE., Washington, DC, on April 20–21, 1993. The meeting will be open to public observation but not participation and will begin each day at 9 a.m.

Dated: January 15, 1993.

John K. Rabiej,

Chief, Rules Committee Support Office.

[FR Doc. 93–1528 Filed 1–21–93; 8:45 am]

BILLING CODE 2210–01–M

DEPARTMENT OF JUSTICE

Antitrust Division

Notice Pursuant to the National Cooperative Research Act of 1984; Advanced Lead-Acid Battery Consortium

Notice is hereby given that, on December 7, 1992, pursuant to section 6(a) of the National Cooperative Research Act of 1984, 15 U.S.C. 4301 *et seq.* ("the Act"), the Advanced Lead-Acid Battery Consortium ("ALABC"), a discrete program of the International Lead Zinc Research Organization, Inc. ("ILZRO"), filed a written notification simultaneously with the Attorney General and the Federal Trade Commission disclosing the addition of six members to and the withdrawal of one member from the ALABC. The notification was filed for the purpose of extending the Act's provisions limiting the recovery of antitrust plaintiffs to actual damages under specified circumstances. Specifically, the ALABC advised that written commitments to become members of the ALABC have been received from Acumuladores Mexicanos, S.A. de C.V., Nuevo Leon, Mexico; Digatron Industrie-Electronik GmbH, Aachen, Germany; Honda R&D, Torrance, CA; and Shin-Kobe Electric Mach. Co, Ltd., Tokyo, Japan. Verbal commitments to become members of the ALABC have been received from Hollingsworth & Vose, Co., West Groton, MA, and Whatman Ltd., Kent, England. Nuova Samim of Rome, Italy has withdrawn their verbal commitment to the ALABC.

No other changes have been made in either the membership or planned activity of the ALABC. Membership in the ALABC remains open and the ALABC intends to file additional written notification disclosing any future changes in membership.

On June 15, 1992, the ALABC filed its original notification pursuant to section 6(a) of the Act. The Department of Justice published a notice in the **Federal Register** pursuant to section 6(b) of the Act of July 29, 1992, (57 FR 33522).

The last notification was filed with the Department on September 10, 1992. A notice was published in the **Federal Register** pursuant to section 6(b) of the Act on October 23, 1992, (57 FR 48398).

Joseph H. Widmar,

Director of Operations, Antitrust Division.

[FR Doc. 93–1451 Filed 1–21–93; 8:45 am]

BILLING CODE 4410–01–M

Notice Pursuant to the National Cooperative Research Act of 1984; Great Lakes Composites Consortium, Inc.

Notice is hereby given that, on December 23, 1992, pursuant to section 6(a) of the National Cooperative Research Act of 1984, 15 U.S.C. 4301 *et seq.* ("the Act"), the Great Lakes Composites Consortium, Inc. ("GLCC") filed an additional written notification simultaneously with the Attorney General and the Federal Trade Commission disclosing changes in its membership. The notification was filed for the purpose of extending the Act's provisions limiting the recovery of antitrust plaintiffs to actual damages under specified circumstances. Specifically, GLCC advised that Anderson/Roethle, Inc., Milwaukee, WI; BF Goodrich Aerospace-Engineered Polymer Products, Jacksonville, FL; Carthage College, Kenosha, WI; Clemson University, Clemson, SC; Dow Corning Corporation, Midland, MI; Garrett Fluid Systems Division Allied-Signal Aerospace Corporation, Tempe, AZ; Gateway Technical College, Kenosha, WI; Hercules Aerospace Corporation, Magna, UT; Hi-Tech Engineering, Inc., Grand Rapids, MI; Kaiser Aerotech, San Leandro, CA; SP Systems, Inc., Los Angeles, CA; Sparta, Inc., Laguna Hills, CA; The Johns Hopkins University, Baltimore, MD; University of California, Los Angeles, Los Angeles, CA; Washington University, St. Louis, MO; and Wilson Composite Group, Folsom, CA have been added as members. Amalga Corporation, West Allis, WI has resigned as a member of GLCC. Cade Industries, San Diego, CA was erroneously cited as a member of GLCC in a prior filing. The name of The Sullivan Corporation, one of GLCC's members cited in a prior filing, has been changed to J&L Fiber Service, Waukesha, WI. The primary objectives of GLCC include the evaluation, demonstration and testing of advanced composites manufacturing technologies.

On February 25, 1991, GLCC filed its original notification pursuant of section 6(a) of the Act. The Department of Justice published a notice in the **Federal Register** pursuant to section 6(b) of the Act on March 15, 1991, (56 FR 11274). GLCC filed an additional notification on December 11, 1991. A notice was published in the **Federal Register** pursuant to section 6(b) of the Act on February 3, 1992, (57 FR 4062).

No other changes have been made in either the membership or planned activity of GLCC. Membership in GLCC remains open, and the members intend to file additional written notification disclosing all changes in membership and providing additional information regarding projects undertaken by GLCC and its members. GLCC will continue for an indefinite period of time.

Joseph H. Widmar,

Director of Operations, Antitrust Division.

[FR Doc. 93–1450 Filed 1–21–93; 8:45 am]

BILLING CODE 4410–01–M

Drug Enforcement Administration

[Docket No. 93–3]

Theodore T. Ambadgis, M.D.; Denial of Application

On September 11, 1992, the Deputy Assistant Administrator, Office of Diversion Control, Drug Enforcement Administration (DEA), issued an Order to Show Cause to Theodore T. Ambadgis, M.D. (Respondent), 71 Menton Street, New Bedford, Massachusetts 02745. The Order to Show Cause sought to deny Respondent's application for a DEA Certificate of Registration executed on August 26, 1989. The proposed action was based on Respondent's lack of State authorization to handle controlled substances in the Commonwealth of Massachusetts as well as prescribing Schedule II controlled substances to five individuals without a legitimate medical purpose and outside the scope of professional practice.

The Order to Show Cause was sent to Respondent by registered mail. Within the thirty day period, Respondent sent a letter to the Office of the Administrative Law Judge which apparently waived his right to a hearing. The matter was docketed before Administrative Law Judge Paul A. Tenney, who sent a letter to Respondent asking Respondent to clarify his waiver and giving Respondent another opportunity to request a hearing. Respondent failed to respond to the administrative law judge's letter. Pursuant to 21 CFR 1301.54(a) and 1301.54(d), Theodore Ambadgis, M.D., is deemed to have waived his opportunity for a hearing. Accordingly, the Administrator now enters his final order in this matter without a hearing and based upon the investigative file. 21 CFR 1301.57.

The Administrator finds that Respondent's controlled substance license was suspended by the Commonwealth of Massachusetts, Department of Public Health, Division of Food and Drugs, effective June 27, 1989. This suspension was based upon allegations concerning the improper prescribing of Schedule II controlled substances which are the same allegations set forth in the Order to Show Cause.

Consequently, Respondent is no longer authorized to prescribe, dispense, administer or otherwise handle controlled substances in the Commonwealth of Massachusetts. The Administrator concludes that the DEA does not have the statutory authority under the Controlled Substances Act to issue a registration if the applicant is without State authority to handle controlled substances. 21 U.S.C. 802(21) and 823(f). The Administrator and his predecessors have consistently so held. See Ramon Pla, M.D., Docket No. 86–54, 51 FR 41168 (1986); George S. Heath, M.D., Docket No. 86–24, 51 FR 26610 (1986); Dale D. Shahan, D.D.S., Docket No. 85–57, 51 FR 23481 (1986); and cases cited therein.

Although Respondent explained in a letter to the administrative law judge that he was not motivated by financial gain when he prescribed the controlled substances in question, Respondent offered no evidence of explanation concerning his lack of State authorization to handle controlled substances. Therefore, the Administrator concludes that Respondent's application for a DEA Certificate of Registration must be denied.

Accordingly, the Administrator of the Drug Enforcement Administration, pursuant to the authority vested in him by 21 U.S.C. 823 and 824 and 28 CFR 0.100(b), hereby orders that the application executed by Theodore T. Ambadgis, M.D., on August 26, 1989, for a DEA Certificate of Registration as a practitioner, be, and it hereby is, denied. This order is effective January 22, 1993.

Dated: January 12, 1993.

Robert C. Bonner,

Administrator of Drug Enforcement.

[FR Doc. 93–1472 Filed 1–21–93; 8:45 am]

BILLING CODE 4410–09–M

Importer of Controlled Substances; Registration

By notice dated July 23, 1992, and published in the **Federal Register** on August 6, 1992, (57 FR 34785), Red River Foods, Inc., 7400 Beaufont Springs Drive, suite 550, Richmond, Virginia 23225, made application to the Drug Enforcement Administration to be registered as an importer of marijuana (7360), a basic class of controlled substance listed in Schedule I.

No comments or objections have been received. Therefore, pursuant to section 1008(a) of the Controlled Substances Import and Export Act and in accordance with title 21, Code of Federal Regulations § 1311.42, the above firm is granted registration as an importer of the basic class of controlled substance listed above.

Dated: January 14, 1993.

Gene R. Haislip,

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

[FR Doc. 93–1471 Filed 1–21–93; 8:45 am]

BILLING CODE 4410–09–M

Lloyd Watson, M.D.; Revocation of Registrations

On August 18, 1992, the Deputy Assistant Administrator, Office of Diversion Control, Drug Enforcement Administration (DEA), issued an Order to Show Cause to Lloyd Watson, M.D. of 4010 7th Street, Riverside, California, proposing to revoke his DEA Certificates of Registration, BW1960966 and BW2025307. The proposed action was predicated on Dr. Watson's lack of authorization to handle controlled substances in the State of California.

The Order to Show Cause was sent to Dr. Watson by registered mail, return receipt requested. The receipt indicates that the Order to Show Cause was received on September 9, 1992. More than thirty days have passed since the Order to Show Cause was received and the Drug Enforcement Administration has received no response thereto. Therefore, the Administrator concludes that Dr. Watson has waived his opportunity for a hearing on the issue raised in the Order to Show Cause and, pursuant to 21 CFR 1301.54(d) and 1301.54(e), enters this final order based on the information contained in the DEA investigative file. 21 CFR 1301.57.

The Administrator finds that on April 27, 1992, Dr. Watson's license to practice medicine in the State of California was revoked upon findings by the Medical Board that Dr. Watson had prescribed controlled substances for no legitimate medical purpose and had falsified medical records. As a result, Dr. Watson is not currently authorized to handle controlled substances in the State of California.

The Administrator concludes that the DEA does not have the statutory authority under the Controlled Substances Act to issue or maintain a registration if the applicant or registrant is without state authority to handle controlled substances. See 21 U.S.C. 802(21), 823(f) and 824(a)(3). This prerequisite has been consistently upheld. See *Bobby Watts, M.D.*, 53 FR 11919 (1988); *Wingfield Drugs, Inc.*, 52 FR 27070 (1987); *Robert F.Witek, D.D.S.*, 52 FR 47770 (1987); and cases cited therein.

Having considered the facts and circumstances in this matter, the Administrator concludes that Dr.

Watson's DEA Certificates of Registration should be revoked due to his lack of authorization to handle controlled substances in the State of California. Accordingly, the Administrator of the Drug Enforcement Administration, pursuant to the authority vested in him by 21 U.S.C. 823 and 824 and 28 CFR 0.100(b), hereby orders that DEA Certificates of Registration, BW1960966 and BW2025307, previously issued to Lloyd Watson, M.D., be, and they hereby are revoked. The Administrator further orders that all pending applications for the renewal of such registration be, and they hereby are, denied. This order is effective February 22, 1993.

Dated: January 12, 1993.

Robert C. Bonner,

Administrator of Drug Enforcement.

[FR Doc. 93–1470 Filed 1–21–93; 8:45 am]

BILLING CODE 4410–09–M

DEPARTMENT OF LABOR

Employment Standards Administration

Wage and Hour Division; Minimum Wages for Federal and Federally Assisted Construction; General Wage Determination Decisions

General wage determination decisions of the Secretary of Labor are issued in accordance with applicable law and are based on the information obtained by the Department of Labor from its study of local wage conditions and data made available from other sources. They specify the basic hourly wage rates and fringe benefits which are determined to be prevailing for the described classes of laborers and mechanics employed on construction projects of a similar character and in the localities specified therein.

The determinations in these decisions of prevailing rates and fringe benefits have been made in accordance with 29 CFR part 1, by authority of the Secretary of Labor pursuant to the provisions of the Davis-Bacon Act of March 3, 1931, as amended (46 Stat. 1494, as amended, 40 U.S.C. 276a) and of other Federal statutes referred to in 29 CFR part 1, appendix, as well as such additional statutes as may from time to time be enacted containing provisions for the payment of wages determined to be prevailing by the Secretary of Labor in accordance with the Davis-Bacon Act. The prevailing rates and fringe benefits determined in these decisions shall, in accordance with the provisions of the foregoing statutes, constitute the minimum wages payable on Federal and federally assisted construction projects to laborers and mechanics of the specified classes engaged on contract work of the character and in the localities described therein.

Good cause is hereby found for not utilizing notice and public comment procedure thereon prior to the issuance of these determinations as prescribed in 5 U.S.C. 553 and not providing for delay in the effective date as prescribed in that section, because the necessity to issue current construction industry wage determinations frequently and in large volume causes procedures to be impractical and contrary to the public interest.

General wage determination decisions, and modifications and supersedeas decisions thereto, contain no expiration dates and are effective from their date of notice in the **Federal Register**, or on the date written notice is received by the agency, whichever is earlier. These decisions are to be used in accordance with the provisions of 29 CFR parts 1 and 5. Accordingly, the applicable decision, together with any modifications issued, must be made a part of every contract for performance of the described work within the geographic area indicated as required by an applicable Federal prevailing wage law and 29 CFR part 5. The wage rates and fringe benefits, notice of which is published herein, and which are contained in the Government Printing Office (GPO) document entitled "General Wage Determinations Issued Under The Davis-Bacon And Related Acts," shall be the minimum paid by contractors and subcontractors to laborers and mechanics.

Any person, organization, or governmental agency having an interest in the rates determined as prevailing is encouraged to submit wage rate and fringe benefit information for consideration by the Department. Further information and self-explanatory forms for the purpose of submitting this data may be obtained by writing to the U.S. Department of Labor, Employment Standards Administration, Wage and Hour Division, Division of Wage Determinations, 200 Constitution Avenue, NW., room S–3014, Washington, DC 20210.

Modification to General Wage Determination Decisions

The number of decisions listed in the Government Printing Office document entitled "General Wage Determinations Issued Under the Davis-Bacon and Related Acts" being modified are listed by Volume, State, and page number(s). Dates of publication in the **Federal Register** are in parentheses following the decisions being modified.

Volume I

Florida:
FL91–17 (Feb. 22, 1991) .. p.141, p.143.
New York:
NY91–3 (Feb. 22, 1991) ... p.797, p.799.
NY91–6 (Feb. 22, 1991) ... p.827, p.830.

General Wage Determination Publication

General wage determinations issued under the Davis-Bacon and related Acts, including those noted above, may be found in the Government Printing Office (GPO) document entitled "General Wage Determinations Issued Under The Davis-Bacon And Related Acts". This publication is available at each of the 50 Regional Government Depository Libraries and many of the 1,400 Government Depository Libraries across the country. Subscriptions may be purchased from: Superintendent of Documents, U.S. Government Printing Office, Washington, DC 20402, (202) 783–3238.

When ordering subscription(s), be sure to specify the State(s) of interest, since subscriptions may be ordered for any or all of the three separate volumes, arranged by State. Subscriptions include an annual edition (issued on or about January 1) which includes all current general wage determinations for the States covered by each volume. Throughout the remainder of the year, regular weekly updates will be distributed to subscribers.

Signed at Washington, DC this 15th day of January 1993.

Alan L. Moss,

Director, Division of Wage Determinations.

[FR Doc. 93–1462 Filed 1–21–93; 8:45 am]

BILLING CODE 4510–27–M

Mine Safety and Health Administration

Petitions for Modification

The following parties have filed petitions to modify the application of mandatory safety standards under section 101(c) of the Federal Mine Safety and Health Act of 1977.

1. Enlow Fork Mining Company

[Docket No. M–92–182–C]

Enlow Fork Mining Company, 1800 Washington Road, Pittsburgh, Pennsylvania 15241 has filed a petition to modify the application of 30 CFR 75.380 (escapeways; bituminous and lignite mines) to its Enlow Fork Mine (I.D. No. 36–07416) located in Greene County, Pennsylvania. The petitioner proposes to maintain the isolated intake escapeway in portions of the B–2 section at 20 inches in width. The petitioner asserts that the proposed

alternate method would provide at least the same measure of protection as would the mandatory standard.

2. Old Ben Coal Company

[Docket No. M–92–183–C]

Old Ben Coal Company, 500 N. DuQuoin Street, Benton, Illinois 62812 has filed a petition to modify the application of 30 CFR 75.364 (weekly examination) to its Mine No. 24 (I.D. No. 11–00589) located in Franklin County, Illinois. Due to deteriorating roof conditions, certain areas of the mine cannot be safely traveled. The petitioner proposes to establish evaluation points to monitor the quantity and quality of air entering and leaving the affected area. The petitioner asserts that the proposed alternate method would provide at least the same measure of protection as would the mandatory standard.

3. Tanoma Mining Company

[Docket No. M–92–184–C]

Tanoma Mining Company, P.O. Box 176, Marion Center, Pennsylvania 15759 has filed a petition to modify the application of 30 CFR 75.1710–1 (canopies and cabs; self-propelled electric face equipment; installation requirements) to its Tanoma Mine (I.D. No. 36–06967) located in Indiana County, Pennsylvania. The petitoner proposes to operate electric face equipment without the use of canopies. The petitioner states that the use of canopies would result in a diminution of safety to the equipment operator.

4. Amax Coal Company

[Docket No. M–92–185–C]

Amax Coal Company, One Riverfront Place, 20 NW. First Street, Evansville, Indiana 47708–1258 has filed a petition to modify the application of 30 CFR 75.380(d)(4) (i) and (ii) (escapeways; bituminous and lignite mines) to its Wabash Mine (I.D. No. 11–00877) located in Wabash County, Illinois. The petitioner proposes to continue using the 28 inches wide and 66 inches high escapeway door at the North Portal and 32 inches wide and 32 inches high escapeway door at the South Portal shaft bottom area. The petitioner asserts that the proposed alternate method would provide at least the same measure of protection as would the mandatory standard. In addition, the petitioner states that the alternate method would not result in a diminution of safety to the miners.

5. Turris Coal Company

[Docket No. M–92–186–C]

Turris Coal Company, P.O. Box 21, Elkhart, Illinois 62634 has filed a petition to modify the application of 30 CFR 75.326 (mean entry air velocity) to its Elkhart Mine (I.D. No. 11–02664) located in Logan County, Illinois. The petitioner requests a modification to require a minimum of 9,000 cubic feet per minute (cfm) of intake air to the line of crosscuts to be augered, and a minimum of 5,000 (cfm) of intake air passing across the auger machine while it is auger mining. The petitioner asserts that the proposed alternate method would provide at least the same measure of protection as would the mandatory standard.

6. Turris Coal Company

[Docket No. M–92–187–C]

Turris Coal Company, P.O. Box 21, Elkhart, Illinois 62634 has filed a petition to modify the application of 30 CFR 75.401 (abatement of dust; water or water with a wetting agent) to its Elkhart Mine (I.D. No. 11–02664) located in Logan County, Illinois. The petitioner proposes to use an auger machine with water sprays on the face conveyor and around the end trough where the auger drill steels enter the auger hole, to prevent dust from being suspended in the air. The petitioner asserts that the proposed alternate method would provide at least the same measure of protection as would the mandatory standard.

7. Turris Coal Company

[Docket No. M–92–188–C]

Turris Coal Company, P.O. Box 21, Elkhart, Illinois has filed a petition to modify the application of 30 CFR 75.362(d) (on-shift examinations) to its Elkhart Mine (I.D. No. 11–02664) located in Logan County, Illinois. The petitioner proposes to have a qualified person test for methane before the auger machine is deenergized and to use the auger machine's continuous methane detection sensor to test the air in the auger hole before augering begins, and to continue testing for methane at the auger machine at intervals of 20 minutes. The petitioner asserts that the proposed alternate method would provide at least the same measure of protection as would the mandatory standard.

8. Turris Coal Company

[Docket No. M–92–189–C]

Turris Coal Company, P.O. Box 21, Elkhart, Illinois 62634 has filed a petition to modify the application of 30 CFR 75.330 to its Elkhart Mine (I.D. No. 11–02664) located in Logan County, Illinois. The petitioner requests a modification to require a minimum of 9,000 cubic feet per minute (cfm) of intake air in the line of crosscuts to be augered and a minimum of 5,000 (cfm) of intake air passing across the auger machine while augering and to continuously monitor the air from the cutting face for adequate ventilation through a ¾-inch pipe past the methane sensor on the auger machine at 100 feet per second. The petitioner asserts that the proposed alternate method would provide at least the same measure of protection as would the mandatory standard.

9. Turris Coal Company

[Docket No. M–92–190–C]

Turris Coal Company, P.O. Box 21, Elkhart, Illinois 62634 has filed a petition to modify the application of 30 CFR 75.335 (construction of seals) to its Elkhart Mine (I.D. No. 11–02664) located in Logan County, Illinois. The petitioner proposes to auger mine with drilling distances not to exceed 300 feet into a panel perimeter barrier pillar. Into each hole, the petitioner would insert isolation caps to prevent gases in a hole from purging into a panel return aircourse. Permanent seals would be constructed when the panel is completed. In addition, the petitioners proposal includes pre-shift examinations and a continuous remote methane detection station. The petitioner asserts that the proposed alternate method would provide at least the same measure of protection as would the mandatory standard.

Request for Comments

Persons interested in these petitions may furnish written comments. These comments must be filed with the Office of Standards, Regulations and Variances, Mine Safety and Health Administration, room 627, 4015 Wilson Boulevard, Arlington, Virginia 22203. All comments must be postmarked or received in that office on or before February 22, 1993. Copies of these petitions are available for inspection at that address.

Dated: January 13, 1993.

Patricia W. Silvey,

Director, Office of Standards, Regulations and Variances.

[FR Doc. 93–1481 Filed 1–21–93; 8:45 am]

BILLING CODE 4510–43–M

NATIONAL AERONAUTICS AND SPACE ADMINISTRATION

[Notice 93-003]

NASA Advisory Council; Space Science and Applications Advisory Committee; Space Physics Subcommittee; Meeting

AGENCY: National Aeronautics and Space Administration.

ACTION: Notice of meeting.

SUMMARY: In accordance with the Federal Advisory Committee Act, Public Law 92-463, the National Aeronautics and Space Administration announces a meeting of the NASA Advisory Council, Space Science and Applications Advisory Committee, Space Physics Subcommittee.

DATES: February 11, 1993, 8 a.m. to 5 p.m.; and February 12, 1993, 8 a.m. to 5 p.m.

ADDRESSES: National Aeronautics and Space Administration, room MIC-5, 300 E Street, SW., Washington, DC 20546.

FOR FURTHER INFORMATION CONTACT:

Dr. George Withbroe, Code SS, National Aeronautics and Space Administration, Washington, DC 20546, 202/358-1544.

SUPPLEMENTARY INFORMATION: The meeting will be open to the public up to the seating capacity of the room. The agenda for the meeting is as follows:

—Space Physics Division Overview: Budget, Ongoing Program, Future Activities

—Program Reports for Magnetospheres, Cosmic and Heliospheric Physics, Solar Physics, and Ionosphere-Thermosphere-Mesosphere

—Space Physics Research and Analysis Program

—Space Physics Mission Operations and Data Analysis

—Strategic Planning

—Discussion and Writing Groups

It is imperative that the meeting be held on these dates to accommodate the scheduling priorities of the key participants. Visitors will be requested to sign a visitor's register.

Dated: January 13, 1993.

John W. Gaff,

Advisory Committee Management Officer, National Aeronautics and Space Administration.

[FR Doc. 93-1434 Filed 1-21-93; 8:45 am]

BILLING CODE 7510-01-M

NATIONAL COUNCIL ON THE HUMANITIES

Meeting

January 11, 1993.

Pursuant to the provisions of the Federal Advisory Committee Act (Pub. L. 92-463, as amended), notice is hereby given that a meeting of the National Council on the Humanities will be held in Washington, DC on February 11-12, 1993.

The purpose of the meeting is to advise the Chairman of the National Endowment for the Humanities with respect to policies, programs, and procedures for carrying out her functions, and to review applications for financial support and gifts offered to the Endowment and to make recommendations thereon to the Chairman.

The meeting will be held in the Old Post Office Building, 1100 Pennsylvania Avenue, NW., Washington, DC. A portion of the morning and afternoon sessions on February 11-12, 1993, will not be open to the public pursuant to subsections (c)(4), (6) and (9)(B) of section 552b of title 5, United States Code because the Council will consider information that may disclose: Trade secrets and commercial or financial information obtained from a person and privileged or confidential; information of a personal nature the disclosure of which will constitute a clearly unwarranted invasion of personal privacy; and information the disclosure of which would significantly frustrate implementation of proposed agency action. I have made this determination under the authority granted me by the Chairman's Delegation of Authority dated September 9, 1991.

The agenda for the sessions on February 11, 1993, will be as follows:

Committee meetings

8:30-9 a.m. Coffee for Council Members—Room 527

(Open to the Public)

9-10 a.m. Committee Meetings—Policy Discussion

Education Programs—Room M-14

Fellowships Programs—Room 315

Public Programs—Room 415

Research Programs/Preservation and Access—Room 507

State Programs and Office of Outreach—Room M-07

10 a.m. until Adjourned. (Closed to the Public for the reasons stated above)—Consideration of specific applications

(Closed to the Public)

3 p.m. until Adjourned. Jefferson Lecture Committee to review Jefferson Lecture nominees—Room 430

The morning session on February 12, 1993, will convene at 9 a.m., in the 1st Floor Council Room, M-09, and will be open to the public. The agenda for the morning session will be as follows:

(Coffee for Council Members from 8:30-9 a.m.)

Minutes of the Previous Meeting

Reports

A. Introductory Remarks

B. Introduction of New Staff

C. Contracts Awarded in the Previous Quarter

D. Budget Report

E. Legislative Report/Reauthorization

F. Committee Reports on Policy and General Matters

1. Overview
2. Education Programs
3. Fellowships Programs
4. Research Programs
5. Preservation and Access Programs
6. Public Programs
7. State Programs and Office of Outreach
8. Jefferson Lecture

The remainder of the proposed meeting will be given to the consideration of future budget requests and specific applications (closed to the public for the reasons stated above).

Further information about this meeting can be obtained from Mr. David C. Fisher, Advisory Committee Management Officer, Washington, DC 20506, or call area code (202) 786-0322, TDD (202) 786-0282. Advance notice of any special needs or accommodations is appreciated.

David C. Fisher,

Advisory Committee Management Officer.

[FR Doc. 93-1489 Filed 1-21-93; 8:45 am]

BILLING CODE 7536-01-M

NATIONAL FOUNDATION ON THE ARTS AND THE HUMANITIES

National Endowment for the Arts; Meeting

Pursuant to section 10(a)(2) of the Federal Advisory Committee Act (Pub. L. 92-463), as amended, notice is hereby given that a meeting of the International Advisory Panel (U.S./Mexico Artist Residencies Section) to the National Council on the Arts will be held on February 9, 1993 from 1 p.m.-7 p.m. and February 10 from 9 a.m.-5 p.m. in Ballroom C at the Menger Hotel, 204 Alamo Plaza, San Antonio, TX.

Portions of this meeting will be open to the public on February 9 from 1 p.m.–1:30 p.m. and February 10 from 3 p.m.–5 p.m. for introductory remarks and policy discussion.

The remaining portions of this meeting on February 9 from 1:30 p.m.–7 p.m. and February 10 from 9 a.m.–3 p.m. are for the purpose of Panel review, discussion, evaluation, and recommendation on applications for financial assistance under the National Foundation on the Arts and the Humanities Act of 1965, as amended, including information given in confidence to the agency by grant applicants. In accordance with the determination of the Chairman of November 24, 1992, these sessions will be closed to the public pursuant to subsection (c) (4), (6) and (9)(B) of section 552b of title 5, United States Code.

Any person may observe meetings, or portions thereof, of advisory panels which are open to the public, and may be permitted to participate in the panel's discussions at the discretion of the panel chairman and with the approval of the full-time Federal employee in attendance.

If you need special accommodations due to a disability, please contact the Office of Special Constituencies, National Endowment for the Arts, 1100 Pennsylvania Avenue, NW., Washington, DC 20506, 202/682–5532, TTY 202/682–5496, at least seven (7) days prior to the meeting.

Further information with reference to this meeting can be obtained from Ms. Yvonne M. Sabine, Advisory Committee Management Officer, National Endowment for the Arts, Washington, DC 20506, or call (202) 682–5439.

Dated: January 14, 1993.

Yvonne M. Sabine,

Director, Panel Operations, National Endowment for the Arts.

[FR Doc. 93–1485 Filed 1–21–93; 8:45 am]

BILLING CODE 7537–01–M0

National Endowment for the Arts; Meeting

Pursuant to section 10(a)(2) of the Federal Advisory Committee Act (Pub. L. 92–463), as amended, notice is hereby given that a meeting of the Challenge/Advancement Advisory Panel (Presenting and Commissioning Advancement Section) to the National Council on the Arts will be held on February 10, 1993 from 9 a.m.—5:30 p.m. and February 11 from 9 a.m.—5 p.m. in room 714 at the Nancy Hanks Carter, 1100 Pennsylvania Avenue NW., Washington, DC 20506.

Portions of this meeting will be open to the public on Febuary 10 from 9 a.m.—10 a.m. and February 11 from 4 p.m.—5 p.m. The topics will be opening remarks and policy discussion.

The remaining portions of this meeting on February 10 from 10 a.m.—5:30 p.m. and February 11 from 9 a.m.—4 p.m. are for the purpose of Panel review, discussion, evaluation, and recommendation on application for financial assistance under the National Foundation on the Arts and the Humanities Act of 1965, as amended, including information given in confidence to the agency by grant applicants. In accordance with the determination of the Chairman of November 24, 1992, these sessions will be closed to the public pursuant to subsection (c)(4), (6) and (9)(B) of section 552b of title 5, United States Code.

Any person may observe meetings, or portions thereof, of advisory panels which are open to the public, and may be permitted to participate in the panel's discussions at the discretion of the panel chairman and with the approval of the full-time Federal employee in attendance.

If you need special accommodations due to a disability, please contact the Office of Special Constituencies, National Endowment for the Arts, 1100 Pennsylvania Avenue, NW., Washington, DC 20506, 202/682–5532, TTY 202/682–5496, at least seven (7) days prior to the meeting.

Further information with reference to this meeting can be obtained from Ms. Yvonne M. Sabine, Advisory Committee Management Officer, National Endowment for the Arts, Washington, DC 20506, or call (202) 682–5439.

Dated: January 14, 1993.

Yvonne M. Sabine,

Director, Panel Operations, National Endowment for the Arts.

[FR Doc. 93–1486 Filed 1–21–93; 8:45 am]

BILLING CODE 7537–01–M

NATIONAL SCIENCE FOUNDATION

Management of Food Wastes at McMurdo Station, Antarctica; Initial Environmental Evaluation

AGENCY: National Science Foundation.

ACTION: Notice of initial environmental evaluation of the U.S. Antarctic Program's management of food wastes at McMurdo Station, Antarctica for 1993–1995.

SUMMARY: The National Science Foundation (NSF) has prepared an Initial Environmental Evaluation (IEE) of the U.S. Antarctic Program's management of food wastes at McMurdo Station, Antarctica for 1993–1995. NSF prepared the IEE pursuant to Executive Order 12114 and NSF's environmental assessment procedures for proposed Foundation actions in Antarctica, 45 CFR part 641.

Based on the IEE, a decision was issued on December 30, 1992, to dispose of most food waste in a three-chambered, emissions controlled incineration system; dispose of limited amounts of ground food waste through the domestic wastewater system; and to retrograde a portion of accumulated food waste by ship to the U.S. This decision will be reevaluated after receipt of analysis of recently collected incinerator emissions monitoring data.

DATES: Public comments on the IEE, although not required by NSF's regulations, are invited up to February 22, 1993. NSF will consider public comments when it reevaluates the decision in light of the new emissions monitoring data.

ADDRESSES: You may obtain copies of the IEE from: Dr. Sidney Draggan, Environmental Officer, Division of Polar Programs, National Science Foundation, Washington, DC 20550. You may address comments to Dr. Draggan.

FOR FURTHER INFORMATION CONTACT: Dr. Sidney Draggan, 202–357–7766.

Lawrence Rudolph,

Deputy General Counsel.

[FR Doc. 93–1429 Filed 1–21–93; 8:45 am]

BILLING CODE 7555–01–M

Special Emphasis Panel in Earth Sciences, Meeting

In accordance with the Federal Advisory Committee Act (Pub. L. 92–463, as amended), the National Science Foundation announces the following meeting:

Date and Time: February 8–9, 1993; 9 a.m. to 5 p.m.

Place: National Science Foundation, 1800 G Street NW., Washington, DC 20550, room 1243.

Type of Meeting: Closed.

Contact Person: Dr. Leonard E. Johnson, Program Director, Division of Earth Sciences, room 602, National Science Foundation, 1880 G St., NW., Washington, DC 20550. Telephone: (202) 357–7721.

Purpose of Meeting: To provide advice and recommendations concerning proposals submitted to NSF for financial support.

Agenda: To review and evaluate Continental Dynamics proposals as part of the selection process for awards.

Reason for Closing: The proposals being reviewed include information of a proprietary or confidential nature, including technical information; financial data, such as salaries; and personal information concerning individuals associated with the proposals. These matters are exempt under 5

U.S.C. 552b(c), (4) and (6) of the Government in the Sunshine Act.

Dated: January 15, 1993.

M. Rebecca Winkler,

Committee Management Officer.

[FR Doc. 93–1466 Filed 1–21–93; 8:45 am]

BILLING CODE 7555–01–M

Committee on Equal Opportunities in Science and Engineering; Meeting

In accordance with the Federal Advisory Committee Act (Pub. L. 92–463, as amended), the National Science Foundation announces the following meeting:

Name: Committee on Equal Opportunities in Science and Engineering (CEOSE).

Date and Time: February 11, 1993; 1:30 p.m.—5:30 p.m. (Open). February 12, 1993; 8:30 a.m.—3 p.m. (Open).

Place: Rooms 1242 and 1243 (Tentative), National Science Foundation, 1800 G Street, NW., Washington, DC 20550.

Type of Meeting: Open.

Contact Person: Wanda E. Ward, Executive Secretary, CEOSE, National Science Foundation, 1800 G Street, NW., rm. 1225, Washington, DC 20550. Telephone: (202) 357–7461.

Summary Minutes: May be obtained from the Executive Secretary at the above address.

Purpose of Meeting: To review the Report to Congress and to review assessments of participation rates of all segments of society in science and engineering.

Agenda: February 11: 1:30 p.m. to 5:30 p.m.—Presentations/discussions of Report to Congress.

5:30 p.m.—Reception

February 12: 8:30 a.m. to 3 p.m.—Review of assessments of participation rates of all segments of society in science and engineering; discussion of CEOSE Report to Congress and NSF future directions.

Dated: January 15, 1993.

M. Rebecca Winkler,

Committee Management Officer.

[FR Doc. 93–1465 Filed 1–21–93; 8:45 am]

BILLING CODE 7555–01–M

Special Emphasis Panel in Human Resource Development; Meeting

In accordance with the Federal Advisory Committee Act (Pub. L. 92–463, as amended), the National Science Foundation announces the following meeting:

Date and Time: February 8–9, 1993; 8:30 a.m.–5 p.m.

Place: Hotel Washington, 15th & Pennsylvania Ave., NW., Washington, DC 20004.

Type of Meeting: Closed.

Contact Person: Dr. William McHenry, Program Director, AMP, National Science. Foundation, 1800 G St. NW., Washington, DC 20550. Telephone: (202) 357–5054.

Purpose of Meeting: To provide advice and recommendations concerning proposals submitted to NSF for financial support.

Agenda: To review and evaluate Alliances for Minority Participation proposals as part of the selection process for awards.

Reason for Closing: The proposals being reviewed include information of a priority or confidential nature, including technical information; financial data, such as salaries; and personal information concerning individuals associated with the proposals. These matters are exempt under 5 U.S.C. 552b(c), (4) and (6) of the Government in the Sunshine Act.

Dated: January 15, 1993.

M. Rebecca Winkler,

Committee Management Officer.

[FR Doc. 93–1464 Filed 1–21–93; 8:45 am]

BILLING CODE 7555–01–M

Special Emphasis Panel in Mathematical Sciences; Meeting

In accordance with the Federal Advisory Committee Act (Pub. L. 92–463, as amended), the National Science Foundation announces the following meeting:

Date and Time: February 19, 1993; 8:30 a.m.–5 p.m.

Place: National Science Foundation, 1800 G Street, NW., Washington, DC 20550, room 1243.

Type of Meeting: Closed.

Contact Person: Jean Thiebaux, Program Director, Office of Special Projects, Division of Mathematical Sciences, room 339, National Science Foundation, 1800 G. St. NW., Washington, DC 20550. Telephone: (202) 357–3453.

Purpose of Meeting: To provide advice and recommendations concerning proposals submitted to NSF for financial support.

Agenda: To review and evaluate Conferences, Workshops, and Special Years in the Mathematical Sciences proposals as part of the selection process for awards.

Reason for Closing: The proposals being reviewed include information of a proprietary or confidential nature, including technical information; financial data, such as salaries; and personal information concerning individuals associated with the proposals. These matters are exempt under 5 U.S.C. 552b(c), (4) and (6) of the Government in the Sunshine Act.

Dated: January 15, 1993.

M. Rebecca Winkler,

Committee Management Officer.

[FR Doc. 93–1463 Filed 1–21–93; 8:45 am]

BILLING CODE 7555–01–M

NUCLEAR REGULATORY COMMISSION

Documents Containing Reporting or Recordkeeping Requirements: Office of Management and Budget Review

AGENCY: Nuclear Regulatory Commission.

ACTION: Notice of the Office of Management and Budget review of information collection.

SUMMARY: The Nuclear Regulatory Commission (NRC) has recently submitted to the Office of Management and Budget (OMB) for review the following proposal for the collection of information under the provisions of the Paperwork Reduction Act (44 U.S.C. chapter 35).

1. *Type of submission, new, revision, or extension:* Extension.

2. *The title of the information collection:* NRC Form 483 Registration Certificate—In Vitro Testing With Byproduct Material Under General License.

3. *The form number if applicable:* NRC Form 483.

4. *How often the collection is required:* Once, when registering as a general licensee pursuant to 10 CFR 31.11.

5. *Who will be required or asked to report:* Physicians, clinical laboratories, hospitals, and veterinarians in the practice of veterinary medicine wishing to use byproduct material for *in vitro* clinical or laboratory testing under the general license in 10 CFR 31.11.

6. *An estimate of the number of responses:* 250.

7. *An estimate of the total number of hours needed to complete the requirement or request:* Approximately seven minutes per response. The total industry burden is 30 hours annually.

8. *An indication of whether section 3504(h), Public Law 96–511 applies:* Not applicable.

9. *Abstract:* Persons wishing to use byproduct material for *in vitro* clinical or laboratory testing under general license must register with NRC by submitting NRC Form 483. The certificate, when validated and returned by NRC, serves as evidence to suppliers of byproduct material that the registrant is entitled to receive the byproduct material.

Copies of the submittal may be inspected or obtained for a fee from the NRC Public Document Room, 2120 L Street, NW. (Lower Level), Washington, DC.

Comments and questions may be directed by mail to the OMB reviewer: Ronald Minsk, Office of Information and

Regulatory Affairs (3150–0038), NEOB–3019, Office of Management and Budget, Washington, DC 20503.

Comments may also be communicated by telephone at (202) 395–3084.

The NRC Clearance officer is Brenda Jo. Shelton, (301) 492–8132.

Dated at Bethesda, Maryland, this 12th day of January 1993.

For the Nuclear Regulatory Commission.

Gerald F. Cranford,

Designated Senior Official for Information Resources Management.

[FR Doc. 93–1469 Filed 1–21–93; 8:45 am]

BILLING CODE 7590–01–M

[Docket No. 50–285]

Omaha Public Power District Fort Calhoun Station, Unit No. 1; Environmental Assessment and Finding of No Significant Impact

The U.S. Nuclear Regulatory Commission (the Commission) is considering issuance of exemptions from the requirements of appendix J to 10 CFR part 50 to the Omaha Public Power District (OPPD/the licensee), for the Fort Calhoun Station, Unit No. 1, located in Washington County, Nebraska.

Summary of Environmental Assessment

Identification of Proposed Action

The proposed action would exempt the licensee from the requirements of appendix J to 10 CFR part 50 in regard to performing Type C leakage tests on the containment isolation valve (check valve CH-198) associated with the charging pump discharge header (penetration M–3).

The proposed action is in accordance with 10 CFR 50.12, Specific Exemptions, and 10 CFR 55.11, Specific Exemptions, and is based upon the information provided to the NRC in the licensee's request dated May 1, 1992.

The Need for the Proposed Action

The proposed exemption is needed since testing is unnecessary because the pressure of the fluid in the charging pump discharge line will always be greater than the containment pressure, thereby providing a seal barrier against escape of the containment atmosphere.

Environmental Impacts of the Proposed Action

Our evaluation of the proposed exemption from appendix J to 10 CFR part 50 indicates that the granting of the exemption will not impair containment integrity for the following reason. The pressure of the fluid in the charging pump discharge line will always be greater than the containment pressure, thereby providing a seal barrier against escape of the containment atmosphere.

Accordingly, post-accident radiological releases will not be greater than previously determined nor does the proposed exemption otherwise affect radiological plant effluents and there is no significant increase in occupational exposure. Therefore, the Commission concludes that there are no significant radiological environmental impacts associated with the proposed exemptions.

With regard to potential non-radiological impacts, the proposed exemption involves features located entirely within the restricted area as defined in 10 CFR part 20. It does not affect non-radiological plant effluents and has no other environmental impact. Therefore, the Commission concludes that there are no significant non-radiological environmental impacts associated with the proposed exemption.

Alternatives to the Proposed Action

Since the Commission has concluded that the environmental effects of the proposed action are not significant, any alternative with equal or greater environmental impacts need not be evaluated.

The principal alternative would be to deny the requested exemption. This would not reduce the environmental impacts attributed to this facility and would result in not permitting OPPD to maintain operational flexibility.

Alternate Use of Resources

This action does not involve the use of any resources not previously considered in the Final Environmental Statement (FES) for the Fort Calhoun Station, Unit No. 1, dated August 1972.

Agencies and Persons Consulted

The Commission's staff reviewed the licensee's request and did not consult other agencies or persons.

Findings of No Significant Impact

The Commission has determined not to prepare an environmental impact statement for the proposed exemption. Based upon the foregoing environmental assessment, we conclude that the proposed action will not have a significant effect on the quality of the human environment.

For further details with respect to this action, see the request for exemption dated May 1, 1992, which is available for public inspection at the Commission's Public Document Room, 2120 L Street, NW., Washington, DC 20555 and at the Local Public Document Room located at the W. Dale Clark Library, 215 South 15th Street, Omaha, Nebraska 68102.

Dated at Rockville, Maryland this 13th day of January 1993.

For the Nuclear Regulatory Commission.

George T. Hubbard,

Acting Director, Project Directorate IV–1, Division of Reactor Projects—III/IV/V, Office of Nuclear Reactor Regulation.

[FR Doc. 93–1467 Filed 1–21–93; 8:45 am]

BILLING CODE 7590–01–M

OFFICE OF MANAGEMENT AND BUDGET

Revision to OMB Circular No. A–129, Managing Federal Credit Programs and Renaming to Policies for Federal Credit Programs and Non-Tax Receivables

AGENCY: Office of Management and Budget.

ACTION: Final circular.

SUMMARY: This notice revises OMB Circular No. A–129, "Managing Federal Credit Programs," last revised November 25, 1988, by incorporating policies published in OMB Circular No. A–70, "Policies and Guidelines for Federal Credit Programs," dated August 24, 1984, and OMB Bulletin No. 91–05, "Guidance for the Management of Guaranteed Loan Programs," dated November 26, 1990. The revised Circular has been renamed "Policies for Federal Credit Programs and Non-Tax Receivables." Circular No. A–70 and Bulletin No. 91–05 are hereby rescinded.

A notice of proposed revision was published in the **Federal Register** on November 5, 1992. This final Circular incorporates suggestions received through public comment.

EFFECTIVE DATE: This Circular is effective immediately.

FOR FURTHER INFORMATION CONTACT: For inquiries concerning budget and legislative policy for credit programs (Appendix A, section II, and Appendices B and C), contact the Office of Management and Budget, Budget Analysis Branch, Room 6025, New Executive Office Building, Washington, DC 20503, 202/395–3930. For inquiries concerning credit management and debt collection policies (Appendix A, sections III–V), contact the Office of Management and Budget, Credit and Cash Management Branch, Room 10236, New Executive Office Building, Washington, DC 20503, 202/395–3066.

SUPPLEMENTARY INFORMATION: OMB Circular No. A–70 was originally issued

on February 1, 1965, under the authority of the Budget and Accounting Act of 1921, as amended. A revised Circular was published on August 24, 1984. Circular No. A–70 required agencies to calculate and analyze credit program subsidies, and set forth requirements for preparation and review of legislation, testimony, and budget requests for credit programs.

OMB Circular No. A–129 was originally issued on May 9, 1985, under the authority of the Budget and Accounting Act of 1921, as amended; the Budget and Accounting Act of 1950, as amended; the Debt Collection Act of 1982, as amended; and section 2653 of Public Law 98–369. Circular No. A–129 defined agencies' responsibilities for originating, servicing, and collecting loans. Although some sections of the Circular applied to defaulted guaranteed loans acquired by the Federal Government, its primary focus was on the management of direct loans. The Circular was last revised on November 25, 1988.

On November 26, 1990, OMB issued Bulletin No. 91–05, which contained guidance for the management of guaranteed loan programs.

Also in 1990, Congress passed two major laws pertinent to Federal credit programs and their administration and management: the Federal Credit Reform Act of 1990 and the Chief Financial Officers Act of 1990. In addition, the Federal Debt Collection Procedures Act of 1990 provided additional debt collection tools to Federal agencies.

This revision of Circular No. A–129 incorporates Circular No. A–70 and Bulletin No. 91–05 and is updated to include requirements of the 1990 laws which apply to Federal credit programs and non-tax receivables. Credit management procedures contained in the credit supplement to the Treasury Financial Manual have been removed from the Circular. Detailed guidance on the calculation and analysis of credit program subsidies are now contained in OMB Circular No. A–11, "Preparation and Submission of Annual Budget Estimates," and OMB Circular No. A–34, "Instructions on Budget Execution."

This final Circular reflects changes made as a result of comments received on the proposed revision published on November 5, 1992.

Analysis of Comments

Comments were received from seven Federal agencies and five private firms or industry associations.

Comments Accepted: Several suggestions were accepted to clarify technical or legal aspects of credit programs and debt collection activities. These changes include: (1) Standardization of the definition of administrative expenses for credit programs used throughout the Circular; (2) Identification of programs exempt from credit reform requirements for advance annual appropriations; (3) Clarification of the requirements for the screening of applicants for credit worthiness and delinquency on Federal debt; (4) Clarification that loan-to-value ratios apply to loans whose primary purpose is to acquire an asset rather than to any loan with collateral; (5) Clarification that the policy for lender liquidation of collateral for a guaranteed loan applies only to real property collateral, and that the policy is based on generally superior performance by the private sector in asset management and disposal; (6) Standardization of the definition of a direct loan delinquency with other documents, including the Treasury Financial Manual; and (7) wording changes to several debt collection techniques to reflect current practices.

Several comments were considered too detailed for inclusion in the Circular but will be reflected in the next revision of the Treasury Financial Manual.

Comments Not Accepted. Several commenters felt that Circular A–129 requirements were inappropriate for certain credit programs, such as guaranteed student loans. For example, four comments were received concerning the requirement that private lenders in guaranteed loan programs bear at least 20 percent of the loss from any default. The commenters suggested that lender risk-sharing is fundamentally at odds with achieving the goals of certain programs and that it would diminish lender participation. While OMB recognizes that there may be legitimate circumstances where this requirement should not be fully implemented, it continues to believe that risk sharing provides an incentive for prudent lending by private institutions and should be retained in the Circular.

Similar comments were received on the inapplicability to certain programs of the A–129 prohibitions against the financing of loan prepayments by tax-exempt borrowing, loan sales with recourse, and the guaranteeing of tax-exempt obligations. As with risk-sharing, OMB believes the Circular reflects prudent credit and financial management policy. Agencies not in conformance with these financial standards may include in their budget submissions to OMB an evaluation of their credit programs and a justification of any non-conformance. Such justifications will be considered on an individual basis.

Comments also were received concerning applicant screening to determine prior Federal delinquencies through the use of the Department of Housing and Urban Development's Credit Alert Interactive Voice Response System (CAIVRS). The commenters were concerned that use of the system would create delays and administrative costs in processing loan applications and would diminish access to credit for all prospective borrowers. OMB disagrees with these comments because it is not in the best interest of the Government to provide additional Federal assistance to applicants delinquent on prior Federal debt. Further, the screening process is conducted through an automated data base and requires only a few minutes to complete. The applicant, not the lender, is responsible for resolving any delinquency identified.

Richard Darman,

Director.

OMB CIRCULAR NO. A–129 POLICIES FOR FEDERAL CREDIT PROGRAMS AND NON-TAX RECEIVABLES

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Circular No. A–129—Revised

To the Heads of Executive Departments and Establishments

Subject: Policies for Federal Credit Programs and Non-Tax Receivables.

Federal credit programs are created to accomplish a variety of social and economic goals. Agencies must implement budget policies and management practices that ensure that the goals of credit programs are met while properly identifying and controlling costs. In addition, Federal receivables, whether from credit programs or other non-tax sources, must be serviced and collected in an efficient and effective manner to protect the value of the Federal Government's assets.

General Information

1. *Purpose.* This Circular prescribes policies and procedures for justifying, designing, and managing Federal credit programs and for collecting non-tax receivables. It sets principles for designing credit programs, including the preparation and review of legislation and regulations, budgeting for the costs of credit programs and minimizing unintended costs to the Government; and improving the efficiency and effectiveness of Federal credit programs. If also sets standards for extending credit, managing lenders participating in the Government's guaranteed loan programs, servicing credit and non-tax receivables, and collecting delinquent debt.

2. *Authority.* This Circular is issued under the authority of the Budget and Accounting Act of 1921, as amended; the Budget and Accounting Act of 1950, as amended, the Debt Collection Act of 1982, as amended; Section 2653 of Public Law 98–369; the Federal Credit Reform Act of 1990; the Federal Debt Collection Procedures Act of 1990; the Chief Financial Officers Act of 1990; Executive Order 8248; the Cash Management Improvement Act Amendments of 1992; and pre-existing common law authority to charge interest on debts and to offset debts administratively.

3. *Coverage*—a. *Applicability.* The provisions of this Circular apply to all credit programs of the Federal Government, including:

(1) Direct loan programs;

(2) Guaranteed loan programs and loan insurance programs in which the Federal Government bears a legal liability to pay for all or part of the principal or interest in the event of borrower default; and

(3) Loans or other financial assets acquired by a Federal agency (or a receiver or conservator acting for a Federal agency) as a result of a claim payment on a defaulted guaranteed or insured loan or in fulfillment of a Federal deposit insurance commitment.

Sections IV and V of Appendix A (Managing the Federal Government's Receivables and Delinquent Debt Collection) also apply to receivables due to the Government from the sale of goods and services; fines, duties, leases, rents, royalties, and penalties, and Federal employees; and similar debts.

b. *Exclusions Under the Debt Collection Act.* Certain debt collection techniques authorized by the Debt Collection Act of 1982, as amended, may not be applied to debts arising under the Internal Revenue Code, the Social Security Act, or the tariff laws of the United States, or to debts owed to the United States Government by State or local governments.

c. *Other Statutory Exclusions.* The policies and standards of this Circular do not apply when statutorily prohibited or inconsistent with statutory requirements. However, agencies are required to review periodically legislation affecting the form of assistance and/or financial standards for credit programs and justify continuance of any non-conformance (see section II.5.c).

4. *Rescissions.* This Circular rescinds and replaces OMB Circular No. A–70, dated August 24, 1984, OMB Circular No. A–129, dated November 25, 1988, and OMB Bulletin No. 91–05, dated November 26, 1990.

The Circular supplements, and does not supersede, the requirements applicable to budget submissions under Circular No. A–11 and to proposed legislation and testimony under Circular No. A–19.

5. *Effective Date.* This Circular is effective immediately.

6. *Inquiries.* Further information on estimating credit subsidies may be found in Appendix D to OMB Circular No. A–11. Further information on the implementation of credit management and debt collection policies may be found in the credit supplement to the Treasury Financial Manual (TFM) and in OMB's government-wide 5-year plan for financial management submitted annually to Congress.

For inquiries concerning budget and legislative policy for credit programs (Appendix A, section II), contact the Office of Management and Budget, Budget Analysis Branch, room 6025, New Executive Office Building, 725 17th Street, NW., Washington, DC 20503, 202/395–3930. For inquiries concerning credit management and debt collection policies (Appendix A, sections III–V), contact the Office of Management and Budget, Credit and Cash Management Branch, room 10236, New Executive Office Building, 725 17th Street, NW., Washington, DC 20503, 202/395–3066.

7. *Definitions.* Key terms used in this circular are defined in OMB Circulars No. A–11 and A–34.

Richard Darman,
Director.

Appendix A to Circular No. A–129

I. Responsibilities of Departments and Agencies

1. *Office of Management and Budget.* The Office of Management and Budget (OMB) is responsible for reviewing legislation to establish new credit programs or to expand or modify existing credit programs; reviewing and clearing testimony pertaining to credit programs and debt collection; reviewing agency budget submissions for credit programs and debt collection activities; formulating and reviewing credit management and debt collection policy; and approving agency credit management and debt collection plans.

2. *Department of the Treasury.* The Department of the Treasury, through its Financial Management Service (FMS), is responsible for monitoring and facilitating implementation of credit management and debt collection policy. FMS develops and disseminates as a supplement to the Treasury Financial Manual operational guidelines for agency compliance with government-wide credit management and debt collection policy. FMS assists agencies in improving credit management activities and evaluates innovative credit management practices.

3. *Federal Credit Policy Working Group.* The Federal Credit Policy Working Group is an inter-agency forum which provides advice and assistance to OMB and Treasury in the formulation and implementation of credit policy. Membership consists of representatives from the Executive Office of the President, the Council of Economic Advisers, the Office of Management and Budget, and the Department of the Treasury. The major credit and debt

collection agencies represented include the Departments of Agriculture, Commerce, Evaluation, Health and Human Services, Housing and Urban Development, Interior, Justice, Labor, State, Transportation, and Veterans Affairs, the Agency for International Development, the Export-Import Bank, the Resolution Trust Corporation, and the Small Business Administration. Other departments and agencies may be invited to participate on the Working Group at the request of the Chairperson. The Director of OMB designates the Chairperson of the Group.

4. *Departments and Agencies.* Departments and agencies shall manage credit programs and all non-tax receivables in accordance with their statutory authorities and the provisions of this Circular to protect the Government's assets, and to minimize losses in relation to social benefits provided.

a. Agencies shall ensure that:

(1) Federal credit program legislation, regulations, and policies are designed and administered in compliance with the principles of this Circular;

(2) The costs of credit programs covered by the Federal Credit Reform Act of 1990 are budgeted for and controlled in accordance with the principles of the Act (the Act exempts deposit insurance agencies, Tennessee Valley Authority, Pension Benefit Guaranty Corporation, and certain other activities from credit reform requirements);

(3) Every effort is made to prevent future delinquencies by following appropriate screening standards and procedures for determination of credit worthiness;

(4) Lenders participating in guaranteed loan programs meet all applicable financial and programmatic requirements;

(5) Informed and cost-effective decisions are made concerning portfolio management, including full consideration of contracting out for servicing or selling the portfolio and transferring servicing to the private sector;

(6) The full range of available techniques are used, as appropriate, to collect delinquent debts, including administrative offset, salary offset, tax refund offset, private collection agencies, and litigation;

(7) Delinquent debts are written off as soon as they are determined to be uncollectible; and

(8) Timely and accurate financial management and performance data are submitted to OMB and the Department of the Treasury so that the Government's credit management and debt collection programs and policies can be evaluated.

b. In achieving these objectives, agencies shall:

(1) Establish, as appropriate, boards to coordinate credit management and debt collection activities and to ensure full consideration of credit management and debt collection issues by all interested and affected organizations. Representation should include, but not be limited to, the agency Chief Financial Officer (CFO) and the senior official(s) for program offices with credit activities or non-tax receivables. The Board may seek from the agency's Inspector General input based on findings and conclusions from past audits and investigations;

(2) Ensure that the standards set forth in this Circular and supplementary guidance set forth in the Treasury Financial Manual are incorporated into agency regulations and procedures for credit programs and debt collection activities;

(3) Propose new or revised legislation, regulations, and forms as necessary to ensure consistency with the provisions of this Circular;

(4) Submit legislation and testimony affecting credit programs for review under the OMB Circular No. A–19 legislative clearance process, and budget proposals for review under the Circular No. A–11 budget justification process;

(5) Periodically evaluate Federal credit programs to assess their effectiveness in achieving program goals;

(6) Assign to the agency CFO, in accordance with the Chief Financial Officers Act of 1990, responsibility for directing, managing, and providing policy guidance and oversight of agency financial management personnel, activities, and operations, including the implementation of asset management systems for credit management and debt collection;

(7) Prepare, as part of the agency CFO Financial Management 5-Year Plan, a Credit Management and Debt Collection Plan for effectively managing credit extension, account servicing and portfolio management, and delinquent debt collection. The plan must ensure agency compliance with the standards in this Circular;

(8) Ensure that data in loan applications and documents for individuals are managed in accordance with the Privacy Act of 1974, as amended by the Computer Matching and Privacy Protection Act of 1988 (the Privacy Act does not apply to loans and debts of commercial organizations); and the Right to Financial Privacy Act; and

(9) Include in personnel evaluation criteria for senior executives with major credit management and debt collection responsibilities performance standards in support of this Circular.

II. Budget and Legislative Policy for Credit Programs

Federal credit assistance should be provided only when it is necessary and the best means to achieve clearly specified Federal objectives. Use of private credit markets should be encouraged, and any impairment of such markets or misallocation of the Nation's resources through the operation of Federal credit programs should be minimized.

1. *Program Justification.* New programs and proposals for reauthorizing, expanding, or significantly increasing funding for credit programs should be accompanied by analysis which:

a. Clearly defines the Federal objectives to be achieved, and demonstrates why they cannot be achieved with private credit assistance, including:

(1) A description of existing and potential private sources of credit by type of institution and the availability and cost of credit to borrowers; and

(2) An explanation as to whether, and why, these private sources of financing and their terms and conditions must be supplemented and subsidized;

b. Specifies whether the credit program is intended to:

(1) Correct a capital market imperfection, which should be defined; and/or

(2) Subsidize borrowers or other beneficiaries, who should be identified, or encourage certain activities, which should be specified;

c. Explains why a credit subsidy is the most efficient way of providing assistance, including how it provides assistance in overcoming market imperfections, and/or would redress the specific inadequate financing cited;

d. Estimates or, when the program exists, measures the benefits expected from the program, including the amount by which the distribution of credit is expected to be altered and the favored activity is expected to increase. Information on conducting a cost-benefit analysis can be found in OMB Circular No. A–94;

e. Estimates the extent to which the program substitutes directly or indirectly for private lending, and analyzes any elements of program design that encourage and supplement private lending activity, with the objective that private lending is

displaced to the smallest degree possible by agency programs; and

f. Provides an explicit estimate of the subsidy, as required by the Federal Credit Reform Act of 1990, and an estimate of the expected annual administrative costs (including extension, servicing, and collection) of the credit program. If loan assets are to be sold or are to be included in a prepayment program for programmatic or other reasons, the sale/prepayment is classified as a modification under the Federal Credit Reform Act. The cost of this modification requires budget authority, which must be appropriated or otherwise made available. Loan asset sales/prepayment programs must be conducted in accordance with policies in this Circular and procedures in the credit supplement to the Treasury Financial Manual, including the prohibitions against the financing of prepayments by tax-exempt borrowing and sales with recourse except where specifically authorized by statute. The cost of any guarantee placed on the asset sold requires budget authority.

2. *Form of Assistance.* When Federal credit assistance is necessary to meet a Federal objective, loan guarantees should be favored over direct loans, unless attaining the Federal objective requires a subsidy, as defined by the Federal Credit Reform Act of 1990, deeper than can be provided by a loan guarantee.

a. Loan guarantees, by removing part or all of the credit risk of a transaction, change the allocation of economic resources. Loan guarantees may make credit available when private financial sources would not otherwise do so, or they may allocate credit to borrowers under more favorable terms than would otherwise be granted. This reallocation of credit may impose a cost on the Government and/or the economy.

b. Direct loans usually offer borrowers lower interest rates and longer maturities than loans available from private financial sources, even those with a Federal guarantee. The use of direct loans, however, may displace private financial sources and increase the possibility that the terms and conditions on which Federal credit assistance is offered will not reflect changes in financial market conditions. The costs on the Government and the economy are therefore likely to be greater.

c. Direct or indirect guarantees of tax-exempt obligations are expressly prohibited under Section 149(b) of the Internal Revenue Code. Guarantees of tax-exempt obligations are an inefficient way of allocating Federal credit. Assistance to the borrower, through the tax exemption and the guarantee, provides interest savings to the borrower that are smaller than the tax revenue loss to the Government. Thus, the cost to the taxpayer is greater than the benefit to the borrower.

d. To preclude the possibility that Federal agencies will guarantee tax-exempt obligations, either directly or indirectly, agencies will: (1) Not guarantee federally tax-exempt obligations; (2) not subordinate direct loans to tax-exempt obligations; (3) provide that effective subordination of a guaranteed loan to tax-exempt obligations will render the guarantee void; (4) prohibit use of a Federal guarantee as collateral to secure a tax-exempt obligation; (5) prohibit Federal guarantees of loans funded by tax-exempt obligations; and (6) prohibit the linkage of Federal guarantees with tax-exempt obligations.

e. Where a large degree of subsidy is justified, comparable to that which would be provided by guaranteed tax-exempt obligations, agencies should consider the use of direct loans.

3. *Financial Standards.* In accordance with the Federal Credit Reform Act of 1990, agencies must analyze and control the risk and cost of their programs. Agencies must develop statistical models predictive of defaults and other deviations from loan contracts. Agencies are required to estimate subsidy costs and to obtain budget authority to cover such costs before obligating direct loans and committing loan guarantees. Specific instructions for budget justification under the Act are provided in OMB Circular No. A–11, and instructions for budget execution are provided in OMB Circular No. A–34.

Agencies shall follow sound financial practices in the design and administration of their credit programs. Where program objectives cannot be achieved while following sound financial practices, the cost of these deviations shall be justified in agency budget submissions in comparison with expected benefits. Unless a waiver is approved, agencies should follow the financial practices discussed below.

a. Lenders and borrowers who participate in Federal credit programs should have a substantial stake in full repayment in accordance with the loan contract.

(1) Private lenders who extend credit that is guaranteed by the Government should bear at least 20 percent of the loss from a default. Loan guarantees that cover 100 percent of the credit risk encourage private lenders to exercise less caution than they otherwise would in evaluating loan requests. The level of guarantee should be no more than necessary to achieve program purposes. Loans for borrowers who are deemed to pose less of a risk should receive a lower guarantee.

(2) Borrowers should have an equity interest in any asset being financed with the credit assistance, and business borrowers should have substantial capital or equity at risk in their business (see section III.A.3.(b) for additional discussion).

b. Interest and fees on direct loans and fees on loan guarantees should be set by reference to the cost to the Government of making the direct loan or loan guarantee and should be reviewed at least annually.

(1) These charges shall be at levels sufficiently high to cover the Government's total cost of making the loan or guarantee, including administrative costs (extension, servicing, and collection), and default and other subsidy costs.

(2) When charging interest and/or fees at such levels is statutorily prohibited or an agency considers it inconsistent with program objectives, the difference should be justified in relation to benefits. In addition, the agency must request an appropriation in accordance with the Federal Credit Reform Act of 1990 for default and other subsidy costs not covered by interest and fees.

(3) Riskier borrowers should be charged more than those who pose less risk in order to encourage such borrowers to take actions to reduce the risk they pose to the Government.

c. Contractual agreements should include all covenants and restrictions (e.g., liability insurance) necessary to protest the Federal Government's interest.

(1) Maturities on loans should be shorter than the estimated useful economic life of any assets financed.

(2) The Government's claims on assets should not be subordinated to the claims of other lenders in the case of a borrower's default on either a direct loan or a guaranteed loan. Subordination increases the risk of loss to the Government, since other creditors would have first claim on the borrower's assets.

d. In order to minimize inadvertent changes in the amount of subsidy, interest rates to be charged on direct loans and any interest supplements for guaranteed loans should be specified by reference to the market rate on a benchmark Treasury security rather than as an absolute level. A specific level of interest rate should not be cited in legislation or in regulation because such a rate could soon become outdated, unintentionally changing the extent of the subsidy.

(1) The benchmark financial market instrument should be a marketable Treasury security with a similar maturity to the direct loans being made or the non-Federal loans being guaranteed. When the rate on the Government loan is intended to be different than the benchmark rate, it should be stated as a percentage of that rate. The benchmark Treasury security must be cited specifically in agency budget justifications.

(2) Interest rates applicable to new loans should be reviewed at least quarterly and adjusted to reflect changes in the benchmark interest rate. Loan contracts may provide for either fixed or floating interest rates.

e. Maximum amounts of direct loan obligations and loan guarantee commitments must be specifically authorized in advance in annual appropriations acts, except for mandatory programs exempt from the appropriations requirements under section 504(c) of the Federal Credit Reform Act of 1990.

f. Financing for Federal credit programs should be provided by Treasury in accordance with the Federal Credit Reform Act of 1990. Guarantees of the timely payment of 100 percent of the loan principal and interest against all risk create a debt obligation that is the credit risk equivalent of a Treasury security. Accordingly, a Federal agency other than the Department of the Treasury may not issue, sell, or guarantee an obligation of a type that is ordinarily financed in investment securities markets, as determined by the Secretary of the Treasury, unless the terms of the obligation provide that it may not be held by a person or entity other than the Federal Financing Bank (FFB) or another Federal agency. The Secretary of the Treasury may waive this requirement with respect to obligations that the Secretary determines: (1) are not suitable for investments for the FFB because of the risks entailed in such obligations; or (2) are or will be financed in a manner that is least disruptive of private financial markets and institutions. The benefits of using the FFB must not expand the degree of subsidy.

g. Loan contracts should be standardized where practicable. Private sector documents should be used whenever possible, especially for loan guarantees.

5. *Implementation.* The provisions of this section II will be implemented through the OMB Circular No. A–19 legislative review process and the OMB Circular No. A–11 budget justification and submission process.

a. Proposed legislation on credit programs, reviews of credit proposals made by others, and testimony on credit activities submitted by agencies under the OMB Circular No. A–19 legislative review process should conform to the provisions of this Circular.

Whenever agencies propose provisions or language not in conformity with the policies of this Circular, they will be required to request in writing that the Office of Management and Budget modify or waive the requirement. Such requests will identify the modification(s), or waiver(s) requested, and also will state the reasons for the request and the time period for which the exception is required. Exceptions, when allowed, will ordinarily be granted only for a limited time in order to allow for an evaluation by OMB.

b. OMB will, upon written request, provide technical advice on proposed credit program provisions that would be exceptions to the standards prescribed in this section II. This will avoid delays and help to ensure consistency with Federal credit policies.

A checklist for reviews of legislative and budgetary proposals is included as Appendix B to their Circular. Model bill language that agencies may use in developing and reviewing legislation is provided in Appendix C.

c. Every four years, or more often at the request of the OMB examiner with primary responsibility for the account, the agency's annual budget submission (required by OMB Circular No. A–11, Section 15.2) should include:

(1) A plan for periodic, results-oriented evaluations of the effectiveness of the program, and the use of relevant program evaluations and/or other analyses of program effectiveness or causes of escalating program costs. A program evaluation is a formal assessment, through objective measurement and systematic analysis, addressing the manner and extent to which credit programs achieve intended objectives;

(2) A review of the changes in financial markets and the status of borrowers and beneficiaries to verify that continuation of the credit program is required to meet Federal objectives, to update its justification, and to recommend changes in its design and operation to improve efficiency and effectiveness; and

(3) Proposed changes to correct those cases where existing legislation, regulations, or program policies are not in conformity with the policies of this section II. When an agency does not deem a change in existing legislation, regulations, or program policies to be desirable, it will provide a justification for retaining the non-conformance.

III. Credit Management and Extension Policy

A. Credit Extension Policies

1. *Applicant Screening*—a. *Program Eligibility.* Agencies, including private lenders in guaranteed loan programs, shall determine whether applicants comply with statutory, regulatory, and administrative eligibility requirements for loan assistance. If it is consistent with program objectives, borrowers should be required to certify and document that they have been unable to obtain credit from private sources. In addition, application forms must require the borrower to certify the accuracy of information being provided (false information is subject to penalties under 18 U.S.C. 1001).

b. *Delinquency on Federal Debt.* Agencies shall determine whether applicants are delinquent on any Federal debt, including tax debt. Agencies must include a question on loan application forms asking applicants if they have such delinquencies. In addition, agencies, including guaranteed loan lenders, shall use the Department of Housing and Urban Development's Credit Alert Interactive Voice Response System (CAIVRS) to identify delinquencies on Federal debt. CAIVRS offers direct on-line access for mortgage lenders to verify whether candidates for Federal Housing Administration (FHA) loans have any previous FHA loan defaults. The CAIVRS data base has been expanded to include delinquent debt from other major credit programs. Other delinquent receivables, including judgment liens against property for debt owed to the United States, tax debt, and corporate debt may also be added to the data base. All credit programs should use CAIVRS for loan screening to ensure applicants are not delinquent on Federal debt.

Processing of applications should be suspended when applicants are delinquent on Federal tax or non-tax debts, including judgment liens against property for a debt to the Federal Government. (This provision does not apply to entitlement awards.) Processing may continue only when the debtor satisfactorily resolves the debt (e.g., pays in full or negotiates a new repayment plan).

c. *Credit Worthiness.* Where credit worthiness is a criterion for loan approval, agencies/private lenders shall determine that applicants have the ability to repay the loan, as well as a satisfactory history of repaying debt. Credit reports and supplementary data

sources, such as financial statements and tax returns, should be used to verify or determine employment, income, held assets, and credit history.

2. *Loan Documentation.* Loan origination files should contain loan applications, credit bureau reports, credit analyses, loan contracts, and other documents necessary to conform to private sector standards for that type of loan. Accurate and complete documentation is critical to providing proper servicing to the debtor, pursuing collection of delinquent debt, and, in the case of guaranteed loans, claims payment. Additional information on documentation requirements is available in the credit supplement to the Treasury Financial Manual.

3. *Collateral Requirements.* For many types of loans, the Government can reduce its default risk and potential losses through well-managed collateral requirements.

a. *Appraisals of Real Property.* Appraisals of real property serving as collateral for a direct or guaranteed loan must be conducted in accordance with the following guidelines:

(1) Agencies shall require that all appraisals be consistent with the "Uniform Standards of Professional Appraisal Practice," promulgated by the Appraisal Standards Board of the Appraisal Foundation. Agencies shall prescribe additional appraisal standards as appropriate.

(2) Agencies shall ensure that all credit transactions over $100,000 have an appraisal prepared by a State licensed or certified appraiser (except refinancings with no cash out and those transactions where the collateral is not a major factor in the decision to extend credit). Agencies shall determine which of these transactions, because of size and/or complexity, must be performed by a State certified appraiser. Agencies may also designate direct or guaranteed loans transactions under $100,000 that require the services of a licensed or certified appraiser.

b. *Loan-to-Value Ratios.* In some credit programs, the primary purpose of the loan is to finance the acquisition of an asset, such as a single family home, which then serves as collateral for the loan. Agencies should ensure that borrowers assume an equity interest in such assets in order to reduce defaults and Government losses. Federal agencies should explicitly define the components of the loan-to-value (LTV) ratio for both direct and guaranteed loan programs. Financing should be limited by not offering terms (including the financing of closing costs) that result in a loan-to-value ratio equal to or greater than 100 percent. Further, the loan maturity should be shorter than the estimated useful economic life of the collateral.

c. *Liquidation of Real Property Collateral for Guaranteed Loans.* In general, it is not in the Federal Government's financial interest to assume the responsibility for managing and disposing of real property serving as collateral on defaulted guaranteed loans. Private lenders should be required to liquidate, through litigation if necessary, any real property collateral for a defaulted guaranteed loan before filing a default claim with the guarantor.

d. *Asset Management Standards and Systems.* Agencies should establish asset management standards and systems for real property acquired as a result of direct or guaranteed loan defaults. Agencies should establish policies and procedures for the acquisition, management, and disposal of such property. Inventory management systems should be established to track all costs, including contractual costs, of maintaining and selling property. Inventory management systems should also generate management reports, provide controls and monitoring capabilities, and summarize information for the Office and Management and Budget and the Department of the Treasury.

B. Management of Guaranteed Loan Lenders and Servicers

1. *Lender Eligibility*—a. *Participation Criteria.* Agencies should establish and publish in the **Federal Register** specific eligibility criteria for lender participation in Federal guaranteed loan programs. These criteria should include:

(1) Requirements that the lender is not currently debarred/suspended from participation in a Government contract or delinquent on a Government debt;

(2) Qualification requirements for principal officers and staff of the lender;

(3) Where appropriate for new or non-regulated lenders or lenders with questionable performance under Federal guarantee programs, fidelity/surety bonding and/or errors and omissions insurance with the Federal Government as a loss payee; and

(4) For lenders not regulated by a Federal financial institutions regulatory agency, financial and capital requirements, including minimum net worth requirements based on business volume.

b. *Review of Eligibility.* Agencies shall review and document a lender's eligibility for continued participation in a guaranteed loan program at least every two years. Ideally, these reviews should be conducted in conjunction with on-site reviews of lender operations (see B.3) or other required reviews, such as renewal of a lender agreement (see B.2). Lenders not meeting standards for continued participation should be decertified. In addition to the participation criteria above, agencies should consider lender performance as a critical factor in determining continued eligibility for participation.

c. *Fees.* When authorization to do so, agencies should assess non-refundable fees to defray the costs of determining and reviewing lender eligibility.

d. *Decertification.* Agencies should establish specific procedures to decertify lenders or take other appropriate action any time there is:

(1) Significant and/or continuing non-conformance with agency standards; and/or

(2) Failure to meet financial and capital requirements or other eligibility criteria.

Agency procedures should define the process and establish timetables by which decertified lenders can apply for reinstatement of eligibility.

e. *Loan Servicers.* Lenders transferring and/or assigning the right to service guaranteed loans to a loan servicer should use only servicers meeting applicable standards set by the agency. Where appropriate, agencies may adopt standards for loan servicers established by a Government Sponsored Enterprise (GSE) or a similar organization (e.g., Government National Mortgage Association for single family mortgages) and/or may authorize lenders to use servicers that have been approved by a GSE or similar organization.

2. *Lender Agreements.* Agencies should enter into written agreements with lenders that have been determined to be eligible for participation in a guaranteed loan program. These agreements should incorporate general participation requirements, performance standards, and other applicable requirements of this Circular. Agencies are encouraged, where not prohibited by authorizing legislation, to set a fixed duration for the agreement to ensure a formal review of the lender's eligibility for continued participation in the program.

a. *General Participation Requirements.* Lender agreements should include:

(1) Requirements for lender eligibility, including participation criteria, eligibility revie vs, fees, and decertification (see section 1., above);

(2) Agency and lender responsibilities for sharing the risk of loan defaults (see section II.3.a.(1)); and, where feasible,

(3) Maximum delinquency, default, and claim rates for lenders, taking into

account individual program characteristics.

b. *Performance Standards.* Agencies should include due diligence requirements for originating, servicing, and collecting loans in their lender agreements. This may be accomplished by referencing agency regulations or guidelines. Examples of due diligence standards include collection procedures for past due accounts, delinquent debtor counseling procedures, and litigation to enforce loan contracts. Agencies should ensure, through the claims review process, that lenders have met these standards prior to making a claims payment. Agencies should reduce claim amounts or reject claims for lender non-performance.

c. *Reporting Requirements.* Credit agencies require certain data to monitor the health of their guaranteed loan portfolios, track and evaluate lender performance, and satisfy OMB, Treasury, and other reporting requirements. Examples of these data include:

(1) *Activity Indicators*—Number and amount of outstanding guaranteed loans at the beginning and end of the reporting period and the agency share of the risk; number and amount of guaranteed loans made during the reporting period; and number and amount of guaranteed loans terminated during the period.

(2) *Status Indicators*—A schedule showing the number and amount of past due loans by "age" of the delinquency, and the number and amount of loans in foreclosure or liquidation (when the lender is responsible for such activities).

Agencies may have several sources for such data, but some or all of the information may best be obtained from lenders and servicers. Lender agreements should identify needed information to be provided on a quarterly basis (or other reporting period based on the level of lending and payment activity).

d. *Loan Servicers.* Lender agreements must specify that loan servicers must meet applicable participation requirements and performance standards. The agreement should also specify that servicers acquiring loans must provide any information necessary for the lender to comply with reporting requirements to the agency. Servicers may not resell the loans except to qualified servicers.

3. *Lender and Servicer Reviews.* To evaluate and enforce lender and servicer performance, agencies should conduct on-site reviews. Agencies should summarize review findings in written reports with recommended corrective actions and submit them to agency review boards (see section I.4.b.1).

Reviews should be conducted biennially where possible; however, agencies should conduct annual on-site reviews for all lenders and servicers with substantial loan volume or whose:

a. Financial performance measures indicate a deterioration in their guaranteed loan portfolios;

b. Portfolio has a high level of defaults for guaranteed loans less than one year old;

c. Overall default rates rise above acceptable levels; and/or

d. Poor performance results in monetary penalties or an abnormally high number of reduced or rejected claims.

Agencies are encouraged to develop a lender/servicer classification system which assigns a risk rating based on the above factors. This risk rating can be used to establish priorities for on-site reviews and monitor the effectiveness of corrective actions.

Reviews should be conducted by special agency program compliance staff, Inspector General staff, and/or independent auditors. Where possible, agencies with similar programs should coordinate their reviews to minimize the burden on lenders/servicers and maximize use of scarce resources. Agencies should also utilize the monitoring efforts of GSEs and similar organizations for guaranteed loans that have been "pooled."

4. *Corrective Actions.* If a review indicates that the lender/servicer is not in conformance with all program requirements, agencies should determine the seriousness of the problem. For minor non-compliances, agencies and the lender or servicer should agree on corrective actions. However, agencies should establish penalties for more serious and frequent offenses. Penalties may include loss of guarantees, reprimands, probation, suspension, and decertification.

IV. Managing the Federal Government's Receivables

The Government must service and collect debts, including defaulted guaranteed loans acquired by the Government, in a manner that best protects the value of the Government's assets. Mechanisms must be in place to collect and record payments and provide accounting and management information for effective stewardship. These servicing activities can be carried out by the agency, or obtained through a cross-servicing arrangement with another agency or a contract with a private sector firm. Under certain conditions, it may be advantageous to sell loans or other debts and transfer servicing and collection responsibilities to the private sector.

1. *Accounting and Financial Reporting*—a. *Accounting and Financial Reporting Systems.* Agencies shall establish accounting and financial reporting systems to meet the standards provided in this Circular, OMB Circular No. A–127, "Financial Management Systems," and other government-wide requirements. These systems shall be capable of accounting for obligations and outlays and of meeting the reporting requirements of OMB and Treasury, including those associated with the Federal Credit Reform Act and the Chief Financial Officers Act.

b. *Agency Reports.* Comprehensive reports on the status of loan portfolios and receivables shall be used to evaluate management effectiveness. Agencies shall prepare, in accordance with the CFOs Act and OMB guidance, annual financial statements which include loan programs and other receivables. The Office of Inspector General or an independent external auditor should audit agency financial statements annually.

Agency reports and financial statements shall be consistent or reconcilable with amounts reported in the agency's budget submission to OMB and in Treasury SF 220–8, "Report on Guaranteed Loans," and SF 220–9, "Report on Accounts and Loans Receivable Due from the Public."

2. *Loan Servicing Requirements.* Agency servicing requirements, whether performed in-house or obtained from another agency or private sector firm, must meet the standards described below.

a. *Documentation.* Approved loan files (or other systems of records) shall contain adequate and up-to-date information reflecting terms and conditions of the loan, payment history, including occurrences of delinquencies and defaults, and any subsequent loan actions which result in payment deferrals, refinancing, or rescheduling.

b. *Billing and Collections.* Agencies shall ensure that there is routine invoicing of payments, and that efficient mechanisms are in place to collect and record payments. Where appropriate, borrowers should be encouraged to use pre-authorized debits when making payments.

c. *Escrow Accounts.* Agency servicing systems must process tax and insurance deposits and payments for housing and other long-term real estate loans through an escrow account. These systems must also be capable of analyzing escrow balances to adjust required deposit

amounts in order to prevent deficiencies.

d. *Referring Account Information to Credit Reporting Agencies.* Agency servicing systems must be able to identify and refer debts to credit bureaus in accordance with the Debt Collection Act of 1982, as amended. Agencies shall refer to credit bureaus:

(1) All non-tariff and non-tax consumer accounts with delinquent payments in excess of $100; and

(2) All commercial accounts (current and delinquent) in excess of $100.

3. *Loan Asset Sales and Prepayment Programs*—a. *Loan Asset Sales Programs.* Loan asset sales may be undertaken to:

(1) *Improve Credit Management.* Improvement in the management and performance of loan portfolios, including better loan origination, documentation, and servicing; and

(2) *Realize Administrative Savings.* Net reduction of agency resource needs by transferring servicing and collection functions to the private sector.

b. *Prepayment Programs.* Agencies shall initiate prepayment programs when statutorily mandated. Other prepayment programs may not be initiated without the approval of OMB and Treasury. Delinquent borrowers may participate in a prepayment program only if past due principal, interest, and charges are paid in full prior to their request to prepay the balance owed.

c. *Financial Advisor.* A financial advisor shall be engaged by the agency to conduct a portfolio valuation and compare pricing options for a prepayment program or loan asset sale. Based on the financial advisor's report, the agency shall develop a schedule and plan, which must include an analysis of the pricing option selected. The pricing option must be carefully selected to avoid undue cost to the Government or additional subsidy to the borrower. Any additional subsidy will require budget authority, which must be appropriated or otherwise made available. Prior to proceeding with the sale, agencies shall submit their plan and proposed pricing option to OMB and Treasury for review and approval.

d. *Loan Asset Sales Guidelines.* Guidelines for loan asset sales and prepayment programs have been established to ensure that agencies meet the policy requirements of this Circular (see the credit supplement to the Treasury Financial Manual). The agency shall consult with OMB and Treasury throughout the sales/prepayment process to ensure consistency with policy and guidelines.

V. Delinquent Debt Collection

Agencies shall have a fair but aggressive program to recover delinquent debt, including defaulted guaranteed loans acquired by the Federal Government. Each agency will establish a collection strategy consistent with its statutory authority that seeks to return the debtor to a current payment status or, failing that, maximize collections on the debt.

1. *Standards for Defining Delinquent and Defaulted Debt*—a. *Direct Loans.* Agencies shall consider a direct loan account to be delinquent when an agreed-upon payment is not paid by the due date, or by the end of any "grace period" established in the loan agreement.

b. *Guaranteed Loans.* Loans guaranteed or insured by the Federal Government are in default when the borrower breaches the loan agreement with the private sector lender. It becomes a default to the Federal Government when the guaranteeing Federal agency repurchases the loan or pays reinsurance on the loan. The repurchased default becomes a receivable and is subject to the debt collection provisions of this Circular.

c. *Other Debt.* Overpayments to contractors, grantees, employees, and beneficiaries; fines; penalties; and other debts are delinquent when the debtor does not pay or resolve the debt within 30 days of the due date or 30 days after the notification of the debt is mailed to the debtor, and has elected not to exercise any available appeals or has exhausted all agency appeal processes.

2. *Collection Strategy for Delinquent Debt.* Agencies shall establish an accurate and timely reporting system to notify collection staff when a receivable becomes delinquent. Each agency shall develop a systematic process for the collection of identified delinquent accounts. Collection strategies should take advantage of the full range of available techniques while recognizing programs needs and statutory authority.

3. *Collection Techniques*—a. *Dunning Procedures.* As soon as an account becomes delinquent, dunning notices or demand letters should be sent to the debtor. The number and frequency of such letters will vary by size, type, and age of debt. These letters should incorporate, as appropriate, due process notices for referring delinquent accounts to credit reporting agencies, initiating Federal salary offset, referring accounts to the Internal Revenue Service for tax refund offset, and referring debt to legal counsel for litigation.

Agencies are also encouraged to contact the debtor in person or by telephone where such action would facilitate determination of the cause of the delinquency and return of the account to a current status.

b. *Rescheduling Debt.* Rescheduling changes the original terms of the debt to provide a repayment plan that reflects the borrower's current financial position. Agencies shall permit rescheduling of payments only when it is in the best interest of the Government and the agency has determined that recovery of all or a portion of the amount owned is reasonably assured. Loan modifications with additional cost to the Government not included in the original subsidy estimate will require additional budget authority.

c. *Administrative Offset.* Agencies may collect delinquent debt by offsetting payments due to the debtor under other Federal loans, grants, contracts, or payments. Offsets can be applied by the agency owed the delinquent debt, or by other agencies upon request of the agency to which the delinquent debt is owed.

(1) Agencies shall implement administrative offset in accordance with the Federal Claims Collection Standards, 4 CFR 102.3–4, and Federal Acquisition Regulations (FAR), Subpart 32.6. Administrative offset against State and local governments is permitted under common law.

(2) Agencies may not attempt to offset a contract if the contract is being adjudicated under the Contract Disputes Act (CDA) or Federal Acquisition Regulations, Subpart 32.6. Once such a contract has been adjudicated, then offsets under the Debt Collection Act may be initiated for any balance of funds still owed the contractor. This does not preclude an agency from offsetting non-disputed contracts of the contractor involved.

(3) Grants, cooperative agreements, or contracts which are paid in advance (e.g., payment is made in advance of performance or before costs are incurred) generally are not subject to offset because:

(a) Such payments do not constitute a "Government debt"; and

(b) Offsets could have the effect of defeating or interfering with the purposes of the payment.

(4) Offsets may be attempted where funds are paid out to the recipient on a reimbursement basis and the recipient has already satisfied the program requirements. Reimbursable payments due may be offset because they clearly represent a Government debt, at least to the extent of the particular reimbursement. Agencies may consider converting a problem recipient with a history of poor performance to

reimbursable payments in anticipation of a future need to effect an offset.

d. *Collection Agencies.* (1) All accounts that are six months or more past due must be turned over to a collection contractor unless the accounts are eligible for the Federal salary or administrative offset programs, or are in litigation. However, agencies are encouraged to use collection agencies at any time after the account (including guaranteed loans acquired by the Federal Government) becomes delinquent.

(2) The cost of collection contractor fees will be added to the amount of the debt. Actual fees paid to a collection contractor will be based on the amount collected, if any.

e. *Federal Employee Salary Offset.* The salaries of Federal employees who are delinquent on debts to the Government (including individuals who are personally liable for the debts of partnerships and corporations, and who can be identified by SSN) may be offset to recover the amount owed. Agencies shall make arrangements for annual matching of their delinquent debtor files against the employment rosters maintained by the Office of Personnel Management, the Department of Defense, and other Federal employers, such as the legislative and judicial branches. Employees who do not repay in full, enter into repayment agreements, or otherwise resolve delinquent debts after notification, will have their salaries offset.

(1) Under the Debt Collection Act of 1982, as amended, up to 15 percent of an employee's disposable pay may be offset each pay period.

(2) Agencies have the option of referring delinquent accounts of Federal employees to the Department of Justice to effect offset on a default judgment in accordance with section 124 of P.L. 97–276. This provision allows collection of 25 percent of salary after a judgment is obtained.

f. *Tax Refund Offset.* Tax refund offset authority requires agencies to recover delinquent debt by offsetting tax refunds due the delinquent debtor (either individuals or corporations). Delinquent debtors will be notified of the planned referral of their accounts to the IRS and be given the opportunity to dispute or resolve the debt. All delinquent accounts not resolved must be referred annually to the IRS for tax refund offset in accordance with guidance provided by OMB and the Department of the Treasury.

g. *Referral for Litigation.* Agencies shall refer delinquent accounts to the Department of Justice, or use other litigation authority that may be available, as soon as there is sufficient reason to conclude that full or partial recovery of the debt can best be achieved through litigation. Referrals to Justice should be made in accordance with the Federal Claims Collections Standards. If the debtor does not come forward with a voluntary payment after the claim has been referred for litigation, a suit shall promptly be initiated.

(1) In consultation with the Department of Justice, agencies shall establish a system to account for:

(a) claims referred to Justice; and

(b) claims closed by Justice and returned to agencies.

(2) Agencies shall accelerate claim referrals to the Department of Justice in those districts where the Department contracts with private law firms for debt collection.

4. *Interest, Penalties, and Administrative Costs*—a. *Policy.* Except where applicable statutes, regulations, loan agreements, or contracts prohibit or explicitly set such charges (and certain other exemptions under 4 CFR 102), agencies shall:

(1) Assess interest, penalties, and administrative costs on outstanding delinquent debt in accordance with 4 CFR part 102, including a notification procedure to inform debtors of impending charges; and

(2) Calculate interest and penalty charges against the total liability to the Federal Government incurred through the delinquency. Agencies may apply interest to unpaid interest, penalties, and administrative charges, if any, when these costs have been added to the loan principal under a rescheduling agreement.

b. *Interest.* (1) Interest shall accrue from the date on which notice of the debt and interest charges is mailed or delivered to the debtor. The minimum annual rate of interest that agencies shall charge is the current cost of funds to the U.S. Treasury.

(2) Agencies must adjust the interest rate on delinquent debt to conform with the rate established by a U.S. Court when a judgment has been obtained.

c. *Penalties.* Agencies shall assess a penalty charge, not to exceed six percent a year, on any portion of a debt that is delinquent.

d. *Administrative Costs.* (1) Administrative costs include both the direct and indirect costs incurred in collecting debts from the time they become delinquent until the time collections are made or agency collection efforts cease. There is no statutory authority to recover costs incurred prior to an account becoming delinquent. Calculation of administrative costs should be based on actual costs incurred or upon an analysis establishing an average of additional costs incurred by the agency.

(2) For those accounts that are successfully litigated, costs to litigate the case by the Department of Justice will be determined by the courts at the time of judgment and added to the judgment amount.

5. *Write-Off and Close-Out Procedures.* Effective write-off and close-out procedures ensure proper accounting for the costs of credit programs, and allow management to focus its efforts on delinquent accounts with the greatest potential for collection. Agencies shall develop a two-step process that:

(1) Identifies and removes uncollectible accounts from the active portfolio through write-off, although collection efforts may continue (individual write-offs greater than $100,000 require approval of the Department of Justice); and

(2) Establishes close-out procedures that result in the termination of all collection activity and elimination of the accounts from all further servicing. Agencies shall report closed out accounts over $600 to the IRS as taxable income (Form 1099–G). Amounts less than $600 may be reported at an agency's discretion.

Appendix B to Circular No. A–129

Checklist for Credit Program Legislation, Testimony, and Budget Submissions

The following checklist provides guidelines to be followed in reviewing credit program legislation, testimony, and budget submissions.

The checklist is to be used by agencies and OMB in proposing legislation, reviewing credit proposals, and preparing testimony on credit activities. If the proposed provisions or language are not in conformity with the policies of this circular as listed in these checklists, agencies will be required to request in writing that the Office of Management and Budget modify or waive the requirement. Such requests will identify the modification(s) or waiver(s) requested, and also will state the reasons for the request and the time period for which the exception is required. Exceptions, when allowed, will ordinarily be granted only for a limited time, in order to allow for continuing review by OMB.

Agencies are to use the checklist in the budget submission process for the evaluation of existing legislation, regulations, or program policies. The OMB budget examiner with primary responsibility for the credit account will

determine the use of this checklist. Use of the list includes review of changes in financial markets and the status of borrowers and beneficiaries to ensure that Federal objectives require continuation of the credit program. If these policies are found to be not in conformity with the policies of this Circular, agencies will propose changes to correct the inconsistency in their annual budget submission and justification to OMB and the Congress. When an agency does not deem a change in existing legislation, regulations, or policies to be desirable, it will provide a justification for retaining the existing non-conforming legislation or policies in its budget submission to OMB at the request of the budget examiner.

Checklist—Federal credit program justification should include the following elements:

1. Program title: _____

2. Form of Assistance (direct or guarantee): _____

3. Reason this form of assistance was chosen:

4. Federal objectives of this program:

5. Reasons why Federal credit assistance is the best means to achieve these objectives:

6. Any draft bill establishing a credit program should contain the following:

- Authorization to extend direct loans or make loan guarantees subject to the requirements of the Federal Credit Reform Act of 1990.
- Authorization and requirement for a subsidy appropriation.
- Cap on volume of obligations or commitments.
- Terms and conditions defined sufficiently and precisely enough to estimate subsidy rate. (State estimated subsidy of this program (rate and dollar amount).)
- Authorization of administrative expenses.

7. Describe briefly the existing and potential private sources of credit (and type of institution):

8. Explain reasons why private sources of financing and their terms and conditions must be supplemented and subsidized, including:

- To correct a capital market imperfection,
- To subsidize borrowers or other beneficiaries, and/or
- To encourage certain activities.

9. State reasons why a federal credit subsidy is the most efficient way of providing assistance, how it provides assistance in overcoming market imperfections, and how it redresses inadequate private financing.

10. Summarize briefly the benefits expected from the program. Can the value of these benefits (or some of these benefits) be estimated in dollar terms? If so, state the estimate of their value. Further information on conducting cost-benefit analysis can be found in OMB Circular No. A–94.

11. Describe the methods used to evaluate the program and the results of evaluations that have been made.

12. Describe any elements of program design which encourage and supplement private lending activity, such that private lending is displaced to the smallest degree possible by agency programs.

13. Estimate the expected administrative (including origination, serving, and collection) costs of the credit program (dollar amounts over next 5 fiscal years).

14. Prohibitions:

- Agencies will not guarantee federally tax-exempt obligations directly or indirectly.
- Agencies will not subordinate direct loans to tax-exempt obligations

15. Financial standards:

Risk sharing:

- Lenders and borrowers share a substantial stake in full repayment according to the loan contract.
- Private lenders who extend Government guaranteed credit bear at least 20 percent of the loss from any default.
- Borrowers deemed to pose less of a risk receive a lower guarantee as a percentage of the total loan amount.
- Borrowers have an equity interest in any asset being financed by the credit assistance.

Fees and interest rates:

- Interest and fees cover, or at least are proportional to, default and other costs, including administrative expenses.
- Interest rates charged to borrowers (or interest supplements) not set at an absolute level, but instead set by reference to the rate (yield) on marketable Treasury securities with a similar maturity to the direct loans being made or the non-Federal loans being guaranteed.

Protecting the Government's interest:

- Contractual agreements include all covenants and restrictions (e.g., liability insurance) necessary to protect the Federal Government's interest.
- Maturities on loans shorter than the estimated useful economic life of any assets financed.
- The Government's claims on assets not subordinated to the claim of other lenders in the case of a borrower's default.
- Loan contracts to be standardized and private sector documents used to the extent possible.

Appendix C to Circular No. A–129

Model Bill Language for Credit Programs

A Bill

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled,

That, this Act may be cited as " ".

Authorization

Sec. 2. (1) The Administrator is authorized to make or guarantee loans to * * * (Define eligible applicants).

(2) There are authorized to be appropriated $_____ for the cost of direct loan obligations or loan guarantee commitments authorized in subsection (1) for each of the fiscal years * * * (List fiscal years for which authorization applies).

Terms and Conditions

Sec. 3. Loans made or guaranteed under this Act will be on such terms and conditions as the Administrator may prescribe, except that:

(1) The Administrator will allow credit to any prospective borrower only when it is necessary to alleviate a credit market imperfection, or when it is necessary to achieve specified Federal objectives by providing a credit subsidy and a credit subsidy is the most efficient way to meet those objectives on a borrower-by-borrower basis.

(2) Loans made or guaranteed will provide for complete amortization within a period not to exceed _____ years, or _____ percent of the useful life of any physical asset to be financed by the loan, whichever is less as determined by the Administrator.

(3) No loan made or guaranteed to any one borrower will exceed _____ percent of the cost of the activity to be financed, or $_____ whichever is less, as determined by the Administrator.

(4) No loan guaranteed to any one borrower will exceed 80% of the outstanding principal on the loan. Borrowers who are deemed to pose less of a risk will receive a lower guarantee as a percentage of the loan amount.

(5) No loan made or guaranteed will be subordinated to another debt contracted by the borrower or to any other claims against the borrower.

(6) No loan will be guaranteed unless the Administrator determines that the lender is responsible and that adequate provision is made for servicing the loan on reasonable terms and protecting the financial interest of the United States.

(7) No loan will be guaranteed if the income from such loan is excluded from gross income for the purposes of Chapter 1 of the Internal Revenue Code

of 1986, as amended, or if the guarantee provides significant collateral or security, as determined by the Administrator, for other obligations the income from which is so excluded.

(8) Direct loans and interest supplements on guaranteed loans will be at an interest rate that is set by reference to a benchmark interest rate (yield) on marketable Treasury securities with a similar maturity to the direct loans being made or the non-Federal loans being guaranteed. The minimum interest rate of these loans will be (at) ____percent above) (no more than ____percent below) the interest rate of the benchmark financial instrument.

(9) The minimum interest rate of new loans will be adjusted every month(s) (weeks) (days) to take account of changes in the interest rate of the benchmark financial instrument.

(10) Any securities of a type that is ordinarily financed in investment securities markets, as determined by the Secretary of the Treasury, and that are 100 percent guaranteed by the program shall be financed through the Department of the Treasury as direct loans, attributable to the agency.

(11) Fees or premiums for loan guarantee or insurance coverage will be assessed by reference to the cost to the Government of such coverage. The minimum guarantee fee or insurance premium will be (at) (no more than ____percent below) the level sufficient to cover the agency's costs to the Government of the expected default claims and other obligations. Loan guarantee fees will be reviewed every ____month(s) to ensure that the fees assessed on new loan guarantees are at a level sufficient to cover the referenced percentage of the agency's most recent estimates of its costs.

(12) Any guarantee will be conclusive evidence that said guarantee has been properly obtained; that the underlying loan qualifies for such guarantee; and that, but for fraud or material misrepresentation by the holder, such guarantee will be presumed to be valid, legal, and enforceable.

(13) The Administrator will prescribe explicit standards for use in periodically assessing the credit risk of new and existing direct loans or guaranteed loans. The Administrator must find that there is a reasonable assurance of repayment before extending credit assistance.

(14) New direct loans may not be obligated and new loan guarantees may not be committed except to the extent that appropriations of budget authority to cover their costs are made in advance, as required in section 504 of the Federal Credit Reform Act of 1990.

(15) Within the resources and authority available, gross obligations for the principal amount of direct loans offered by the Administrator will not exceed $_____, or the amount specified in appropriations acts in each of fiscal years, * * * (List fiscal years for which authorization applies). Commitments to guarantee loans may be made by the Administrator only to the extent that the total loan principal, any part of which is guaranteed, will not exceed $_____, or the amount specified in appropriations acts in each of the fiscal years, * * * (List fiscal years for which authorization applies).

Payment Of Losses

Sec. 4(a). If, as a result of a default by a borrower under a guaranteed loan, after the holder thereof has made such further collection efforts and instituted such enforcement proceedings as the Administrator may require, the Administrator determines that the holder has suffered a loss, the Administrator will pay to such holder ____percent of such loss, as specified in the guarantee contract. Upon making any such payment, the Administrator will be subrogated to all the rights of the recipient of the payment. The Administrator will be entitled to recover from the borrower the amount of any payments made pursuant to any guarantee entered into under this Act.

(b) The Attorney General will take such action as may be appropriate to enforce any right accruing to the United States as a result of the issuance of any guarantee under this Act.

(c) Nothing in this section will be construed to preclude any forbearance for the benefit of the borrower which may be agreed upon by the parties to the guaranteed loan and approved by the Administrator, provided that budget authority for any resulting subsidy costs as defined under the Federal Credit Reform Act of 1990 is available.

(d) Notwithstanding any other provision of law relating to the acquisition, handling, or disposal of property by the United States, the Administrator will have the right in his discretion to complete, recondition, reconstruct, renovate, repair, maintain, operate, or sell any property acquired by him pursuant to the provisions of this Act.

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Financial Management Systems

AGENCY: Office of Management and Budget, Executive Office of the President.

ACTION: Proposed Revision of OMB Circular No. A-127.

SUMMARY: The Office of Management and Budget is revising Circular No. A-127, Financial Management Systems. This notice proposes revisions to requirements for executive branch agency financial management systems.

DATES: Persons who wish to comment on the proposed revisions to Circular No. A-127 should submit their comments by February 22, 1993.

ADDRESSES: Comments should be addressed to: Federal Financial Systems Branch, Office of Federal Financial Management, Office of Management and Budget, room 10236, New Executive Office Building, Washington, DC 20503.

FOR FURTHER INFORMATION CONTACT: Federal Financial Systems Branch, Office of Federal Financial Management, Office of Management and Budget, (202) 395-6903. Copies of the current Circular can be obtained from the address above.

SUPPLEMENTARY INFORMATION:

Background

Circular No. A-127 was issued on December 19, 1984, to provide policies and procedures for developing, operating, evaluating, and reporting on financial management systems. This Circular requires establishment of a single, integrated financial management system at each executive branch agency to provide complete, reliable, consistent, and timely financial information supporting Federal government operations. OMB's objectives in revising this Circular are to eliminate unnecessary overlap between Circular No. A-127 and Circulars A-123,"Internal Control Systems"/A-130,"Management of Federal Information Resources", clarify terminology and definitions, update the Circular for statutory and policy changes, clarify certain agency responsibilities and eliminate outdated guidance.

(1) Eliminate unnecessary overlap with Circular No. A-123 involving policies for management control and Federal Managers' Financial Integrity Act (FMFIA) reporting and Circular No. A-130 involving policies for information systems. The revised Circular focuses specifically on requirements for financial management systems. Policies and guidance pertaining to reviews of financial

management systems for FMFIA will be covered under a subsequent revision to Circular No. A–123. Circular No. A–130 focuses on information systems and information technology management policy for the management of information resources. The proposed revisions to Circular No. A–127 clarify that financial management systems are a subset of information systems and, therefore, subject to the policies established in Circular No. A–130. Some policy statements proposed in the revision to Circular No. A–127 duplicate existing policy in Circular No. A–130 in order to provide added emphasis to certain financial management system requirements. OMB also plans to provide periodic supplemental guidance for areas with more dynamic requirements, such as financial management plan preparation and FMFIA report guidance.

(2) Clarify terminology and definitions which caused confusion on the interpretation of data on financial management systems. These changes are consistent with definitions and terminology used in Circular No. A–11 involving preparation and submission of budget estimates and in OMB guidance for developing CFO Financial Management 5-Year Plans and for preparing FMFIA reports. This revision specifically clarifies what constitutes a single, integrated financial management system. This definition has not been clear in past publications.

(3) Update the Circular for statutory and policy changes. Since the Circular was first issued in 1984, there have been numerous statutory and policy changes substantially affecting financial management systems. The Circular provides for the impact of these changes by establishing sections on financial management system requirements and financial management system improvements.

The financial management system requirements section establishes specific financial management system requirements and identifies authoritative sources for standards covering information, reporting, functional, and accounting standards. Specifically, the proposed Circular recognizes the core financial system requirements published by the Joint Financial Management Improvement Program (JFMIP) and the U.S. Government Standard General Ledger (SGL) published by the Department of the Treasury as financial management system requirements. It also requires financial management systems to be able to provide the data required to prepare financial statements in accordance with the accounting standards recommended by the Federal Accounting Standards Advisory Board (FASAB) and reporting policies and requirements prescribed by OMB and the Department of the Treasury.

The financial management system improvements section was added to highlight requirements for the implementation of financial management systems. This section covers general financial management system development and operating requirements and includes guidance on cross-servicing, use of "off-the-shelf" software, and developing custom financial system software. This section also places a strong emphasis on the need for system designs to support improvement in agency work processes.

(4) Clarify agency responsibilities for financial management systems. The revised Circular makes reference to the Chief Financial Officers Act where responsibilities for financial management systems were clearly defined. The revised Circular also refers to responsibilities outlined in other OMB circulars.

(5) Eliminate outdated guidance. The revised Circular rescinds OMB Circular No. A–127 issued December 19, 1984 and OMB Publications M–85–10 "Financial Management and Accounting Objectives" and M–85–16 "Guidelines for Evaluating Financial Management/ Accounting Systems."

Frank Hodsoll,

Deputy Director for Management.

Attachment

Circular No. A–127

Revised

To The Heads of Executive Departments and Establishments

Subject: Financial Management Systems

1. *Purpose:* OMB Circular No. A–127 (hereafter referred to as Circular A–127) prescribes policies and standards for executive departments and agencies to follow in developing, operating, evaluating, and reporting on financial management systems.

2. *Rescission:* This Circular replaces and rescinds Circular A–127 dated December 19, 1984. This Circular also rescinds OMB memorandum M–85–10, "Financial Management and Accounting Objectives" and M–85–16, "Guidelines for Evaluating Financial Management/ Accounting Systems."

3. *Authorities:* This Circular is issued pursuant to the Chief Financial Officers Act of 1990, P.L. 101–576 and the Federal Managers Financial Integrity Act of 1982, P.L. 97–255 as incorporated in 31 U.S.C. 3512 et seq.; and the Budget and Accounting Act, as amended (31 U.S.C. Chapter 11).

4. *Applicability and Scope.*

a. The policies in this Circular apply to the financial management systems of all agencies as defined in Section 5 of this Circular. Agencies not included in the CFOs Act are exempted from certain requirements as noted in Section 9 of this Circular.

b. The policies contained in OMB Circular No. A–130, "Management of Federal Information Resources" (hereafter referred to as Circular A–130) govern agency management of information systems. The policies contained in Circular A–130 apply to all agency information resources, including financial management systems as defined in this Circular.

c. The policies and procedures contained in OMB Circular No. A–123, "Internal Control Systems," (hereafter referred to as Circular A–123) govern executive departments and agencies in establishing, maintaining, evaluating, improving, and reporting on internal controls in their program and administrative activities. Policies and references pertaining to internal controls contained in this Circular serve to amplify policies contained in Circular A–123 or highlight requirements unique to financial management systems.

5. *Definitions.* For the purposes of this Circular, the following definitions apply:

The term "agency" means any executive department, military department, independent agency, government corporation, government controlled corporation, or other establishment in the executive branch of the government, excluding the U.S. Postal Service.

The term "information system" means the organized collection, processing, transmission, and dissemination of information in accordance with defined procedures, whether automated or manual. Information systems include non-financial, financial, and mixed systems as defined in this Circular.

The term "financial system" means an information system, comprised of one or more applications, that is used for any of the following:

—Collecting, processing, maintaining, transmitting, and reporting data about financial events;
—Supporting financial planning or budgeting activities;
—Accumulating and reporting cost information; or
—Supporting the preparation of financial statements.

A financial system supports the financial functions required to track

financial events, provide financial information significant to the financial management of the agency, and/or required for the preparation of financial statements.

A financial system encompasses automated and manual processes, procedures, controls, data, hardware, software, and support personnel dedicated to the operation and maintenance of system functions. A financial system may include multiple applications that are integrated through a common database or are electronically interfaced, as necessary, to meet defined data and processing requirements.

The term "non-financial system" means a system that supports non-financial functions of the Federal government or components thereof and any financial data included in the system are insignificant to agency financial management and/or not required for the preparation of financial statements.

The term "mixed system" means a system that supports both financial and non-financial functions of the Federal government or components thereof.

The term "financial management systems" means financial management systems consists of financial systems and the financial portions of mixed systems necessary to support financial management.

The term "single, integrated financial management system" means a unified set of financial systems and the financial portions of mixed systems encompassing the software, hardware, personnel, processes (manual and automated), procedures, controls and data necessary to carry out financial management functions, manage financial operations of the agency and report on the agency's financial status to central agencies, Congress and the public. Unified means that the systems are planned for and managed together, operated in an integrated fashion, and linked together electronically in an efficient and effective manner to provide agency-wide financial system support necessary to carry out the agency's mission and support the agency's financial management needs.

The term "application (financial or mixed system)" means a group of interrelated components of financial or mixed systems which supports one or more functions and has the following characteristics:

—A common data base
—Common data element definitions
—Standardized processing for similar types of transactions
—Common version control over software

The term "financial event" means financial event is any occurrence having financial consequences to the Federal government related to the receipt of appropriations or other financial resources; acquisition of goods or services; payments or collections; recognition of guarantees, benefits to be provided, or other potential liabilities; or other reportable financial activities.

The term "work process" means a series of activities operating together to achieve an end or desired result (mission, goal or objective). A work process is a workflow or series of steps necessary for the initiation, tracking and delivery of services or outputs. The process reflects how resources are managed to deliver the services or outputs and may cut across existing or future organizational boundaries.

6. *Policy.* Financial management in the Federal government requires accountability of financial and program managers for financial results of actions taken, control over the Federal government's financial resources and protection of Federal assets. To enable these requirements to be met, financial management systems must be in place to process and record financial events effectively and efficiently, and to provide complete, timely, reliable and consistent information for decision makers and the public.

The Federal government's financial management system policy is to establish government-wide financial systems and compatible agency systems, with standardized information and electronic data exchange between central management agency and individual operating agency systems, to meet the requirements of good financial management. These systems shall provide complete, reliable, consistent, timely and useful financial management information on Federal government operations to enable central management agencies, individual operating agencies, divisions, bureaus and other subunits to carry out their fiduciary responsibilities; deter fraud, waste, and abuse of Federal government resources; and facilitate efficient and effective delivery of programs through relating financial consequences to program performance.

In support of this objective, each agency shall establish and maintain a single, integrated financial management system that complies with:

—Applicable accounting principles, standards, and related requirements as defined by OMB and the Department of the Treasury;
—Internal control standards as defined in Circular A–123 (revised August 4, 1986) and/or successor documents; and
—Policies and requirements prescribed by OMB, the Department of the Treasury and the agency.

An agency's single, integrated financial management system shall comply with the characteristics outlined in Section 7 of this Circular.

7. *Financial Management System Requirements.* Agency financial management systems shall comply with the following requirements:

a. *Agency-wide Financial Information Classification Structure.* The design of the financial management systems shall reflect an agency-wide financial information classification structure that is consistent with the Standard General Ledger, provides for tracking of specific program expenditures, and covers financial and financially related information. This structure will minimize data redundancy, ensure that consistent information is collected for similar transactions throughout the agency, encourage consistent formats for entering data directly into the financial management systems, and ensure that consistent information is readily available and provided to internal managers at all levels within the organization. Financial management systems' designs shall support agency budget, accounting and financial management reporting processes by providing consistent information for budget formulation, budget execution, programmatic and financial management, performance measurement and financial statement preparation.

b. *Integrated Financial Management Systems.* Financial management systems shall be designed to provide for effective and efficient interrelationships between software, hardware, personnel, procedures, controls, and data contained within the systems. In doing so, they shall have the following characteristics:

Common Data Elements. Standard data classifications (definitions and formats) shall be established and used for recording financial events. Common data elements shall be used to meet reporting requirements and, to the extent possible, used throughout the agency for collection, storage and retrieval of financial information. Government-wide information standards (e.g., the Standard General Ledger) and other external reporting requirements shall be incorporated into the agency's standard data classification requirements.

Common Transaction Processing. Common processes shall be used for processing similar kinds of transactions throughout the system to enable these

transactions to be reported in a consistent manner.

Consistent Internal Controls. Internal controls over data entry, transaction processing and reporting shall be applied consistently throughout the system to ensure the validity of information and protection of Federal government resources.

Efficient Transaction Entry. Financial system designs shall eliminate unnecessary duplication of transaction entry. Wherever appropriate, data needed by the systems to support financial functions shall be entered only once and transferred automatically to appropriate accounts or other parts of the system through electronic means consistent with the time requirements of normal business/transaction cycles.

c. *Application of the U. S. Government Standard General Ledger at the Transaction Level.* Financial events shall be recorded by agencies throughout the financial management system applying the requirements of the U.S. Government Standard General Ledger (SGL) at the transaction level. Application of the SGL at the transaction level means that the financial management systems will process transactions following the definitions and defined uses of the general ledger accounts as described in the SGL. Compliance with this standard requires:

Data in Financial Reports Consistent with the SGL. All reports produced by the systems, whether used internally or externally, shall provide financial data that can be traced directly to the SGL accounts.

Transactions Recorded Consistent with SGL Rules. The criteria (e.g., timing, processing rules/conditions) for recording financial events in all financial management systems shall be consistent with accounting transaction definitions and processing rules defined in the SGL.

Supporting Transaction Detail for SGL Accounts Readily Available. Transaction detail supporting SGL accounts shall be available in the financial management systems and directly traceable to specific SGL account codes.

d. *Federal Accounting Standards.* Agency financial management systems shall maintain accounting data to permit reporting in accordance with accounting standards recommended by the Federal Accounting Standards Advisory Board (FASAB) and issued by the Director of OMB, and reporting requirements issued by the Director of OMB and the Secretary of the Treasury. Where no accounting standards have been recommended by FASAB and issued by the Director of OMB, the systems shall maintain data in accordance with the applicable accounting standards used by the agency for preparation of its financial statements. Agency financial management systems shall be designed flexibly to adapt to changes in accounting standards.

e. *Financial Reporting.* The agency financial management system shall meet the following agency reporting requirements.

Agency Financial Management Reporting. The agency financial management system shall be able to provide financial information in a timely and useful fashion to (1) support management's fiduciary role; (2) support the legal, regulatory and other special management requirements of the agency; (3) support budget formulation and execution functions; (4) support fiscal management of program delivery and program decision making, (5) comply with internal and external reporting requirements, including, as necessary, the requirements for financial statements prepared in accordance with the form and content prescribed by OMB and reporting requirements prescribed by Treasury; and (6) monitor the financial management system to ensure the integrity of financial data.

Performance Measures. Agency financial management systems shall be able to capture and produce the financial information required for program performance, financial performance, and financial management performance measures needed for budgeting, program management and financial statement presentation. As new performance measures are established, agencies shall incorporate the necessary information and reporting requirements, as appropriate and feasible, into their financial management systems.

f. *Budget Reporting.* Agency financial management systems shall enable the agency to prepare, execute and report on the agency's budget in accordance with the requirements of OMB Circular No. A–11 (Preparation and Submission of Budget Estimates), OMB Circular No. A–34 (Instructions on Budget Execution) and other circulars and bulletins issued by the Office of Management and Budget.

g. *Functional Requirements.* Agency financial management systems shall conform to existing applicable functional requirements for the design, development, operation, and maintenance of financial management systems. Functional requirements are defined in a series of publications entitled Federal Financial Management Systems Requirements issued by the Joint Financial Management Improvement Program (JFMIP). Additional functional requirements may be established through OMB circulars and bulletins and the Treasury Financial Manual. Agencies are expected to implement expeditiously new functional requirements as they are established and/or made effective.

h. *Computer Security Act Requirements.* Agencies shall plan for and incorporate security controls in accordance with the Computer Security Act of 1987 and Circular A–130 for those financial management systems that contain "sensitive information" as defined by the Computer Security Act.

i. *Documentation.* Agency financial management systems and processing instructions shall be clearly documented in hard copy or electronically in accordance with (a) the requirements contained in the Federal Financial Management Systems Requirements documents published by JFMIP or (b) other applicable requirements. All documentation (software, system, operations, user manuals, operating procedures, etc.) shall be kept up-to-date and be readily available for examination. System user documentation shall be in sufficient detail to permit a person, knowledgeable of the agency's programs and of systems generally, to obtain a comprehensive understanding of the entire operation of each system. Technical systems documentation such as requirements documents, systems specifications and operating instructions shall be adequate for technical personnel to update and maintain the system.

j. *Internal Controls.* The financial management systems shall include a system of internal controls that ensure resource use is consistent with laws, regulations, and policies; resources are safeguarded against waste, loss, and misuse; and reliable data are obtained, maintained, and disclosed in reports. Appropriate internal controls shall be applied to all system inputs, processing, and outputs. Such system related controls form a portion of the internal control structure required by Circular A–123.

k. *Training and User Support.* Adequate training and appropriate user support shall be provided to the users of the financial management systems, based on the level, responsibility and roles of individual users, to enable the users of the systems at all levels to understand, operate and maintain the system.

l. *Maintenance.* On-going maintenance of the financial management systems shall be performed

to enable the systems to continue to operate in an effective and efficient manner. The agency shall periodically evaluate how effectively and efficiently the financial management systems support the agency's changing business practices and make appropriate modifications.

[Note: Sections 7 i, k and l may be covered in Circular A–130 in a future revision. These sections will be adjusted as necessary to eliminate any overlap.]

8. *Financial Management System Improvements.* In improving financial management systems, agencies shall follow the information technology management policies presented in Circular A–130. In addition, agencies shall comply with the following policies in designing, developing, implementing, operating and maintaining financial management systems:

a. *Improvement in Agency Work Processes.* Designs for financial systems and mixed systems shall be based on the financial and programmatic information and processing needs of the agency. As part of any financial management system design effort, agencies are to analyze how system improvements, new technology supporting financial management systems, and modifications to work processes can together enhance agency operations and improve program and financial management. The reassessment of information and processing needs shall be an integral part of the determination of system's requirements. Process redesign shall be considered an essential step towards meeting user needs in program management, financial management, and budgeting. Concurrent with developing and implementing integrated financial management systems, agencies shall consider program operations, roles and responsibilities, and policies/practices to identify related changes necessary to facilitate financial management systems operational efficiency and effectiveness.

b. *Cost Effective and Efficient Development and Operation of Financial Management Systems.* Financial management system development and implementation efforts shall seek cost effective and efficient solutions as required by Circular A–130. A custom software development approach for financial management systems shall be used as a last resort and only after consideration of all appropriate software options, including the following:

—Use of the agency's existing system with enhancements/upgrades,
—Use of another system within the department/agency,
—Use of an existing system at another department/agency,
—Development of the system using a commercial "off-the-shelf" software package
—Use of a system under development at another department, or
—Use of a private vendor's service.

The cost effectiveness of developing custom software shall be clear and documented in a benefit/cost analysis that includes the justification of the unique nature of the systems functions that preclude the use of alternative approaches. This analysis shall be made available to OMB for review upon request.

c. *Cross or Private Servicing.* Cross or private servicing of financial system support, where one agency or a division within an agency provides financial management software and processing support to another agency or division within an agency, shall be used whenever feasible and cost effective, as a solution to meet Federal government financial management system needs. Agencies providing cross-servicing support shall ensure that systems are maintained appropriately; fees for service are reasonable; adequate conversion support is provided; procedures, training and documentation are available and periodic service reviews are conducted. Small agencies are particularly encouraged to use cross-servicing to meet fundamental core financial and payroll/personnel processing and reporting requirements.

d. *Use of "Off-the-Shelf" Software.* GSA shall maintain the Financial Management System Software (FMSS) Multiple Award Schedule for vendors providing acceptable software which meets the core financial system requirements as defined in the Core Federal Financial Management System Requirements document published by JFMIP. Such software packages will be "benchmarked," as appropriate, by an independent team approved by the OMB Office of Federal Financial Management (OFFM) or its designee to assure the software complies with such requirements.

Agencies replacing software to meet core financial system requirements must use "off-the-shelf" software from the GSA FMSS Multiple Award Schedule unless a waiver is granted under the Federal Information Resources Management Regulations (FIRMR). Agencies obtaining such a waiver must ensure the system, whether resulting from a custom software development approach or from software existing within or external to the agency, is "benchmarked" by an independent team approved by OFFM or its designee.

Financial management system software meeting requirements beyond the scope of the Core Federal Financial Management System Requirements document may also be made available under the GSA FMSS Multiple Award Schedule as agreed to by the OFFM or its designee.

e. *Joint Development of Software.* Agencies with similar financial management functions, after considering "off-the-shelf" software solutions, are encouraged to undertake joint development efforts by pooling resources and developing common approaches for meeting similar financial functions. The designs for jointly developed software shall contain the flexibility and other features needed for transportability of the system to other agencies and/or cross-servicing.

f. *Transfer of Agency Financial Management Software.* In cases where an agency determines it is more efficient and effective to use or adopt the software of another agency to meet its financial management system requirements, the agency shall ensure the following:

(1) The software meets the financial management system requirements in Section 7 of this Circular.

(2) A formal written agreement on the transfer of software is prepared and approved by all parties. The agreement shall cover the full scope of support services to be provided including system modifications, maintenance and related costs;

(3) Any necessary support requirements not covered in the agreement shall be provided by the agency and such support, including implementation support and training, shall be assessed and determined to be adequate.

(4) An ongoing relationship for determining future enhancements shall be established between the parties involved.

Any compensation arrangements for the transfer of the software shall conform to Circular A–130 policies.

9. *Assignment of Responsibilities.*

a. *Agency Responsibilities.* Agencies shall perform the financial management system responsibilities prescribed by legislation referenced in Section 3 "Authorities" of this Circular. In addition, each agency shall take the following actions:

(1) Develop and Maintain an Agency-wide Inventory of Financial Management Systems.

Agencies are required to maintain an inventory of existing and proposed financial management systems. Annually CFOs Act agencies will provide OMB with financial

management system information in compliance with the financial system planning guidance issued by OMB for the Agency CFO 5-Year Financial Management Plan. Financial management systems shall be included in the agency information systems inventory following the information system inventory policies established in OMB Circular A–130.

(2) Develop and Maintain Agency-wide Financial Management System Plans.

Agencies are required to prepare annual financial management systems plans. These plans shall be developed in accordance with OMB guidance issued annually. Financial management system planning guidance for CFOs Act agencies shall be included in the guidance for developing CFO Financial Management 5-Year Plans.

The financial management systems strategies and tactical initiatives included in the CFO Financial Management 5-Year Plan shall be incorporated into the agency's five year information systems plan prepared in compliance with Circular A–130.

Agencies not covered by the CFOs Act shall prepare plans following the CFO Financial Management 5-Year Plan guidance but are not required to submit the plans to OMB. Financial management system plans shall be an integral part of the agency's overall planning process and updated for significant events that result in material changes to the plan as they occur.

(3) *Review of Agency Financial Management Systems.*

Each agency shall ensure appropriate reviews are conducted of its financial management systems. The results of these reviews shall be considered when developing financial management systems plans. OMB encourages agencies to coordinate and, where appropriate, combine required reviews. Reviews must comply with policies for (1) reviews of internal controls undertaken and reported on in accordance with the guidance issued by OMB for compliance with the requirements of the Federal Managers' Financial Integrity Act (FMFIA) and Circular A–123, (2) reviews of conformance of financial management systems with the principles, standards and related requirements in Section 7 of this Circular undertaken in accordance with the guidance issued by OMB for compliance with requirements of the FMFIA, and (3) reviews of systems and security as required under provisions of Circular A–130.

(4) *Develop and Maintain Agency Financial Management System Directives.*

Agencies shall issue, update, and maintain agency-wide financial management system directives to reflect policies defined in this Circular.

b. *GSA Responsibilities.* GSA is responsible for maintaining the FMSS Multiple Award Schedule for Federal financial management software and related services.

10. *Information Contact.* All questions or inquiries should be addressed to the Office of Federal Financial Management, Federal Financial Systems Branch, telephone number 202/395–6903.

11. *Termination Review Date.* This Circular shall have an independent policy review to ascertain its effectiveness three years from the date of issuance.

12. *Effective Date:* This Circular is effective on January 22, 1993.

[FR Doc. 93–1480 Filed 1–21–93; 8:45 am]
BILLING CODE 3110–01–F

PENSION BENEFIT GUARANTY CORPORATION

Guarantee of Benefits Under Certain Plans Not Amended To Comply With Minimum Vesting Standards

AGENCY: Pension Benefit Guaranty Corporation.

ACTION: Notice of Board of Directors submission interpreting statutory provisions.

SUMMARY: In response to an order of the United States Court of Appeals for the District of Columbia Circuit to make a policy decision, the Board of Directors of the Pension Benefit Guaranty Corporation ("PBGC") has considered whether, with respect to pension plans that terminated prior to September 26, 1980, benefits vested under statutory vesting schedules are guaranteed in the absence of a plan amendment adopting one of those schedules. The Board has concluded that a decision to guarantee such benefits is not warranted on policy grounds and that the PBGC's previous decision not to guarantee those benefits, based on the statutory language, also represents an appropriate accommodation of the policies underlying Title IV of the Employee Retirement Income Security Act of 1974. The Board's decision is set forth in a submission to the United States District Court for the District of Columbia.

FOR FURTHER INFORMATION CONTACT: Israel Goldowitz, Assistant General Counsel, Pension Benefit Guaranty Corporation, Office of the General Counsel (Code 22000), 2020 K Street, NW., Washington, DC 20006, 202–778–8886 (202–778–1958 for TTY and TTD). (These are not toll-free numbers.)

SUPPLEMENTARY INFORMATION: This notice informs the public of a decision by the Board of Directors of the Pension Benefit Guaranty Corporation ("PBGC") that has been submitted to the United States District Court for the District of Columbia in response to the July 10, 1992 decision of the United States Court of Appeals for the District of Columbia Circuit in *Page/Collins* v. *PBGC*, 968 F.2d 1310 (D.C. Cir. 1992), a case brought on behalf of a nationwide class of participants whose pension plans terminated between 1976 and 1980 without having been amended to comply with the minimum vesting standards set forth in section 203 of the Employee Retirement Income Security Act of 1974 ("ERISA") (29 U.S.C. 1053). Consistent with its reading of ERISA section 4022(a) (29 U.S.C. 1322(a)), the PBGC guaranteed benefits under these plans only to the extent that the benefits were vested, or nonforfeitable, under express plan terms. The court of appeals concluded that ERISA section 4022(a), as it existed before the 1980 amendments to ERISA, "admits of more than one interpretation" and did not clearly preclude the PBGC from guaranteeing benefits that were vested under title I standards in the absence of an actual plan amendment. It remanded the case to the district court and invited a submission reflecting the Board's "first-instance decision" on the policy question. On December 7, 1992, the PBGC filed its submission with the district court entitled "Policy Submission of the Board of Directors of the Pension Benefit Guaranty Corporation Regarding Guarantee of Benefits Under Pension Plans Terminated Before September 26, 1980 Without Being Amended to Comply With the Minimum Vesting Standards Set Forth in section 203 of the Employee Retirement Income Security Act of 1974" ("submission").

As stated by the Board: "Our weighing of the competing considerations persuades us . . . that a decision to guarantee the disputed benefits is not warranted in the circumstances involved here" (submission, page 2). The Board also concluded that the decision of the PBGC in 1976 not to guarantee the disputed benefits, based on the statutory language, also represented an appropriate accommodation of the policies underlying title IV of ERISA and that this result is even more compelling today.

The PBGC is notifying the public of the Board's submission, which includes

the agency's interpretation of statutory provisions and is set forth below.

Dated: January 14, 1993.

James B. Lockhart III,

Executive Director, Pension Benefit Guaranty Corporation.

December, 1992.

Policy Submission of the Board of Directors of the Pension Benefit Guaranty Corporation Regarding Guarantee of Benefits Under Pension Plans That Terminated Before September 26, 1980 Without Being Amended to Comply With the Minimum Vesting Standards Set Forth in Section 203 of the Employee Retirement Income Security Act of 1974

Introduction

This submission is provided in response to the July 10, 1992 decision of the United States Court of Appeals for the District of Columbia Circuit in *Page/Collins* v. *PBGC*, 968 F.2d 1310 (D.C. Cir. 1992). That case was brought on behalf of a nationwide class of participants whose pension plans terminated between 1976 and 1980 without having been amended to comply with the minimum vesting standards set forth in section 203 of ERISA. Consistent with its reading of section 4022(a), PBGC guaranteed benefits under these plans only to the extent that the benefits were vested, or nonforfeitable, under express plan terms.[1]

The court of appeals concluded that section 4022(a) did not clearly preclude PBGC from guaranteeing benefits that were vested under Title I standards in the absence of an actual plan amendment. The court further determined that, because this issue was not resolved by the statute, it is a policy matter that, in the court's view, is reserved to the Board of Directors under PBGC's bylaws. The court remanded the case to the district court and invited a submission reflecting the Board's "first-instance decision" on the question.

The court of appeals expressed "grave doubts" as to whether the PBGC staff's interpretation of section 4022(a) is consistent with the underlying statutory scheme. 968 F.2d at 1316. We have undertaken consideration of this policy question with due regard for those doubts. Our weighing of the competing considerations persuades us, however, that a decision to guarantee the disputed benefits is not warranted in the circumstances involved here.

[1] At the relevant time, section 4022(a) provided that PBGC "shall guarantee the payment of all nonforfeitable benefits * * * under the terms of a plan which terminates * * *."

I. The Language of the Statute

Before addressing the issue as a matter of policy, we note that we are persuaded that the language of section 4022(a) precluded the agency from guaranteeing benefits that were not vested under the express terms of a plan. Not only does this interpretation comport with a literal reading of the statute, but it was essentially ratified by Congress in 1980, when the statute was amended prospectively.

For purposes of this submission, however, we accept the court of appeals' conclusion that "the statutory phrase on which this case turns, in context, admits of more than one interpretation." 968 F.2d at 1317. Our task is thus to decide whether, as a matter of policy, PBGC should restrict its guarantee to benefits vested under express plan terms or should instead read Title I's vesting provisions into unamended plans.

II. PBGC'S Mandate

Any policy decision under Title IV of ERISA must begin with consideration of the three purposes set forth in section 4002(a). There, Congress stated that PBGC is to carry out the following objectives:

1. Encouraging the continuation and maintenance of voluntary private pension plans for the benefit of their participants,

2. Providing for the timely and uninterrupted payment of pension benefits to participants and beneficiaries under plans to which Title IV applies, and

3. Maintaining premiums at the lowest level consistent with carrying out its obligations under Title IV.

These objectives may be in tension in particular circumstances. For example, additional efforts to assure the timely and uninterrupted payment of benefits to participants may require higher premiums. Any effort to encourage the continuation of plans by limiting insurable benefits may have an adverse impact on the flow of benefits to participants. In such circumstances, a policy decision by PBGC must balance these conflicting purposes.

The court of appeals indicated that such considerations as cost and inter-employer equity should be subordinated to "ERISA's core purpose," which it identified as protecting the "legitimate expectations" of employees. 968 F.2d at 1317. Section 2(a) of ERISA and the legislative history reflect concern that workers were not receiving promised benefits after years of service. The minimum vesting, funding, and fiduciary standards of Title I certainly work to alleviate that concern.

When Congress established the insurance program in title IV, however, it did not identify a single "core" purpose. Rather it explicitly articulated "[t]he purposes of this title, which are to be carried out by the corporation." ERISA section 4002(a). Protecting employee expectations is not among the three specific purposes of title IV, and none of those purposes is, in any event, identified as "overwhelming." See *Collins*, 968 F.2d at 1317. We believe, therefore, that careful consideration of the specific objectives that govern title IV is necessary.

The court of appeals also noted that PBGC's mandate to maintain low premiums is qualified by the language "consistent with carrying out its obligations" under title IV. 968 F.2d at 1316. The court construed this to mean that maintaining low premiums should be subordinated to ERISA's "core purpose." We read this language differently.

It is clear that PBGC could not, in the interest of reducing the burdens on premium payers, refuse to guarantee benefits that the statute clearly requires it to guarantee. Such guarantees are "obligations" within the meaning of section 4002(a)(3), and therefore they must be paid, even if premiums must be increased as a result.[2] But where the statute is ambiguous and PBGC must decide whether, as a matter of policy, to provide a guarantee, it would be circular to characterize the benefits as title IV "obligations." In such a case, PBGC must consider the potential imposition on its premium payers and the impact that its decision would have on the continuation and maintenance of covered plans. Ongoing plans are not only the primary source for payment of benefit entitlements, but premiums from these plans are the lifeblood of the insurance program that exists for participants whose plans fail. In making such a judgment, PBGC must strike a balance to promote a viable self-financing insurance program for the 40 million participants who potentially depend on it.

As the text of section 4002(a) indicates, Congress expects PBGC to

[2] Thus, in 1977, PBGC obtained congressional approval of a premium increase from $1.00 to $2.60 per participant per year, based on projected guaranteed benefit obligations of $120 million over a 5-year period. Among the premises of PBGC's recommendation were that, with this increase, premiums would cover the claims and administrative expenses as incurred and that the single-employer program deficit incurred prior to the time of the premium increase would be amortized over 10 years. See Pension Benefit Guaranty Corp., Premium Requirements for the Single Employer Basic Benefit Insurance Program. Subsequent premium increases were imposed in 1986, 1988, and 1990.

weigh a number of policy objectives when it implements the title IV insurance program. While Congress obviously had high regard for participant interests, it did not direct PBGC to resolve all issues in favor of individual participants. The statute itself contains some rules that may conflict with individual participant expectations but that discourage abuses and reduce burdens on premium payers. For example, section 4022(b) contains several limitations on PBGC's guarantee. These include:

- The phase-in of the guarantee of benefits of "substantial owners" over 30 years (section 4022(b)(5))
- The maximum guarantee level, which places some risk of loss on the participants (section 4022(b)(3))
- The limitation of guarantees of benefits accrued while a plan is not tax-qualified (section 4022(b)(6))
- The five-year phase-in rule for new benefits or new plans (section 4022(b)(1), (7))
- Elimination of the guarantee of benefits in effect for less than five years in plans terminated for the purpose of obtaining insurance (*ibid.*)

By limiting the scope of the PBGC guarantee in these situations, the statute discourages to some extent unfunded benefit increases and unnecessary terminations of underfunded plans.[3]

Balancing its multiple statutory objectives, PBGC has adopted policies that limit fulfillment of participant expectations where such policies are necessary to protect the insurance program. For example, in *PBGC* versus *LTV Corp.*, the Supreme Court upheld PBGC's policy against "follow-on" plans, even though it leaves some employee expectations unfulfilled, because the policy furthers the continuation of plans and the maintenance of low premiums. 496 U.S. at 651–52. As a result of the *LTV* decision, employers may not terminate their underfunded plans and then institute follow-on plans to replace the benefits lost through the operation of section 4022(b). Thus, the section 4022(b) limitations, backed by PBGC's anti-follow-on plan policy, provide an incentive for participants to ensure that their plans remain ongoing and funded so that they can receive full benefits. See 496 U.S. at 651–52.

These incentives to employers and employees alike to keep plans ongoing and funded in the normal course ultimately serve all three of the stated purposes in section 4002(a). The continuation of plans permits the accumulation of sufficient assets to pay promised benefits as they come due, which in turn keeps premiums low by reducing both the incidence of termination and PBGC's losses where plans do terminate. In this way, the complex guarantee limitations of title IV promote the maintenance of pension plans and a sound and equitable insurance program for the greater good of participants generally and over the long term.

The language and structure of this complex statute do not require PBGC to place paramount importance on the expectations of the particular group of participants affected. To do so would be to require PBGC to resolve every interpretive question with respect to insurance of benefits in their favor, which would threaten the viability of the termination insurance program. The ever increasing premiums would drive ever larger numbers of responsible employers out of the system to the ultimate detriment of participants as a whole.

III. Analysis

A. *Participant Expectations.* Although fulfilling the "legitimate expectations" of plan participants is not among the purposes of title IV listed in section 4002(a),[4] the legislative history indicates that it is a valid consideration. And, because the court of appeals indicated that this factor should be paramount in our deliberations, we give it careful attention.

We therefore seek to determine how employee expectations come to have legitimacy for purposes of the insurance program. Title IV of ERISA is instructive in this regard, because it does not treat all employee expectations alike. Rather, a fundamental principle built into the insurance program is that employees have stronger expectations with respect to some classes of benefits than others, largely because of a greater degree of reliance.

Thus, a key provision governing the termination process—section 4044—requires the assets of a terminated plan to be allocated in accordance with a strict scheme of priorities. Priority is given first to participants' accrued benefits derived from their voluntary contributions and second to those derived from participants' mandatory contributions. Remaining assets are then allocated to participants who had retired or become eligible to receive benefits at least three years prior to termination; then to guaranteed benefits, to vested but nonguaranteed benefits, and finally to all other benefits under the plan. ERISA section 4044(a). This hierarchical scheme for the allocation of a terminated plan's assets among competing employee claims reflects Congress's judgments as to those expectations that carry the most weight.

Vested benefits were assigned a high priority in this congressional scheme. ERISA not only imposed minimum vesting standards, but provided a guarantee of benefits that are "nonforfeitable," or vested, on the date of plan termination. By contrast, the only protection for accrued but non-vested benefits under these plans was full funding. See ERISA section 4044(a)(5); I.R.C. section 411(c)(3).[5] Thus, participants have always had a greater reliance interest in vested than in non-vested benefits, a distinction that was incorporated into title IV.

Nevertheless, even as to vested benefits, protecting participants' expectations sometimes gives way to competing considerations, as illustrated by the limitations on PBGC's guarantee in section 4022(b). One of the most important of those limitations, the "phase-in limitation" in subsections (b)(1) and (7), withholds any guarantee for new plans or new benefits unless they have been in effect for at least one year, and thereafter the guarantee is generally phased in at a rate of 20 percent per year for five years. Participants in a relatively new plan plainly do not have nearly the same reliance interest in their promised benefits as participants in a plan that

[3] For example, the preamble to the Limitation on Guaranteed Benefits Regulation states that "[t]he purpose of the phase-in rule is to protect against undue increases in unfunded plan liabilities in anticipation of plan termination." 41 FR 6194 (Feb. 11, 1976). PBGC has generally applied its phase-in regulation to benefit enhancements that result from ERISA-mandated plan improvements, such as more generous vesting schedules. See generally Rettig versus PBGC, 744 F.2d 133 (D.C. Cir. 1984). We have had no occasion to apply the phase-in regulation to vesting enhancements read into plans, because the agency previously found that any guarantee of such benefits was precluded by statute. Because we now conclude as a matter of policy that this guarantee should not be provided, we do not reach the phase-in issue here. Moreover, before we could reach a conclusion on this issue, we would need to undertake a thorough examination of all of the relevant factors bearing on that issue, including cost evidence, as indicated in *Rettig*.

[4] The closest analog to upholding participant expectations among the various stated purposes in section 4002(a) would appear to be providing for the timely and uninterrupted payment of benefits to participants. However, this objective does not focus on participant expectations, but rather on the assured delivery of benefits—presumably those to which the participants are entitled under other provisions of title IV. This objective could be jeopardized by decisions of the agency that expand its commitments beyond its capacity to perform them.

[5] Under current law, PBGC is responsible for paying a portion of participants' accrued but non-vested benefits upon plan termination where they cannot be paid from plan assets. See ERISA section 4022(c). Prior to 1986, however, participants' claims for such benefits, if any, ran against their employer.

has been in existence for many years. The same is true of relatively recent benefit increases.

On the other hand, section 4044 accords a relatively high priority to participants who have reached retirement age prior to plan termination. After payment of benefits derived from employee contributions, assets are allocated to benefits of participants who have been (or could have been) retired for at least three years before plan termination, even if these benefits are not eligible for PBGC's guarantee, and even before assets are allocated to benefits that would otherwise be guaranteed by PBGC. This scheme reflects the recognition that older participants are more likely to rely on their pensions than younger ones, perhaps because they have already withdrawn from the workforce or, if they have not retired, because they have fewer employment options and fewer years of earning potential than younger employees.

The statute also recognizes that participant expectations are created by the existence of the plan.[8] The minimum standards of ERISA authorize plan provisions that limit vesting to years of service performed while the plan (and any predecessor) was in effect. ERISA section 203(b)(1)(C). The plan need not recognize years of service with the employer prior to establishment of the plan.

The design and structure of title IV thus places greater or lesser weight on participant reliance interests depending on whether the benefit was vested before termination, the length of time the plan or benefit was in effect, and the likelihood that the participant will be dependent on the benefit as a significant part of his regular income. These principles assist in measuring the strength of the participants' expectations with respect to the benefits at issue here.

The plans involved in this decision were established before ERISA was enacted, at a time when participants had no legally protected expectation of receiving anything beyond what was promised in the plan itself. For many of these plans, there was no promise of vesting in an accrued benefit unless a participant worked with the sponsoring employer until a specified retirement age. ERISA was enacted in 1974, but the minimum vesting standards did not apply to existing plans until the 1976 plan year. Thus, the statute permitted employers to terminate their plans prior to 1976 in lieu of complying with title I's vesting standards. There was no statutory penalty for terminating prior to the effective date, and a substantial number of employers did so.[7] Given this unfettered discretion, until the beginning of the 1976 plan year, participants' reliance interests clearly were limited to whatever benefits were expressly promised under plan terms.

The years of 1976 and 1977 were a period of transition. Beginning in 1975, the Internal Revenue Service granted several extensions of the deadline for adopting remedial plan amendments for tax qualification purposes.[8] Once adopted, such amendments were to be retroactive to the date the ERISA standards took effect. In April 1976, DOL issued a regulation requiring plans to issue a notice advising participants that their plans were required to apply the new Title I standards beginning with the 1976 plan year and that amendments adopted later were to apply retroactively. 29 CFR 2520.104b-5(c), 41 FR 16,957 (Apr. 23, 1976).[9] The last of the IRS extensions of the remedial amendment period expired on December 31, 1977.[10]

It was during this period that the bulk of the plans at issue here terminated. The majority of the plans in question (approximately 7,000 of 11,000) terminated before the end of 1976, and an overwhelming majority (almost 10,000) terminated before the end of 1977. Title I's vesting rules thus applied to these plans for a maximum of two years. It was only during this period that participants may have worked in reliance on ERISA's minimum standards. Accordingly, any reliance interest the participants may have had in a vested benefit before normal retirement age was very short-lived.

In addition, many of the plans that terminated during this period had only recently been created. A 1977 study of plan terminations found that 64 percent of the plans that were terminated during the post-ERISA era were less than 10 years old. Pension Benefit Guaranty Corp., Analysis of Single Employer Defined Benefit Plan Terminations, 1977 at 6 (1978). As the Rettig court recognized, "an employee who has participated in * * * a pension plan for many years has a much stronger and more reasonable expectation of eventually receiving benefits under the plan * * * than does an employee whose employer only recently instituted a pension plan." 744 F.2d at 152–53.

We have also examined the benefits that would have been received by participants in the affected plans at termination had their plans been treated as amended by operation of law to comply with ERISA. Statistical samples show that roughly 80 percent of the participants in nontrusteed plans and nearly 90 percent of the participants in trusteed plans would have received no additional guaranteed benefit at all upon plan termination.[11] Of the participants in nontrusteed plans who would have received an additional guaranteed benefit, 25 percent would have received a lump sum of $114 or less.[12] In fact, 50 percent of those receiving additional benefits would have received a lump sum of $333 or less and fully 75 percent would have received $1,178 or less.[13]

In these circumstances, we have some difficulty concluding that the members of the plaintiff class were, on average, deprived of an important source of retirement income.[14] Of course, for some members of the class, the additional amount generated by a guarantee of ERISA-vested benefits would have been

[8] Section 402 provides that all plans must be established and maintained pursuant to a written instrument. Title I also includes elaborate reporting and disclosure requirements to keep participants informed about the provisions of their plan. ERISA sections 101–110.

[7] PBGC studies show that 4,300 plans terminated in 1975. Pension Benefit Guaranty Corp. Analysis of Single Employer Defined Benefit Plan Terminations, 1977 at 17 (1978).

[8] See Tentative Treas. Reg. § 1.401(b), 40 FR 46,314 (Oct. 7, 1975), *reprinted in* Pens. Rep. (BNA) No. 56, at R–4 (Oct. 13, 1975).

[9] The regulation cautioned that the notice could not be used if the plan administrator had "reason to know that the use of [the prescribed] language would be seriously misleading or incomplete as applied to the plan." *Id.*

[10] Information Release 1833 (Sept. 13, 1977), *reprinted in* Pens. Rep. (BNA) No. 155, at A–1 (Sept. 19, 1977).

[11] The Institute for Survey Research of Temple University designed probability samples of unamended trusteed and nontrusteed plans that terminated after their Title I effective date and prior to the end of 1981. This study was implemented with the assistance of PBGC and the firm of W.F. Corroon, Facciani Division. The methodology for this study is set forth in the ERISAfication Study Methodology Report dated November 19, 1992 and in the ERISAfication Study Methodology Report (Trusteed Plans), dated November 23, 1992.

[12] The numbers in text assume that the phase-in limitation was not applied to these additional benefits and that a relatively liberal vesting schedule was used. As noted above, *supra* note 3, we do not here decide whether the phase-in rules would be applied to the benefits at issue if the vesting provisions were to be read in. Similarly, we do not reach the questions of which of the three minimum vesting schedules permissible under section 203 would be applied or whether participants' service prior to the establishment of the plan would be recognized for vesting or accrual purposes. The numbers in text are based on 10-year cliff vesting, recognizing pre-establishment service. Of the two other permissible vesting schedules, one produces higher liabilities and the other lower.

[13] Recoveries for participants in the trusteed plans would have been on the same order of magnitude.

[14] We note also that at least 40 percent of the sponsors of the nontrusteed plans identified in the Temple study stated that they intended to replace their terminated defined benefit plans with some other form of retirement plan for their employees.

substantial. But a policy decision with respect to a class of over 100,000 participants requires that we view the problem in the aggregate, especially when we weigh the benefits to participants produced against the administrative costs of delivering them.

Based on all of the above considerations—but especially the fact that plan termination occurred shortly after Title I's vesting standards took effect—we conclude that, while some participant reliance on the benefits at issue was reasonable, participant expectations with regard to these benefits were limited.

B. *Continuation of plans—Equity among premium payers.* The first purpose listed in § 4002(a) is "to encourage the continuation and maintenance of voluntary private pension plans." A key concept that is evident here is that sponsoring pension plans is a voluntary undertaking; nothing in ERISA requires employers to provide such plans. But a healthy insurance program depends on a broad base of premium payers. As with any insurance program, it is particularly important that it retain financially strong members as well as those who are likely to draw on the insurance guarantee.

For this reason, it is important to ensure that the termination insurance program functions equitably to avoid creating an incentive for responsible employers to terminate their plans. If the system appears to be unfair, responsible premium payers might desert the system, leaving relatively more bad risks in the system, a classic case of adverse selection. This problem has been noted by economists who have studied the pension insurance system:

> [T]he prospect that overcharging the sponsors of well-funded plans in order to subsidize the underfunded plans of financially-distressed firms might cause financially healthy sponsors to terminate their defined-benefit plans. Ultimately, the United States could be left only with bankrupt defined-benefit plans with benefits financed directly by tax-payers.

Zvi Bodie & Robert C. Merton, Pension Benefit Guarantees in the United States: A Functional Analysis at 14 (Apr. 15, 1992) (for presentation at the Pension Research Council Annual Symposium, May 1992). Accordingly, we believe that we must consider fairness to premium payers whenever we are deciding whether to provide a discretionary guarantee.

Guaranteeing the benefits at issue raises serious questions of fairness to premium payers. Where a plan has not been amended to liberalize vesting requirements, the employer has not provided funding toward the enhanced benefits. Insuring benefits that are not backed by any funding defeats one of the purposes of ERISA's minimum funding standards by shifting the burden of financing those benefits to other employers:

> To create a plan termination insurance program without appropriate funding standards would permit those who present the greatest risk in terms of exposure to benefit at the expense of employers who have developed conscientious funding programs. The funding standards contained in the Act are designed to lessen that unnecessary exposure by requiring every plan to be funded in a manner which will fully amortize unfunded liabilities.

H.R. Rep. No. 553, 93d Cong., 1st Sess. 14, *reprinted in* II Leg. Hist. 2348, 2361; *accord* S. Rep. No. 383, 93d Cong., 1st Sess. 26, *reprinted in* I Leg. Hist. 1069, 1094.

The termination insurance program was, of course, created to protect participants from the consequences of inadequate funding. But it was not designed to relieve solvent employers of financial responsibility for their pension commitments. Thus, section 4062(b), as originally enacted, required employers to reimburse PBGC for the amount of the plan's unfunded guaranteed benefits up to 30 percent of the employer's net worth. This employer liability was intended to ensure that, where a plan sponsor has not properly funded its plan, it is nevertheless required to bear a substantial financial burden in connection with termination. As Senator Williams explained, employer liability counteracts the "possibility of abuse by solvent employers." 120 Cong. Rec. 29,931 (1974), *reprinted in* III Leg. Hist. 4741.

Available evidence indicates that the overwhelming majority of the employers who terminated their plans in the 1976–1977 period were solvent and continued in business for a number of years.[15] Here, however, no recovery will be possible due to the statute of limitations and, in some cases, the later dissolution of the employers. As a result, PBGC's current premium payers would be forced to bear the entire cost of insuring these additional benefits with no contribution whatever from the original employers.

A reluctance to see their premiums used to subsidize less responsible employers has always been a concern of important segments of the premium payer community. This concern has been expressed frequently by employer representatives in a variety of contexts.

For example, an executive of American Airlines and its parent AMR Corporation recently appeared before Congress. He noted that AMR's premiums have increased almost 40-fold in seven years and that "[c]ompanies like AMR are unfairly shouldering a burden that, ultimately, may become too costly to bear." *Hearings Before the Subcomm. on Oversight, House Comm. on Ways and Means*, 102d Cong., 2d Sess., Statement of Michael J. Durham at 3, 4 (Aug. 11, 1992). These concerns were recently echoed by a representative of the ERISA Industry Committee (an umbrella organization representing some of the nation's largest employers):

> ERIC believes that the [termination insurance] program's guarantees must not be extended irresponsibly. Employers that sponsor less than fully funded plans should not be given a free hand to increase the benefits for which the PBGC and the employers who pay PBGC premiums are financially responsible.

Hearings Before the Subcomm. on Private Retirement Plans and Oversight of the Internal Revenue Service of the Senate Comm. on Finance, 102d Cong., 2d Sess., Statement of the ERISA Industry Committee at 3 (Sept. 25, 1992).[16]

We think that these concerns are highly relevant to the issue before us. It is unfair to premium payers who have adopted "conscientious funding programs" for their own plans also to have to bear financial responsibility for the benefits in question where the employers terminated their plans shortly after the advent of the minimum vesting standards without ever funding

[15] A PBGC survey of plans that terminated in 1976 indicates that only 5.5 percent of the nontrusteed plans were terminated in connection with a liquidation, dissolution or plant closing. Pension Benefit Guaranty Corp., Analysis of Single Employer Defined Benefit Plan Terminations, 1976 at 17, Table 5. In the sample of unamended nontrusteed plans used in the Temple University study, 83 percent of the sponsors continued in business past 1980. Only one in the sample of 51 sponsors appears to have declared bankruptcy at or before the time its plan terminated.

[16] See also *id.* at 2 ("we are gravely concerned that escalating termination insurance premiums are inflicting severe long-run damage on the pension system"); *id.*, Statement of the Association of Private Pension and Welfare Plans at 2 ("the threat or reality of higher premiums, especially when imposed on sponsors of well-funded plans, encourages employers to reevaluate the economic wisdom of continuing to sponsor plans"). Leading steel companies made a similar point in an amicus brief filed in the *LTV* case: "The liabilities transferred to the PBGC by LTV will place an unfair higher premium burden on other steel producers and other employers whose premiums fund the Title IV insurance fund." Brief of Amici Curiae ARMCO, Bethlehem Steel Corp., Inland Steel Indus., National Steel Corp., and USX Corp. at 13, *PBGC* v. *LTV Corp.*, 496 U.S. 633 (1990) (No. 89–390).

for these increased benefits and without paying any employer liability. This is exactly the kind of imposition described by the Managing Director of the Million Dollar Round Table in 1987: "[T]he reality may very well be that the burden being passed on to those pension programs that are valid and sound will be so substantial that organizations will think twice about maintaining pension programs at all, or starting new ones."[17]

C. Maintenance of low premiums—Cost considerations. Congress also instructed PBGC to maintain premiums at the lowest possible level consistent with its obligations under title IV. This objective requires us to consider the costs that would be incurred to insure any benefits for which we have interpretive discretion. We must be especially attentive to costs that are not themselves benefit payments to participants. Unlike benefit payments, large administrative costs do not directly fulfill any statutory objective, but at the same time undermine the objective of maintaining low premiums and therefore the confidence of responsible premium payers.

A decision to guarantee these benefits in 1976 would have had serious fiscal consequences, because it would have expanded dramatically the scope of the program. When Congress designed the termination insurance program in 1973 and 1974, it had before it a study of 1972 plan terminations prepared by the Departments of Treasury and Labor pursuant to a Presidential directive. According to that study, 546 plans terminated in 1972 without sufficient assets to pay accrued benefits. Treasury/Labor Study at 18. The frequent references to this study in the legislative history of ERISA suggest that Congress expected that plan terminations after ERISA took effect would be comparable. *E.g.*, I Leg. Hist. at 596; II Leg. Hist. at 1599–1600; II Leg. Hist. at 1635; III Leg. Hist. at 4665. Congress designed the program and set the annual premium at $1 per participant based on this premise. See S. Rep. No. 383, 93d Cong., 1st Sess. 83–84 (1973), *reprinted in* I Leg. Hist. at 1161–62; 119 Cong. Rec. 30,062 (1973) (statement of Sen. Long), *reprinted in* II Leg. Hist. at 1668.

By 1976, however, terminations were running several times more than historical rates. Many plans that had not been amended to comply with ERISA continued through the grace period and terminated just after the new minimum standards became effective. Based on the Treasury/Labor study, one might have expected about 1,200 terminations per year. Instead, the agency encountered 7,200 terminations in fiscal 1976 and 6,500 in fiscal 1977. See Pension Benefit Guaranty Corp., Analysis of Single Employer Defined Benefit Plan Terminations, 1977 at 17 (1978).[18] Approximately 10,000 of them were the unamended plans involved here. At that time, PBGC was serving as trustee for 145 plans. For PBGC to have become trustee for even a portion of the unamended plans and guaranteed the contested benefits would have led to staggering costs and burdens in relation to the program as then constituted.[19]

PBGC is considerably larger now than it was in the late 1970s, but its obligations have correspondingly increased. Losses from plan terminations were higher in recent years than in any previous year. The unprecedented magnitude of PBGC's liability arising from these terminations is clearly illustrated by the seven Eastern Air Lines Plans, which were underfunded by nearly $700 million when they terminated in 1990. By the end of fiscal year 1991, the PBGC's losses from actual and probable plan terminations for the year totalled approximately $1 billion, increasing the single-employer program's liability to $8.2 billion and increasing its deficit from $1.9 billion to $2.5 billion in that year alone.[20]

In the context of this deficit, any decision to assume significant additional liability must be carefully weighed. Here, preliminary estimates indicate that the additional benefit costs (including interest) would likely be in the neighborhood of $80 million in 1992 dollars, without reduction for the five-year phase-in and using relatively liberal vesting schedules.[21]

More important in this case, however, are the additional administrative costs that would arise from any effort to provide benefits to participants in the unamended plans at this time. Today, the administrative costs would be so large in proportion to payments to participants as to create serious doubt as to the value achieved for premium payers and the American public.

The problem is not simply the passage of more than a decade and half since these plans were terminated. It derives as well from the administrative process under which these plans were terminated. The overwhelming majority of the 11,000 plans in question were closed out in the private sector by the purchase of annuities or the payment of lump sums, so that PBGC never obtained as much data as it would have in the event that it had been required to become trustee of these plans. For PBGC now to calculate and pay guaranteed benefits, plan records will need to be gathered, much of the participant data will have to be reconstructed, and extensive actuarial analysis will be required.

The characteristics of the plans in question contribute substantially to the administrative burden. They comprise a large number of small plans: 86.3 percent of the nontrusteed plans (9,712) have twenty or fewer participants. Less than two-tenths of 1 percent have more than 500 participants.[22] The agency's experience in paying benefits indicates that the cost of "opening a plan"—having an actuary analyze its provisions to establish appropriate formulae for payment of guaranteed benefits—far exceeds the incremental cost of calculating the benefits of additional participants. Because of the predominance of small plans in this population, the administrative cost of

[17] Letter from John J. Prast, Managing Director, Million Dollar Round Table, to Senator Alan Dixon (Feb. 13, 1987). Other letters by or on behalf of plan sponsors that were forwarded to PBGC make the same point. *E.g.*, Letter from Howard C. Weizmann, Executive Director, Association of Private Pension and Welfare Plans, to Senator David Boren (Oct. 2, 1991); Letter from Gary L. Schacht, Corporate Counsel, Store Kraft Manufacturing Co., to Senator Robert Kerrey (Apr. 18, 1990); Letter from Richard H. Pennell, President and Chief Executive Officer, Metromont Materials Corp., to Congresswoman Elizabeth Patterson (July 29, 1991).

[18] Prior to 1986, employers were permitted to terminate their plans without proving that they were suffering severe financial distress. According to PBGC's studies, the reasons for the 1976–1977 terminations varied and in a significant percentage of cases ERISA was named as at least a contributing cause. 1976 PBGC Study at 8; 1977 PBGC Study at 9.

[19] As noted above, in 1977, after the initial experience had allowed some quantification of projected program costs, PBGC requested that Congress increase premiums—from $1.00 to $2.60 per participant per year. A recent extrapolation from the 1977 premium study indicates that to have insured the benefits in question would have required a further increase of 5.8 cents for every additional $10 million in benefits or administrative costs. We believe that such an effect on premium rates would have led the Board of Directors to decline to guarantee the disputed benefits had it been called upon to address this policy issue in 1977.

[20] By contrast, PBGC's separate multiemployer guaranty fund, see ERISA 4005(a), had a surplus of $133 million as of 1990, and in 1991 the PBGC recommended that Congress increase the maximum benefit guaranteed under that program by approximately 50 percent. See Pension Benefit Guaranty Corp., Financial Condition of the PBGC's Multiemployer Insurance Program at 1 (1991).

[21] This number combines an estimate of $8.9 million for trusteed plans and an estimate of $69.5 million for the nontrusteed plans. These estimates are from Temple University study. It is 95 percent likely that the additional benefit costs will fall within a 44 percent corridor on either side of the $69.5 million estimate and a 56 percent corridor on either side of the $8.9 million estimate. For convenience, we use the midpoint numbers in text, but our conclusions would not change if the liability were at the high end of each corridor.

[22] The trusteed plans tend to be larger, but roughly 71 percent have fewer than 75 participants.

providing guaranteed benefits to the *Collins* class will be greatly disproportionate to the benefits to be delivered.[23]

The agency has sought to measure that administrative burden in more than one way. The agency's experience in implementing the settlement in *Rettig* v. *PBGC* is instructive in this regard. The class in that case consisted of participants in amended plans terminated between 1976 and 1981. The most recent projection is that $27 million in administrative costs will be incurred over 7 to 8 years to deliver $24 million in benefits, a ratio of 1.15:1. We do not view administrative cost at this level—which was unforeseen when the settlement was entered—as a prudent expenditure of PBGC insurance funds.

The administrative costs associated with benefit payments in this case will greatly exceed those in *Rettig*. In absolute terms, *Rettig* involved fewer than 1,000 plans covering 120,000 participants. *Collins* potentially involves in excess of 7,500 plans covering 134,000 participants.[24] The majority of the *Rettig* plans, moreover, were already trusteed by PBGC, so that documents were preserved and some of the analysis had already been completed. The overwhelming majority of the *Collins* plans were not trusteed and were closed out by their employers in the private sector well over a decade ago.[25]

Finally, the plan demographics for *Rettig* and *Collins* classes are different. The unamended nontrusteed plans were generally much smaller, with an average of 16.5 participants, while the *Rettig* plans were roughly 7.5 times larger, or an average of 126 participants per plan. Since the most expensive aspect of the process is the initial actuarial analysis of plan provisions, the administrative cost per participant is expected to be much larger for the class of unamended small plans.

For all of these reasons, the ratio of administrative costs to benefit payments in the *Collins* class could be expected to be considerably greater than the 1.15 to 1 ratio associated with the *Rettig* settlement. Preliminary cost estimates obtained from PBGC's staff and outside contractors confirm this observation. Combining these data, it is estimated that the total administrative costs would be between $174 million and $247 million. This would result in a ratio of more than 2 dollars for every dollar of benefits paid.

The magnitude of these administrative costs is especially troubling in light of the small amount per participant that would be paid in benefits. As noted above, 80 percent of the participants in the nontrusteed plans would receive no additional benefits. For those who would be paid an additional benefit, almost 3 out of 4 would receive lump sums of $3,500 or less. Providing so little benefit to so few participants at so great a cost cannot be justified.

Based on the above considerations, we believe that the substantial administrative cost that would attend guaranteeing these benefits supports a decision to deny such guarantee.

D. *Other Considerations—Enforcement of Title I.* We have also considered to what degree a guarantee of the benefits at issue would enhance enforcement of title I of ERISA. By enforcement of title I, we mean something more than fulfilling the monetary expectations of participants—a topic previously discussed. Rather, we examine here the need to develop regulatory policy that would deter employers from maintaining plans in violation of the statute. Thus, we have considered whether a denial of PBGC's guarantee with respect to these unamended plans would, by giving effect to "illegal" plan terms, undermine the enforcement of title I of ERISA. We conclude that, in the unusual circumstances of this case, a refusal to insure these benefits would not have that effect.

Initially, we note that it is not at all clear what role Congress envisioned that PBGC and its termination insurance program would play in the enforcement of title I of ERISA. The statute generally vests the Department of Labor and the Internal Revenue Service with primary responsibility for enforcing that title. See ERISA section 506, 3001(d), 3002(a). The Department of Labor receives annual reports from the plans summarizing their provisions and administration, see ERISA section 103, 504, and is given the right to sue plan fiduciaries for breach of Title I standards. ERISA section 502(a)(2), (5). In addition, the Internal Revenue Service assures conformity with most of those standards by denying tax qualification to plans that do not meet them. I.R.C. section 401. As noted above, PBGC was directed to carry out "the purposes of this title [i.e., title IV]," none of which addresses enforcement of the minimum standards of title I of ERISA. Thus, it is unclear to what degree Congress intended that PBGC, through the exercise of its insurance function, would assure conformity with the minimum standards of title I.

We have also considered the difficult factual question of whether a decision to insure these benefits between the passage of ERISA and early in 1976 might have promoted employer compliance with title I. It is not clear how a decision to insure the minimum benefits in these plans (regardless of whether they were actually amended to comply with ERISA) might have affected employer conduct. While such a policy might have permitted PBGC to provide significantly greater benefits to participants in plans that terminated shortly after passage of ERISA, that policy might also have caused greater numbers of employers to terminate their plans prior to the date on which the minimum standards became applicable, so as to avoid their substantially increased employer liability.

We need not resolve in this policy submission, however, the legal question of PBGC's role in enforcing title I or the hypothetical issue of what actions it might have taken to insure compliance in the period from 1976 to 1980. Our analysis takes place years after that period. There is no longer any reasonable prospect of inducing any change of conduct by the sponsors of the unamended plans.

We must deal with the facts as we now find them. The plans have terminated without amendment. In the overwhelming number of cases, plan assets were found sufficient to cover liabilities, and the plans were closed out in the private sector. In the smaller number of plans with insufficient assets, PBGC has already asserted whatever claim it may have had against the plan sponsors. Further suit for recovery of the additional employer liability is now precluded by insurmountable legal and practical barriers.

Thus, PBGC is no longer in a position to enforce the requirements of the

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[23] Another demographic factor contributing to a high ratio of administrative costs to benefit payments is the relatively low total value of the average payment per participant. Based on PBGC's preliminary samples, roughly 80 percent of the participants in these nontrusteed plans would receive no additional benefits at all. The average total benefit per participant (with interest to date) would be $619.14 under the most generous assumptions on phase-in and credited service for vesting and benefit accrual purposes.

[24] Study results indicate that there are 112,000 participants in nontrusteed plans and 22,000 in trusteed plans that terminated after their Title I effective date. Although some 11,000 unamended plans terminated during the period 1976–1981, the study shows that many of the plans that terminated in calendar year 1976 did so before the beginning of their 1976 plan year. Those plans are not within the scope of plans that are affected by this by this decision.

[25] Moreover, these plans were governed by pre-ERISA law for most of their lives. At that time, record-keeping requirements were quite limited. For example, before ERISA employers were not required to maintain detailed information for each employee, such as hours of service, necessary to determine benefits due. Compare ERISA § 209; see also *id.* §§ 103, 105.

statute by compelling employers to amend their plans or by demanding that they pay for the full amount of the liability created by application of the minimum vesting standards. For this reason, we do not think that the enforcement of title I—in the sense of influencing employer conduct—weighs in favor of granting benefits in this context.[26]

IV. Conclusion

After carefully considering all of the above factors, we conclude that PBGC should not guarantee benefits vested under Title I vesting schedules in the absence of a plan amendment adopting one of those schedules.[27] We recognize that participants in unamended plans may have had some expectation that their benefits would be vested and protected under Title I even though not explicit in their plans. But the plans with which we are concerned here all terminated shortly after the statutory vesting provisions became effective and the vast majority terminated before the time for adopting conforming amendments had expired. The participants' reliance interest is therefore quite limited. On the other hand, the considerations of employer equity and the need to maintain low premiums are undiluted and perhaps stronger than in most situations that PBGC has faced.

In light of the various considerations discussed above, we conclude that the decision of PBGC in 1976 not to guarantee these benefits—though based on statutory language—also represented an appropriate accommodation of the policies underlying title IV.[28] We further conclude that this result is even more compelling today, in view of the disproportionate administrative cost and the inequity of requiring current premium payers to bear full financial responsibility for benefits paid to the employees of other plan sponsors.

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[26] Indeed, though it is not critical to our analysis, we see some risk that participants who benefitted from their employers' failure to amend would receive an additional windfall if ERISA-vested benefits were guaranteed at this time. Our review of the available evidence indicates most employers that terminated their plans were not in financial distress and continued in business thereafter. Rather than paying up to one third of their net worth for a guarantee of the minimum ERISA-vested benefits, they were able to retain those funds for their employees or owners, in the form of compensation or stock value. In fact, in the sample of nontrusteed plans identified in the Temple study, approximately 40 percent of the employers intended to institute new defined contribution or other plans for their employees to replace the terminated defined benefit plans.

[27] We recognize that Congress in 1980 directed a different result for subsequent terminations, but do not believe that we are bound by that resolution. The circumstances surrounding the 1980 congressional action were significantly different. Congress took prospective action at a time when the minimum vesting standards had been in effect for nearly five years and the affected plans were that much older. Accordingly, participant expectations were significantly stronger. In addition, prospective application ensured that PBGC would be in a position to assert claims for employer liability against the sponsors of unamended plans and had the potential of promoting voluntary compliance. Finally, it was apparent by 1980 that the number of terminations was rapidly diminishing and, in fact, the 1980 amendments resulted in a guarantee of additional benefits for a relative few plans. By contrast, our decision concerns terminations a decade earlier, applies to a much larger universe of plans, relates to a time period during which participant expectations were more limited, is made under circumstances that preclude the collection of employer liability, and has no potential for encouraging employer compliance.

[28] In this regard, we note that in 1980 Congress, though fully aware of PBGC's interpretation and its application in past cases, did not choose retroactively to overturn this accommodation of the policies of title IV, even as it adopted a new rule for the future. See 126 Cong. Rec. S11,665, S11,673 (daily ed. Aug. 26, 1980) (statement of Sen. Williams); see also 126 Cong. Rec. H7863, H7901 (daily ed. Aug. 25, 1980) (statement of Rep. Thompson).

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–31730; File No. SR–NASD–91–61]

Self-Regulatory Organizations; National Association of Securities Dealers, Inc.; Order Approving Proposed Rule Change Relating to Close-out Procedures and Customer Account Transfers

January 14, 1993.

I. Introduction

The National Association of Securities Dealers, Inc. ("NASD") submitted on November 20, 1991, a proposed rule change pursuant to Section 19(b)(1)[1] of the Securities Exchange Act of 1934 ("Act") and Rule 19b–4[2] thereunder to amend Section 59 of the Uniform Practice Code ("UPC") to establish failure to deliver and liability notice procedures for foreign currency, index warrants and similar instruments.[3] Additionally, the proposed rule change amends Section 65 of the UPC to establish procedures to transfer customer accounts in a timely manner and institute close-out and sell-out procedures for fail contracts.[4]

Notice of the proposed rule change appeared in the **Federal Register** on October 7, 1992.[5] No comments were received with respect to the proposed rule change.

II. Description of the Proposal

A. Proposed Amendments to Section 59 of the UPC

The proposed rule change would amend Section 59 of the UPC to provide liability notice procedures for index warrants, foreign currency and similar instruments. Unlike other securities subject to UPC liability notice procedures (e.g., securities subject to a tender or exchange offer at a certain time), American style index warrants and similar instruments are unique because, while they have a stated expiration, they have the potential to be exercised at any time until expiration and the exercising holder can value before the expiration date.[6]

Under current UPC rules, a member who fails to receive an index warrant in accordance with the terms of the purchase contract, and is thereby unable to exercise such warrant, cannot hold anyone liable for the value of the exercise, because existing UPC Liability Notice Procedures hinge on the expiration of, not the exercise of, a warrant. Given this deficiency in existing UPC rules, the NASD in conjunction with other securities groups has developed a procedure to provide protection to buyers of foreign currency, index warrants and similar instruments.[7]

The NASD has proposed procedures that govern if a contract is for a deliverable instrument, with an exercise provision that may be accomplished on a daily basis, and the settlement date of the contract to purchase the instrument is on or before the requested exercise date. Pursuant to these procedures, the

[1] 15 U.S.C. 78s(b)(1) (1988).

[2] 17 CFR 240.19b–4 (1992).

[3] A liability notice delivered in accordance with the provisions of Section 59 of the UPC serves as notification to the receiving member of the existence of a claim for damages.

[4] The term "close-out" in this context refers to the procedures that one broker must follow when another broker (the defaulting broker) fails to deliver securities. The non-defaulting party must "buy-in" the securities to meet its own obligations, and liability for resulting losses may be imposed on the defaulting broker. The opposite of a buy-in is a "sell-out," where a broker may dispose of securities if another broker defaults by refusing to accept delivery. See M. Thompsett, Investment & Securities Dictionary, 38, 257 (1986); D. Scott, Wall Street Words, 42 (1988).

[5] Securities Exchange Act Release No. 31272 (October 1, 1992), 57 FR 46212.

[6] This is to be contrasted with European style warrants, which can only be exercised during a specified period before the warrant expires.

[7] The NASD proposal was developed in conjunction with the National Securities Clearing Corporation ("NSCC") and the Midwest Clearing Corporation ("MCC"). See Securities Exchange Act Release No. 28445 (February 1, 1991), 56 FR 5436 (February 11, 1991); and Securities Exchange Act Release No. 28855 (February 5, 1991), 56 FR 5716 (February 12, 1991), approving similar amendments for the NSCC and MCC, respectively.

broker/dealer executing the notice must deliver the notice no later than 11 a.m. on the day the exercise is to be effected. The proposed procedures would permit immediate retransmission of the liability notice to another member no later than noon the same day. Such notice would be required to be written or transmitted through an electronic device having immediate receipt capabilities. If the contract remains undelivered at expiration, and has not been canceled by mutual consent, the procedures would require the broker/dealer executing the notice to notify the defaulting member of the exact amount of the liability on the next business day.

B. Proposed Amendments to Section 65 of the UPC

1. Procedures Relating to the Transfer of Customer Accounts

The proposed rule change amends several provisions of Section 65 of the UPC to help ensure that customer accounts are transferred in a timely manner. Amendments have also been made to further define the responsibilities of NASD members when executing an account transfer pursuant to a customer's request.

Currently, Section 65(c)(1)(C) provides a list of securities that may be incapable of being transferred to another broker/dealer pursuant to a customer's request, and therefore deemed nontransferable assets. This list includes, among other things, assets that are the proprietary product of the carrying member (i.e., the firm from which the account is being transferred), and assets that may not be received due to regulatory limitations on the scope of the business of a receiving member (i.e., the firm to which the customer's account is to be transferred). The instant proposal would expand the list of nontransferable assets embodied in Section 65(c)(1)(C) to include foreign securities, baby bonds,[8] and limited partnership interests in retail accounts

The NASD believes it is appropriate to designate foreign securities and baby bonds as nontransferable assets because at the time of an account transfer, the proper denomination for these assets may not be obtainable pursuant to governmental regulation or the issuance terms of these assets. Limited partnership interests in retail accounts are included in this list of non-transferable assets as well, because broker/dealers maintaining customer accounts typically do not have physical custody of these securities. Rather, these assets are frequently held by the general partner or a trustee of the limited partnership.

Subsection 65(d) governs the validation of transfer instructions. Under current rules, the carrying member may not take exception to a transfer instruction, and therefore deny validation of the transfer instruction, because of a dispute over securities positions or the money balance in the account. The existing provision strictly forbids such action, and provides a narrow list of circumstances which permit members to take exception to a transfer instruction. The instant proposal would amend Subsection 65(d) to permit members to take exception to a transfer instruction if: (1) The account is flat (i.e., it reflects no transferable assets), (2) the account number is incorrect, or (3) the instruction is a duplicate request. In addition, the amendments to Subsection 65(d) would provide for the resubmission of transfer instructions which were rejected because the account was deemed "flat".

Further, Subsection 65(d), as proposed, would be amended to provide an exception to the Rule's requirements that members "freeze" the account upon validation of a transfer instruction. That is, members must cancel all open orders and cease their acceptance of new orders upon receipt of a transfer instruction. The proposal would make a narrow exemption for option positions that expire within seven business days. As these positions expire by their terms in a brief period, the NASD did not believe it was necessary to require that they be subject to an account freeze.

Subsection 65(e) currently requires members to complete the transfer of an account within five business days following the validation of a transfer instruction. If the customer's securities have not been delivered as required, both the carrying and receiving firms must establish, as appropriate, fail to deliver or fail to receive contracts respecting the deliveries that have not occurred. The proposal would amend the subsection to eliminate the requirement that fail contracts be established for options positions.

The NASD believes it appropriate to delete the phrase 'including options" from Subsection 65(e) because it is no longer necessary. The NSCC's Automated Customer Account Transfer Service ("ACATS") now has an interface to the Options Clearing Corporation ("OCC") and all open options positions are reported to the OCC for settlement in memorandum form as open positions.[9] Accordingly, fails need not and should not be established for options positions under the UPC.[10]

Subsection 65(f) is proposed to be amended to require that any fail contracts resulting from an account transfer be included in a member's fail files and promptly resolved according to applicable UPC close-out and liability procedures.[11] An exemption will be provided, however, for fail contracts participating in a repricing and re-confirmation service such as RECAPS.[12]

[8] The term "baby bond" refers to a bond issued in a small, non-standard denomination, typically a convertible or straight debt bond having a par value of less than $1000 usually $500 to $25. Such bonds are intended to bring the bond market within reach of small investors, and by the same token, open a source of funds to corporations that lack entree to the large institutional market. See J. Downes and J. Goodman, Barron's Dictionary of Finance and Investment Terms, 25, (1987).

[9] ACATS was designed by the NSCC to facilitate the prompt transfer of customer accounts, including option positions between broker/dealers. For the approval order authorizing the NSCC's adoption of ACATS, see Securities Exchange Act Release. No. 22481 (September 30, 1985), 50 FR 41274 (October 9, 1985). See also order approving the OCC's participation in ACATS, Securities Exchange Act Release No. 24133 (February 24, 1987), 52 FR 6417 (March 3, 1987).

[10] See letter to Selwyn Notelovitz, Branch Chief, Over-the-Counter Regulation, Division of Market Regulation from Suzanne Rothwell, Associate General Counsel, NASD, dated December 7, 1992, providing the NASD's rationale for deleting options positions from the requirements of Subsection 65(e).

[11] As originally amended, this provision deleted the requirement that members execute the close-out procedures "promptly." Amendment No. 4 to the proposal reinstates "promptly" as the timeliness requirement for action relating to establish fails. See NASD letter dated December 7, 1992, supra note 10.

The Commission is concerned that the UPC provide greater certainly concerning a member's obligation to act "promptly" in delivering securities or closing out open fails. The NASD staff has agreed to bring this issue to the Operations Committee of the NASD Board of Governors for its consideration at the earliest opportunity. See letter from Suzanne E. Rothwell, Associate General Counsel, NASD to Selwyn Notelovitz, Branch Chief, Over-the-Counter Regulation, Division of Market Regulation, SEC, dated December 28, 1992.

The Commission understands that NASD members' expectations regarding "prompt" resolution of fails may very, among other things, with the ready availability and efficiency of transfers of record ownership. For example, securities that are processed by registered transfer agents and that are classified as "routine" items under Rule 17AD–1 of the Exchange Act, generally can be transferred quickly, usually within three business days. 17 CFR 240Ad–1. Rule 17Ad–2 requires registered transfer agents to turnaround 90% of the routine items presented for transfer within either three or five business days. 17 CFR 240.17AD–2. Other securities, such as limited partnership interests or transfers from fiduciary names, can be more time consuming.

[12] Currently, the NSCC is the only registered clearing agency that offers a reconfirmation and repricing service to its members. See Securities Exchange Act Release No. 28339 (August 13, 1990), 55 FR 34109 (Order approving NSCC's RECAPS). The service reconfirms and reprices securities transactions which were originally compared but failed to settle in a timely fashion. RECAP statistics for 1992 also support the proposed exemption for securities participating in RECAPS. During each of the quarterly RECAP cycles for 1992, there were

Continued

Should securities fail to settle through RECAPS, the NASD interprets paragraph (f)(3) to provide that a fail contract submitted to RECAPS that remains outstanding after repricing continues to be a fail for purposes of paragraph (f)(1).[13] The amendments to this Subsection (f)(1) are intended to result in few postponements in the complete transfer of customer accounts. Members will have a means of closing-out or selling-out securities that have not been delivered or received, rather than delaying completion of the transfer.[14]

Finally, Section 65(g) now requires that members promptly resolve an discrepancies relating to positions or money balances that exist or occur after transfer of a customer's account. The proposed rule change would amend Subsection 65(g) to expand the member's responsibility to require the prompt transfer or distribution of assets which accrue to the customer's account after the initial transfer has been completed (i.e., dividends and bond interest).

2. The Establishment of Procedures for Close-out and Sell-out Fail Contracts

The proposal also would add Subsections 65 (h) and (i) to the UPC to create procedures to close-out and sell-out fail contracts resulting from an account transfer.[15] Although existing Sections 59 and 60 of the UPC provide close-out procedures with guidelines to buy-in and sell-out securities contracts under fairly specific circumstances, these rules give buyers and sellers close-out rights and implicitly turn on the existence of a purchase or sale contract, without expressly addressing a contract for delivery of securities arising from a transfer of securities.

The new "close-out" procedures are proposed for codification in Subsection 65(h). These procedures are based on existing UPC Section 59 Buy-In rules. As proposed, the procedures permit a receiving member to close a valued fail contract no sooner than the third business day following the due date pursuant to written notification. Under the proposed procedures, a broker/dealer intending to effect a close-out would be required to send notice to the carrying member of the following information concerning the contract to be closed: (1) The settlement date, (2) the quantity of units, and (3) the contract price of the securities covered.

The notice would be required to be delivered to the carrying member's office no later than 12 noon, his time, two business days preceding the execution of the proposed close-out. Further, the notice would have to advise the carrying member that unless delivery is effected at or before a certain specified time, which may not be prior to 3 p.m. local time in the community where the carrying member is located, the security may be closed-out on the date specified for the account of the carrying member. Finally, the party executing the close-out, immediately upon its execution but, in any case, no later than the close of business local time where the seller maintains his office, would be required to notify the carrying member for whose account the securities were bought as to the quantity purchased and the price paid.

New Subsection 65(i) proposes notification and sell-out procedures for fail contracts to permit a carrying member to sell any and all securities due or deliverable under a fail contract in the best available market, where the receiving member failed to accept delivery, or where a properly executed Uniform Reclamation Form, a depository generated rejection advice, or a valid Reversal Form is lacking. The party executing a sell-out would be required to notify, no later than the close of business on the day of execution, the member for whose account and liability the securities were sold, the quantity sold and the price received.

III. Discussion

The Commission believes that the proposal is consistent with the Act. Section 15A(b)(6) mandates that the rules of the NASD be designed to foster cooperation with persons engaged in regulating, clearing, settling, processing information with respect to, and facilitating transactions in, securities. To this end, the amendments to Section 59 which establish liability notice procedures for index warrants, foreign securities and similar instruments will serve to clarify the responsibilities of parties to transactions in these securities and thereby foster cooperation and coordination in the clearing and settling of these securities.

The proposed liability notice procedures establish that a defaulting party to transactions in index warrants and similar instruments shall be liable for damages arising from such default. Further, these amendments will establish a procedure for notification of a member failing to deliver securities of the existence of a claim for damages as a result of such failure.

The Commission believes that the proposed liability notice procedures also further the broad investor protection mandate of Section 15A(b)(6) which requires that the NASD rules be designed, in general, to protect investors and the public interest. Without a mechanism to provide for damages when a receiving member is unable to exercise instruments such as index warrants, because of the delivering member's failure to deliver the securities, the receiving member and its customers stand to sustain losses.[16]

The UPC currently affords the protection of liability notice procedures for other securities regulated by the UPC. The proposal amends the NASD's rules to address developing securities products, which heretofore have been subject to an unintended regulatory gap.[17]

In addition, the Commission finds that the proposed amendments to Section 65 of the UPC to establish additional procedures to transfer accounts promptly and create procedures to close-out and sell-out fail contracts established pursuant to an account transfer are consistent with the provisions of Section 15A(b)(6) of the Act. The proposed rule provides increased certainty to customers that most positions in most accounts will be deemed transferred, and that assets and funds will be available for their use at the receiving firm on a timely basis.

Further, the Commission recognizes that efficient customer account transfers are critical to street-name account management.[18] In an environment in

approximately 350 participants. The RECAP statistics for each of the cycles were as follows: March 1992, 11,015 sides were accepted and 9,968 compared; June 1992 7,957 sides were accepted and 7,586 trades compared; September 1992, 8,249 sides were accepted and 7,408 compared; and December 1992, 8,286 sides were accepted and 7,628 compared.

[13] See letter from Suzanne Rothwell, Associate General Counsel, NASD, to Selwyn Notelovitz, Branch Chief, Over-the-Counter Regulation, Division of Market Regulation, SEC, dated December 30, 1992.

[14] This amendment would confirm the NASD's rules with those of the New York Stock Exchange ("NYSE") to the extent that NYSE Rule 412 also subjects fail contracts established pursuant to an account transfer to close-out procedures. See New York Stock Exchange Guide, CCH 2412.

[15] While the proposed procedures are expected to be used primarily in the account transfer context, the procedures also stipulate they may be used when clearing agency rules do not otherwise apply to close-out and sell-out contracts in securities for which there are no established procedures, such as zero coupon bonds, mutual funds, and limited partnerships.

[16] See also Securities Exchange Act Release No. 28445 (February 1, 1991), *supra* note 7.

[17] As noted above, clearing agencies have adopted liability notice procedures that govern when members effect trades through those organizations. See *supra* note 7. The proposal also addresses those circumstances where clearing agency rules do not apply.

[18] As a matter of industry practice, securities are often held in street-name because they are thereby

which certificate immobilization is expanding, customers must be able to move street-name positions from firm to firm promptly and accurately. In a period of increased reliance on book-entry facilities,[19] prompt and efficient account transfer arrangements are increasingly important. Increased immobilization of securities certificates will be more difficult to the extent customers lack confidence that street-name positions will be transferred from one firm to another promptly, efficiently and accurately. In view of these concerns, the Commission believes that the proposal will assist in advancing the objectives of removing potential impediments to the increased immobilization of securities certificates.[20]

IV. Conclusion

For the aforementioned reasons, the Commission finds that the proposed rule change is consistent with the requirements of the Act and the regulations thereunder applicable to a national securities association, in particular, the requirements of Section 15A(b)(6).

It is therefore ordered, pursuant to Section 19(b)(2) of the Act, that the proposed rule change, SR–NASD–91–61 be, and hereby is, approved.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.[21]

Margaret H. McFarland,

Deputy Secretary.

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in the custody of the broker. Thus, transfer of the shares at the time of sale is easier than if the securities were registered in the customer's name and physical certificates had to be transferred.

[19] The securities industry has encouraged the strong and continuing trend over the last decade to settle corporate and municipal securities in book-entry form in a depository environment. For example, as of 1990, the Depository Trust Company ("DTC") alone had immobilized 63% of the total market value outstanding of publicly-held equity securities, while the number of registered certificates provided to investors and participants through DTC dropped from 16 million certificates annually in 1980 to 6 million certificates in 1990. See Report of the Bachmann Task Force on Clearance and Settlement Reform in U.S. Securities Markets ("Bachmann Report"), submitted to the Chairman of the U.S. Securities and Exchange Commission, May 1992. Securities Exchange Act Release No. 30802 (June 15, 1992), 57 FR 27812 (June 22, 1992). See also [1991] SEC, Annual Report, Table 16.

[20] See 15 U.S.C. 78q–1–1(e).

[21] 17 CFR 200.30–3(a)(12).

[Release No. 34–31729; File No. SR–NASD–92–12, Amt. No. 3]

Self-Regulatory Organizations; Notice of Amendment of Proposed Rule Change by National Association of Securities Dealers, Inc., Relating to the Proposed Short Sale Rule

January 13, 1993.

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 December 23, 1992, the National Association of Securities Dealers, Inc. ("NASD" or "Association") filed with the Securities and Exchange Commission ("Commission" or "SEC") Amendment No. 3 to the proposed rule change as described in Items I, II, and III below, which Items have been prepared by the NASD.[1] The Commission is publishing this notice to solicit comments on Amendment No. 3 from interested persons.

I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

The NASD is amending the proposed short sale rule or "bid test" for Nasdaq National Market System ("Nasdaq/NMS") securities to include a provision regarding short sale by qualified options market makers and to add a provision identical to a section in Securities Exchange Act Rule 10a–1 exempting certain customer transactions. The NASD is also proposing amendments to the Rules of Practice and Procedures for the Automated Confirmation Transaction service ("ACT") to require members to append a short sale identifier to certain trade report data and an amendment to the Rules of Fair Practice, Article III, Section 21(b) to clarify the books and records requirements applicable to member sales. Below is the text of Amendment No. 3. Proposed new language is in italics; proposed deletions are in brackets.

Rules of Fair Practice

Article III, Section 21—Books and Records

* * * * *

Marking of Customer Order Tickets

(b)(1) A person associated with a member shall indicate on the memorandum for the sale of any security whether the order is "long" or "short," except that this requirement shall not apply to transactions in corporate debt securities. As order may be marked "long" if (1) the customer's account is long the security involved or (2) the customer *owns the security and* agrees to deliver the security as soon as possible without undue inconvenience or expense.

* * * * *

Article III, Section 46—Short Sales

(a) No member shall effect a short sale for the account of a customer or for its own account in a Nasdaq National Market System security at or below the current best (inside) bid when the current best (inside) bid as displayed by the Nasdaq system is below the preceding best (inside) bid in the security.

(b) In determining the price at which a short sale may be effected after a security goes ex-dividend, ex-right, or ex-any other distribution, all quotation prices prior to the "ex" date may be reduced by the value of such distribution.

(c) The provisions of subsection (a) shall not apply to:

(1) Sales by a qualified market maker registered in the security in the Nasdaq system in connection with bona fide market making activity. For purposes of this subsection, risk arbitrage, index arbitrage, and other transactions unrelated to normal market making activity will not be considered bona fide market making activity.

(2) Any sale by any person, for an account in which he has an interest, if such person owns the security sold and intends to deliver such security as soon as possible without undue inconvenience or expense.

(3) [(2)] Sales by a member, for an account in which the member has not interest, pursuant to an order to sell which is marked "long" in which the member does not know, or have reason to know, that the beneficial owners of the account have, *or would as a result of such sales have,* a short position in the security.

(4) [(3)] Sales by a member to offset odd-lot orders of customers.

(5) [(4)] Sales by a member to liquidate a long position which is less than a round lot, provided that such sale does not change the position of the member by more than one unit of trading.

(6) [(5)] Sales by a member of a security for a special arbitrage account if the member then owns another security by virtue of which the member is, or presently will be, entitled to acquire an equivalent number of securities of the same class of securities sold; provided such a sale, or the

[1] Amendment Nos. 1 and 2 were previously incorporated in the Notice of Proposed Rule Change issued by the Commission in Securities Exchange Act Release No. 31003 (August 6, 1992), 57 FR 36421 (August 13, 1992).

purchase which such sale offsets, is effected for the bona fide purpose of profiting from a current difference between the price of the security sold and the security owned and that such right of acquisition was originally attached to or represented by another security or was issued to all the holders of any such class of securities of the issuer.

(7) [(6)] Sales by a member of a security effected for a special international arbitrage account for the bona fide purpose of profiting from a current difference between the price of such security on a securities market not within or subject to the jurisdiction of the United States and on such a securities market subject to the jurisdiction of the United States; provided the member at the time of such sale knows or, by virtue of information currently received, has reasonable grounds to believe that an offer enabling the member to cover such sale is then available to the member in such foreign securities market and intends to accept such offer immediately.

(8) [(7)] Sales by an underwriter, or any member of a syndicate or group participating in the distribution of a security, in connection with an over-allotment of securities, or any layoff sale by such a person in connection with a distribution of securities through rights pursuant to Securities Exchange Act Rule 10b–8 or a standby underwriting commitment.

(d) No member shall effect a short sale for the account of a customer or for its own account indirectly or through the offices of a third party *to avoid* [for the purpose of avoiding] the application of this section.

(e) No member shall knowingly, or with reason to know, effect sales for the account of a customer or for its own account *to avoid* [for the purpose of avoiding] the application of this section.

(f) A member that is not currently registered as a Nasdaq market maker in a security and that has acquired a security while acting in the capacity of a block positioner shall be deemed to own such security for the purposes of this rule notwithstanding that such member may not have a net long position in such security if and to the extent that such member's short position in such security is the subject of one or more offsetting positions created in the course of bona fide arbitrage, risk arbitrage, or bona fide hedge activities.

(g) For purposes of this section, a depositary receipt of a security shall be deemed to be the same security as the security represented by such receipt.

(h) A member may execute a qualifying short sale for the account of an options market maker that would otherwise be in contravention of this section, if:

(1) the options market maker is registered with an organized options exchange and has met market maker qualification standards for the exemption as established;

(2) the options exchange on which the options market maker is registered has adopted rules requiring an options market maker employing this exemption to comply with the terms of the NASD's short sale rule;

(3) the options market maker is effecting a short sale in a Nasdaq/NMS security in order to create a bona fide hedge of overall exposure from an existing or reasonably and immediately expected position in all options overlying the Nasdaq/NMS security; and

(4) the options market maker has submitted a sell order in the Nasdaq/NMS security to the SelectNet service at a price which is in compliance with the rule and betters the inside offer price (as displayed in the Nasdaq system) by at least 1/8 point and such order has not been executed when another transaction is reported in that security ("reported transaction") at a price higher than the price of the SelectNet order submitted by the market maker. If the inside spread in the security equals 1/8 point or less, the options market maker will be deemed to be in compliance with the pricing requirements of this subparagraph if the sell order in SelectNet is a minimum increment of 1/16 point above the inside bid price as shown on Nasdaq.

A "qualifying short sale" shall mean a short sale at the bid by an options market maker: (1) In the amount of the lesser of the options market maker's order in SelectNet or the size of the reported transaction, and (2) if the sale transaction is effected within a ten minute period following the reported transaction.

(i) [(h)] Upon application or on its own motion, the Association may exempt either unconditionally, or on specified terms and conditions, any transaction *or class of transactions* from the provisions of this section.

(j) [(i)] From time to time, the Securities and Exchange Commission may amend Rule 10a–1, Rule 3b–3, or Rule 3b–8 under the Securities Exchange Act of 1934. The Board of Governors reserves the authority to alter, amend, modify, or supplement this section in accordance with amendments to Rule 10a–1, Rule 3b–3, or Rule 3b–8 or as otherwise deemed appropriate or necessary for Nasdaq/NMS securities without recourse to membership for approval as required by Article XII to the By-Laws.

(k) [(j)] Definitions

* * * * *

ACT Rules

(d) Trade Report Input

* * * * *

4. Trade information to be input—Each ACT report shall contain the following information:

(A) Security identification symbol of the eligible security ("SECID");

(B) Number of shares;

(C) Unit price, excluding commissions, mark-ups, or mark-downs;

(D) Execution time for any transaction in Nasdaq or CQS securities not reported within 90 seconds of execution;

(E) A symbol indicating whether the party submitting the trade report represents the Market Maker side or the Other Entry side;

(F) A symbol indicating whether the transaction is a buy, sell, *sell short, sell short exempt,* or cross *(The "sell short" and "sell short exempt" indicators must be entered for all customer short sales, including cross transactions, and for short sales effected by members that are not qualified market makers pursuant to Section 46 of Article III of the Rules of Fair Practice.)*;

(G) A symbol indicating whether the trade is as principal or agent;

(H) Reporting side clearing broker (if other than normal clearing broker);

(I) Reporting side executing broker as "give-up" (if any);

(J) Contra side executing broker;

(K) Contra side introducing broker in case of "give-up" trade;

(L) Contra side clearing broker (if other than normal clearing broker).

II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, the NASD included statements concerning the purpose of and basis for the proposed rule change and discussed any comments it received on the proposed rule change. The text of these statements may be examined at the places specified in Item IV below. The NASD has prepared summaries, set forth in sections (A), (B), and (C) below, of the most significant aspects of such statements.

A. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

The Association is proposing an amendment to SR–NASD–92–12 to

provide for access to the SelectNet service and a limited exemption to the short sale rule for certain registered options market makers in response to comments by options exchanges that relief from the short sale restrictions is necessary. The amendments also: (1) Add a requirement for members to indicate that certain transactions are short sales on their ACT reports; (2) add a section tracking Securities Exchange Act Rule 10a–1 regarding an exemption for customer sales when the customer owns the security sold and intends to deliver the security; and (3) amend language in the Rules of Fair Practice, Article III, Section 21 to clarify members' obligations regarding marking order tickets long or short.

1. OPTIONS MARKET MAKERS

After submitting the short sale rule proposal to the SEC in April 1993, the NASD met with representatives and market makers from the American Stock Exchange ("AMEX"), the Chicago Board Options Exchange ("CBOE"), the Pacific Stock Exchange ("PSE"), and the Philadelphia Stock Exchange ("Phlx"). The meeting was held to discuss a request for an exemption from the short sale rule for registered options market makers. The options markets requested an exemption similar to the exemption offered to qualified Nasdaq market makers because they believe that the NASD proposal will have an adverse effect on the liquidity and pricing of options overlying Nasdaq/NMS securities. In addition, the options market makers have expressed concerns about the ability to hedge their options transactions quickly and efficiently in the Nasdaq market. When an options market maker facilitates a customer trade, it may want to hedge its own risk, at times by selling the underlying equity security short. The options market makers believe that the NASD short sale proposal will unnecessarily interfere with the ability of a market maker to hedge by prohibiting short sales on down bids. They contend that hedging options positions overlying exchange-listed securities is more readily accomplished because of their ability to enter a limit order to sell on the specialist's book and be assured an execution at the next possible trading opportunity. The options market makers are concerned that because of the nature of a geographically dispersed competitive dealer market, they do not have the same assurance of an execution. Similarly, options market makers note that they provide liquidity to customers seeking to invest in options or to hedge their investments in Nasdaq/NMS securities and the options dealers believe that their rule in providing liquidity may be adversely affected by the NASD's short sale proposals.

These various arguments were also advanced through the comment process when the options markets and individual market makers responded to the SEC's request for comments on the NASD rule proposal.[2] The NASD has reviewed these arguments and believes that an outright exemption for options market makers from the short sale rule would eviscerate the effectiveness of the rule by permitting unfettered short sale pressure in the options market to spill over into the stock market. For example, customers that would be prevented from selling equity securities short on a down bid in the Nasdaq market could readily purchase puts in the overlying option, at a fraction of the cost necessary to effect executions in equities, with a reasonable anticipation that their purchases would cause the options market maker to sell the stock short in order to hedge that transaction. Accordingly, unfettered short sales by options market makers could be employed as part of a scheme to engage in manipulative or abusive short selling.

The NASD has, however, developed an alternative approach which addresses the concerns articulated by options market makers by providing them access to the SelectNet service. SelectNet was originally conceived as a response to the market break of 1987 as an alternative means of communication between NASD members when telephonic communication was impracticable or impossible. SelectNet provides the ability for members to enter priced orders in Nasdaq securities into the Nasdaq Workstation and direct those orders to a single destination or broadcast to all market makers in the security. The orders may be timed to expire after three minutes or may be day orders; SelectNet orders may be limited in their terms, such as "all or none" orders, or may be negotiable as to price or size or both; and broadcast orders may be identified or disseminated anonymously. Finally, SelectNet offers the possibility of price improvement as many of the orders are entered between the current best bid and offer as shown in the Nasdaq system and negotiation of orders "between the spread" is always possible.

[2] The AMEX, Phlx, PSE and CBOE submitted comment letters requesting that the rule be disapproved, or in the alternative, that their market makers be granted an exemption equivalent to that proposed for Nasdaq market makers. Additionally, numerous options market makers submitted form letters requesting similar relief.

The NASD is proposing an amendment to section 46 to allow certain registered options market makers the status of order entry firms for the purposes of using the SelectNet service. The facility to enter orders directly into SelectNet will permit options market makers to hedge their options transactions in the Nasdaq market without the necessity of using a dealer to enter an order. The NASD believes that access to SelectNet will address the options markets' primary concerns—assurance of access to the Nasdaq market so that they may continue to offer liquidity and accurate pricing to the options market while managing their risk effectively with the ability to hedge their executions.

In addition to the order entry functionality, the NASD is offering additional capabilities to ensure options market makers retain their ability to effectively hedge their positions. The proposed amendment gives options market makers certain limited exemptions from the Nasdaq short sale rule. For example, if an options market maker effects a transaction in an option overlying a Nasdaq/NMS security and wishes to hedge that transaction by selling the stock short, he may place an order to sell in SelectNet, priced at least ⅛ point above the inside bid and at least ⅛ point lower than the inside ask as displayed in the Nasdaq system. That order may be directed to a particular market maker or broadcast to all dealers in the security. If the options market maker's SelectNet order is not accepted by a Nasdaq market maker and another trade in the security is effected and trade reported at an inferior price, the options market maker may then contact a Nasdaq dealer directly and "hit" the bid using a limited exemption from the short sale rule. (This action is limited to the size of the order in SelectNet or the size of the trade printed, whichever is smaller, and must be undertaken within 10 minutes of the reported transaction.) Accordingly, in the unlikely event that the options market maker's order is not taken out prior to a trade being reported at an inferior price, the options market maker will be provided the opportunity to achieve an immediate execution at the bid. By employing SelectNet, the options market maker may effectively hedge its options position and manage its risk, while the underlying intent of the short sale rule in the Nasdaq market will not have been compromised. With this proposal, the NASD will for the first time be granting non-members access to the SelectNet service. The amendments also specify that the options markets that wish their market makers to qualify

for the exemption will formulate market maker qualification standards for their dealers and rules requiring the dealers employing this exemption to comply with the terms of the NASD's bid test. In this regard, the NASD will be pleased to confer with the options exchanges to develop qualification standards for the market makers intending to take advantage of the proposals contained in this amendment.

2. Short Sale Modifier

An important element of bid test surveillance relates to the submission to ACT of a designator identifying a transaction as a short sale. The designator would be collected for surveillance purposes only and would not be disseminated to the public. The designator would be required on all broker/dealer short sales (when the broker/dealer is not a qualified market maker pursuant to section 46 of Article III to the Rules of Fair Practice) and to all customer short sales, even when a qualified market maker facilitates a short sale for a customer, i.e., buys as principal from a customer selling short. Since a short sale is required to be designated on an order ticket (NASD Rules of Fair Practice, Article III, Section 21), the NASD believes that it is not burdensome to enter the trade into ACT as a "short sale." In addition, the NASD will also offer the "short sale exempt" indicator for customer or member short sales that are exempt from the rule.

3. Additional Amendments

In response to comments on the short sale proposal, the NASD is also adding a provision to section 46 that tracks a provision in Securities Exchange Act Rule 10a–1(e)(1), stating that a customer is exempt from the rule if the short sale in question is for a security that the person owns and intends to deliver as soon as possible without undue inconvenience or expense. This exemption would include instances when a member or customer has purchased or entered into an unconditional contract to purchase stock but has not yet received possession of the stock. Similarly, the exemption would apply in a merger or acquisition situation when a shareholder of one company tenders its shares in the company and is due to receive shares of the surviving entity, but has not yet taken possession of those shares. In instances like these, the SEC has granted an exemption from its short sale rule and the NASD is adding identical language.

The NASD is also amending the section regarding the ability to exempt either unconditionally, or on specified terms and conditions, any transaction or class of transactions from the provisions of the rule. The NASD believes that it is important to retain flexibility in determining which specific transactions or class of transactions may prove unsuitable for short sale regulation, and would therefore warrant an exemption from the rule.

Finally, the NASD is amending the Rules of Fair Practice, Article III, section 21 to clarify members' books and records requirements. This section requires members to annotate on their order tickets whether a customer sale is a short sale or long sale and the NASD is clarifying the language to emphasize that an order may be marked "long" if (1) The customer's account is long the security involved or (2) the customer owns the security and agrees to deliver the security as soon as possible without undue inconvenience or expense. This clarification brings the language of section 21 into line with the proposed short sale rule which tracks the SEC's definition of short sales. According, the NASD is clarifying the language so that members will be able to ascertain whether the customer's sale is short or long, annotate the order tickets accordingly, and comply more readily with all relevant NASD bid test requirements.

The NASD believes the proposed rule change is consistent with sections 15A(b)(6) and 11A(c)(1)(F) of the Act. Section 15A(b)(6) requires that the rules of a national securities association be designed to prevent fraudulent and manipulative acts and practices, to promote just and equitable principles of trade, to foster cooperation and coordination with persons engaged in regulating, clearing, settling, processing information with respect to, and facilitating transactions in securities, to remove impediments to and perfect the mechanism of a free and open market. Section 11A(c)(1)(F) assures equal regulation of all markets for qualified securities and all exchange members, brokers, and dealers effecting transactions in such securities. The NASD believes that approval of the proposed short sale rule would result in equivalent short sale regulation in the exchange and Nasdaq markets and would work to prevent fraud and manipulation with respect to short sales in the Nasdaq market. These amendments are designed to give relief to options market makers in order to enable them to hedge their positions without eviscerating the effectiveness of the proposed short sale rule.

B. Self-Regulatory Organization's Statement on Burden on Competition

The NASD believes that the proposed rule change will not result in 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

Comments were neither solicited nor received.

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

Within 35 days of the date of publication of this notice in the **Federal Register** or within such longer period (i) as the Commission may designate up to 90 days of such date if it finds such longer period to be appropriate and publishes its reasons for so finding or (ii) as to which the NASD consents, the Commission will:

A. By order approve such proposed rule change, or

B. Institute proceedings to determine whether the proposed rule change should be disapproved.

IV. Solicitation of Comments

Interested persons are invited to submit written data, views, and arguments concerning the foregoing. Persons making written submissions should file six copies thereof with the Secretary, Securities and Exchange Commission, 450 Fifth Street, NW., Washington, DC 20549. Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for inspection and copying in the Commission's Public Reference Room. Copies of such filing will also be available for inspection and copying at the principal office of the NASD. All submissions should refer to the file number in the caption above and should be submitted by February 12, 1993.

For the Commission, by the Division of Market Regulation, pursuant to

delegated authority, 17 CFR 200.30–3(a)(12).

Margaret H. McFarland,

Deputy Secretary.

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BILLING CODE 8010–01–M

SMALL BUSINESS ADMINISTRATION

Reporting and Recordkeeping Requirements Under OMB Review

AGENCY: Small Business Administration.

ACTION: Notice of reporting requirements submitted for review.

SUMMARY: Under the provisions of the Paperwork Reduction Act (44 U.S.C. chapter 35), agencies are required to submit proposed reporting and recordkeeping requirements to OMB for review and approval, and to publish a notice in the **Federal Register** notifying the public that the agency has made such a submission.

DATES: Comments should be submitted within 30 days of this publication in the **Federal Register**. If you intend to comment but cannot prepare comments promptly, please advise the OMB Reviewer and the Agency Clearance Officer before the deadline.

COPIES: Request for clearance (S.F. 83), supporting statement, and other documents submitted to OMB for review may be obtained from the Agency Clearance Officer. Submit comments to the Agency Clearance Officer and the OMB Reviewer.

FOR FURTHER INFORMATION CONTACT:

Agency Clearance Officer: Cleo Verbillis, Small Business Administration, 409 3rd Street, SW., 5th Floor, Washington, DC 20416, Telephone: (202) 205–6629.

OMB Reviewer: Gary Waxman, Office of Information and Regulatory Affairs, Office of Management and Budget, New Executive Office Building, Washington, DC 20503.

Title: Request for Approval of Joint Venture Agreement.

SBA Form No.: N/A.

Frequency: On occasion.

Description of Respondents: 8(a) firms entering into a joint venture agreement.

Annual Responses: 20.

Annual Burden: 100.

Title: Notice of Change of Ownership.

SBA Form No.: N/A.

Frequency: On occasion.

Description of Respondents: 8(a) firms proposing a change in their ownership.

Annual Responses: 50.

Annual Burden: 100

Title: Request for Eligibility.

SBA Form No.: N/A.

Frequency: On occasion.

Description of Respondents: 8(a) applicants seeking eligibility reconsideration.

Annual Responses: 600.

Annual Burden: 2,400.

Title: Submission of Business Financial Statement.

SBA Form No.: N/A.

Frequency: On occasion.

Description of Respondents: 8(a) participating firms.

Annual Responses: 3,100.

Annual Burden: 3,100.

Dated: January 14, 1993.

Cleo Verbillis,

Chief, Administrative Information Branch.

[FR Doc. 93–1444 Filed 1–21–93; 8:45 am]

BILLING CODE 8025–01–M

DEPARTMENT OF TRANSPORTATION

Aviation Security Advisory Committee; Meeting

AGENCY: Federal Aviation Administration, Transportation.

ACTION: Notice of Aviation Security Advisory Committee meeting.

SUMMARY: Notice is hereby given of a meeting of the Aviation Security Advisory Committee.

DATES: The meeting will be held February 4, 1993, from 9 a.m. to 1 p.m.

ADDRESSES: The meeting will be held in the MacCracken Room, Federal Aviation Administration, 800 Independence Avenue, SW., Washington, DC.

FOR FURTHER INFORMATION CONTACT: The Office of the Assistant Administrator for Civil Aviation Security, ACS, 800 Independence Avenue, SW., Washington, DC 20591, telephone 202–267–7416.

SUPPLEMENTARY INFORMATION: Pursuant to section 10(a) of the Federal Advisory Committee Act (Pub. L. 92–463; 5 U.S.C. app. II). notice is hereby given of a meeting of the Aviation Security Advisory Committee to be held February 4, 1993, in the MacCracken Room, Federal Aviation Administration, 800 Independence Avenue, SW., Washington, DC.

The agenda for the meeting will include reports from the Airport Construction Guidelines Task Force and the Aircrew Access Task Force, and a report on FAA research and development programs. Attendance at the February 4, 1993, meeting is open to the public but limited to space available. Members of the public may address the committee only with the written permission of the chair, which should be arranged in advance. The chair may entertain public comment if, in its judgment, doing so will not disrupt the orderly progress of the meeting and will not be unfair to any other person. Members of the public are welcome to present written material to the committee at any time.

Persons wishing to present statements or obtain information should contact the Office of the Assistant Administrator for Civil Aviation Security, 800 Independence Avenue, SW., Washington, DC 20591, telephone 202–267–7416.

Issued in Washington, DC on January 15, 1993.

O.K. Steele,

Assistant Administrator for Civil Aviation Security.

[FR Doc. 93–1496 Filed 1–21–93; 8:45 am]

BILLING CODE 4910–13–M

Coast Guard

[CGD 93–001]

The Boat Safety Account of the Aquatic Resources Trust Fund; Fiscal Year 1993 Financial Assistance

AGENCY: Coast Guard, DOT.

ACTION: Notice of availability.

SUMMARY: The Coast Guard is seeking to enter into financial assistance agreements with national nonprofit public service organizations for national boating safety activities. The Coast Guard has fiscal year 1993 funds available to subsidize selected national boating safety activities. This announcement seeks proposals for all types of projects that will promote boating safety on a national level.

DATES: Proposals must be received by April 2, 1993.

ADDRESSES: Application packages may be obtained from and proposals submitted to Commandant (G–NAB–5), U.S. Coast Guard, 2100 Second Street, SW., Washington, DC 20593–0001.

FOR FURTHER INFORMATION CONTACT: Mr. Ladd Hakes, Office of Navigation Safety and Waterway Services, U.S. Coast Guard (G–NAB–5), 2100 Second Street SW., Washington, DC 20593–0001; (202) 267–0954.

SUPPLEMENTARY INFORMATION: Title 26, United States Code, section 9504 establishes the Boat Safety Account of the Aquatic Resources Trust Fund. The Coast Guard may award annually up to 5 percent of the available funds to national nonprofit public service organizations for national boating safety activities. Up to $1,862,500 is available for the fiscal year ending September 30, 1993. Twenty-two awards totaling

$1,750,000 were made in fiscal year 1992; awards ranged from $5,000 to $245,000. Nothing in this announcement should be construed as committing the Coast Guard to dividing available funds among all qualified applicants or awarding any specified amount.

It is anticipated that several awards will be made by the Chief, Office of Navigation Safety and Waterway Services, U.S. Coast Guard. Applicants must be responsible, nongovernmental, nonprofit public service organizations and must establish that their activities are, in fact, national in scope. Specific information on organization eligibility, proposal requirements, award procedures, and financial administration procedures may be obtained by contacting the person listed under the head "FOR FURTHER INFORMATION CONTACT."

Some general areas of particular interest include:

—Boating accident studies and analyses.

—Projects to research, design and develop training aids for boating education programs, including films, tapes, books, classroom materials and other items.

—Projects to design and develop boating safety education media and materials (films, tapes, books) for use by the boating public, including the boater, marine enforcement personnel, and the boating industry.

—Projects to support national boating safety media efforts (e.g., National Safe Boating Week, education seminars and public service announcements).

—Technical or engineering projects to research suspected safety problems on specific boat or associated equipment types.

—Evaluation studies of the effectiveness of selected boating education safety materials.

—Projects addressing multiple-use waterway conflict management.

This list should not constrain submission of proposals addressing other boating safety concerns. Innovative approaches are welcome. Discussions of specific projects of interest to the Coast Guard will be included in the application package which may be obtained as stated in ADDRESSES, above. The Boating Safety Financial Assistance Program is listed in section 20.005 of the Federal Domestic Assistance Catalog.

Dated: January 15, 1993.

W.J. Ecker,

Rear Admiral, U.S. Coast Guard, Chief, Office of Navigation Safety and Waterway Services.

[FR Doc. 93–1453 Filed 1–21–93; 8:45 am]

BILLING CODE 4910–14–M

National Highway Traffic Safety Administration

[Docket No. 93–03; Notice 1]

Receipt of Petition for Determination That Nonconforming 1970 Mercedes Benz 250C Passenger Cars Are Eligible for Importation

AGENCY: National Highway Traffic Safety Administration, DOT.

ACTION: Notice of receipt of petition for determination that nonconforming 1970 Mercedes-Benz 250C passenger cars are eligible for importation.

SUMMARY: This notice announces receipt by the National Highway Traffic Safety Administration (NHTSA) of a petition for a determination that a 1970 Mercedes-Benz 250C that was not originally manufactured to comply with all applicable Federal motor vehicle safety standards is eligible for importation into the United States because (1) it is substantially similar to a vehicle that was originally manufactured for importation into and sale in the United States and that was certified by its manufacturer as complying with the safety standards, and (2) it is capable of being readily modified to conform to the standards.

DATES: The closing date for comments on the petition is February 22, 1993.

ADDRESSES: Comments should refer to the docket number and notice number, and be submitted to: Docket Section, room 5109, National Highway Traffic Safety Administration, 400 Seventh Street, SW., Washington, DC 20590. Docket hours are from 9:30 a.m. to 4 p.m.

FOR FURTHER INFORMATION CONTACT: Ted Bayler, Office of Vehicle Safety Compliance, NHTSA (202–366–5306).

SUPPLEMENTARY INFORMATION:

Background

Under section 108(c)(3)(A)(i) of the National Traffic and Motor Vehicle Safety Act (the Act), 15 U.S.C. 1397(c)(3)(A)(i), a motor vehicle that was not originally manufactured to conform to all applicable Federal motor vehicle safety standards shall be refused admission into the United States on and after January 31, 1990, unless NHTSA has determined that the motor vehicle is substantially similar to a motor vehicle originally manufactured for importation into and sale in the United States, certified under section 114 (of the Act), and of the same model year as the model of the motor vehicle to be compared, and is capable of being readily modified to conform to all applicable Federal motor vehicle safety standards.

Petitions for eligibility determinations may be submitted by either manufacturers or importers who have registered with NHTSA pursuant to 49 CFR part 592. As specified in 49 CFR 593.7, NHTSA publishes notice in the **Federal Register** of each petition that it receives, and affords interested persons an opportunity to comment on the petition. At the close of the comment period, NHTSA determines, on the basis of the petition and any comments that it has received, whether the vehicle is eligible for importation. The agency then publishes this determination in the **Federal Register**.

Champagne Imports Inc. of Lansdale, Pennsylvania (Registered Importer R–90–009) has petitioned NHTSA to determine whether 1970 Mercedes-Benz 250C (Model ID 114.021) passenger cars manufactured by Daimler Benz A.G. are eligible for importation into the United States. The vehicle which Champagne believes is substantially similar is the 1970 Mercedes-Benz 250C (Model ID 114.023) that Daimler Benz A.G. offered for sale in the United States and certified as conforming to all applicable Federal motor vehicle safety standards.

The petitioner stated that it carefully compared the non-U.S. certified version of the 250C to its U.S. certified counterpart, and found that the two vehicles are substantially similar with respect to compliance with most applicable Federal motor vehicle safety standards.

Champagne submitted information with its petition intended to demonstrate that the non-U.S. certified 1970 model 250C, as originally manufactured, conforms to many Federal motor vehicle safety standards in the same manner as its U.S. certified counterpart, or is capable of being readily modified to conform to those standards.

Specifically, the petitioner claims that the non-U.S. certified 1970 model 250C is identical to its U.S. certified counterpart with respect to compliance with Standard Nos. 102 *Transmission Shift Lever Sequence* * * *, 103 *Defrosting and Defogging Systems*, 104 *Windshield Wiping and Washing Systems*, 105 *Hydraulic Brake Systems*, 106 *Brake Hoses*, 107 *Reflecting Surfaces*, 109 *New Pneumatic Tires*, 113 *Hood Latch Systems*, 116 *Brake Fluid*,

201 *Occupant Protection in Interior Impact*, 202 *Head Restraints*, 203 *Impact Protection for the Driver From the Steering Control System*, 204 *Steering Control Rearward Displacement*, 205 *Glazing Materials*, 206 *Door Locks and Door Retention Components*, 207 *Seating Systems*, 208 *Occupant Crash Protection*, 209 *Seat Belt Assemblies*, 210 *Seat Belt Assembly Anchorages*, 211 *Wheel Nuts, Wheel Discs and Hubcaps*, 212 *Windshield Retention*, 216 *Roof Crush Resistance*, and 302 *Flammability of Interior Materials*.

Petitioner also contends that the non-U.S. certified 250C is capable of being readily modified to meet the following standards, in the manner indicated:

Standard No. 101 *Controls and Displays*: Substitution of a lens marked "Brake" for a lens with an ECE symbol on the brake failure indicator lamp.

Standard No. 108 *Lamps, Reflective Devices and Associated Equipment*: (a) Installation of U.S.-model headlamp assemblies which incorporate sealed beam headlamps and front sidemarkers; (b) installation of U.S.-model taillamp assemblies which incorporate rear sidemarkers.

Standard No. 110 *Tire Selection and Rims*: Installation of a tire information placard.

Standard No. 114 *Theft Protection*: Installation of a buzzer microswitch in the steering lock assembly, and a warning buzzer.

Standard No. 115 *Vehicle Identification Number*: Installation of a VIN plate that can be read from outside the left windshield pillar, and a VIN reference label on the edge of the door or latch post nearest the driver.

Standard No. 301 *Fuel System Integrity*: Installation of a rollover valve in the fuel tank vent line between the fuel tank and the evaporative emissions collection canister.

Interested persons are invited to submit comments on the petition described above. Comments should refer to the docket number and be submitted to: Docket Section, National Highway Traffic Safety Administration, room 5109, 400 Seventh Street, SW., Washington, DC 20590. It is requested but not required that 10 copies be submitted.

All comments received before the close of business on the closing date indicated above will be considered, and will be available for examination in the docket at the above address both before and after that date. To the extent possible, comments filed after the closing date will also be considered. Notice of final action on the petition will be published in the **Federal Register** pursuant to the authority indicated below.

Comment closing date: February 22, 1993.

Authority: 15 U.S.C. 1397(c)(3)A)(i)(I) and (C)(ii); 49 CFR 593.8; delegations of authority at 49 CFR 1.50 and 501.8.

Issued on January 13, 1993.

William A. Boehly,

Associate Administrator for Enforcement.

[FR Doc. 93–1339 Filed 1–21–93; 8:45 am]

BILLING CODE 4910–59–M

DEPARTMENT OF THE TREASURY

Order Number 107–02

Authority of the General Counsel To Receive Service of Process

January 12, 1993.

1. By virtue of the authority vested in the Secretary of the Treasury, including the authority in 31 U.S.C. 321(b), I hereby authorize the General Counsel to receive service of any subpoena, summons or other judicial process directed to an officer or employee of the Department in that officer's or employee's official capacity in any litigation.

2. This authorization may be redelegated by the General Counsel or the General Counsel's designee to any attorney within the Legal Division of the Department. Any such redelegation shall be in writing.

3. The General Counsel is authorized to ratify and affirm the acceptance of any subpoena, summons or other judicial process directed to an officer or employee of the Department in his or her official capacity when such acceptance was performed by the Associate General Counsel, or by an attorney under the supervision of an Assistant General Counsel or the Associate General Counsel, prior to the date hereof.

4. This order does not in any way abrogate or modify the requirements of the Federal Rules of Civil Procedure regarding service of summons and complaint.

5. *Cancellation.* This order supersedes Treasury Order 107–02, "The Authority to the General Counsel to Receive Service of Process," dated March 27, 1953.

Nicholas F. Brady,

Secretary of the Treasury.

[FR Doc. 93–1418 Filed 1–21–93; 8:45 am]

BILLING CODE 4810–25–M

Sunshine Act Meetings

Federal Register
Vol. 58, No. 13
Friday, January 22, 1993

This section of the FEDERAL REGISTER contains notices of meetings published under the "Government in the Sunshine Act" (Pub. L. 94-409) 5 U.S.C. 552b(e)(3).

FEDERAL ELECTION COMMISSION

DATE AND TIME: Tuesday, January 26, 1993 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, January 28, 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
Title 26 Certification Matters
Advisory Opinion 1992–43—Senator Tim Erwin
Regulations: Request for a Public Hearing on the Ex Parte Communication Rules
Routine Administrative Matters.

PERSON TO CONTACT FOR INFORMATION: Mr. Fred Eiland, Press Officer, Telephone: (202) 219–4155.

Marjorie W. Emmons,
Secretary of the Commission.
[FR Doc. 93–1711 Filed 1–19–93; 3:05 pm]
BILLING CODE 6715–01–M

BOARD OF GOVERNORS OF THE FEDERAL RESERVE SYSTEM

TIME AND DATE: 11:00 a.m., Monday, January 25, 1993.

PLACE: Marriner S. Eccles Federal Reserve Board Building, C Street entrance between 20th and 21st Street, N.W., Washington, D.C. 20551.

STATUS: Closed.

MATTERS TO BE CONSIDERED:

1. Personnel actions (appointments, promotions, assignments, reassignments, and salary actions) involving individual Federal Reserve System employees.
2. Any items carried forward from a previously announced meeting.

CONTACT PERSON FOR MORE INFORMATION: Mr. Joseph R. Coyne, Assistant to the Board; (202) 452–3204. You may call (202) 452–3207, beginning at approximately 5 p.m. two business days before this meeting, for a recorded announcement of bank and bank holding company applications scheduled for the meeting.

Dated: January 15, 1993.

Jennifer J. Johnson,
Associate Secretary of the Board.
[FR Doc. 93–1588 Filed 1–19–93; 11:27 am]
BILLING CODE 6210–01–M

UNITED STATES POSTAL SERVICE BOARD OF GOVERNORS

The Board of Governors of the United States Postal Service, pursuant to its Bylaws (39 C.F.R. Section 7.5) and the Government in the Sunshine Act (5 U.S.C. Section 552b), hereby gives notice that it intends to hold a meeting at 8:30 a.m. on Tuesday, February 2, 1993, in Washington, DC. The meeting is open to the public and will be held at U.S. Postal Service Headquarters, 475 L'Enfant Plaza, SW., in the Benjamin Franklin Room. The Board expects to discuss the matters stated in the agenda which is set forth below. Requests for information about the meeting should be addressed to the Secretary of the Board, David F. Harris, at (202) 268–4800.

There will also be a session of the Board on Monday, February 1, 1993, but it will consist entirely of briefings and is not open to the public.

Agenda

Tuesday Session

February 2—8:30 a.m. (Open)

1. Minutes of the Previous Meeting, January 4–5, 1993.
2. Remarks of the Postmaster General. (Marvin Runyon)
3. Appointment of Committee Members. (Bert H. Mackie, Chairman, Board of Governors)
4. Quarterly Report on Financial Performance. (M. Richard Porras, Acting Vice President, Finance and Planning)
5. Quarterly Report on Service Performance. (Ann McK. Robinson, Vice President, Consumer Advocate)
6. Annual Report on Diversity Development and Affirmative Action. (Veronica O. Collazo, Vice President, Diversity Development)
7. Annual Report on Equal Employment Opportunity (EEO). (Joseph J. Mahon, Jr., Vice President, Labor Relations)
8. Capital Investment. (Stephen E. Miller, Vice President Operations Support)
   a. Additional Delivery Bar Code Sorters.
9. Tentative Agenda for the March 1–2, 1993, meeting in Washington, DC.

David F. Harris,
Secretary.
[FR Doc. 93–1639 Filed 1–19–93; 11:28 am]
BILLING CODE 7710–12–M

U.S. RAILROAD RETIREMENT BOARD

Notice of Public Meeting

Notice is hereby given that the Railroad Retirement Board will hold a meeting on January 28, 1993, 9:00 a.m., at the Board's meeting room on the 8th floor of this headquarters building, 844 North Rush Street, Chicago, Illinois, 60611. The agenda for this meeting follows:

Portion Open to the Public

(1) San Francisco Regional Director's Vacancy.
(2) Board Policy Concerning Travel and Budget Process.
(3) Special Service Awards.
(4) Fund-Raising/Sales Activity Policy.
(5) Employee Suggestions.
(6) Coverage Determination—General Railway Services.
(7) *Nancy Johnson* v. *Railroad Retirement Board.*
(8) Debt Collection.
(9) Pre-Recovery Waiver.
(10) Debt-Prevention.
(11) Regulations—Part 203, Employees Under the Act.
(12) Regulations—Part 228, Computation of Survivor Annuities.
(13) Regulations—Part 230, Reduction and Non-Payment of Annuities by Reason of Work.
(14) Regulations—Parts 202 and 301, Employers Under the Railroad Retirement Act and Railroad Unemployment insurance Act.
(15) Regulations—Part 328, Voluntary Leaving of Work.
(16) Regulations—Part 336, Duration of Normal and Extended Benefits.
(17) Regulations—Part 345, Contribution and Contribution Reports.

Portion Closed to the Public

(A) 1993 Performance Appraisal Plans.
(B) Individual Development Plans.

The person to contact for more information is Beatrice Ezerski, Secretary to the Board, COM No. 312–751–4920, FTS No. 386–4920.

Dated: January 15, 1993

Beatrice Ezerski,

Secretary to the Board.

[FR Doc. 93–1704 Filed 1–19–93; 3:04 pm]

BILLING CODE 7905–01–M

federal register

Friday
January 22, 1993

Part II

National Indian Gaming Commission

25 CFR Parts 501 et al.

Purpose and Scope; Service; Approval of Class II and Class III Gaming Ordinances; Background Investigations and Gaming Licenses Under the Indian Gaming Regulatory Act; Privacy Act Procedures; Management Contract Requirements and Procedures Under the Indian Gaming Regulatory Act; Compliance and Enforcement Procedures Under the Indian Gaming Regulatory Act; Final Rules

NATIONAL INDIAN GAMING COMMISSION

25 CFR Parts 501, 519, 522, 523, 524, 556, 558

RIN 3141–AA01

Purpose and Scope; Service; Approval of Class II and Class III Gaming Ordinances; Background Investigations and Gaming Licenses Under the Indian Gaming Regulatory Act

AGENCY: National Indian Gaming Commission.

ACTION: Final rule.

SUMMARY: The National Indian Gaming Commission is establishing this rule in chapter III in title 25 of the Code of Federal Regulations (Parts 500–599). This rule provides a purpose and scope, procedures for service of Commission determinations, requirements for submitting new and existing gaming ordinances to the Chairman for approval, requirements for background investigations on primary management officials and key employees, and requirements for licensing employees of an Indian gaming operation. Elsewhere in today's **Federal Register**, the Commission is establishing procedures under the Privacy Act. The Commission previously established an Indian Gaming Individuals Record System.

EFFECTIVE DATE: February 22, 1993.

FOR FURTHER INFORMATION CONTACT: Mary Jane Markley, National Indian Gaming Commission, suite 250, 1850 M Street, NW., Washington, DC 20036–5083; telephone: 202–632–7032.

SUPPLEMENTARY INFORMATION:

Background

The Indian Gaming Regulatory Act (IGRA, or the Act), 25 U.S.C. 2701 *et seq.*, was signed into law on October 17, 1988. The IGRA established the National Indian Gaming Commission (NIGC, or the Commission). Under the IGRA, the Commission is charged with regulating class II gaming and certain aspects of class III gaming. On Wednesday, July 8, 1992, the Commission proposed regulations for service, approval of class II and class III gaming ordinances, and Privacy Act procedures. 57 FR 30346–30357. The Commission requested comments on those proposed regulations. In addition, the Commission provided notice that it was establishing a system of records under the Privacy Act. 57 FR 30358–30359. Below is the Commission's analysis of the comments received and the texts of the final service and ordinance regulations. Additionally, the Commission has added a new part, part 501, Purpose and scope of this chapter.

General Comments

One commenter questioned the Commission's "piecemeal approach" to rulemaking. This commenter was concerned that commenters had to comment on "separate pieces of a big puzzle without knowing what the 'big picture' looks like." The Commission disagrees. During the comment period for the ordinance and Privacy Act regulations (July 8 through August 24, 1992), the Commission also proposed compliance and enforcement regulations (57 FR 30584, July 9, 1992) and management contract regulations (57 FR 37656, August 19, 1992). Additionally, the Commission had previously promulgated fee regulations (56 FR 40702, August 15, 1991) and definitions regulations (57 FR 12382, April 9, 1992). Those regulations form key pieces of the Commission's regulatory program and they were available during this rulemaking. The Commission plans to provide a set of its regulations along with preambles so that interested persons may have ready reference to the regulations and the Commission's explanations for them.

The same commenter also questioned the Commission's rejection of negotiated rulemaking, stating that use of that process would avoid litigation. In the view of the Commission, because Congress spelled out specific requirements that the Commission could not ignore, negotiated rulemaking was not suitable. Furthermore, commenters have had ample opportunity to review, comment on, and discuss with Commissioners and staff the Commission's thinking with respect to the ordinance regulations. Those regulations have been available since December 1991 in working draft form.

Another commenter asked whether tribes having ordinances that complied with Bureau of Indian Affairs' (BIA) useful guidance that was issued on March 5, 1992, would need to revise those ordinances and procedures to conform to the Commission's regulations. To the extent that there are additional requirements or conflicts tribes must change their ordinances. Tribes are free, however, to adopt procedures more stringent than those set out in parts 522, 523, 556, and 558. Under the ordinance regulations, the background investigation requirements for class II gaming and for class III gaming (where a compact allocates such responsibility to a tribe) are the responsibility of a tribe.

Part 501—Purpose and Scope of this Chapter

To clarify that the requirements under the IGRA and this chapter do not preempt tribal ordinances and regulations that do not conflict with the IGRA, this chapter, or a compact, the Commission has added a new part 501, Purpose and scope of this chapter. There, the Commission spells out the overlapping jurisdictions of a tribe, the regulations of the Commission with respect to gaming on Indian lands and the applicability of state law under a compact for class III gaming. Tribes are free to add their own requirements in regulating Indian gaming so long as those requirements are not in conflict with nor are less stringent than the requirements under the IGRA, the regulations of chapter III of the C.F.R., or a compact for class III gaming.

Jurisdiction, as spelled out in § 501.2(b) for class I gaming, implements section 2710(a)(1). Jurisdiction, as spelled out in § 501.2(c) for class II gaming, implements section 2710(a)(2). Jurisdiction, as spelled out in § 501.2(d) for class III gaming, implements section 2710(d)(5).

Part 519—Service

Fax failure

A commenter noted that appeal deadlines could be missed in the event of failure of a fax machine to receive a transmission under § 519.3(a)(5). In this commenter's view, that could happen because the service regulation provides that service by facsimile is complete upon transmission (as opposed to receipt). The commenter stated that a fax machine could be out of ink at the time a fax was sent and therefore not receive a fax. The Commission believes that it has adopted adequate safeguards in the event of fax failure. First, the Commission will send copies of its notices to three entities in addition to the entity being served: The tribal chairman, the designated tribal agent and the relevant tribal gaming authority. Second, after such transmission the Commission's fax machine tells it whether the transmission was successful. If the fax machine tells the Commission that a transmission was not successful, service would not be complete. In that case, the Commission would serve a document by other means. Third, the Commission plans to confirm service by telephoning the receiving office.

Syntax

The Commission modified slightly the language of § 519.3(a)(5) by inserting "Transmitting a" before "facsimile."

This modification makes (a)(5) parallel to the other items under subparagraph (a).

Service of entities

One commenter requested that the Commission define "person" in part 519 to include "entities." Apparently, the commenter was concerned that entities other than natural persons be served. Under § 519.1 a tribe must designate an agent for service. Similarly, under § 519.2, a tribal operator or management contractor must also designate such an agent. By designating agents, entities that are not natural persons may be served.

Clarification of § 519.4 with respect to timeliness and certainty

Several commenters were concerned that copies to tribal officials be timely and certain. In response to those commenters' concerns, the Commission clarified § 519.4. First, the Commission deleted "When practicable" from the beginning of the sentence. Second, the Commission deleted "send" and inserted in its place "transmit" to indicate copies could be delivered by a method other than the mail. Third, the Commission added a new sentence to read: "The Commission shall transmit each copy as expeditiously as possible." Finally, to clarify the separation of service from providing copies to tribal officials, the Commission added another sentence to read: "Service under § 519.3 shall not depend on a copy being sent to the appropriate tribal chairman, the designated tribal agent, or to the relevant tribal gaming authority." With these clarifications, the Commission believes it has answered the timeliness and certainty concerns expressed by several commenters.

Part 522—Submission of Gaming Ordinance or Resolutions

State law issues

One commenter suggested that part 522 require that each class II game be authorized by the laws of the state in which the gaming would be conducted. That same commenter suggested that with respect to the card games under section 2703(A)(ii), if a tribe conducted a card game inconsistent with State law or regulation, that such conduct should constitute grounds for disapproval of an ordinance or resolution. The Commission disagrees. In the view of the Commission, approval of an ordinance does not authorize the playing of certain games. Nor should disapproval of an ordinance be a vehicle for indicating disagreement with a tribe on a matter of interpretation of state law. In its approvals, the Commission plans to include a disclaimer concerning the legality of whether and how specific games may be conducted. The Commission views illegally played games as a matter for enforcement, both by the Commission and under 18 U.S.C. 1166.

Class III gaming under procedures prescribed by the Secretary

A commenter suggested amending § 522.2(e) to indicate that class III gaming may be authorized under procedures that are prescribed by the Secretary of the Interior under section 2710(d)(7)(B)(vii). The Commission agrees and has therefore added after "compact," "or procedures as prescribed by the Secretary."

Fingerprints

Some commenters suggested requiring fingerprints, stating that fingerprints are a basic tool for law enforcement authorities in identifying individuals who are using false identities and who may supply false information. The Commission agrees and therefore has added § 522.2(h) to provide for the orderly collection of fingerprints of key employees and primary management officials. The Commission has also added § 556.4(a)(14) to require that tribes obtain fingerprints from applicants for key employee and primary management official positions. The Commission plans to help any tribe that may need guidance in setting up procedures to ensure the integrity of the fingerprinting process. Tribes that have previously worked with the Bureau of Indian Affairs in obtaining criminal history checks may wish to continue doing so. Regarding the requirement in § 522.2(h) that a criminal history check must include a check through the FBI National Criminal Information Center, the Commission encourages additional criminal history checks through tribal, local and state systems, but does not require them.

Submission requirements issues

Some commenters questioned the authority of the Commission to require submission of various procedures under § 522.2, stating that the IGRA does not require such submissions. The Commission disagrees. Authority to request the various procedures is contained in the IGRA, contrary to assertions of the commenters. First, section 2710(b)(2) states that the Chairman shall approve an ordinance if it includes certain required provisions and if there is an "adequate system" that includes, among other things, background investigations and licensing. Hence the Commission's requirements for submission of such procedures. Second, concerning procedures for dispute resolution, Congress included among the IGRA's purposes to assure "that gaming is conducted fairly and honestly by both the operator and the players." Section 2702(2) The Commission's requirement to submit dispute resolution procedures implements that purpose. Third, section 2706(b)(10) grants the Commission power to "promulgate such regulations and guidelines as it deems appropriate to implement the provisions of (the IGRA)." Because the procedures in question implement specific purposes and requirements of the IGRA and because the IGRA grants the Commission power to promulgate necessary regulations, the Commission rejects the suggestions that such procedures are beyond its authority.

One commenter suggested adding to the existing submission requirements in § 522.2 "any other documents, papers, reports, or other information deemed relevant by the Chairman." In the commenter's view, that addition would afford the Commission the flexibility to require any other information needed to facilitate a complete review of an ordinance without having to amend the applicable regulation. The Commission believes that the information requirements as set out in the IGRA and the regulations are sufficient for the Chairman to make an informed decision in approving or disapproving an ordinance. Therefore the Commission rejects the suggestion.

The same commenter suggested requiring a form for submission of ordinances under part 522. The Commission rejects that suggestion for now because the requirements are explicit without a form. Additionally, supplying ordinances and descriptions of various procedures does not lend itself to forms.

Another commenter questioned the Commission's requiring submission of a copy of a tribal-state compact under § 522.2(e), stating that such a requirement was "an unnecessary expense and waste of paper." The Commission disagrees. In reviewing class III ordinances, the Chairman needs an up-to-date compact so he or she may ascertain how jurisdiction is allocated for background investigations and enforcement. Therefore the Commission rejects the suggestion that requiring a copy of a compact is wasteful.

Amendment issues

One commenter suggested amending § 522.3(b) by inserting "after adoption" following the word "days" to make the

requirement consistent with subsection (a). The Commission agrees and therefore has inserted "after adoption" in the text of the regulation.

Another commenter suggested revising from 15 to 60 days the time limit for submission of an amendment that has been adopted by a tribe under § 522.3(b). The Commission disagrees. The present period of 15 days is sufficient to copy the amendment and mail it to the Commission.

Approval clarifications

The Commission corrected two cross references and clarified the applicability of the regulations to key employees and primary management officials in § 522.4. First, the Commission corrected the references in § 522.4(b)(1). The language of the regulation now reads: "The tribe shall have the sole proprietary interest in * * * gaming * * * unless it elects to allow individually owned gaming under either § 522.10 or § 522.11 of this part." Second, the language of § 522.4(b)(4) now reads: "All gaming related contracts * * * shall be specifically included within the scope of the audit conducted under § 522.4(b)(3) of this part." To clarify that the background investigations and licensing requirements of parts 556 and 558 apply only to key employees and primary management officials, the Commission inserted those terms in § 522.4(b)(5).

Sole proprietary interest

One commenter requested that the Commission define "sole proprietary interest" as it relates to gaming. The commenter wanted to know whether that term would exclude leases on equipment, collateral for loans, and tribal member stock ownership. In the view of the Commission, unless a tribe elects to license individual owners, the tribe must have "the sole proprietary interest and responsibility for the conduct of any gaming activity." Section 2710(b)(2)(A). An agreement whereby consideration is paid of payable to the gaming operation for the right to place gambling devices that are controlled by the vendor in such gaming operation is inconsistent with the requirement that a tribe have the sole proprietary interest. Regarding collateral for loans, a tribe may not grant a security interest in a gaming operation if such an interest would give a party other than the tribe the right to control gaming in the event of default by a tribe. Such a security interest would be inconsistent with the IGRA's requirement that a tribe have the "sole proprietary interest and responsibility for the conduct of any gaming activity." Similarly, because IGRA specifies that a tribe (not its members) must have the sole proprietary interest, stock ownership in a tribal gaming operation by individual tribal members would also be inconsistent with the IGRA. It is not possible for the Commission to further define the term in any meaningful way. The Commission will, however, provide guidance in specific circumstances.

Charitable organizations

Two commenters objected to a reference to the Internal Revenue Service with respect to charitable organizations under § 522.4(b)(2)(iv). Under section 2710(b)(2)(B)(iv), gaming revenues may be donated to charitable organizations. The Commission had stated that charitable organizations are generally understood to be those approved by the I.R.S. under I.R.C. section 501(c)(3). The commenters stated that I.R.S. approval would not be an appropriate test for two reasons. First, tribes are not subject to Federal income tax. Second, within tribes there are clans, societies and other traditional organizations that customarily conduct charitable activities. The Commission agrees with the reasoning of the commenters. The Commission did not intend to prevent groups within tribes from receiving charitable donations so long as those groups are charitable as that term is legally understood. Black's Law Dictionary defines "charitable" as follows: "Having the character or purpose of a charity. The word 'charitable', in a legal sense includes every gift for a general public use, to be applied consistent with existing laws, for benefit of an indefinite number of persons, and designed to benefit them from an educational, religious, moral, physical or social standpoint." In the view of the Commission, donations to groups that come within this definition meet the requirement of the IGRA.

Submission completeness

One commenter suggested amending § 522.4 so that the 90 day approval review period would begin only after a Chairman's determination that a submission was complete. The Commission rejects that suggestion. Although the Commission plans to notify tribes of incomplete submissions, an ordinance would be deemed approved under section 2710(e) unless the Chairman acts within 90 days. With respect to existing ordinances and resolutions, § 523.3(b) requires the Chairman to notify a tribe in writing of specific areas of noncompliance. The Commission notes that it will review most ordinances under part 523 rather than part 522 because most tribes already have gaming ordinances.

Duplication of IGRA's language

One commenter suggested deleting as unnecessary subparagraphs (b)(2), (3), (4), (6) and (7) of § 522.4, stating that those requirements duplicate the IGRA. The Commission rejects that suggestion. Those subparagraphs are included to provide a complete reference, without having to refer to the IGRA.

Disapproval clarification issues

A commenter suggested clarifying that disapproval of an ordinance may be for reasons other than failing to submit information required § 522.2. The Commission agrees and therefore has clarified § 522.5 by inserting "or § 522.4(b)." The Commission added an additional sentence to clarify that the Commission will notify a tribe of its right to appeal a disapproval. The additional sentence reads: "The Chairman shall notify a tribe of its right to appeal under part 524."

Stay

Another commenter requested that the Chairman's disapproval under § 522.5 or § 522.7 be stayed pending the Commission's action on an appeal. The Commission agrees. The Commission intends to stay the effect of a disapproval. Therefore the Commission added to § 522.5 and § 522.7 the following sentence: "A disapproval shall be effective immediately unless appealed under part 524." The Chairman will refrain from taking an enforcement action pending an appeal.

Cure period

A commenter requested a "cure period," to be in effect after the Commission upholds a disapproval by the Chairman. The Commission disagrees. During an appeal a tribe may request such a cure period as part of any relief sought. The Commission will consider requests for a cure period on a case-by-case basis.

Automatic approval

Another commenter requested amending § 522.5 by adding, "otherwise the submitted ordinance will be automatically approved upon expiration of 90 days after submission for approval under § 522.2." The Commission rejects this suggestion as unnecessary in view of § 522.9. That section provides for substitute approval if the Chairman fails to approve or disapprove an ordinance.

Class III ordinance clarifications

To clarify appeal rights of a tribe upon disapproval of a class III ordinance, the

Commission inserted under § 522.7 "and notify a tribe of its right to appeal under part 524" after "resolution."

To clarify that it is upon the Chairman's approval that there will be publication in the **Federal Register** of a class III tribal gaming ordinance, the Commission replaced "Commission" with "Chairman" and replaced "its" with "the Chairman's."

Undue influence issues

One commenter questioned whether the approval process was a proper forum for considering any undue influence over a tribe in adopting its class III gaming ordinance under § 522.7(a)(2). In this commenter's view, the Commission should be concerned only with the particular provisions of a gaming ordinance. The Commission disagrees. Section 2710(d)(2)(B) directs the Chairman to disapprove a class III ordinance "if the tribal governing body was significantly and unduly influenced in the adoption of such ordinance or resolution * * *." Because IGRA directs the Chairman's attention to issues of undue influence in reviewing a class III ordinance, the Commission is not free to ignore those issues.

Other commenters questioned whether the Commission interpreted too broadly the class of people whose influence should be scrutinized. In these commenters' view, scrutiny for undue influence should be limited to persons found to pose a threat of criminal influence. The Commission thinks not. An exercise of undue influence by any person having a financial or management interest under 25 CFR 502.17 or 502.18 would constitute a per se threat to the public interest and the effective regulation and control of gaming. Additionally, restricting scrutiny to persons found to pose a threat of criminal influence would require there to be such finding before an exercise of undue influence could be deemed improper. In the Commission's view, undue influence by any person having a financial or management interest is improper and hence grounds for disapproving an ordinance. Therefore, the Commission rejects the suggestion.

Individually owned class III operations

To clarify the language in § 522.10(f) that requires "denial of a license for any person or entity that would not be eligible to receive a State license to conduct the same activity within the jurisdiction of the surrounding state," the Commission added a second sentence that clarifies the extent to which state law standards apply. Looking to the Committee Report for guidance, the Commission found it in a discussion of the requirements for individually owned gaming. There, the Report states: "While a tribe should license such enterprises as part of its governmental function, the Committee has determined that State law (such as purpose, entity, pot limits, hours o(f) operation, etc.) should apply to such enterprises. These games are not to be confused with units of a tribe or tribal social or charitable organizations that operate gaming to support their charitable purposes, such games are not covered by this paragraph but rather will come under tribal gaming." S. Rep. No. 446, 100th Cong., 2d Sess 12 (1988).

One commenter suggested limiting authority to engage in class III gaming to Indian tribes under § 522.10. In this commenter's view, the language of section 2710(d)(3)(A), which limits compacting authority to Indian tribes, also limits class III gaming operations to tribes. The Commission disagrees, noting that (d)(2)(A) clearly contemplates non-tribal entities being authorized to engage in class III gaming. That provision states: "If any Indian tribe proposes to engage in, *or to authorize any person or entity to engage in*, a class III gaming activity * * *" (emphasis added). Because the Commission is not free to ignore the clear language of the IGRA, the Commission rejects the suggestion.

Another commenter suggested including a provision for the transfer of grandfathered gaming licenses under § 522.11. The Commission rejects that suggestion, noting the IGRA specifically prohibits such transfers. Section 2710(b)(4)(B)(ii) states: "The exemption from the application of this subsection (concerning individually owned gaming operations) provided under this subparagraph may not be transferred to any person or entity * * *."

Part 523—Review and Approval of Existing Ordinances or Resolutions

Clarification of § 523.1

To clarify that part 523 applies to ordinances in existence before the promulgation of this rulemaking, not ordinances that may have been disapproved under part 522, the text of § 523.1 now reads: "* * * and that has not been submitted to the Chairman."

Status of gaming activity pending review

One commenter suggested that part 523 should address the provision in section 2712(a) that states, "(a)ny activity conducted under such ordinance, resolution, contract, or agreement shall be valid under this Act, or any amendment made by this Act, unless disapproved under this section." The Commission agrees that an otherwise valid gaming activity remains valid until the ordinance is disapproved by the Chairman. Nothing in the Commission's regulations provides otherwise. Therefore the Commission rejects the suggestion as unnecessary.

Submission of financial information

To clarify that the Commission requires financial information for only the previous fiscal year under § 523.2(a)(2), the Commission changed the text of the regulation to indicate that it requires submission of financial statements for the previous fiscal year and the most recent audit report and management letter.

Deemed disapproval for failure to submit an ordinance

To clarify the status of an ordinance that a tribe failed to submit upon the request of the Chairman under § 523.2(a), the Commission added a new paragraph (b) providing that the Chairman will deem the ordinance or resolution disapproved and will notify such tribe of its appeal rights under part 524.

When a tribe disagrees with the Chairman's order to amend an ordinance

Two commenters suggested amending § 523.3 to include procedures that were mentioned in the preamble. There, the Commission had stated: "When a tribe and the Commission disagree about amending an ordinance, the Commission intends that a tribe and the Commission may jointly waive the 120-day period, in which case the Chairman would disapprove the ordinance or resolution, and the tribe could then proceed to appeal under part 524 * * *." 57 FR 30347. The Commission agrees and has therefore inserted in paragraph (d) after "section," "or earlier if the tribe notifies the Chairman that it intends not to comply(.)"

Part 524—Appeals

Appeals by a party other than a tribe

Some commenters stated that appeals should be limited to a tribe's appealing the Chairman's disapproval of an ordinance, resolution or amendment, stating that the validity of a tribal gaming ordinance or resolution is a matter of tribal sovereignty, subject only to the Chairman's review. In the view of these commenters, other interests have no standing to contest such proceeding. Under the Administrative Procedure Act, each agency may have its own rules regarding standing to participate in its administrative proceedings. An agency's

standing rules may differ and may be narrower than a court's rules. However, a person who may not have standing under agency rules, but who would have standing under a court's rules, may challenge an agency action in Federal court. With the differing rules for standing in mind, the Commission revisited part 524. The regulation now provides that only a tribe may appeal a disapproval by the Chairman under § 524.1. Other persons may, however, request limited participation in such a proceeding under § 524.2. The Commission also notes that any person may contribute to the Chairman's deliberations in reviewing an ordinance by writing the Chairman.

Appeal deadlines

One commenter was concerned that an appeal deadline could run without a tribe's knowing that the Commission had taken an appealable action. The Commission notes that this could not happen under the language of the final regulation. The final regulation includes the following: "An appeal shall be filed with the Commission within 30 days after the Chairman serves his or her determination under part 519." In adding the preceding sentence, the Commission believes it has addressed the concern of the commenter.

Deletion of appeals for approvals

One commenter stated that appeals should be limited to disapprovals. The Commission agrees and has therefore revised the regulation to allow only for appeals in the case of disapprovals.

Part 556—Background Investigations for Primary Management Officials and Key Employees

Jurisdictional clarifications with respect to class III gaming

The Commission revisited the issue of jurisdiction with respect to class III gaming in response to commenters' and its own concerns. One commenter stated that it may be impossible for some tribes with compacts for class III gaming to comply with procedures that would have required disclosure to a tribe of the results of background investigations that were conducted by a state. The commenter was concerned that under the relevant compact, the state conducted the background investigation but did not disclose the reports to a tribe. Rather, under that compact, the state discussed the contents of a report with the tribal governing body. The Commission agrees that the proposed requirement would have presented jurisdictional problems and therefore changed the scopes of parts 556 and 558 as explained below. In the view of the Commission, if a tribe receives background investigation information under a compact that allocates responsibility to a state, such an arrangement is beyond the jurisdiction of the Commission.

Another commenter questioned whether procedures under a compact would have been considered as stringent as the procedures spelled out in parts 556 and 558. As discussed below, the Commission has changed the regulation so that certain requirements no longer apply where a tribal-state compact allocates responsibility to a state. Where a compact allocates responsibility to both a tribe and a state, however, the final regulation requires a tribe to forward an application and an investigative report to the Commission.

One commenter questioned whether requiring submission of investigative reports for class III employees was proper when, in the view of that commenter, class III gaming falls solely within a tribal-state compact. As explained below, the regulation requires investigative reports for class III gaming only where a compact allocates sole or joint jurisdiction to a tribe.

In revisiting the jurisdictional issues, the Commission reviewed the IGRA's provisions. The IGRA requires that class III gaming be authorized by an ordinance that meets the requirements for class II gaming and is approved by the Chairman. Section 2710(d)(1)(A). Additionally, class III gaming must be conducted under a tribal-state compact that is in effect. Section 2710(d)(1)(C). Under such a compact, however, a tribe may agree to state civil laws and regulations with respect to licensing, or to tribal laws, or to both state and tribal laws. Section 2710(d)(3)(C)(i).

To harmonize IGRA's apparently conflicting provisions, the Commission interprets the IGRA to grant jurisdiction to the Commission with respect to reviewing background investigations and licensing where a tribe has authority under a compact to license class III gaming. In the view of the Commission, Congress intended Commission oversight of class III licensing and background investigations where a compact allocates jurisdiction to a tribe for licensing. The Commission notes that licensing and background investigations (including Commission notification by a tribe of the results of a background investigation) are an integral part of the "adequate system" required under section 2710(b) for ordinance approval. Furthermore, nowhere does the IGRA exempt licensing for class III gaming from the requirements of section 2710(b), even where a compact may provide otherwise. As a practical matter, however, because the Commission lacks jurisdiction over states and therefore cannot oversee their activities with respect to background investigations and licensing for Indian gaming, the Commission has not included within the scope of either part 556 or 558 background investigations and licensing where a compact allocates those activities solely to a state. The Commission therefore conformed the texts of parts 556 and 558 to its views on jurisdiction, eliminating separate requirements for class III. The final regulations apply to all class II and to class III gaming where a tribe has sole or joint jurisdiction over background investigations and licensing.

Conditional or temporary employment and licenses pending background investigation

Some commenters requested provision for conditional or temporary employment and licenses due to the time it takes to complete criminal records checks or other delays. The Commission has addressed the need to hire an employee before being able to conduct a background investigation through the requirements of part 556 and § 558.3(b). Under those requirements, a tribe may employ a key employee or a primary management official for up to 90 days before either issuing a license or terminating employment as a key employee or primary management official. Therefore the Commission rejects this suggestion.

Effect of compact provisions on class II gaming

One commenter suggested that where a compact spelled out procedures for background investigations and licensing, that those procedures should be deemed sufficient for class II gaming. The Commission disagrees because the IGRA sets out requirements for class II gaming regardless of whether a compact is in effect for class III gaming. Furthermore, the IGRA requires that investigations and licensing for class III gaming comply with certain standards, as set out in the discussion under "Jurisdictional clarifications with respect to class III gaming." The Commission therefore rejects the suggestion.

Additional positions under "key employee" as that term is defined under 25 CFR 502.14

One commenter suggested amending the definition of key employee to include surveillance and investigative personnel. The Commission believes

that background investigations and licensing of persons in positions listed in the existing definitions are adequate to protect the integrity of Indian gaming. Section 502.14 includes the Chief of Security, any person whose total cash compensation is in excess of $50,000 per year, or, if not otherwise included, the four most highly compensated persons in a gaming operation. Furthermore, the definition of a primary management official includes any person who has authority to hire and fire employees or to set up working policy for a gaming operation. As the Commission stated, however, in the preamble to its definitions regulations, "(a) tribe may add any other positions to its own definition." (57 FR 12388, April 9, 1992)

Confidentiality

One commenter questioned how it would be possible to maintain confidentiality under § 556.4(b) with respect to the identity of people interviewed in the course of background investigations. This commenter was concerned about disclosure to a tribe. The intent of requiring a promise of confidentiality is to maintain confidentiality with respect to the subject of the investigation and the public, not a tribal authority conducting such investigation. Disclosure to a tribal authority, the Commission, or its staff does not compromise with confidentiality.

Time limits with respect to gaming offenses

One commenter suggested deleting the time limit with respect to gaming offenses for misdemeanor convictions under § 556.4(a). The Commission rejected that suggestion as not necessary to protect the integrity of Indian gaming. The Commission notes, however, that a tribe may require any information beyond the time limits specified by the Commission in § 556.4(a). See § 556.4(a)(13).

Criminal charges and arrests

Some commenters suggested requiring information on arrests, or criminal charges in § 556.4(a), stating that as a result of plea bargains or use of an individual as an informant, that otherwise valid arrests are frequently not converted to convictions. The Commission agrees that where criminal charges are brought by a law enforcement authority such information should be available to a tribal gaming authority and has therefore added criminal charges to § 556.4(a)(10). With respect to arrests, however, unless an arrest results in a criminal charge, there may not be information that is sufficiently reliable to use in determining suitability for employment in Indian gaming. Therefore the Commission rejected the suggestion to require information concerning mere arrests.

Asset and liability disclosure

One commenter suggested requiring asset and liability disclosure under § 556.4(a), stating such information would allow the Commission to discover hidden ownership interests or the involvement of undesirable individuals who might influence the gaming operation. The Commission rejects that suggestion, noting that it already proposes to require such disclosure under its management contract regulations for persons having a direct or indirect financial interest in a management contract. (See proposed § 537.1(b)(1)(xi), 57 FR 37661, August 19, 1992.) In addition, § 556.4(a)(5) and (6) require disclosure of ownership interests in business relationships with Indian tribes and with the gaming industry. A tribe may, however, require such information for key employees or primary management officials under its tribal ordinance.

Catch all ("other information as required") requirement

One commenter suggested adding to § 556.4(a) a catch all requirement, stating that without such a requirement a tribe or the Commission may be precluded from obtaining information necessary to make a fair determination. The Commission rejects this suggestion, noting that it is a tribe, not the Commission, that determines suitability for employment in a gaming operation. Moreover, a tribe may require any other information that it deems relevant under § 556.4(a)(13).

Updating background investigations and investigative reports

One commenter suggested providing for the Commission to notify a tribe in those instances when the Commission already possesses an investigative report. This would signal that a tribe would only need to provide updated information. In the view of the Commission, it is important that a tribe have a complete record of a previous background investigation, not merely a summary investigative report. Therefore, although the Commission will provide a tribe an investigative report, a tribe may not rely solely on that report in making an eligibility determination under § 558.2. The Commission notes that in reviewing an application a tribe can determine if another tribe has previously employed the applicant. In such cases, a tribe may request investigative information from the other tribe. The Commission has clarified § 556.4(c) to provide that a tribe may request access to such material from the tribe that previously had conducted a background investigation.

Disposition of felony charges

One commenter suggested adding "if any" to § 556.4(a)(8) regarding the disposition of a felony charge, stating that there is no disposition in an on-going prosecution. The Commission agrees and therefore has inserted "if any" after "disposition".

Authority of the Commission to require an investigative report prior to a tribe's licensing a key employee or a primary management official

Some commenters questioned the authority of the Commission to require an investigative report prior to a tribe's licensing a key employee or a primary management official under § 556.5(b). The commenters read section 2710(c)(1) to give the Commission authority to review a licensing decision for 30 days after a tribe issues a license. The Commission disagrees, noting that § 2710(b)(2)(F)(ii)(III) requires, as a condition of approval of a tribal ordinance, that a tribe have "an adequate system which * * * includes * * * notification by the Indian tribe to the Commission of the results of such background check *before* the issuance of any * * * licenses." (emphasis added) Because the Commission is not free to ignore this requirement, it rejects the suggestion.

Part 558—Gaming Licenses for Key Employees and Primary Management Officials

Applicability to employees other than key employees and primary management officials

One commenter requested adding an explicit provision that would leave tribes to develop standards and procedures for employees other than key employees and primary management officials. The Commission rejects that suggestion because § 558.1(b) already makes it clear that the standards and procedures of part 558 apply only to key employees and primary management officials. However, because the Commission wished to alert tribes that a requirement for a certificate of self-regulation under section 2710(c)(3) is that a tribe "has * * * adopted and is implementing adequate systems for * * * investigation,

licensing and monitoring of *all* employees of the gaming (operation)" (emphasis added), the Commission also stated that, "(a) tribe shall develop licensing procedures for all employees of a gaming operation * * *." Hence, the requirement in § 558.1(b) that a tribe develop licensing procedures for all employees.

Licensing persons other than key employees and primary management officials

The same commenter requested amending § 558.1 to state that a tribe may license persons having a direct or indirect financial interest in a management contract. A tribe is free to prescribe license requirements for whomever it wishes so long as it also licenses key employees and primary management officials. Thus a tribe may license persons having a direct or indirect financial interest in a management contract. Therefore the Commission rejects the suggestion as unnecessary.

Sixty-day time limit for submission of an investigative report under § 558.3(b)

Two commenters questioned whether 60 days is sufficient time for a tribe to conduct a background investigation and to submit a background investigation report. The Commission notes that with respect to existing employees, tribes have 120 days after being notified of any deficiencies in an ordinance under § 523.3(c) to bring the ordinance into compliance. During that time tribes may also conduct background investigations on existing key employees and primary management employees. In addition to the 120 days under § 523.3(c), under § 558.3(b) tribes have 60 days from the date of ordinance approval to conduct a background investigation and prepare an investigative report. For new operations, a tribe may begin background investigations before hiring and may complete background investigations before submitting an ordinance for approval. In light of the existing deadlines, the Commission did not change the 60-day requirement.

Clarification of when a hearing right vests under § 558.1(d)

To clarify that a hearing right vests only for an employee who has obtained a license after the Chairman has approved an ordinance under either part 522 or 523, the Commission inserted "granted" after "license".

Automatic disqualification for applicants who are convicted of felonies or misdemeanors that are crimes of moral turpitude

One commenter suggested that applicants who are convicted of felonies or misdemeanors that are crimes of moral turpitude should automatically be disqualified from holding a key employee or primary management official position in Indian gaming under § 558.2. The Commission notes that the IGRA leaves the actual standards for employment to tribes under section 2710(b)(2)(F)(ii)(II). That provision requires a tribe to have "an adequate system which * * * includes * * * a standard whereby any person whose prior activities * * * pose a threat to * * * the effective regulation of gaming * * * shall not be eligible for employment." Thus the IGRA dictates the result, leaving it to tribes to determine how best to achieve that result. Therefore a tribe could adopt a standard of automatic disqualification but is not required to do so. Even without automatic disqualifications, in the view of the Commission, there are safeguards adequate to protect the integrity of Indian gaming. Such safeguards include requiring the Commission to review the application and investigative report of each key employee and primary management official and consult with appropriate law enforcement officials. Furthermore, upon notification by the Commission of reliable information indicating unsuitability for employment in Indian gaming, a tribe is required to suspend the license of any key employee or primary management official pending a hearing. In light of the limiting language of the IGRA and the other safeguards, the Commission rejects the suggestion.

Threat to the public interest

One commenter requested clarification of the IGRA's language concerning ineligibility for employment where such employment would be a "threat to the public interest" under § 558.2. In the view of the commenter, such language is vague and therefore subject to litigation. Attempting to apply that language without specific facts, however, would be futile and the Commission therefore rejects the suggestion. The Commission will, however, provide guidance to a tribe in specific situations.

Clarification with respect to "prior activities, criminal record, if any, or reputation, habits and associations"

Two commenters pointed out that the Commission had omitted the above language from § 558.2. The Commission therefore amended the text of the regulation to include that language.

Denial of a license for a false statement or omission

Two commenters suggested amending § 558.2 to provide for license denials where an applicant provides a false statement or omits information from an application. The Commission considered but rejected requiring a tribe to deny a license in such circumstances. In the view of the Commission, however, lying on an application by itself may be grounds for disqualification. When a lie is also material, the person who lies should most likely not be hired, or if already hired, should be fired, absent very compelling reasons to the contrary. The Commission notes that it intends to notify tribes to suspend licenses under § 558.5 when it uncovers information that indicates a material lie, misstatement or omission on an application. In the Commission's view, materially false or misleading information is information that if correct, or supplied, is important in determining eligibility for employment as a key employee or primary management official in Indian gaming.

The Commission notes that a U.S. Attorney may prosecute an individual omitting material information or supplying false or misleading material information under 18 U.S.C. 1001. See § 556.3. Title 18 U.S.C. 1001 provides: "Whoever, in any matter within the jurisdiction of any department or agency of the United States knowingly and willfully falsifies, conceals or covers up by any trick, scheme, or device a material fact, or makes any false, fictitious or fraudulent statements or representations, or makes or uses any false writing or document knowing the same to contain any false, fictitious or fraudulent statement or entry, shall be fined not more than $10,000 or imprisoned not more than five years, or both."

The Commission also notes that under 25 U.S.C. 2716(b), it must notify appropriate law enforcement officials when it has information that indicates a violation of Federal, State or Tribal statutes, or resolutions.

Denial of a license for failure to meet any additional criteria imposed by a tribe

One commenter suggested amending § 558.2 to provide for license denials to meet any additional criteria imposed by a tribe. The Commission notes that a tribe may add criteria to its eligibility determination so long as those criteria

are not less stringent than the criteria in the IGRA. Therefore the Commission rejects the suggestion as unnecessary.

Hiring a person deemed ineligible under § 558.2

One commenter suggested amending § 558.2 to provide that any person ineligible for employment as a key employee or primary management official be automatically disqualified for any position or function related to the gaming operation. The Commission notes that key employees and primary management officials are within the jurisdiction of the Commission under the IGRA; other positions are not. Therefore the Commission may not prohibit a tribe from hiring a person deemed ineligible in another position, providing that person does not perform any of the functions of a key employee or a primary management official. Hence the Commission rejects the suggestion.

Adequacy of Commission's 30-day review period

One commenter questioned whether the Commission is prepared to conduct adequate background investigations within the 30-day period under § 558.3(c). The Commission notes that it is not responsible for conducting background investigations, only reviewing them. Furthermore, the Commission is limited by the IGRA, which specifies a 30-day review period in section 2710(c)(1). The Commission is not, however, limited by any time period if it later receives reliable information indicating that an employee is not eligible for employment under § 558.2. In such case, the Commission may notify a tribe under § 558.5. Failure to suspend a license would constitute possible grounds for an enforcement action under section 2713. For the above reasons, the Commission rejects the suggestion.

Conducting background investigations before hiring employees

One commenter suggested that if § 558.3 required conducting a background investigation before hiring, a significant number of suspension hearings under § 558.5(c) could be avoided. However, the right to a suspension hearing attaches only after a tribe grants a license, not after a tribe hires an employee. Therefore conducting a background investigation before hiring an applicant would not reduce the number of suspension hearings. For this reason, the Commission rejects the suggestion.

Who may appeal an objection to a tribe's granting a license

One commenter suggested that both a tribe and an applicant should have standing to appeal a Commission's objection to a tribe's granting a license under § 558.4(b). The Commission clarified its role in objecting to a tribe's granting a license. The text of the regulation now reads that the Commission shall notify a tribe of its objection and the tribe shall reconsider the matter, taking into account the Commission's reasons. The tribe retains discretion to issue a license whether or not the Commission objects. Because it is the Commission that notifies a tribe of its objection, such a decision is a final decision and therefore may not be administratively appealed. Consequently, the Commission rejects the suggestion.

Another commenter suggested amending § 558.5(b) to allow continuation of employment as a key employee or primary management official pending an appeal. As pointed out in the preceding paragraph, there would be no Commission action to appeal. In the view of the Commission, it is not within a tribe's discretion to allow continuation of employment pending a revocation hearing. The IGRA states that a tribe "shall suspend such license," leaving no apparent room for continuing employment. Section 2710(c)(2). Furthermore, it is unlikely that a tribe would want to allow continuation of employment in such a situation because it is the tribe that makes the determination to suspend a license. For these reasons the Commission rejects the suggestion.

Regulatory Matters

Executive Order 12291 and the Regulatory Flexibility Act

The Commission has determined that this document is not a major rule under Executive Order 12291. Under the Executive Order, a rule is a major rule if: (1) Its annual effect on the economy will be $100 million or more; (2) it will result in a major increase in costs or prices for consumers, individual industries, Federal, State, or local governments, or geographic regions; or (3) there will be significant adverse effect on competition, employment, investment, productivity, innovation, or the ability of U.S. based enterprises to compete with foreign based enterprises in domestic or export markets. If a rule is major, the agency must conduct a regulatory impact analysis. The Commission believes that the rule will not have any significant effect on the economy or result in major increases in costs or prices for consumers, individual industries, Federal, state, or local governments, agencies, or geographical regions. The Commission also believes that the rule will not have any adverse effects on competition, employment, investment, productivity, innovation, or the export/import market. No commenter supplied data that contradicted the Commission's tentative conclusion under E. O. 12291.

Pursuant to the Regulatory Flexibility Act, 5 U.S.C. 601 *et seq.*, the Commission has determined that this rule will not have a significant economic impact on a substantial number of small entities. The Regulatory Flexibility Act requires agencies to determine whether a rule will have a significant economic impact on a substantial number of small entities. If so, an agency must prepare a regulatory flexibility analysis that explores less burdensome alternatives. If not, an agency must certify that the rule will not have such an impact. No commenter supplied data that contradicted the Commission's tentative conclusion under the Regulatory Flexibility Act.

Paperwork Reduction Act

The information collection requirements contained in this rule have been submitted to the Office of Management and Budget (OMB) for approval as required by 44 U.S.C. 3501 *et seq.* and assigned clearance number 3141–0003, with an expiration date of October 31, 1995.

National Environmental Policy Act

The Commission has determined that this rulemaking does not constitute a major Federal action significantly affecting the quality of the human environment and that no detailed statement is required pursuant to the National Environmental Policy Act of 1969.

Executive Order 12278

The Chairman of the National Indian Gaming Commission has certified to the Office of Management and Budget that this final rule meets the applicable standards provided in sections 2(a) and 2(b)(2) of Executive Order No. 12778, "Civil Justice Reform," 56 FR 55195, October 25, 1991.

Anthony J. Hope,

Chairman, National Indian Gaming Commission.

List of Subjects in 25 CFR Parts 501, 519, 522, 523, 524, 556, 558

Gaming, Indian lands.

Title 25, Chapter III, of the Code of Federal Regulations is amended by

adding parts 501, 519, 522, 523, 524, and 556 to read as follows:

PART 501—PURPOSE AND SCOPE OF THIS CHAPTER

Sec.
501.1 Purpose.
501.2 Scope.

Authority: 25 U.S.C. 2706, 2710.

§ 501.1 Purpose.

This chapter implements the Indian Gaming Regulatory Act (Pub. L. 100–497, 102 Stat. 2467).

§ 501.2 Scope.

(a) Tribes and other operators of class II and class III gaming operations on Indian lands shall conduct gaming operations according to the requirements of the Indian Gaming Regulatory Act, the regulations of this chapter, tribal law and, where applicable, the requirements of a compact or procedures prescribed by the Secretary under 25 U.S.C. 2710(d).

(b) Class I gaming on Indian lands is within the exclusive jurisdiction of the Indian tribes and shall not be subject to the provisions of the Indian Gaming Regulatory Act or this Chapter.

(c) Class II gaming on Indian lands shall continue to be within the jurisdiction of an Indian tribe, but shall be subject to the provisions of the Indian Gaming Regulatory Act and this Chapter.

(d) Nothing in the Indian Gaming Regulatory Act or this Chapter shall impair the right of an Indian tribe to regulate class III gaming on its Indian lands concurrently with a State, except to the extent that such regulation is inconsistent with, or less stringent than, the State laws and regulations made applicable by a Tribal-State compact that is entered into by an Indian tribe under the Indian Gaming Regulatory Act and that is in effect.

PART 519—SERVICE

Sec.
519.1 Designation of an agent by a tribe.
519.2 Designation of an agent by a management contractor or a tribal operator.
519.3 Methods of service.
519.4 Copy of any official determination, order, or notice of violation.

Authority: 25 U.S.C. 2706(b)(10).

§ 519.1 Designation of an agent by a tribe.

By written notification to the Commission, a tribe shall designate an agent for service of any official determination, order, or notice of violation.

§ 519.2 Designation of an agent by a management contractor or a tribal operator.

By written notification to the Commission, a management contractor or a tribal operator shall designate an agent for service of any official determination, order, or notice of violation.

§ 519.3 Methods of service.

(a) The Chairman shall serve any official determination, order, or notice of violation by:

(1) Delivering a copy to a designated agent;

(2) Delivering a copy to the person who is the subject of the official determination, order, or notice of violation;

(3) Delivering a copy to the individual who, after reasonable inquiry, appears to be in charge of the gaming operation that is the subject of the official determination, order, or notice of violation;

(4) Mailing to the person who is the subject of the official determination, order, or notice of violation or to his or her designated agent at the last known address. Service by mail is complete upon mailing; or

(5) Transmitting a facsimile to the person who is the subject of the official determination, order, or notice of violation or to his or her designated agent at the last known facsimile number. Service by facsimile is complete upon transmission.

(b) Delivery of a copy means: Handing it to the person or designated agent (or attorney for either); leaving a copy at the person's, agent's or attorney's office with a clerk or other person in charge thereof; if there is no one in charge, leaving it in a conspicuous place therein; or, if the office is closed or the person to be served has no office, leaving it at the person's dwelling house or usual place of abode with some person of suitable age and discretion then residing therein.

(c) Service shall not be deemed incomplete because of refusal to accept.

§ 519.4 Copy of any official determination, order, or notice of violation.

The Commission shall transmit a copy of any official determination, order, or notice of violation to the tribal chairman, the designated tribal agent under § 519.1, and to the relevant tribal gaming authority. The Commission shall transmit such copy as expeditiously as possible. Service under § 519.3 shall not depend on a copy being sent to the appropriate tribal chairman, the designated tribal agent or to the relevant tribal gaming authority.

PART 522—SUBMISSION OF GAMING ORDINANCE OR RESOLUTION

Sec.
522.1 Scope of this part 522.
522.2 Submission requirements.
522.3 Amendment.
522.4 Approval requirements for class II ordinances.
522.5 Disapproval of a class II ordinance.
522.6 Approval requirements for class III ordinances.
522.7 Disapproval of a class III ordinance.
522.8 Publication of class III ordinance and approval.
522.9 Substitute approval.
522.10 Individually owned class II and class III gaming operations other than those operating on September 1, 1986.
522.11 Individually owned class II gaming operations operating on September 1, 1986.
522.12 Revocation of class III gaming.

Authority: 25 U.S.C. 2706, 2710, 2712

§ 522.1 Scope of this part 522.

This part applies to any gaming ordinance or resolution adopted by a tribe after February 22, 1993. Part 523 of this chapter applies to all existing gaming ordinances or resolutions.

§ 522.2 Submission requirements.

A tribe shall submit to the Chairman all of the following information with a request for approval of a class II or class III ordinance or resolution:

(a) One copy on 8½" x 11" paper of an ordinance or resolution certified as authentic by an authorized tribal official and that meets the approval requirements in § 522.4(b) or 522.6 of this part;

(b) A description of procedures to conduct or cause to be conducted background investigations on key employees and primary management officials and to ensure that key employees and primary management officials are notified of their rights under the Privacy Act as specified in § 556.2 of this chapter;

(c) A description of procedures to issue tribal licenses to primary management officials and key employees;

(d) Copies of all tribal gaming regulations;

(e) When an ordinance or resolution concerns class III gaming, a copy of the tribal-state compact or procedures as prescribed by the Secretary;

(f) A description of procedures for resolving disputes between the gaming public and the tribe or the management contractor;

(g) Designation of an agent for service under § 519.1 of this chapter; and

(h) Identification of a law enforcement agency that will take fingerprints and a description of procedures for

conducting a criminal history check by a law enforcement agency. Such a criminal history check shall include a check through the Federal Bureau of Investigation National Criminal Information Center.

§ 522.3 Amendment.

(a) Within 15 days after adoption, a tribe shall submit for the Chairman's approval any amendment to an ordinance or resolution.

(b) A tribe shall submit for the Chairman's approval any amendment to the submissions made under §§ 522.2(b) through (h) of this part within 15 days after adoption of such amendment.

§ 522.4 Approval requirements for class II ordinances.

No later than 90 days after the submission to the Chairman under § 522.2 of this part, the Chairman shall approve the class II ordinance or resolution if the Chairman finds that—

(a) A tribe meets the submission requirements contained in § 522.2 of this part; and

(b) The class II ordinance or resolution provides that—

(1) The tribe shall have the sole proprietary interest in and responsibility for the conduct of any gaming operation unless it elects to allow individually owned gaming under either § 522.10 or § 522.11 of this part;

(2) A tribe shall use net revenues from any tribal gaming or from any individually owned games only for one or more of the following purposes:

(i) To fund tribal government operations or programs;

(ii) To provide for the general welfare of the tribe and its members (if a tribe elects to make per capita distributions, the plan must be approved by the Secretary of the Interior under 25 U.S.C. 2710(b)(3));

(iii) To promote tribal economic development;

(iv) To donate to charitable organizations; or

(v) To help fund operations of local government agencies;

(3) A tribe shall cause to be conducted independent audits of gaming operations annually and shall submit the results of those audits to the Commission;

(4) All gaming related contracts that result in purchases of supplies, services, or concessions for more than $25,000 in any year (except contracts for professional legal or accounting services) shall be specifically included within the scope of the audit conducted under paragraph (b)(3) of this section;

(5) A tribe shall perform background investigations and issue licenses for key employees and primary management officials according to requirements that are at least as stringent as those in parts 556 and 558 of this chapter;

(6) A tribe shall issue a separate license to each place, facility, or location on Indian lands where a tribe elects to allow class II gaming; and

(7) A tribe shall construct, maintain and operate a gaming facility in a manner that adequately protects the environment and the public health and safety.

§ 522.5 Disapproval of a class II ordinance.

No later than 90 days after a tribe submits an ordinance for approval under § 522.2 of this part, the Chairman may disapprove an ordinance if he or she determines that a tribe failed to comply with the requirements of § 522.2 or § 522.4(b) of this part. The Chairman shall notify a tribe of its right to appeal under part 524 of this chapter. A disapproval shall be effective immediately unless appealed under part 524 of this chapter.

§ 522.6 Approval requirements for class III ordinances.

No later than 90 days after the submission to the Chairman under § 522.2 of this part, the Chairman shall approve the class III ordinance or resolution if—

(a) A tribe follows the submission requirements contained in § 522.2 of this part;

(b) The ordinance or resolution meets the requirements contained in § 522.4(b)(2), (3), (4), (5), (6), and (7) of this part; and

(c) The tribe shall have the sole proprietary interest in and responsibility for the conduct of any gaming operation unless it elects to allow individually owned gaming under § 522.10 of this part.

§ 522.7 Disapproval of a class III ordinance.

(a) Notwithstanding compliance with the requirements of § 522.6 of this part and no later than 90 days after a submission under § 522.2 of this part, the Chairman shall disapprove an ordinance or resolution and notify a tribe of its right of appeal under part 524 of this chapter if the Chairman determines that—

(1) A tribal governing body did not adopt the ordinance or resolution in compliance with the governing documents of a tribe; or

(2) A tribal governing body was significantly and unduly influenced in the adoption of the ordinance or resolution by a person having a direct or indirect financial interest in a management contract, a person having management responsibility for a management contract, or their agents.

(b) A disapproval shall be effective immediately unless appealed under part 524 of this chapter.

§ 522.8 Publication of class III ordinance and approval.

The Chairman shall publish a class III tribal gaming ordinance or resolution in the **Federal Register** along with the Chairman's approval thereof.

§ 522.9 Substitute approval.

If the Chairman fails to approve or disapprove an ordinance or resolution submitted under § 522.2 of this part within 90 days after the date of submission to the Chairman, a tribal ordinance or resolution shall be considered to have been approved by the Chairman but only to the extent that such ordinance or resolution is consistent with the provisions of the Act and this chapter.

§ 522.10 Individually owned class II and class III gaming operations other than those operating on September 1, 1986.

For licensing of individually owned gaming operations other than those operating on September 1, 1986 (addressed under § 522.11 of this part), a tribal ordinance shall require:

(a) That the gaming operation be licensed and regulated under an ordinance or resolution approved by the Chairman;

(b) That income to the tribe from an individually owned gaming operation be used only for the purposes listed in § 522.4(b)(2) of this part;

(c) That not less than 60 percent of the net revenues be income to the Tribe;

(d) That the owner pay an assessment to the Commission under § 514.1 of this chapter;

(e) Licensing standards that are at least as restrictive as those established by State law governing similar gaming within the jurisdiction of the surrounding State; and

(f) Denial of a license for any person or entity that would not be eligible to receive a State license to conduct the same activity within the jurisdiction of the surrounding State. State law standards shall apply with respect to purpose, entity, pot limits and hours of operation.

§ 522.11 Individually owned class II gaming operations operating on September 1, 1986.

For licensing of individually owned gaming operations operating on September 1, 1986, under § 502.3(e) of this chapter, a tribal ordinance shall

contain the same requirements as those in § 522.10(a)–(d) of this part.

§ 522.12 Revocation of class III gaming.

A governing body of a tribe, in its sole discretion and without the approval of the Chairman, may adopt an ordinance or resolution revoking any prior ordinance or resolution that authorizes class III gaming.

(a) A tribe shall submit to the Chairman on 8½" x 11" paper one copy of any revocation ordinance or resolution certified as authentic by an authorized tribal official.

(b) The Chairman shall publish such ordinance or resolution in the **Federal Register** and the revocation provided by such ordinance or resolution shall take effect on the date of such publication.

(c) Notwithstanding any other provision of this section, any person or entity operating a class III gaming operation on the date of publication in the **Federal Register** under paragraph (b) of this section may, during a one-year period beginning on the date of publication, continue to operate such operation in conformance with a tribal-state compact.

(d) A revocation shall not affect—

(1) Any civil action that arises during the one-year period following publication of the revocation; or

(2) Any crime that is committed during the one-year period following publication of the revocation.

PART 523—REVIEW AND APPROVAL OF EXISTING ORDINANCES OR RESOLUTIONS

Sec.

523.1 Scope of this part 523.
523.2 Submission requirements.
523.3 Review of an ordinance or resolution.
523.4 Review of an amendment.

Authority: 25 U.S.C. 2706, 2710, 2712.

§ 523.1 Scope of this part 523.

This part applies to a class II or a class III gaming ordinance or resolution enacted by a tribe prior to February 22, 1993 and that has not been submitted to the Chairman.

§ 523.2 Submission requirements.

(a) Within 60 days after a request by the Chairman, a tribe shall:

(1) Submit for review and approval all items required under § 522.2 of this chapter; and

(2) For each gaming operation submit the financial statements for the previous fiscal year and the most recent audit report and management letter.

(b) If a tribe fails to submit all items under § 522.2 of this chapter within 60 days, the Chairman shall deem the ordinance or resolution disapproved and shall notify the tribe of its right to appeal under part 524.

§ 523.3 Review of an ordinance or resolution.

Within 90 days after receipt of a submission under § 523.2 of this part, the Chairman shall subject the ordinance or resolution to the standards in part 522 of this chapter.

(a) For class II and class III gaming, if the Chairman determines that an ordinance or resolution submitted under this part meets the approval and submission requirements of part 522 of this chapter and the Chairman finds the annual financial statements are included in the submission, the Chairman shall approve the ordinance or resolution.

(b) If an ordinance or resolution fails to meet the requirements for review under part 522 of this chapter or if a tribe fails to submit the annual financial statement, the Chairman shall notify a tribe in writing of the specific areas of noncompliance.

(c) The Chairman shall allow a tribe 120 days from receipt of such notice to bring the ordinance or resolution into compliance with the requirements of part 522 of this chapter or to submit an annual financial statement, or both.

(d) At the end of the 120-day period provided under paragraph (c) of this section, or earlier if the tribe notifies the Chairman that it intends not to comply, the Chairman shall disapprove any ordinance or resolution if a tribe fails to amend according to the notification made under paragraph (b) of this section.

§ 523.4 Review of an amendment.

Within 90 days after receipt of an amendment, the Chairman shall subject the amendment to the standards in part 522 of this chapter.

(a) If the Chairman determines that an amendment meets the approval and submission requirements of part 522 of this chapter, the Chairman will approve the amendment.

(b) If an amendment fails to meet the requirements for review under part 522 of this chapter, the Chairman shall notify the tribe in writing of the specific areas of noncompliance.

(c) If the Chairman fails to disapprove a submission under paragraph (a) or (b) of this section within 90 days after the date of submission to the Chairman, a tribal amendment shall be considered to have been approved by the Chairman but only to the extent that such amendment is consistent with the provisions of the Act and this chapter.

PART 524—APPEALS

Sec.

524.1 Appeals by a tribe.
524.2 Limited participation by an entity other than a tribe.
524.3 Decision on appeals.

Authority: 25 U.S.C. 2706, 2710, 2712.

§ 524.1 Appeal by a tribe.

A tribe may appeal disapproval of a gaming ordinance, resolution or amendment under part 522 or 523 of this chapter. An appeal shall be filed with the Commission within 30 days after the Chairman serves his or her determination under part 519 of this chapter. Such an appeal shall state succinctly why the tribe believes the Chairman's determination to be erroneous, and shall include supporting documentation, if any. Failure to file an appeal within the time provided by this section shall result in a waiver of the opportunity for an appeal.

§ 524.2 Limited participation by an entity other than a tribe.

(a) An entity other than a tribe may request to participate in an appeal of a disapproval under part 522 or part 523 of this chapter by filing a written submission. Such written submission shall:

(1) State the property, financial, or other interest of the party in the appeal; and

(2) The reasons why the action of the Chairman in disapproving an ordinance, resolution or amendment may be in error or the reasons why the Chairman's disapproval should be upheld by the Commission. The reasons shall address the approval requirements under §§ 522.4, 522.5, 522.6, 522.7, 523.2 of this chapter.

(b) The Commission shall forward a copy of a request under paragraph (a) of this section to the party of record under § 524.1 of this part.

(c) The Commission shall review a request under this section and timely notify the requester of its determination. Such notification shall supply the reasons for the determination. The Commission shall also notify the party of record on appeal under § 524.1 of its determination.

(d) The Commission shall limit the extent of participation by an entity other than a tribe to one written submission as described under paragraph (a) of this section, unless the Commission determines further participation would substantially contribute to the record.

§ 524.3 Decisions on appeals.

(a) Within 90 days after it receives the appeal, the Commission shall render its decision on the appeal.

(b) The Commission shall notify the party of record under § 524.1 of this part and any limited participant under § 524.2 of this part of its final decision and the reasons supporting it.

PART 556—BACKGROUND INVESTIGATIONS FOR PRIMARY MANAGEMENT OFFICIALS AND KEY EMPLOYEES

Sec.
556.1 Scope of this part 556.
556.2 Privacy notice.
556.3 Notice regarding false statements.
556.4 Background investigations.
556.5 Report to Commission.

Authority: 25 U.S.C. 2706, 2710, 2712.

§ 556.1 Scope of this part 556.

Unless a tribal-state compact allocates sole jurisdiction to an entity other than a tribe with respect to background investigations, the requirements of this part apply to all class II and class III gaming.

§ 556.2 Privacy notice.

(a) A tribe shall place the following notice on the application form for a key employee or a primary management official before that form is filled out by an applicant:

In compliance with the Privacy Act of 1974, the following information is provided: Solicitation of the information on this form is authorized by 25 U.S.C. 2701 *et seq.* The purpose of the requested information is to determine the eligibility of individuals to be employed in a gaming operation. The information will be used by National Indian Gaming Commission members and staff who have need for the information in the performance of their official duties. The information may be disclosed to appropriate Federal, Tribal, State, local, or foreign law enforcement and regulatory agencies when relevant to civil, criminal or regulatory investigations or prosecutions or when pursuant to a requirement by a tribe or the National Indian Gaming Commission in connection with the hiring or firing of an employee, the issuance or revocation of a gaming license, or investigations of activities while associated with a tribe or a gaming operation. Failure to consent to the disclosures indicated in this notice will result in a tribe's being unable to hire you in a primary management official or key employee position.

The disclosure of your Social Security Number (SSN) is voluntary. However, failure to supply a SSN may result in errors in processing your application.

(b) A tribe shall notify in writing existing key employees and primary management officials that they shall either:

(1) Complete a new application form that contains a Privacy Act notice; or

(2) Sign a statement that contains the Privacy Act notice and consent to the routine uses described in that notice.

§ 556.3 Notice regarding false statements.

(a) A tribe shall place the following notice on the application form for a key employee or a primary management official before that form is filled out by an applicant:

A false statement on any part of your application may be grounds for not hiring you, or for firing you after you begin work. Also, you may be punished by fine or imprisonment (U.S. Code, title 18, section 1001)

(b) A tribe shall notify in writing existing key employees and primary management officials that they shall either:

(1) Complete a new application form that contains a notice regarding false statements; or

(2) Sign a statement that contains the notice regarding false statements.

§ 556.4 Background investigations.

A tribe shall perform a background investigation for each primary management official and for each key employee of a gaming operation.

(a) A tribe shall request from each primary management official and from each key employee all of the following information:

(1) Full name, other names used (oral or written), social security number(s), birth date, place of birth, citizenship, gender, all languages (spoken or written);

(2) Currently and for the previous 5 years: business and employment positions held, ownership interests in those businesses, business and residence addresses, and drivers license numbers;

(3) The names and current addresses of at least three personal references, including one personal reference who was acquainted with the applicant during each period of residence listed under paragraph (a)(2) of this section;

(4) Current business and residence telephone numbers;

(5) A description of any existing and previous business relationships with Indian tribes, including ownership interests in those businesses;

(6) A description of any existing and previous business relationships with the gaming industry generally, including ownership interests in those businesses;

(7) The name and address of any licensing or regulatory agency with which the person has filed an application for a license or permit related to gaming, whether or not such license or permit was granted;

(8) For each felony for which there is an ongoing prosecution or a conviction, the charge, the name and address of the court involved, and the date and disposition if any;

(9) For each misdemeanor conviction or ongoing misdemeanor prosecution (excluding minor traffic violations) within 10 years of the date of the application, the name and address of the court involved and the date and disposition;

(10) For each criminal charge (excluding minor traffic charges) whether or not there is a conviction, if such criminal charge is within 10 years of the date of the application and is not otherwise listed pursuant to paragraph (a)(8) or (a)(9) of this section, the criminal charge, the name and address of the court involved and the date and disposition;

(11) The name and address of any licensing or regulatory agency with which the person has filed an application for an occupational license or permit, whether or not such license or permit was granted;

(12) A photograph;

(13) Any other information a tribe deems relevant; and

(14) Fingerprints consistent with procedures adopted by a tribe according to § 522.2(h) of this chapter.

(b) A tribe shall conduct an investigation sufficient to make a determination under § 558.2 of this chapter. In conducting a background investigation, a tribe or its agents shall promise to keep confidential the identity of each person interviewed in the course of the investigation.

(c) If the Commission has received an investigative report concerning an individual who another tribe wishes to employ as a key employee or primary management official and if the second tribe has access to the investigative materials held by the first tribe, the second tribe may update the investigation and update the investigative report under § 556.5(b) of this part.

§ 556.5 Report to Commission.

(a) When a tribe employs a primary management official or a key employee, the tribe shall forward to the Commission a completed application containing the information listed under § 556.4(a)(1)–(13) of this part.

(b) Before issuing a license to a primary management official or to a key employee, a tribe shall forward to the Commission an investigative report on each background investigation. An investigative report shall include all of the following:

(1) Steps taken in conducting a background investigation;

(2) Results obtained;

(3) Conclusions reached; and

(4) The bases for those conclusions.

(c) When a tribe forwards its report to the Commission, it shall include a copy

of the eligibility determination made under § 558.2 of this chapter.

(d) If a tribe does not license an applicant—

(1) The tribe shall notify the Commission; and

(2) May forward copies of its eligibility determination under § 558.2 and investigative report (if any) under § 556.5(b) to the Commission for inclusion in the Indian Gaming Individuals Record System.

PART 558—GAMING LICENSES FOR KEY EMPLOYEES AND PRIMARY MANAGEMENT OFFICIALS

Sec.

558.1 Scope of this part 558.
558.2 Eligibility determination for employment in a gaming operation.
558.3 Procedures for forwarding applications and reports for key employees and primary management officials to the Commission.
558.4 Granting a gaming license.
558.5 License suspension.

Authority: 25 U.S.C. 2706, 2710, 2712.

§ 558.1 Scope of this part 558.

Unless a tribal-state compact allocates responsibility to an entity other than a tribe:

(a) The licensing authority for class II or class III gaming is a tribal authority.

(b) A tribe shall develop licensing procedures for all employees of a gaming operation. The procedures and standards of part 556 of this chapter and the procedures and standards of this part apply only to primary management officials and key employees.

(c) For primary management officials or key employees, a tribe shall retain applications for employment and reports (if any) of background investigations for inspection by the Chairman or his or her designee for no less than three (3) years from the date of termination of employment.

(d) A right to a hearing under § 558.5 of this part shall vest only upon receipt of a license granted under an ordinance approved by the Chairman.

§ 558.2 Eligibility determination for employment in a gaming operation.

(a) An authorized tribal official shall review a person's prior activities, criminal record, if any, and reputation, habits and associations to make a finding concerning the eligibility of a key employee or a primary management official for employment in a gaming operation. If the authorized tribal official, in applying the standards adopted in a tribal ordinance, determines that employment of the person poses a threat to the public interest or to the effective regulation of gaming, or creates or enhances the dangers of unsuitable, unfair, or illegal practices and methods and activities in the conduct of gaming, a management contractor or a tribal gaming operation shall not employ that person in a key employee or primary management official position.

(b) A gaming operation shall not employ in a key employee or primary management official position a person who has supplied materially false or misleading information or who has omitted material information with respedct to the required information under § 556.4(a) of this chapter.

§ 558.3 Procedures for forwarding applications and reports for key employees and primary management officials to the Commission.

(a) When a key employee or a primary management official begins work at a gaming operation, a tribe shall:

(1) Forward to the Commission a completed application for employment that contains the notices and information listed in §§ 556.2, 556.3 and 556.4 of this chapter; and

(2) Conduct a background investigation under part 556 of this chapter to determine the eligibility of the key employee or primary management official for continued employment in a gaming operation.

(b) Upon completion of a background investigation and a determination of eligibility for employment in a gaming operation under paragraph (a)(2) of this section, a tribe shall forward a report under § 556.5(b) of this chapter to the Commission within 60 days after an employee begins work or within 60 days of the Chairman's approval of an ordinance under part 523. A gaming operation shall not employ a key employee or primary management official who does not have a license after 90 days.

(c) During a 30-day period beginning when the Commission receives a report submitted under paragraph (b) of this section, the Chairman may request additional information from a tribe concerning a key employee or a primary management official who is the subject of a report. Such a request shall suspend the 30-day period until the Chairman receives the additional information.

§ 558.4 Granting a gaming license.

(a) If, within the 30-day period described in § 558.3(c) of this part, the Commission notifies a tribe that it has no objection to the issuance of a license pursuant to a license application filed by a key employee or a primary management official for whom the tribe has provided an application and investigative report to the Commission pursuant to § 558.3 (a) and (b) of this part, the tribe may go forward and issue a license to such applicant.

(b) If, within the 30-day period described in § 558.3(c) of this part, the Commission provides the tribe with a statement itemizing objections to the issuance of a license to a key employee or to a primary management official for whom the tribe has provided an application and investigative report to the Commission pursuant to § 558.3 (a) and (b) of this part, the tribe shall reconsider the application, taking into account the objections itemized by the Commission. The tribe shall make the final decision whether to issue a license to such applicant.

§ 558.5 License suspension.

(a) If, after the issuance of a gaming license, the Commission receives reliable information indicating that a key employee or a primary management official is not eligible for employment under § 558.2 of this part, the Commission shall notify the tribe that issued a gaming license.

(b) Upon receipt of such notification under paragraph (a) of this section, a tribe shall suspend such license and shall notify in writing the licensee of the suspension and the proposed revocation.

(c) A tribe shall notify the licensee of a time and a place for a hearing on the proposed revocation of a license.

(d) After a revocation hearing, a tribe shall decide to revoke or to reinstate a gaming license. A tribe shall notify the Commission of its decision.

[FR Doc. 93–1062 Filed 1–21–93; 8:45 am]
BILLING CODE 7565–01–M

NATIONAL INDIAN GAMING COMMISSION

25 CFR Part 515

RIN 3141–AA01

Privacy Act Procedures

AGENCY: National Indian Gaming Commission.

ACTION: Final rule.

SUMMARY: The National Indian Gaming Commission (NIGC, or the Commission) is establishing this rule in chapter III of title 25 of the Code of Federal Regulations (parts 500–599). This rule describes the procedures and policies adopted by the Commission pursuant to the Privacy Act of 1974, 5 U.S.C. 552a. Under the Act, Federal agencies must publish, in the **Federal Register**, notice of any systems of records that they intend to establish. Agencies must also

publish procedures regarding the collection, maintenance, use, and dissemination of certain records within those systems. The Commission published notice of the creation of the Indian Gaming Individuals Records System in the Federal Register. The regulations established here provide procedures regarding the maintenance, use, and dissemination of records complied in that system and in any other records systems created by the Commission.

EFFECTIVE DATE: February 22, 1993.

FOR FURTHER INFORMATION CONTACT: Mary Jane Markley, (202) 632–7032 (not a toll free number).

SUPPLEMENTARY INFORMATION: Congress enacted the Privacy Act of 1974 as a means of regulating the collection, maintenance, use and dissemination of personal information gathered by Federal Government agencies. The purpose of the Act is to balance the need of agencies to maintain information about individuals for various purposes, against the individual right to be protected against unwarranted invasions of privacy. The Act restricts the disclosure of certain personal information, while allowing individuals, on whom records have been compiled, greater access to and the right to amend those records. In effect, the Act establishes a code of fair information practices with which agencies must comply.

Tribal Consultation

One commenter questioned whether a tribe would be consulted and its interests in confidential and privileged information protected under the Commission's Privacy Act rule. The Privacy Act protects records concerning individuals. Under the Act, the Federal Government may not disclose records concerning an individual to anyone except that individual, unless that individual has consented to a "routine use" disclosure. An individual consents to such disclosure pursuant to a Privacy Act Notice such as the one in 25 CFR 556.1.

The Freedom of Information Act directs the Federal Government to disclose all records except those falling under an exemption. Section 2716(a) of the IGRA specifically mentions the FOIA. Section 2716(a) directs the Commission to preserve confidential information under the FOIA. In the view of the Commission, section 2716(a) does not, however, direct the Commission with respect to the Privacy Act.

Although both acts govern how the government handles information, the purposes of the two acts are quite different. The Privacy Act seeks to protect information that concerns individuals, allowing disclosure by the Federal Government only for purposes listed in a Privacy Act Notice (see 25 CFR 556.1). The Privacy Act rule (25 CFR part 515) and Publication of System of Records Notice (57 FR 30358–30359) tell an individual how to request to see records concerning himself or herself and how to request amendments to those records, should the individual believe the records contain errors. The Privacy Act does not provide for consultation with third parties before allowing an individual to see records concerning himself or herself. The Commission does not contemplate its records containing investigative materials such as transcripts of interviews in connection with background investigations of key employees or primary management officials; such records would be retained by a tribe and would therefore be subject to tribal procedures for protecting such material.

Access To Records by Criminal Justice Agencies

Another commenter requested that the rule contain procedures for access by criminal justice agencies that may be conducting background checks on prospective primary management officials and key employees. Because the Privacy Act Notice (25 CFR 556.1) provides for such disclosure, the Commission may disclose records to a criminal justice agency that is conducting a background check on a prospective primary management official or key employee.

Access To Records by Tribes

The same commenter requested that the rule provide for access to records by tribes. The Privacy Act Notice (25 CFR 556.1) provides for disclosure of records to "appropriate Federal, Tribal, State, local, or foreign law enforcement and regulatory agencies" in connection with the hiring of an employee. Thus the Commission may disclose records to a tribe in connection with the hiring or firing of a primary management official or key employee.

Regulatory Matters

Executive Order 12291 and the Regulatory Flexibility Act

The Commission has determined that this document is not a major rule under Executive Order 12291. The rule will not have any significant effects on the economy or result in major increases in costs or prices for consumers, individual industries, Federal, State, or local governments, agencies or geographical regions. The rule will not have any adverse effects on competition, employment, investment, productivity, innovation, or the export/import market.

Pursuant to the Regulatory Flexibility Act, 5 U.S.C. 601 *et seq.*, the Commission has determined that this rule will not have a significant economic impact on a substantial number of small entities. Because this rule is procedural in nature, it will not impose substantive requirements that could be deemed impacts within the scope of the Act.

Paperwork Reduction Act

The information collection requirements contained in this rule have been submitted to the Office of Management and Budget (OMB) for approval as required by 44 U.S.C. 3501 *et seq.* and assigned clearance number 3141–0002, with an expiration date of October 31, 1995.

National Environmental Policy Act

The Commission has determined that this rulemaking does not constitute a major Federal action significantly affecting the quality of the human environment and that no detailed statement is required pursuant to the National Environmental Policy Act of 1969.

Executive Order 12778

The Chairman of the NIGC has certified to OMB that this rule meets the applicable standards provided in sections 2(a) and 2(b)(2) of Executive Order 12778, "Civil Justice Reform," 56 FR 55195, October 25, 1991.

Anthony J. Hope,

Chairman, National Indian Gaming Commission.

List of Subjects in 25 CFR Part 515:

Gaming, Indian lands, Privacy Act.

Title 25, of chapter III of the Code of Federal Regulations is amended by adding part 515 to read as follows:

PART 515—PRIVACY ACT PROCEDURES

Sec.

515.1 Purpose and scope.
515.2 Definitions.
515.3 Identification of individuals making requests.
515.4 Procedures for requests and disclosures.
515.5 Request for amendment to record.
515.6 Review of request for amendment of record by the Records Manager.
515.7 Appeal to the Commission of initial adverse agency determination on access or amendment to records.
515.8 Disclosure of record to a person other than the individual to whom it pertains

Sec.
515.9 Fees.
515.10 Penalties.
515.11 General exemptions. [reserved]
515.12 Specific exemptions.

Authority: 5 U.S.C. 552a.

§ 515.1 Purpose and scope.

(a) The purpose of this part is to inform the public of records maintained by the Commission about identifiable individuals and to inform those individuals how they may gain access to and amend records concerning themselves.

(b) This part carries out the requirements of the Privacy Act of 1974 (Pub. L. 93–579) codified at 5 U.S.C. 552a.

(c) The regulation applies only to records disclosed or requested under the Privacy Act of 1974, and not to requests for information made pursuant to 5 U.S.C. 552, the Freedom of Information Act.

§ 515.2 Definitions.

As defined in the Privacy Act of 1974 and for the purposes of this part, unless otherwise required by the context, the following terms shall have these meanings:

(a) *Individual* means a citizen of the United States or an alien lawfully admitted for permanent residence.

(b) *Maintain* means maintain, collect, use, or disseminate.

(c) *Record* means any item, collection, or grouping of information about an individual that is maintained by the Commission, including education, financial transactions, medical history, and criminal or employment history, and that contains the individual's name, or the identifying number, symbol, or other identifier assigned to the individual, such as social security number, finger or voice print, or a photograph.

(d) *System of records* means a group of any records under the control of the Commission from which information is retrieved by the name of the individual or by some identifying number, symbol, or other identifier assigned to the individual.

(e) *Routine use* means, with respect to the disclosure of a record, the use of such record for a purpose that is compatible with the purpose for which it was collected.

§ 515.3 Identification of individuals making requests.

(a) Any individual may request that the Commission inform him or her whether a particular record system named by the individual contains a record pertaining to him or her and the contents of such record. Such requests shall conform to the requirements of § 515.4 of this part. The request may be made in person or in writing at the NIGC, suite 250, 1850 M Street, NW., Washington, DC 20036–5803 during the hours of 9 a.m. to 12 noon and 2 p.m. to 5 p.m. Monday through Friday.

(b)(1) Requests made in writing shall include a statement, signed by the individual and either notarized or witnessed by two persons (including witnesses' addresses). If the individual appears before a notary, the individual shall submit adequate proof of identity in the form of a driver's license, birth certificate, passport, or other identification acceptable to the notary. If the statement is witnessed, it shall include a statement above the witnesses' signatures that they personally know the individual or that the individual has submitted proof of his or her identity to their satisfaction. In any case in which, because of the extreme sensitivity of the record sought to be seen or copied, the Commission determines that the identification is not adequate, it may request the individual to submit additional proof of identity.

(2) If the request is made in person, the requester shall submit proof of identity similar to that described in paragraph (b)(1) of this section, and that is acceptable to the Commission. The individual may have a person of his or her own choosing accompany him or her when the record is disclosed.

(c) Requests made by an agent, parent, or guardian shall be in accordance with the procedures described in paragraph (b) of this section.

§ 515.4 Procedures for requests and disclosures.

(a) Requests for a determination under § 515.3(a) of this part shall be acknowledged by the Commission within ten (10) days (excluding Saturdays, Sundays and Federal holidays) after the date on which the Commission receives the request. If the Commission is unable to locate the information requested, it shall so notify the individual within ten (10) days (excluding Saturdays, Sundays and Federal holidays) after receipt of the request, Such acknowledgement may request additional information to assist the Commission in locating the record, or it may advise the individual that no record exists about that individual.

(b)(1) Upon submission of proof of identity as required by § 515.3(b)(1) or (2) of this part, the Commission shall respond within ten (10) days (excluding Saturdays, Sundays and Federal holidays). The Commission shall decide whether to make a record available to the record subject and shall immediately convey its determination to the requester. If the individual asks to see the record, the Commission may make the record available at the location where the record is maintained.

(2) The Commission shall furnish each record requested by an individual under this section in a form intelligible to that individual.

(3) If the Commission denies access to a record to an individual, that person shall be advised of the reason for the denial and of the appeal procedures provided in § 515.7 of this part.

(4) Upon request, an individual shall be provided access to the accounting of disclosures from his or her record under the same procedures as provided above and in § 515.3 of this part.

§ 515.5 Request for amendment to record.

(a) Any individual who has reviewed a record pertaining to him or her that was furnished under this part, may request that the Commission amend all or any part of that record.

(b) Each individual requesting an amendment shall send the request to the Records Manager.

(c) Each request for an amendment of a record shall contain the following information:

(1) The name of the individual requesting the amendment;

(2) The name of the system of records in which the record sought to be amended is maintained;

(3) The location of the system of records from which the individual record was obtained;

(4) A copy of the record sought to be amended or a sufficiently detailed description of that record:

(5) A statement of the material in the record that the individual desires to amend;

(6) A statement of the basis for the requested amendment, including any material that the individual can furnish to substantiate the reasons for the amendment sought.

§ 515.6 Review of request for amendment of record by the Records Manager.

(a) The Records Manager shall, not later than ten (10) days (excluding Saturdays, Sundays and Federal holidays) after the receipt of a request for an amendment of a record under § 515.5 of this part, acknowledge receipt of the request and inform the individual whether more information is required before the amendment can be considered.

(b) If more information is not required, within ten (10) days after receipt of the request (excluding Saturdays, Sundays and Federal holidays), the Records Manager shall

either make the requested amendment or notify the individual of the Commission's refusal to do so, including in the notification the reasons for the refusal, and the appeal procedures provided in § 515.7 of this part.

(c) The Records Manager shall make each requested amendment to a record if such amendment will tend to negate inaccurate, irrelevant, untimely, or incomplete material in the record.

(d) The Records Manager shall inform prior recipients of any amendment or notation of dispute of such individual's record. The individual may request a list of prior recipients if there exists an accounting of the disclosures.

§ 515.7 Appeal to the Commission of initial adverse agency determination on access or amendment to records.

(a) Any individual whose request for access or an amendment has been denied in whole or in part, may appeal the decision to the Commission no later than one hundred eighty (180) days after the adverse decision is rendered.

(b) The appeal shall be in writing and shall contain all of the following information:

(1) The name of the individual making the appeal;

(2) Identification of the record sought to be amended;

(3) The record system in which such record is contained;

(4) A short statement describing the amendment sought; and

(5) The name and location of the agency official who initially denied the amendment.

(c) Not later than thirty (30) days (excluding Saturdays, Sundays and Federal holidays) after the date on which the Commission receives the appeal, the Commission shall complete its review of the appeal and make a final decision thereon. For good cause shown, however, the Commission may extend such thirty (30) day period. If the Commission extends the period, the individual requesting the review shall be promptly notified of the extension and the anticipated date of a decision.

(d) After review of an appeal, the Commission shall send a written notice to the requester containing the following information:

(1) The decision and, if the denial is upheld, the reasons for the decision;

(2) The right of the requester to file with the Commission a concise statement setting forth the reasons for his or her disagreement with the Commission's denial of access or amendment. The Commission shall make this statement available to any person to whom the record is later disclosed, together with a brief statement, if appropriate, of the Commission's reasons for denying requested access or amendment. The Commission shall also send a copy of the statement to prior recipients of the individual's record; and

(3) The right of the requester to institute a civil action in a Federal district court for judicial review of the decision.

§ 515.8 Disclosure of record to a person other than the individual to whom it pertains.

(a) Any individual who desires to have a record covered by this part disclosed to or mailed to another person may designate such person and authorize such person to act as his or her agent for that specific purpose. The authorization shall be in writing, signed by the individual, and notarized or witnessed as provided in § 515.3 of this part.

(b) The parent of any minor individual or the legal guardian of any individual who has been declared by a court of competent jurisdiction to be incompetent, due to physical or mental incapacity or age, may act on behalf of that individual in any matter covered by this section. A parent or guardian who desires to act on behalf of such an individual shall present suitable evidence of parentage or guardianship, by birth certificate, certified copy of court order, or similar documents, and proof of the individual's identity in a form that complies with § 515.3(b) of this part.

(c) An individual to whom a record is to be disclosed in person, pursuant to this section, may have a person of his or her own choosing accompany him or her when the record is disclosed.

§ 515.9 Fees.

The Commission shall not charge an individual for the costs of making a search for a record or the costs of reviewing the record. When the Commission makes a copy of a record as a necessary part of reviewing the record, the Commission shall not charge the individual for the cost of making that copy. Otherwise, the Commission may charge a fee sufficient to cover the cost of duplication.

§ 515.10 Penalties.

Any person who makes a false statement in connection with any request for a record, or an amendment thereto, under this part, is subject to the penalties prescribed in 18 U.S.C. 494 and 495.

§ 515.11 General exemptions. [Reserved]

§ 515.12 Specific exemptions.

(a) The following system of records is exempt from 5 U.S.C. 552a(c)(3), (d), (e)(1) and (f):

Indian Gaming Individuals Records System

(b) The exemptions under paragraph (a) of this section apply only to the extent that information in this system is subject to exemption under 5 U.S.C. 552a(k)(2). When compliance would not appear to interfere with or adversely affect the overall responsibilities of the Commission with respect to licensing of key employees and primary management officials for employment in an Indian gaming operation, the applicable exemption may be waived by the Commission.

(c) Exemptions from the particular sections are justified for the following reasons:

(1) From 5 U.S.C. 552a(c)(3), because making available the accounting of disclosures to an individual who is the subject of a record could reveal investigative interest. This would permit the individual to take measures to destroy evidence, intimidate potential witnesses, or flee the area to avoid the investigation.

(2) From 5 U.S.C. 552a(d), (e)(1), and (f) concerning individual access to records, when such access could compromise classified information related to national security, interfere with a pending investigation or internal inquiry, constitute an unwarranted invasion of privacy, reveal a sensitive investigative technique, or pose a potential threat to the Commission or its employees or to law enforcement personnel. Additionally, access could reveal the identity of a source who provided information under an express promise of confidentiality.

(3) From 5 U.S.C. 552a(d)(2), because to require the Commission to amend information thought to be incorrect, irrelevant, or untimely, because of the nature of the information collected and the length of time it is maintained, would create an impossible administrative and investigative burden by continually forcing the Commission to resolve questions of accuracy, relevance, timeliness, and completeness.

(4) From 5 U.S.C. 552a(e)(1) because:

(i) It is not always possible to determine relevance or necessity of specific information in the early stages of an investigation.

(ii) Relevance and necessity are matters of judgment and timing in that what appears relevant and necessary when collected may be deemed unnecessary later. Only after

information is assessed can its relevance and necessity be established.

(iii) In any investigation the Commission may receive information concerning violations of law under the jurisdiction of another agency. In the interest of effective law enforcement and under 25 U.S.C. 2716(b), the information could be relevant to an investigation by the Commission.

(iv) In the interviewing of individuals or obtaining evidence in other ways during an investigation, the Commission could obtain information that may or may not appear relevant at any given time; however, the information could be relevant to another investigation by the Commission.

[FR Doc. 93–1063 Filed 1–21–93; 8:45 am]
BILLING CODE 7565–01–M

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25 CFR Parts 531, 533, 535, 537 and 539

RIN 3141–AA03

Management Contract Requirements and Procedures Under the Indian Gaming Regulatory Act

AGENCY: National Indian Gaming Commission.

ACTION: Final rule.

SUMMARY: The National Indian Gaming Commission is establishing this rule in chapter III of title 25 of the Code of Federal Regulations (Parts 500–599). This rule implements the management contract provisions of the Indian Gaming Regulatory Act of 1988 by establishing the requirements and procedures for the approval of management contracts concerning Indian gaming operations and the conduct of related background investigations.

EFFECTIVE DATE: February 22, 1993.

FOR FURTHER INFORMATION CONTACT: Fred W. Stuckwisch, National Indian Gaming Commission, Suite 250, 1850 M Street, NW, Washington, DC 20036–5083; telephone: 202–632–7003; by facsimile: 202–632–7066 (not toll-free numbers).

SUPPLEMENTARY INFORMATION:

Background.

The Indian Gaming Regulatory Act (IGRA, or the Act), 25 U.S.C. 2701 *et seq.*, was signed into law on October 17, 1988. The Act established the National Indian Gaming Commission (NIGC, or the Commission). Under the IGRA, the Commission is charged with regulating class II gaming, and certain aspects of class III gaming.

On August 15, 1991, the Commission published final rules (56 FR 40702) requiring class II gaming operations to compute and pay to the Commission the annual fees required by section 2717 of the Act. On April 9, 1992, the Commission published a final rule (57 FR 12382) that defines key statutory terms, notably clarifying the distinctions between class II gaming (regulated by tribes and the Commission) and class III gaming (regulated primarily under negotiated tribal-state compacts).

The Commission also has proposed rules regarding its review and approval of tribal gaming ordinances and resolutions under sections 2710 and 2712 of the Act (57 FR 30346, July 8, 1992), Privacy Act procedures under the Privacy Act of 1974 (57 FR 30353, July 8, 1992), compliance and enforcement procedures under sections 2705 and 2706 of the Act (57 FR 30584, July 9, 1992), and disclosure of information under the Freedom of Information Act (57 FR 55212, November 24, 1992). In the near future, the Commission will publish proposed rules regarding requirements under the National Environmental Policy Act and tribal self-regulation under section 2710(c) of the Act.

On Wednesday, August 19, 1992, the Commission proposed regulations covering management contract requirements and procedures (57 FR 37656–37662). Those rules are being published in final form today.

In the preamble to the proposed rules (57 FR 37656, August 19, 1992), the Commission provided a discussion of the rule's provisions and invited the public to comment generally on the form and content of the regulations and specifically on (1) its determination that management contracts concerning class III gaming are subject to the same background investigation requirements as class II under the IGRA, and (2) its preliminary determinations under Executive Order 12291 and the Regulatory Flexibility Act. Comments received and the Commission's responses to those comments are summarized below.

General Comments

BIA Guidelines

One commenter asked about the effect of the guidelines issued by the Bureau of Indian Affairs (BIA) in April 1992 once the final regulations are adopted.

Response: The management contract regulations, once they become final and effective, will supersede that portion of the guidelines that relate to the review and approval of management contracts. Those who are regulated under the Act must comply with the regulations.

Section 81

Another commenter, arguing that Section 81 remains in full force and effect, including the citizen suit provision, and that the Commission has been substituted for the Secretary in carrying out continuingly valid provisions of Section 81, urged the Commission to include a statement to that effect.

Response: The Commission agrees with the commenter that section 81 remains in full force and effect, including the citizen suit provision. The IGRA contains no express repeal of section 81.

Commission's Role in Class III Gaming

Several commenters took issue with the Commission's preliminary determination that the IGRA authorizes the Chairman to conduct background investigations and otherwise determine the suitability of persons having a financial interest in or management responsibility for a management contract concerning class III gaming (57 FR 37657–37658). Other commenters agreed with the Commission's initial position.

Response: The Commission now agrees with the commenters who argue that under the IGRA the responsibility for conducting background investigations and determining the suitability of persons or entities having a financial responsibility in a management contract for class III gaming falls to the tribe or state pursuant to a tribal-state compact and not to the Chairman. Section 2710(d)(9) of the IGRA provides that "(t)he Chairman's review and approval of such contracts (for class III gaming) shall be governed by the provisions of subsections (b), (c), (d), (f), (g), and (h) of section 12." Excluded are subsections (a) (background information on persons or entities which must be provided to the Commission), (e) (grounds for disapproving a management contract), and (i) (requiring a potential contractor to pay a fee to cover the cost of a background investigation). When the excluded subsections are read together, it becomes evident that Congress did not intend for the Chairman to conduct background investigations on persons or entities involved in class III gaming, but to insure that a management contract complied with the other requirements of the IGRA, such as limits on the term of years, limits on the division of net revenues, and adoquate accounting procedures.

Although the disparate, more limited review of class III management contracts is not explained in the IGRA's legislative history, it is consistent with the overall regulatory scheme of the IGRA which vests in the Commission the responsibility to oversee the regulation of class II gaming while leaving to the tribes and states the responsibility to regulate class III gaming. This bifurcation of responsibilities, which makes the Chairman responsible only for conducting background investigations on persons or entities having an interest in a management contract for class II gaming, may give rise to varying, and possibly, conflicting standards for conducting background investigations and determining the suitability of persons involved in Indian gaming. It could also result in a situation where no background investigation is conducted because the IGRA does not mandate that any particular subject be included in a tribal-state compact. The Commission is hopeful that these potential problems can be avoided.

While the Chairman may not have the responsibility for conducting background investigations on persons or entities with an interest in a management contract concerning class III gaming, the Commission believes that the IGRA does not preclude the Chairman from disapproving a management contract concerning class III gaming based on the ground contained in section 2711(e)(1)(D) of the IGRA. That provision provides that the Chairman shall not approve a management contract if the Chairman determines that a person or entity "poses a threat to the public interest or to the effective regulation and control of gaming, or create or enhance the dangers of unsuitable, unfair, or illegal practices, methods, and activities in the conduct of gaming or the carrying on of related business and financial arrangements." It is the view of the Commission that Congress did not intend for the Chairman to disregard information in his or her possession that indicates that a person is unsuitable for Indian gaming. To do so would undermine one of the fundamental policies of the IGRA—"to shield (tribes) from organized crime and other corrupting influences." 25 U.S.C. 2702(2). Thus, while the Chairman will not conduct background investigations on class III contractors, the Chairman may disapprove a management contract concerning class III gaming based on information in the possession of the Commission that indicates that such person is unsuitable for Indian gaming under the standard contained in § 533.6(c).

Approval Requirements

One commenter urged that the Commission not attempt to approve management contracts that were approved by the Secretary after IGRA was enacted or attempt to modify or void such contracts without a hearing. The commenter argued that the regulations fail to distinguish between contracts approved by the Secretary prior to the enactment of IGRA, which require Commission approval, and contracts approved by the Secretary after the enactment of IGRA, which do not.

Response: The Commission disagrees. Sections 2710(d)(9) and 2711(a)(1) of the IGRA provide that the Chairman must approve all management contracts, whether or not the Secretary has approved them. The only distinction the Act makes for those contracts approved prior to the enactment of the IGRA is that the parties are given additional time to bring the contract into compliance (Section 2712(c)(3)). The Commission has, however, modified the content requirements for contracts that have been approved by the Secretary by eliminating those contained in § 531.1(a), (b), (k), (l), (m), and (n).

Business Judgments

One commenter suggested that the tribes, not the Chairman, should make judgments and decisions as to business details of contracts. In the view of this commenter the Commission's role should be limited to providing technical assistance in the negotiation process to ensure that tribal governments negotiate contracts in the best interest of the tribe and not "outside forces."

Response: The IGRA does give the Commission the authority to disapprove a contract if "a trustee, exercising the skill and diligence that a trustee is commonly held to, would not approve the contract." 25 U.S.C. 2711(e)(4). The Commission dies not, however, intend to second-guess the business decisions of a tribe. Consequently, it is the responsibility of all tribal governments to negotiate contracts in the best interests of their tribes.

Another commenter contended that the proposed regulations are overreaching in the ability of the Chairman to reject the contractual terms and second-guess the business decisions of the tribes. The regulations should contain a presumption that the decisions of the tribe are reasonable unless there is clear and convincing evidence to the contrary.

Response: As indicated elsewhere, the Commission does not intend to micro-manage a tribe's business.

Self-Regulation

One commenter urged that self-regulation be addressed as soon as possible.

Response: The Commission agrees. The IGRA provides that a tribe which operates a class II gaming operation and has complied with the various provisions of the IGRA may apply for a certificate of self-regulation. Some of those provisions require regulations; the Commission must propose and finalize such regulations before a tribe may apply for a certificate of self-regulation.

Piecemeal Regulation

One commenter suggested the Commission should not take the piecemeal approach in the drafting of the regulations.

Response: The Commission disagrees. As stated elsewhere, the promulgation of all regulations in a single package would take so long and be such a sizeable undertaking that necessary guidance would be unduly delayed.

Negotiated Rulemaking

The same commenter urged that negotiated rulemaking be used.

Response: The Commission disagrees. Because Congress spelled out specific requirements that the Commission could not ignore, negotiated rulemaking was not suitable. Interested parties have been given ample opportunity to review, comment on, and discuss with Commissioners and staff the Commission's thinking with respect to management contract regulations.

Collateral Economic Activities

A commenter argued that the Commission must extend its regulatory authority over collateral economic activities such as gift shops, food and beverage services, custodial services and security services if the regulatory scheme is to have full effect and if the goal of Congress to encourage clean, profitable gaming is to be realized.

Response: The Commission does not disagree with the merits of the commenter's arguments but notes that there are statutory limitations to doing what the commenter suggests. The IGRA gives the Commission regulatory oversight over gaming operations, not other tribal businesses.

The FBI and State Gaming Authorities

A commenter suggested that the regulations should require that a copy of the management contract application, with all attachments, should be

forwarded to the appropriate state gaming authority and to the FBI at the same time that these documents are forwarded to the Commission for approval.

Response: The Commission disagrees. The Act does not provide for such a requirement and it is doubtful that the FBI or state gaming authorities would want to routinely receive management contracts.

Definition of Management Contractor

One commenter asked whether the Commission considered a "bright line" definition of "management contractor" which focuses on the ultimate decision-making authority or basis of compensation to identify a management contractor rather than on functions performed.

Response: The Commission considered many alternative definitions of "management contractor" in connection with the promulgation of its definition regulations and believes that the definition of a management contract in the final rule is sufficiently clear.

Definition of a Management Contract

Another commenter argued that the proposed regulations, together with the overbroad definition of a management contract (because of the many contracts that could be included), is unworkable for both the Commission and the tribe because it subjects numerous contracts to the regulatory requirements. The commenter suggested that the regulations should specifically delineate what is and what is not a management contract.

Response: The Commission disagrees. The definition adopted by the Commission is not overly broad and covers those contracts where a management role is present.

Part 531—Content of Management Contracts

Contract-Compact Conflicts

One commenter suggested that § 531.1 should require that the contracts include an order of precedence provision to the effect that the compact controls where there is a conflict between provisions of the management contract and the governing compact.

The same commenter suggested that § 531.1(a), Governmental Authority, be revised by adding "and in conformance with the governing tribal/state gaming compact" before the semicolon.

Response: While the Commission is in general agreement that management contracts should not be inconsistent with the requirements contained in a tribal-state compact (unless those requirements are contrary to the statutory provisions of the IGRA relating to management contracts), the Commission does not agree that the regulations should be modified to require that a management contract must conform to a tribal-state compact. Enforcement of the requirements of the compact should be the responsibility of the tribe or the state; it is not the responsibility of the Commission.

Compliance With the Act

Another commenter pointed out that the preamble to the proposed regulations indicated that a management contract must provide that all gaming will be conducted in accordance with the governing tribal ordinance and suggested that consideration be given to indicating that all gaming will be conducted in accordance with the Act as well as the governing tribal ordinance.

Response: The Commission agrees and has revised § 531.1(a) accordingly. The Commission believes that any reader of such a contract should be made aware that it is subject to all the provisions of the Act.

Changes in Gaming Ordinances

One commenter suggested that § 531.1(a) should require the management contract to state how changes in gaming ordinances that affect contract terms will be handled.

Another commenter argued that neither the preamble nor the final rule should contain a statement or requirement such as that contained in the preamble to the proposed rule advising that "the management contract also should state how any changes to the ordinance that affect contract terms will be handled." Such a statement, the commenter argued, is unnecessary and confuses the tribes two roles as sovereign and party to the management contract.

Response: The Commission disagrees with both commenters. The parties to the contract should be aware of and deal with the inter-relationships between the contract and the governmental authority of the tribe that can be exercised through ordinances and resolutions.

Assignment of Responsibilities

One commenter suggested that § 531.1(b), Assignment of Responsibilities, is not required by IGRA and should be omitted from the final rule or limited to those items listed in the proposed rule.

Response: The Commission disagrees. It is in the best interest of Indian gaming to deal with as many contractual issues as possible in advance.

Another commenter felt that § 531.1(b) should be changed if it is the intent of the Commission that the items listed are the only functions for which responsibility is to be enumerated.

Response: Such is not the intent of the Commission as evidenced by the use of the word "including."

Responsibility for Auditors

One commenter argued that § 531.1(b)(7) should be deleted or reworded to provide that independent auditors will be directly engaged and scheduled by the tribe and shall report directly to the tribal government.

Another commenter urged that § 531.1(b)(7) be changed to require hiring and scheduling of auditors solely by the tribe.

Response: The Commission agrees in part and has revised the rule by limiting the assignment of responsibility concerning auditors to "paying for the services of the independent auditor engaged pursuant to § 571.12 of this chapter."

Police Protection

One commenter suggested that the regulations make clear that the tribe and contractor must make proper arrangements with local law enforcement for adequate police protection.

Response: The Commission believes that the provision of law enforcement and police protection are the responsibility of the tribe and need not be addressed in the management contract. However, the incremental cost of law enforcement and police protection resulting from the gaming operation should be dealt with in the contract. Accordingly, § 531.1(b) has been expanded by adding paragraph (15): "paying the cost of any increased public safety services."

NEPA Requirements

The Commission has added § 531.1(b)(16) to require the parties to the contract, when applicable, to assign responsibility for supplying the Commission with all information necessary for it to comply with the regulations of the Commission to be issued shortly pursuant to the requirements of the National Environmental Policy Act (NEPA).

Financial Reports

One commenter inquired whether § 531.1(d) should be changed to require that a management contractor provide certain financial reports "not less frequently than monthly" to facilitate the tribe receiving more frequent accountings of gaming revenues.

Response: The Commission agrees and has revised the rule accordingly.

Guaranteed Payments

Another commenter asked if the Commission intended that the guaranteed payments required in § 531.1(f) be a debt instrument.

Response: It is not intended that this payment obligation cover the entire contract period and be recorded at the outset or reflected in a debt instrument. This is a month-to-month obligation of the gaming operation which is to be recorded and paid as incurred.

One commenter said that § 531.1(f) provides virtually no protection to the tribe and that the Commission should develop a mechanism to ensure that a meaningful guaranteed monthly minimum payment is provided to a tribe either as a minimum dollar amount or a percentage of the anticipated net revenues.

Response: The Commission disagrees. It is not possible to develop a useful regulatory mechanism or formula that will ensure that a tribe receives an adequate guaranteed payment. The purpose of this provision is to assure that a payment be made regardless of the requirement for repayment of development and construction costs.

Term Limitations

This same commenter felt that § 531.1(h) should indicate what showing must be made to justify a longer term, including a description of the relationship between capital and income which is necessary to receive approval for a seven year contract.

Response: The Commission disagrees. Each situation is unique because in each, location of the gaming operation is the most important factor.

Two commenters urged that § 531.1(h) indicate when the term of a management contract begins for purposes of calculating the term limit. One commenter suggested that the time be counted from the opening of the gaming facility.

Response: The Commission agrees that the regulations should clarify when the term of a management contract begins and has revised the rule to add a requirement that "the time period shall begin running no later than the date when the gaming activities authorized by an approved management contract begin."

One commenter urged that § 531.1(h) be expanded to add this additional sentence: "However, the assumption by the Chairman will be that such term is economically reasonable when so requested by the tribe and will be approved by the Chairman."

Response: The Commission disagrees; such changes would be contrary to the statute.

Percentage Fee Limitations

This same commenter urged that § 531.1(i)(2) be expanded to add the same additional sentence.

Response: The Commission disagrees; these changes would be contrary to the statute.

Another commenter urged that § 531.1(i) should be expanded to include the standards that will be used to judge whether a higher percentage fee is justified.

Response: The Commission disagrees. Each situation is unique because in each, location of the gaming operation is the most important factor.

A commenter asked if a management contract provides for a fixed fee, must that fee not be in excess of the percentages provided for in § 531.1(i)?

Response: The answer is no. The use of a percentage fee to compensate the management contractor is optional and the percentage fee limitations would not apply to other methods of compensation.

Licensing Disputes

One commenter asked whether § 531.1(k) should be revised to specifically address licensing disputes between the tribe and the management contractor involving third parties.

Response: The Commission believes not. It is up to the tribe in its governmental capacity to make licensing determinations.

Dispute Resolution

Another commenter argued that the regulations should not impose the dispute resolution requirements contained in § 531.1(k) since IGRA contains no such requirement.

Response: The Commission disagrees. The Commission was given the authority to "promulgate such regulations and guidelines as it deems appropriate to implement the provisions of this Act." (25 U.S.C. 2706(c)(10)) The Commission believes it is in the best interest of Indian gaming to anticipate the need for, and deal with, the resolution of disputes in advance.

Assignments and Subcontracting

A commenter urged that § 531.1(l) be changed to limit the assignment provisions to class II and previously approved class III contracts and subcontracting provisions relating only to gaming activities.

Response: The Commission disagrees. It believes that all management contracts not previously approved by the Secretary should indicate whether and to what extent contract assignments and subcontracting are permissible.

This same commenter questioned the Commission's authority to require approval of assignments and subcontracts.

Response: Any contract that requires the approval of the Chairman that is modified by assignment or subcontract, must have that modification approved.

Compact Requirements

A commenter urged that a new subsection, Terms and conditions required by compact, should be added to § 531.1 to require that the management contract shall include all provisions required to be included in such contracts by the governing tribal/state gaming compact.

Response: The Commission disagrees. The Commission was not given oversight over the tribal-state compacting process. That was left to the tribes and the states.

Effective Date

Another commenter suggested that the following language be added to § 531.1:

"(n) Effective Date. State that the contract shall not become effective unless and until the Chairman approves it, date of signature of the parties notwithstanding."

The commenter pointed out that without such a statement, a contract is normally understood to be effective upon execution (i.e., signature of the parties). Since the regulations require "after-the-fact" approval, this provision clarifies when the contractor may begin work.

Response: The Commission agrees and has added the suggested language to § 531.1 as subparagraph (n).

Long-Term Leases

One commenter asked if it is intended by § 531.2, Prohibited Provisions, that Tribes will be unable to enter into long term leases that exceed the 5–7 year time frame.

Response: The simple answer is no. However, the Commission wishes to point out that a lease cannot authorize or permit the management of a gaming operation; i.e., one cannot manage a gaming operation through a lease.

Prohibited Provisions

One commenter suggested that the Commission consider deleting § 531.2 because it merely reiterates what is already set forth in the statute.

Response: The Commission disagrees. This section is included to provide a

complete reference, without having to refer to the IGRA.

Part 533—Approval of Management Contracts

General

One commenter urged that the regulations "include a provision identifying a clear and specific means of endowing a contract with approval, such as written endorsement by the Chairman * * *" and "recite that no other means or act by the Commission will constitute or be construed to constitute approval."

Response: The Commission agrees and has included a new provision in § 533.1(b) which provides "Contract approval will be evidenced by a Commission document dated and signed by the Chairman. No other means of approval shall be valid."

The same commenter argued that the regulations should provide that contract approvals by the Chairman are prospective in application only.

Response: The Commission disagrees. The Supreme Court has recognized the authority of the government to retroactively approve agreements between Indians and non-Indians. *Lykins v. McGrath*, 184 U.S. 169 (1902). There is no reason for the Commission to restrict the Chairman's authority. In most, if not all cases, however, contract approvals will be prospective only.

Another commenter opined that the regulations should require that the contracts provide "that the contractor will not interfere with or attempt to unduly influence internal affairs or governmental decisions of the tribe."

Response: The Commission does not believe that such a regulatory provision is necessary. Unduly interfering with or influencing tribal governmental decisions relating to gaming is a basis for disapproving a management contract. 25 U.S.C. 2711(e)(2).

Contracts Approved by the Secretary

One commenter argued that § 533.1 should be modified to provide that contracts approved by the Secretary remain effective.

Response: The Commission has added § 533.1(c) which provides "Contracts approved by the Secretary remain effective until approved or disapproved by the Chairman."

Failure to Submit

The Commission has added language to § 533.2(a) which provides that the Chairman may deem a contract disapproved if a tribe or management contractor fail to submit a contract previously approved by the Secretary within sixty (60) days of the Chairman's request.

Evidence of Tribal Authority

One commenter suggested that the requirement in § 533.3(b) is unnecessary in light of § 533.3(c) and should be eliminated.

Response: The Commission disagrees. Section 533.3(b) requires the tribal chairman to set forth in writing the identity and authority of the tribal official who is acting for the tribe concerning the management contract; § 533.3(c) requires the submission of the tribal documents providing and delegating such authority.

Parties to the Contract

Another commenter suggested that § 533.3(d) be changed to limit its application to class II contracts and to class III contracts previously approved by BIA.

Response: The Commission disagrees. The Commission needs to know the identity of all parties to a contract.

Background Investigations for Class III

One commenter argued that the Commission's interpretation that management contracts concerning class III gaming are subject to the same background investigation requirements as class II is erroneous and will result in needless repetition of effort and expense for tribes. Therefore, the regulations should be changed to clarify that § 533.3(d) and § 533.6 do not apply to class III gaming.

Response: The Commission has modified the background investigation requirements but disagrees as to specific changes recommended. Section 533.3(d) has been revised to require only the information identified in § 537.1(b)(1)(i) for contracts covering class III gaming. Section 533.6 has been revised to require only that the requirements of § 533.6(c) be met for contracts covering class III gaming. See also discussion captioned "Commission's role in class III" above.

Business Plan or Financial Statements

One commenter argued that § 533.3(e), which requires the submission of a business plan or financial statements, should be eliminated because it is unauthorized by IGRA, unnecessary and overbroad.

Response: The Commission disagrees. The information is needed for the Chairman and the Commission to make the judgments required under the IGRA.

One commenter asked whether § 533.3(e)(1), which requires a three year business plan for new contracts, applies to operations that have been in existence for many years and are now engaging new contractors.

Response: The Commission has added § 533.3(e)(3) which requires both a business plan and financial statements for new contracts for existing operations.

Another commenter stated that § 533.3(e)(1) is vague and should be expanded to clarify the information the Commission wants included in the 3 year business plan regarding the gaming business.

Response: The Commission agrees and has revised the provision to include the requirements enumerated in the preamble to the proposed regulations.

One commenter said that the business plan submitted under § 533.3(e)(1) should be required to cover the same period of time as the term of the proposed contract.

Response: The Commission disagrees. Plans and projections covering a period beyond three years would not be sufficiently useful.

One commenter asked the Commission to consider removing from § 533.3(e)(2) the final proviso "to the extent that such data exists."

Response: The Commission agrees and has made the suggested revision.

Term Limit Justification

The same commenter asked that the Commission consider modifying § 533.3(f) to read "If applicable, a justification, consistent with the provisions of § 531.1(h), for a term limit in excess of five (5) years, *but not exceeding seven (7) years.*"

Response: The Commission agrees and has made the suggested revision.

Fee Percentage Justification

This same commenter also asked the Commission to consider modifying § 533.3(g) to read "If applicable, a justification, consistent with the provisions of § 531.1(i), for a fee in excess of thirty (30) percent, *but not exceeding forty (40) percent.*"

Response: The Commission agrees and has made the requested revision.

Temporary Approval

One commenter asked if § 533.4 should be changed to provide for temporary approvals.

Response: The Commission believes that temporary approvals would not be appropriate.

Approval Time Limits

The same commenter asked whether the time frames for the approval process in § 533.4 should be shortened and whether the approval process should distinguish between an ongoing and a proposed casino.

Response: The Commission notes that the time frames provided are statutory and that the IGRA does not provide different requirements for ongoing versus proposed casinos.

Right to Bring Action

This same commenter argues that the right to bring an action to compel the Chairman to act provided in § 533.4(b) is without a remedy.

Response: The Commission disagrees. Compelling the Chairman to approve or disapprove a contract is the remedy.

Another commenter argues that both the tribe and the management contractor should be allowed to bring legal action to compel action on a contract under § 533.4(b).

Response: The Commission disagrees. The IGRA only authorizes a tribe to file suit in federal district court to compel the Chairman to approve or disapprove a management contract.

Retroactive Application of the Regulations

One commenter suggested that the retroactive application of the regulations provided in § 533.5 is most unwise because it has a chilling effect on management companies interested in investing in Indian gaming.

Response: The Commission notes that this provision is required by the IGRA.

Approval of Previously Approved Contracts

One commenter asked whether § 533.5 should be changed because it permits a tribe to void a management contract simply by refusing to modify an existing management contract to bring it into compliance with the rules. The commenter suggested that if so, it should provide for an "automatic" modification of management contract terms to bring them into compliance with the regulations or by providing for mandatory arbitration to resolve contract disputes.

Another commenter urged that § 533.5 be revised to provide for an alternative dispute resolution mechanism allowing an unbiased third party to facilitate the negotiation of existing management contracts to permit them to be in compliance with current law.

Yet another commenter suggested that § 533.5(b) be revised to prevent a tribe from failing to respond to a request for modification and thereby letting the contract become void. This commenter urged that if so, previously approved pre 1988 contracts should require mandatory binding arbitration after the passage of the 180 day time period.

Still another commenter argued that § 533.5(b) should be changed to add:

"provided, however, that in situations where the Chairman is reviewing a management contract which has been approved by the Secretary, he may waive any of the requirements if the Chairman determines that a Tribe is refusing to bargain in good faith in order to terminate or void an existing contract."

Response: The Commission agrees that § 533.5 should be revised to address the problem identified by the commenter but does not agree with the solutions proposed. Instead, § 533.5(b) has been revised and now reads as follows:

If a tribe and a management contractor fail to modify a management contract within the time provided, the Chairman may:

(1) Disapprove the management contract, or

(2) Approve the management contract subject to the required modifications if:

(i) The modifications all benefit the tribe,

(ii) The modifications are required to bring the contract into statutory compliance, and

(iii) The modifications are all agreed to by the management contractor.

The Commission has also added the management contractor to § 533.2 so that the tribe or the management contractor can submit the required information.

Approval Requirement

One commenter suggested that § 533.6 be changed from "may approve" to "shall approve." A second commenter said the language of § 533.6 should be changed to provide that the Chairman "shall approve the contract unless" he determines that it meets one of the conditions listed.

Response: The Commission has revised § 533.6 to track the statute.

Compact Provisions

One commenter suggested that § 533.6 be expanded to enable the Chairman to disapprove a contract for failure to comply with tribal-state compact requirements. Another commenter argued that § 533.6 should provide for disapproval of management contracts whose provisions are not consistent with, or are contrary to, the provisions of the tribe's class III gaming compact.

This same commenter also suggested that § 533.6 provide that where a compact specifically requires that certain provisions be included in a management contract, the Commission should not approve contracts which do not contain them.

Response: The Commission disagrees. The statute and the regulations govern the review and approval of management contracts, not the terms of the compacts. Furthermore, the Commission was not given the authority to enforce tribal-state compacts. That was left to the tribes and the states.

Another commenter suggested that § 533.6 be expanded to include "knowingly or willfully providing materially false statements to a state or agency of the state with responsibility for Indian gaming oversight."

Response: The Commission disagrees; as previously noted, the Commission was not given an oversight role over the tribal-state compacting process.

Gaming Offenses

One commenter suggested that it should be made clear that "gaming offense" under § 533.6(b)(2) includes misdemeanor convictions.

Response: The Commission agrees and has modified the provision, now in § 533.6(b)(1)(ii), accordingly. The regulation now reads "has been convicted of any felony or any misdemeanor gaming offense."

Void Agreements

A commenter suggested that § 533.7, which provides that management contracts not approved by the Chairman are void, is unreasonable with respect to contracts that have been approved by the Secretary.

Response: The Commission has revised § 533.7 to exclude contracts approved by the Secretary which remain valid until disapproved by the Chairman.

One commenter argued that § 533.7 should be limited to class II contracts because the Commission has no authority over class III investors.

Response: The Commission disagrees; the Commission is charged with reviewing and approving class III contracts and therefore has an interest in the parties to the contract.

Part 535—Post-Approval Procedures

General

One commenter suggested that part 535 be modified to distinguish between a simple modification and a new contract. This same commenter felt that part 535 should be modified to treat assignments as new contracts, not modifications of existing contracts.

Response: The Commission believes the suggested change is unnecessary. Both new contracts and modifications are subject to the same degree of scrutiny and review. Furthermore, it's up to the parties to decide whether and when to modify an existing contract or to enter into a new contract.

Background Investigations

One commenter suggested that § 535.1, to the extent that it applies to background investigations, be limited to class II contracts and to modifications to class III contracts previously approved by the Secretary.

Response: The Commission disagrees that its authority is limited in the manner suggested by the commenter. The Commission has, however, revised § 535.1(c)(4) to provide as follows:

(4) If the modification involves a change in person(s) having a direct or indirect financial interest in the management contract or having management responsibility for the management contract, a list of such person(s) and either:

(i) The information required under § 537.1(b)(1) for class II gaming contracts and § 537.1(b)(1)(i) for class III gaming contracts; or

(ii) The dates on which the information was previously submitted.

Evidence of Tribal Authority

One commenter suggested that the requirement in § 535.1(c)(2) is unnecessary given the requirement in § 535.1(c)(3).

Response: The Commission disagrees. Section 535.1(c)(2) requires the tribal chairman to set forth in writing the identity and authority of the tribal official who is acting for the tribe concerning the management contract; § 535.1(c)(3) requires the submission of the tribal documents providing and delegating such authority.

Term Limitation

Another commenter urged that § 535.1(c)(5) should be changed to include a maximum term limit of seven (7) years.

Response: The Commission agrees and has changed the provision to read as follows:

(5) If applicable, a justification consistent with the provisions of § 531.1(h), for a term limit in excess of five (5) years, but not exceeding seven (7) years[.]

Correction

Several commenters pointed out that § 535.1(c)(6) should be changed to say "percent" rather than "days."

Response: The Commission agrees and has made the change.

Percentage Fee Limitation

One commenter suggested that § 535.1(c)(6) be changed to include a maximum management fee of forty percent (40%).

Response: The Commission agrees and has added the phrase, "but not exceeding forty (40) percent," to the language of this paragraph.

Background Information

One commenter suggested that §§ 535.1(c)(4), 535.1(d), and 535.1(e) should be rewritten to limit their application to class II contracts.

Response: The Commission has revised § 535.1(c)(4) to reflect the elimination of certain background investigation requirements for class III contracts. The other two sections have not been changed in the manner suggested.

Another commenter, noting that the proposed rule provided for a 30 day appeal period when a modification is disapproved, suggested that the proposed rule be clarified to remove any ambiguity as to when the 30 day appeal period begins.

Response: The Commission agrees and has revised § 535.1(d)(2) to include notification pursuant to the service provisions of part 519 of this chapter.

Approval

One commenter suggested that § 535.1(e) be changed from "may approve" to "shall approve."

Response: The Commission has considered the question raised and revised § 535.1(e).

Compact Requirements

One commenter argued that § 535.1(e)(2) should be expanded to enable the Chairman to disapprove a contract for failure to comply with tribal-state compacting requirements.

Response: The Commission disagrees for the reasons already discussed.

Assignment Approval

One commenter argued that § 535.2, to the extent that it applies to background investigations, should be limited to class II contracts and to modifications to class III contracts previously approved by the Secretary.

Response: The Commission disagrees. The Commission is interested in the identity of the parties to all contracts for gaming, whether or not a background investigation is required.

Post-Approval Noncompliance

One commenter agreed that § 535.3 is too broad in that it refers to "any action or condition that violates the standards contained in this chapter," where "this chapter" encompasses all the Commission's regulations. The section should be amended to refer only to violations of section 2711 or the specific sections of the regulations implementing section 2711.

Response: The Commission agrees and has revised § 535.3 by substituting parts 531, 533, 535, and 537 for "this chapter."

Hearings and Appeals

One commenter argued that both § 535.3 and § 539.2 should be changed to conform to IGRA and provide for a hearing (including oral and written presentations) prior to a determination to modify or void a contract. The same commenter also recommended that the Commission eliminate any administrative appeal from decisions on management contracts.

Response: The Commission disagrees. Under IGRA, notice and hearing are required only under section 2711(f), which deals with the Chairman's reconsideration of his/her prior approval of management contracts. This section applies only to the contracts that have been approved by the Chairman. In addition, under IGRA, decisions on management contracts are subject to administrative appeal. New contracts are covered under section 2705(a)(4) (referring to Commission appeals of Chairman's approval of management contracts in sections 2710(d)(9) and 2711 and existing contracts through section 2712(a)(2) (which incorporates the process of section 2711). Section 535.3, however, has been revised to provide a hearing prior to a determination to modify or void a contract.

Part 537—Background Investigations for Persons or Entities with a Financial Interest in, or Having Management Responsibility for, a Management Contract

General

One commenter argued that "* * * some mechanism, such as an NCIC check, is needed to provide provisional approvals of management contractors within thirty days of submission."

Response: The Commission disagrees. IGRA clearly requires advance approvals of management contractors.

One commenter suggested that the "regulations create a mechanism under which the Commission could review the background investigation systems mandated by Tribal-State compacts, and—if in the Commission's view those systems adequately protect the Tribes and the public—the Commission could accept the results of the compact-required systems as sufficient for the Commission's purposes."

Response: The Chairman or the Commission has the responsibility to conduct background investigations and to make suitability determinations based on those background investigations for class II gaming only. Furthermore, it

would be inconsistent with this responsibility to delegate this task to someone outside the Commission.

One commenter suggested that the rule regarding background investigations require the Commission to employ Indian preference, use the most cost-effective contractor available, and provide consultation with the tribe.

Response: The Commission agrees as to the desirability of these suggested actions but does not believe these are appropriate matters to be addressed by the regulations.

One commenter said that the Commission should bear the cost of the background investigation in light of the fees it receives.

Response: The Commission disagrees; this would be contrary to the IGRA.

One commenter questioned the Commission's decision with respect to class III gaming to "rely to the maximum extent possible on background investigations conducted by a tribe or state pursuant to a tribal-state compact." In the view of this commenter, independent government background investigations are essential to ensure that uniform and adequate standards are met.

Response: Although it will not be conducting background investigations for class III gaming, the Commission believes that it may rely on the work of others in conducting background investigations and intends to do so for class II gaming. The Commission believes that such an approach can save time and money. The Commission, however, remains responsible for the quality of the work performed and for all determinations based on such information.

Scope of Coverage

One commenter suggested that in light of the express provisions of section 2710 of the IGRA, part 537 should be revised to limit the requirements for background investigations of persons with a financial interest in, or having management responsibility for, a management contract to class II contracts and to existing class III contracts previously approved by the Secretary.

Another commenter argued that part 537 should be limited to class II background investigations because the IGRA does not authorize the Commission to perform background investigations of class III management contractors. According to this commenter, section 2710(d)(3)(C) and (9) give this authority to the tribes and states.

Yet another commenter felt that part 537 should be rewritten to exclude class III contracts from its application.

Conversely, one commenter said the Commission had reached an appropriate conclusion in determining that under part 537 the same standards that apply to class II background investigations apply to approval of class III management contracts.

Response: The Commission has considered these comments and revised the regulations to require background information and investigations for only class II contracts and the identifying information specified in § 537.1(b)(1)(i) for class III contracts. (See discussion above under "Commission's role in class III gaming.")

One commenter suggested that part 537 be revised to require background investigations of persons having an ownership interest of 5 percent.

Response: The Commission has revised the regulations to require background investigations on the ten (10) owners with the largest interests in an entity. In many if not most cases this should cover 5% owners.

Background Information

The same commenter argued that the Commission should require biographical, residence and employment history for affected persons since the age of 18.

Response: The Commission agrees that additional background information would be useful and has revised the regulations to require all the specified information for the previous ten (10) years; the city, state and country of residence from age eighteen (18) forward; and, personal references at each residence for the most recent five (5) years.

Conduct of Background Investigations

Another commenter suggested that in order to provide greater flexibility, proposed § 537.1 should be modified to indicate "The Chairman shall conduct or cause to be conducted a background investigation * * *."

Response: The Commission agrees and has made the suggested change.

Approval Time Limits

One commenter suggested that, for those contracts where background investigations under § 537.1 are completed by the tribes or the states, the Commission should provide a shorter approval deadline.

Response: The Commission disagrees. It is not possible for the Commission to commit to a time limitation without knowing the nature and extent of the information it may be receiving from the tribes or the states.

Coverage

One commenter observed that § 537.1 provides for background investigations of certain persons with indirect financial interests and persons with less than a 10 percent interest in a corporation. The commenter objects, arguing that this approach subjects to investigation more persons than IGRA intended.

Another commenter asked if § 537.1(a) is overly broad by requiring background investigations of the top ten (10) shareholders. This commenter recommended that the provision be revised to conform to the statutory requirements.

Response: The Commission agrees that the proposed regulation extends the requirements of section 2711(a)(1)(A) of the IGRA; this was intentional and within the authority of the Commission (25 U.S.C. 2706(b)(3)).

Overlapping coverage

Another commenter suggested that § 537.1(a)(1), which requires the Commission to perform a background investigation of each person with management responsibility for a management contract, be deleted because the tribe is already required to perform a background investigation.

Response: The Commission disagrees. The Commission is responsible for conducting the background investigations and making suitability determinations in connection with class II management contractors. As previously noted, the Commission will use the work of others to the extent it can but will not delegate the authority to make suitability determinations.

Coverage under definition regulations

One commenter asked whether § 537.1(a)(3) should be changed to clarify this requirement in light of the definition of "person having a direct or indirect financial interest" in § 502.17 of the definition regulations.

Another asked whether § 537.1(a)(3) should be deleted and § 537.1(a) should be rewritten to follow the language of the Act and to eliminate any inconsistencies with § 502.17 of the definition regulations.

Yet another commenter observed that § 537.1(a) requires the Chairman to conduct background investigations on a group of individuals which may be different than the group designated under the statutory language or the Commission's definition of "persons having a direct or indirect financial interest in a management contract."

Under the proposed regulation not all partners or trustees would be investigated but persons with less than 10 percent interests in a company could be investigated. The commenter suggests that both of these results are contrary to the IGRA.

Response: The Commission acknowledges that the set of persons for which background investigations are required and for which the Chairman must make suitability determinations under the regulations is different from the set of persons identified in the definition regulations under § 502.17. The Commission believes this is both appropriate and authorized under the IGRA.

The Commission does not believe that it would be appropriate to subject all partners of a partnership and all beneficiaries of a trust with interests in a management contract to background investigations and suitability determinations while at the same time ignoring persons with a 9 percent interest in a management contract. Therefore, the Commission has exercised its authority and judgement and used different criteria for selecting persons to be subjected to background investigations and suitability determinations.

The Commission is requiring management contractors to identify and provide information about all entities with an interest in the management contract and to identify the ten (10) natural persons who have the largest financial interest in those entities. While it is conceivable that this could result in identifying hundreds of individuals with an interest in the management contract, the Commission does not believe as a practical matter that this will occur frequently or that it will create an unreasonable burden.

Once all the individuals are identified, the management contractor is to identify the ten (10) persons with the largest financial interest in the management contract and furnish complete background information on these persons. It is these people who will be subjected to background investigations and for whom the Chairman must make suitability determinations.

Disclosure Requirements

One commenter suggested that § 537.1(b) require disclosure of ownership interests in businesses other than those involving Indian tribes and gaming.

Response: The Commission disagrees. The financial statements being submitted will provide the same information sought through the suggested change.

One commenter suggested that § 537.1(b)(1)(iii) should be changed to require only the applicant's current driver's license number.

Response: The Commission agrees and has revised § 537.1(b)(1)(ii) accordingly.

One commenter suggested that § 537.1(b)(1)(ix) and § 537.1(b)(1)(x) should be expanded to add "pleas of guilty or nolo contendere for which no conviction resulted under state law."

Response: The Commission agrees and has revised the regulations to add § 537.1(b)(1)(xii):

(F)or each criminal charge (excluding minor traffic charges) regardless of whether or not it resulted in a conviction, if such criminal charge is within 10 years of the date of the application and is not otherwise listed pursuant to subparagraph (b)(1)(ix) or (b)(1)(x) of this section, the name and address of the court involved, the criminal charge, and the dates of the charge and the disposition.

Privacy Notice

A commenter suggested that § 537.1(b)(4) should be modified replacing the term "Indian gaming" with the group of individuals from whom this information will be sought.

Response: The Commission agrees and "Indian gaming" has been replaced by the phrase "individuals with a financial interest in, or having management responsibility for, a management contract."

Notice Regarding False Statements

Another commenter suggested that § 537.1(b)(5) be revised to limit its application to those who "knowingly and willfully" provide false statements, and for greater consistency with 25 U.S.C. 2711(e)(1)(C).

Response: The Commission notes that the statute cited in § 537.1(b)(5) contains "knowingly and willfully." The Commission has added this phrase to the regulation as well.

A commenter suggested that § 537.1(c) should require entities and individuals to respond to questions put by the Chairman and should provide for penalties for false statements.

Response: The Commission agrees and has made the recommended change.

Clarification

One commenter suggested that § 537.1(c)(1) be modified by separating the list of persons from whom the information is required from the paragraph which identifies what the required information shall be.

Response: The Commission agrees and has revised both § 537.1(a) and § 537.1(c) to clarify the requirements.

Multiple Sites or Operations

One commenter asked whether the fee structure under § 537.3 will be applicable to multi-site licensing requiring the payment of a separate fee for each gaming location which a management contractor seeks to operate.

Another commenter asked whether § 537.3 should be changed to provide a single fee for an investigation of a management contractor regardless of the number of operations involved.

(Readers please note that both commenters erroneously interpreted this provision as providing for the amount of the fee rather than the amount of the deposit.)

Response: A separate deposit will be required for each location and operation that a management contractor seeks to operate. However, investigative work will not be duplicated and investigative costs will be reduced.

Guarantee Bonds

One commenter opined that the bonds required by § 537.3 appear excessive. This commenter asked the Commission to explain the rationale for the size of the bonds.

Response: The purpose of the bonds is to assure that the Commission gets reimbursed for costs incurred in investigating persons or entities with a financial interest in, or having management responsibility for, a management contract. The bonds must be large enough to ensure that the investigative work is not impeded and that the investigation can be completed as quickly as possible. It is the Commission's view that the amount of the bonds is not large considering the magnitude of the responsibility the management contractor is seeking to acquire.

Coverage

One commenter suggested that § 537.3 should be limited to class II because the IRGA does not authorize the Commission to charge fees to class III management contractors for Commission background investigations.

Response: The Commission has revised its requirements and will be conducting background investigations for class II only.

Fees for Background Investigations

The same commenter argues that the fee arrangement proposed in § 537.3 for background investigations fails to provide adequate justification for the fees proposed and fails to provide

adequate procedures regarding the use of the fees and possible return of the bonds.

Response: Proposed § 537.3 dealt with the amount of the bonds to be posted by the parties being investigated. The amount of the fees to be charged will be determined by the cost of the required background investigations. Each investigation will cost a different amount and the range of costs and fees is likely to be very broad. The cost of each background investigation cannot be justified in advance; it can only be determined and explained when the investigation is done. The bonds will be returned when all fees and expenses have been paid.

One commenter suggested that the requirements of § 537.3 need to be rewritten to better explain who must pay the fee. This commenter further suggested that fees for background investigations should be limited to the individual fee.

Response: The fees for background investigations must be paid by the management contractor. Both the entity and the individuals must be investigated and consequently a separate fee is required for each.

Conduct of Background Investigations

One commenter stated that the regulations should be clarified to specify who is responsible for conducting the background investigations referenced in § 537.3.

Response: The regulations as proposed make clear that the Chairman and the Commission are responsible for conducting or causing to be conducted background investigations. They will use both staff and the services of others to discharge their responsibilities.

Failure to Pay Costs

One commenter suggested that § 537.3(c) should be modified by adding a proviso which specifies the period of time allowable before failure to pay unpaid costs will result in the termination of the investigation, and which clarifies the status of the application once the investigation is terminated.

Response: The Commission agrees and has revised and expanded § 537.3 as follows:

(c) The management contractor shall be billed for the costs of the investigation as it proceeds; the investigation shall be suspended if the unpaid costs exceed the remaining amount of the available bond, letter of credit, or deposit.

(1) An investigation will be terminated if any bills remain unpaid for more than thirty (30) days.

(2) A terminated investigation will preclude the Chairman from making the necessary determinations and result in a disapproval of the management contract.

Part 539—Appeals

Appeal rights

One commenter argued that § 539.2 is too broad and would give appeal rights to management company competitors, states and local entities, none of which are proper parties to an appeal. According to this commenter, "(s)tanding to bring an appeal should be limited to the tribe and the management contractor."

Response: The Commission agrees and has revised the regulations to confer appeal rights only on the parties to the management contract.

One commenter argued that the appeal process under § 539.2 provides a right without a remedy because an appeal of a contract disapproval to the Commission is unlikely to have any effect in changing the ultimate decision. In the view of this commenter the proper forum for an appeal is the federal court system.

Response: The Commission disagrees. The appeals procedure adopted by the Commission is consistent with the provisions of IGRA. *See* 25 U.S.C. 2705 and 25 U.S.C. 2714 as they relate to 25 U.S.C. 2711.

Filing Requirement

Another commenter suggested that § 539.2 should be changed to omit the 45 day filing requirement if that period expires earlier than the 30 day filing period.

Response: The Commission agrees and has changed the provision to require filing within thirty (30) days of the Chairman's determination served pursuant to part 519 of this chapter.

Commission Decision

The same commenter suggested that to ensure a timely decision that may be appealed, the last sentence of § 539.2 should be omitted and replaced with the following:

Within thirty (30) days after receipt of the appeal, the Commission shall render a decision, unless the appellant agrees to allow the Commission additional time to render a decision. In the absence of a decision within the time provided, the Chairman's decision shall constitute the final decision of the Commission.

Response: The Commission generally agrees with this comment and has revised § 539.2 to ensure the right to a timely appeal.

Administrative Appeals

One commenter suggested that § 539.2 be changed to eliminate an administrative appeal from decisions of the Chairman on modifications to a management contract that the Chairman has already approved.

Response: The Commission disagrees. Actions under § 535.3 are actions of the Chairman. Due process and 25 U.S.C. 2705 require a review of this decision by the full Commission. Such a review would constitute a final agency action appealable to the appropriate federal district court under 25 U.S.C. 2714. Hence, an appeal of the Chairman's action to the full Commission is appropriate and necessary.

Right to Appeal

Another commenter suggested that § 539.2 be revised to provide a right of appeal only upon disapproval of a management contract. This commenter also suggested that the right to appeal should be limited to the parties to the management contract which has been disapproved.

Response: The Commission disagrees that the appeals should be limited to disapprovals of management contracts. The Commission agrees, however, that appeals should be limited to the parties to the contract and have revised the regulations accordingly.

Time for Filing an Appeal

This same commenter also argued that the time for filing an appeal under § 539.2 should be 30 days from receipt of the Chairman's decision pursuant to the service requirements stated in proposed § 519.3 of this chapter.

Response: The Commission agrees that the time for filing an appeal should run pursuant to the service requirements (not necessarily receipt) and has revised the regulation accordingly.

Regulatory Matters

Executive Order 12291 and the Regulatory Flexibility Act

The Commission has determined that this document is not a major rule under Executive Order 12291. Under the Executive Order, a rule is a major rule if: (1) Its annual effect on the economy will be $100 million or more; (2) it will result in a major increase in costs or prices for consumers, individual industries, Federal, State, or local governments, or geographic regions; or (3) there will be significant adverse effects on competition, employment, investment, productivity, innovation, or the ability of U.S. based enterprises to compete with foreign based enterprises

in domestic or export markets. If a rule is major, the agency must conduct a regulatory impact analysis. The Commission believes that the rule will not have any significant effects on the economy or result in major increases in costs or prices for consumers, individual industries, federal, state, or local governments, agencies, or geographical regions. The Commission also believes that the rule will not have any adverse effects on competition, employment, investment, productivity, innovation, or the export/import market. No commenter supplied data that contradicted the Commission's tentative conclusion under E.O. 12291.

Pursuant to the Regulatory Flexibility Act, 5 U.S.C. 601 *et seq.*, the Commission has determined that this rule will not have a significant economic impact on a substantial number of small entities. The Regulatory Flexibility Act requires agencies to determine whether a rule will have a significant economic impact on a substantial number of small entities. If so, an agency must prepare a regulatory flexibility analysis that explores less burdensome alternatives. If not, an agency must certify that the rule will not have such an impact. No commenter supplied data that contradicted the Commission's tentative conclusion under the Regulatory Flexibility Act.

Paperwork Reduction Act

The information collection requirements contained in this rule have been submitted to the Office of Management and Budget (OMB) for approval as required by 44 U.S.C. 3501 *et seq.* and assigned clearance number 3141–0004. The approval expires on October 31, 1995, at which time the Commission will evaluate the collection requirements and seek further approval from OMB.

National Environmental Policy Act

The Commission has determined that this rulemaking does not constitute a major federal action significantly affecting the quality of the human environment and that no detailed statement is required pursuant to the National Environmental Policy Act of 1969.

Executive Order 12778

The Chairman of the National Indian Gaming Commission has certified to the Office of Management and Budget that this final rule meets the applicable standards provided in §§ 2(a) and 2(b)(2) of Executive Order 12278, "Civil Justice Reform," 56 FR 55195, October 25, 1991.

Anthony J. Hope,

Chairman, National Indian Gaming Commission.

List of Subjects in 25 CFR Parts 531, 533, 535, 537 and 539:

Gaming, Indian lands.

Title 25, Chapter III, of the Code of Federal Regulations is amended by adding parts 531, 533, 535, 537 and 539 to read as follows:

PART 531—CONTENT OF MANAGEMENT CONTRACTS

Sec.

531.1 Required provisions.
531.2 Prohibited provisions.

Authority: 25 U.S.C. 81, 2706(b)(10), 2710(d)(9), 2711.

§ 531.1 Required provisions.

A management contract previously approved by the Secretary of the Interior shall conform to the requirements contained in paragraphs (c), (d), (e), (f), (g), (h), (i), and (j) of this section and a management contract not previously approved by the Secretary shall conform to all of the requirements contained in this section in the manner indicated.

(a) *Governmental authority.* Provide that all gaming covered by the contract will be conducted in accordance with the Indian Gaming Regulatory Act (IGRA, or the Act) and governing tribal ordinance(s).

(b) *Assignment of responsibilities.* Enumerate the responsibilities of each of the parties for each identifiable function, including:

(1) Maintaining and improving the gaming facility;

(2) Providing operating capital;

(3) Establishing operating days and hours;

(4) Hiring, firing, training and promoting employees;

(5) Maintaining the gaming operation's books and records;

(6) Preparing the operation's financial statements and reports;

(7) Paying for the services of the independent auditor engaged pursuant to § 571.12 of this chapter;

(8) Hiring and supervising security personnel;

(9) Providing fire protection services;

(10) Setting advertising budget and placing advertising;

(11) Paying bills and expenses;

(12) Establishing and administering employment practices;

(13) Obtaining and maintaining insurance coverage, including coverage of public liability and property loss or damage;

(14) Complying with all applicable provisions of the Internal Revenue Code;

(15) Paying the cost of any increased public safety services; and

(16) If applicable, supplying the National Indian Gaming Commission (NIGC, or the Commission) with all information necessary for the Commission to comply with the regulations of the Commission issued pursuant to the National Environmental Policy Act (NEPA).

(c) *Accounting.* Provide for the establishment and maintenance of satisfactory accounting systems and procedures that shall, at a minimum:

(1) Include an adequate system of internal accounting controls;

(2) Permit the preparation of financial statements in accordance with generally accepted accounting principles;

(3) Be susceptible to audit;

(4) Allow a class II gaming operation, the tribe, and the Commission to calculate the annual fee under § 514.1 of this chapter;

(5) Permit the calculation and payment of the manager's fee; and

(6) Provide for the allocation of operating expenses or overhead expenses among the tribe, the tribal gaming operation, the contractor, and any other user of shared facilities and services.

(d) *Reporting.* Require the management contractor to provide the tribal governing body not less frequently than monthly with verifiable financial reports or all information necessary to prepare such reports.

(e) *Access.* Require the management contractor to provide immediate access to the gaming operation, including its books and records, by appropriate tribal officials, who shall have:

(1) The right to verify the daily gross revenues and income from the gaming operation; and

(2) Access to any other gaming-related information the tribe deems appropriate.

(f) *Guaranteed payment to tribe.* Provide for a minimum guaranteed monthly payment to the tribe in a sum certain that has preference over the retirement of development and construction costs.

(g) *Development and construction costs.* Provide an agreed upon maximum dollar amount for the recoupment of development and construction costs.

(h) *Term limits.* Be for a term not to exceed five (5) years, except that upon the request of a tribe, the Chairman may authorize a contract term that does not exceed seven (7) years if the Chairman is satisfied that the capital investment required, and the income projections, for the particular gaming operation

require the additional time. The time period shall begin running no later than the date when the gaming activities authorized by an approved management contract begin.

(i) *Compensation.* Detail the method of compensating and reimbursing the management contractor. If a management contract provides for a percentage fee, such fee shall be either:

(1) Not more than thirty (30) percent of the net revenues of the gaming operation if the Chairman determines that such percentage is reasonable considering the circumstances; or

(2) Not more than forty (40) percent of the net revenues if the Chairman is satisfied that the capital investment required and income projections for the gaming operation require the additional fee.

(j) *Termination provisions.* Provide the grounds and mechanisms for modifying or terminating the contract (termination of the contract shall not require the approval of the Chairman).

(k) *Dispute provisions.* Contain a mechanism to resolve disputes between:

(1) The management contractor and customers, consistent with the procedures in a tribal ordinance;

(2) The management contractor and the tribe; and

(3) The management contractor and the gaming operation employees.

(l) *Assignments and subcontracting.* Indicate whether and to what extent contract assignments and subcontracting are permissible.

(m) *Ownership interests.* Indicate whether and to what extent changes in the ownership interest in the management contract require advance approval by the tribe.

(n) *Effective date.* State that the contract shall not be effective unless and until it is approved by the Chairman, date of signature of the parties notwithstanding.

§ 531.2 Prohibited provisions.

A management contract shall not transfer or, in any other manner, convey any interest in land or other real property, unless specific statutory authority exists and unless clearly specified in writing in the contract.

PART 533—APPROVAL OF MANAGEMENT CONTRACTS

Sec.

533.1 Requirement for review and approval.
533.2 Time for submitting management contracts.
533.3 Submission of management contract for approval.
533.4 Action by the Chairman.
533.5 Notice of noncompliance.
533.6 Approval.
533.7 Void agreements.

Authority: 25 U.S.C. 81, 2706(b)(10), 2710(d)(9), 2711.

§ 533.1 Requirement for review and approval.

Subject to the Chairman's approval, an Indian tribe may enter into a management contract for the operation of a class II or class III gaming activity.

(a) Such contract shall become effective upon approval by the Chairman.

(b) Contract approval shall be evidenced by a Commission document dated and signed by the Chairman. No other means of approval shall be valid.

(c) Contracts approved by the Secretary remain effective until approved or disapproved by the Chairman.

§ 533.2 Time for submitting management contracts.

A tribe or a management contractor shall submit a management contract to the Chairman for review as follows:

(a) Contracts approved by the Secretary, within sixty (60) days after a request by the Chairman. If a tribe or a management contractor fail to submit all items under § 533.3 of this part within 60 days, the Chairman may deem the contract disapproved and shall notify the parties of their rights to appeal under part 539 of this chapter.

(b) All other contracts, upon execution.

§ 533.3 Submission of management contract for approval.

A tribe shall include in any request for approval of a management contract under this part:

(a) A contract containing:

(1) Original signatures of an authorized official of the tribe and the management contractor;

(2) A representation that the contract as submitted to the Chairman is the entirety of the agreement among the parties; and

(3)(i) If the contract has been approved by the Secretary, terms that meet the requirements of §§ 531.1(c), (d), (e), (f), (g), (h), (i), and (j) and § 531.2 of this chapter; or

(ii) Terms that meet the requirements of part 531 of this chapter.

(b) A letter, signed by the tribal chairman, setting out the authority of an authorized tribal official to act for the tribe concerning the management contract.

(c) Copies of documents evidencing the authority under paragraph (b) of this section.

(d) A list of all persons and entities identified in §§ 537.1(a) and 537.1(c)(1) of this chapter, and either:

(1) The information required under § 537.1(b)(1) of this chapter for Class II gaming contracts and § 537.1(b)(1)(i) of this chapter for class III gaming contracts; or

(2) The dates on which the information was previously submitted.

(e) (1) For new contracts and new operations, a three (3)-year business plan which sets forth the parties' goals, objectives, budgets, financial plans, and related matters; or

(2) For existing contracts, income statements and sources and uses of funds statements for the previous three (3) years; or

(3) For new contracts for existing operations, a three (3) year business plan which sets forth the parties goals, objectives, budgets, financial plans, and related matters, and income statements and sources and uses of funds statements for the previous three (3) years.

(f) If applicable, a justification, consistent with the provisions of § 531.1(h) of this chapter, for a term limit in excess of five (5) years, but not exceeding seven (7) years.

(g) If applicable, a justification, consistent with the provisions of § 531.1(i) of this chapter, for a fee in excess of thirty (30) percent, but not exceeding forty (40) percent.

§ 533.4 Action by the Chairman.

(a) The Chairman shall provide notice of noncompliance under § 533.5 of this part, or shall approve or disapprove a management contract applying the standards contained in § 533.6 of this part, within 180 days of the date on which the Chairman receives a complete submission under § 533.3 of this part, unless the Chairman notifies the tribe and management contractor in writing of the need for an extension of up to ninety (90) days.

(b) A tribe may bring an action in a U.S. district court to compel action by the Chairman:

(1) After 180 days following the date on which the Chairman receives a complete submission if the Chairman does not provide notice of noncompliance or approve or disapprove the contract under this part; or

(2) After 270 days following the Chairman's receipt of a complete submission if the Chairman has told the tribe and management contractor in writing of the need for an extension and has not provided notice of noncompliance or approved or disapproved the contract under this part.

§ 533.5 Notice of noncompliance.

(a) If a management contract previously approved by the Secretary fails to meet the requirements of this part, the Chairman shall notify the tribe and management contractor, in writing, of the specific areas of noncompliance.

(1) The Chairman shall allow the tribe and the management contractor 120 days from receipt of such notice to modify the contract.

(2) If the Secretary approved a management contract before October 17, 1988, the Chairman shall allow the tribe and the management contractor 180 days from receipt of such notification to modify the contract.

(b) If a tribe and a management contractor fail to modify a management contract within the time provided, the Chairman may:

(1) Disapprove the management contract, or

(2) Approve the management contract subject to the required modifications if:

(i) All modifications benefit the tribe;

(ii) The modifications are required to bring the contract into statutory compliance; and

(iii) The modifications are all agreed to by the management contractor.

§ 533.6 Approval.

(a) The Chairman may approve a management contract if it meets the standards of part 531 of this chapter and § 533.3 of this part;

(b) The Chairman shall disapprove a management contract for class II gaming if he or she determines that—

(1) Any person with a direct or indirect financial interest in, or having management responsibility for, a management contract:

(i) Is an elected member of the governing body of the tribe that is party to the management contract;

(ii) Has been convicted of any felony or any misdemeanor gaming offense;

(iii) Has knowingly and willfully provided materially false statements or information to the Commission or to a tribe;

(iv) Has refused to respond to questions asked by the Chairman in accordance with his responsibilities under this part; or

(v) Is determined by the Chairman to be a person whose prior activities, criminal record, if any, or reputation, habits, and associations pose a threat to the public interest or to the effective regulation and control of gaming, or create or enhance the dangers of unsuitable, unfair, or illegal practices, methods, and activities in the conduct of gaming or the carrying on of related business and financial arrangements;

(2) The management contractor or its agents have unduly interfered with or influenced for advantage, or have tried to unduly interfere with or influence for advantage, any decision or process of tribal government relating to the gaming operation;

(3) The management contractor or its agents has deliberately or substantially failed to follow the terms of the management contract or the tribal gaming ordinance or resolution adopted and approved pursuant to this Act; or

(4) A trustee, exercising the skill and diligence to which a trustee is commonly held, would not approve the contract.

(c) The Chairman may disapprove a management contract for class III gaming if he or she determines that a person with a financial interest in, or management responsibility for, a management contract is a person whose prior activities, criminal record, if any, or reputation, habits, and associations pose a threat to the public interest or to the effective regulation and control of gaming, or create or enhance the dangers of unsuitable, unfair, or illegal practices, methods, and activities in the conduct of gaming or the carrying on of related business and financial arrangements.

§ 533.7 Void agreements.

Management contracts and changes in persons with a financial interest in or management responsibility for a management contract, that have not been approved by the Secretary of the Interior or the Chairman in accordance with the requirements of this part, are void.

PART 535—POST-APPROVAL PROCEDURES

Sec.

535.1 Modifications.

535.2 Assignments.

535.3 Post-approval noncompliance.

Authority: 25 U.S.C. 81, 2706(b)(10), 2710(d)(9), 2711.

§ 535.1 Modifications.

(a) Subject to the Chairman's approval, a tribe may enter into a modification of a management contract for the operation of a class II or class III gaming activity.

(b) A tribe shall submit a modification to the Chairman upon its execution.

(c) A tribe shall include in any request for approval of a modification under this part:

(1) A modification containing original signatures of an authorized official of the tribe and the management contractor and terms that meet the applicable requirements of part 531 of this chapter;

(2) A letter, signed by the tribal chairman, setting out the authority of an authorized tribal official to act for the tribe concerning the modification;

(3) Copies of documents evidencing the authority under paragraph (c)(2) of this section;

(4) If the modification involves a change in person(s) having a direct or indirect financial interest in the management contract or having management responsibility for the management contract, a list of such person(s) and either:

(i) The information required under § 537.1(b)(1) of this chapter for class II gaming contracts or § 537.1(b)(1)(i) of this chapter for class III gaming contracts; or

(ii) The dates on which the information was previously submitted;

(5) If applicable, a justification, consistent with the provisions of § 531.1(h) of this chapter, for a term limit in excess of five (5) years, but not exceeding seven (7) years; and

(6) if applicable, a justification, consistent with the provisions of § 531.1(i) of this chapter, for a management fee in excess of thirty (30) percent, but not exceeding forty (40) percent.

(d) For modifications which do not require a background investigation under part 537 of this chapter, the Chairman shall have thirty (30) days from receipt to approve or disapprove a modification, or to notify the parties that an additional thirty (30) days is required to reach a decision.

(1) When a modification requires a background investigation under part 537 of this chapter, the Chairman shall approve or disapprove such modification as soon as practicable but in no event later than 180 days after the Chairman receives it;

(2) If the Chairman does not approve or disapprove, he shall respond in accordance with the service provisions of part 519 of this chapter noting that no action has been taken on the proposed modification. The request shall therefore be deemed disapproved and the parties shall have thirty (30) days to appeal the decision under part 539 of this chapter.

(e) (1) The Chairman may approve a modification to a management contract if the modification meets the submission requirements of paragraph (c) of this section.

(2) The Chairman shall disapprove a modification of a management contract for class II gaming if he or she determines that the conditions contained in § 533.6(b) of this chapter apply.

(3) The Chairman may disapprove a modification of a management contract for class III gaming if he or she

determines that the conditions contained in § 533.6(c) of this chapter apply.

(f) Modifications that have not been approved by the Chairman in accordance with the requirements of this part are void.

§ 535.2 Assignments.

Subject to the approval of the Chairman, a management contractor may assign its rights under a management contract to the extent permitted by the contract. A tribe or a management contractor shall submit such assignment to the Chairman upon execution. The Chairman shall approve or disapprove an assignment applying the standards of, and within the time provided by §§ 535.1(d) and 535.1(e) of this part.

§ 535.3 Post-approval noncompliance.

If the Chairman learns of any action or condition that violates the standards contained in parts 531, 533, 535, and 537 of this chapter, the Chairman may require modifications of, or may void, a management contract approved by the Chairman under such sections, after providing the parties an opportunity for a hearing before the Chairman and a subsequent appeal to the Commission as set forth in part 577 of this chapter. The Chairman will initiate modification proceedings by serving the parties, specifying the grounds for modification. The parties will have thirty (30) days to request a hearing or respond with objections. Within thirty (30) days of receiving a request for a hearing, the Chairman will hold a hearing and receive oral presentations and written submissions. The Chairman will make his decision on the basis of the developed record and notify the parties of his/her decision and of their right to appeal.

PART 537—BACKGROUND INVESTIGATIONS FOR PERSONS OR ENTITIES WITH A FINANCIAL INTEREST IN, OR HAVING MANAGEMENT RESPONSIBILITY FOR, A MANAGEMENT CONTRACT

Sec.

537.1 Applications for approval.
537.2 Submission of background information.
537.3 Fees for background investigations.
537.4 Determinations.

Authority: 25 U.S.C. 81, 2706(b)(10), 2710(d)(9), 2711.

§ 537.1 Applications for approval.

(a) For each management contract for class II gaming, the Chairman shall conduct or cause to be conducted a background investigation of:

(1) Each person with management responsibility for a management contract;

(2) Each person who is a director of a corporation that is a party to a management contract;

(3) The ten (10) persons who have the greatest direct or indirect financial interest in a management contract;

(4) Any entity with a financial interest in a management contract (in the case of institutional investors, the Chairman may exercise discretion and reduce the scope of the information to be furnished and the background investigation to be conducted); and

(5) Any other person with a direct or indirect financial interest in a management contract otherwise designated by the Commission.

(b) For each natural person identified in paragraph (a) of this section, the management contractor shall provide to the Commission the following information:

(1) *Required information.* (i) Full name, other names used (oral or written), social security number(s), birth date, place of birth, citizenship, and gender;

(ii) A current photograph, driver's license number, and a list of all languages spoken or written;

(iii) Business and employment positions held, and business and residence addresses currently and for the previous ten (10) years; the city, state and country of residence from age eighteen (18) to the present;

(iv) The names and current addresses of at least three (3) personal references, including one personal reference who was acquainted with the person at each different residence location for the past five (5) years;

(v) Current business and residence telephone numbers;

(vi) A description of any previous business relationships with Indian tribes, including ownership interests in those businesses;

(vii) A description of any previous business relationships with the gaming industry generally, including ownership interests in those businesses;

(viii) The name and address of any licensing or regulatory agency with which the person has filed an application for a license or permit relating to gaming, whether or not such license or permit was granted;

(ix) For each gaming offense and for each felony for which there is an ongoing prosecution or a conviction, the name and address of the court involved, the charge, and the dates of the charge and of the disposition;

(x) For each misdemeanor conviction or ongoing misdemeanor prosecution (excluding minor traffic violations) within ten (10) years of the date of the application, the name and address of the court involved, and the dates of the prosecution and the disposition;

(xi) A complete financial statement showing all sources of income for the previous three (3) years, and assets, liabilities, and net worth as of the date of the submission; and

(xii) For each criminal charge (excluding minor traffic charges) regardless of whether or not it resulted in a conviction, if such criminal charge is within 10 years of the date of the application and is not otherwise listed pursuant to paragraphs (b)(1)(ix) or (b)(1)(x) of this section, the name and address of the court involved, the criminal charge, and the dates of the charge and the disposition.

(2) *Fingerprints.* The management contractor shall arrange with an appropriate federal, state, or tribal law enforcement authority to supply the Commission with a completed form FD–258, Applicant Fingerprint Card, (provided by the Commission), for each person for whom background information is provided under this section.

(3) *Responses to Questions.* Each person with a direct or indirect financial interest in a management contract or management responsibility for a management contract shall respond within thirty (30) days to written or oral questions propounded by the Chairman.

(4) *Privacy notice.* In compliance with the Privacy Act of 1974, each person required to submit information under this section shall sign and submit the following statement:

Solicitation of the information in this section is authorized by 25 U.S.C. 2701 *et seq.* The purpose of the requested information is to determine the suitability of individuals with a financial interest in, or having management responsibility for, a management contract. The information will be used by the National Indian Gaming Commission members and staff and Indian tribal officials who have need for the information in the performance of their official duties. The information may be disclosed to appropriate federal, tribal, state, or foreign law enforcement and regulatory agencies in connection with a background investigation or when relevant to civil, criminal or regulatory investigations or prosecutions or investigations of activities while associated with a gaming operation. Failure to consent to the disclosures indicated in this statement will mean that the Chairman of the National Indian Gaming Commission will be unable to approve the contract in which the person has a financial interest or management responsibility.

The disclosure of a persons' Social Security Number (SSN) is voluntary. However, failure to supply a SSN may result

in errors in processing the information provided.

(5) *Notice regarding false statements.* Each person required to submit information under this section shall sign and submit the following statement:

A false statement knowingly and willfully provided in any of the information pursuant to this section may be grounds for not approving the contract in which I have a financial interest or management responsibility, or for disapproving or voiding such contract after it is approved by the Chairman of the National Indian Gaming Commission. Also, I may be punished by fine or imprisonment (U.S. Code, title 18, section 1001).

(c) For each entity identified in paragraph (a)(4) of this section, the management contractor shall provide to the Commission the following information:

(1) *List of individuals.* (i) Each of the ten (10) largest beneficiaries and the trustees when the entity is a trust;

(ii) Each of the ten (10) largest partners when the entity is a partnership; and

(iii) Each person who is a director or who is one of the ten (10) largest holders of the issued and outstanding stock alone or in combination with another stockholder who is a spouse, parent, child or sibling when the entity is a corporation.

(2) *Required information.* (i) The information required in paragraph (b)(1)(i) of this section for each individual identified in paragraph (c)(1) of this section;

(ii) Copies of documents establishing the existence of the entity, such as the partnership agreement, the trust agreement, or the articles of incorporation;

(iii) Copies of documents designating the person who is charged with acting on behalf of the entity;

(iv) Copies of bylaws or other documents that provide the day-to-day operating rules for the organization;

(v) A description of any previous business relationships with Indian tribes, including ownership interests in those businesses;

(vi) A description of any previous business relationships with the gaming industry generally, including ownership interests in those businesses;

(vii) The name and address of any licensing or regulatory agency with which the entity has filed an application for a license or permit relating to gaming, whether or not such license or permit was granted;

(viii) For each gaming offense and for each felony for which there is an ongoing prosecution or a conviction, the name and address of the court involved, the charge, and the dates of the charge and disposition;

(ix) For each misdemeanor conviction or ongoing misdemeanor prosecution within ten (10) years of the date of the application, the name and address of the court involved, and the dates of the prosecution and disposition;

(x) Complete financial statements for the previous three (3) fiscal years; and

(xi) For each criminal charge (excluding minor traffic charges) whether or not there is a conviction, if such criminal charge is within 10 years of the date of the application and is not otherwise listed pursuant to paragraph (c)(1)(viii) or (c)(1)(ix) of this section, the criminal charge, the name and address of the court involved and the dates of the charge and disposition.

(3) *Responses to questions.* Each entity with a direct or indirect financial interest in a management contract shall respond within thirty (30) days to written or oral questions propounded by the Chairman.

(4) *Notice regarding false statements.* Each entity required to submit information under this section shall sign and submit the following statement:

A false statement knowingly and willfully provided in any of the information pursuant to this section may be grounds for not approving the contract in which we have a financial interest, or for disapproving or voiding such contract after it is approved by the Chairman of the National Indian Gaming Commission. Also, we may be punished by fine or imprisonment (U.S. Code, title 18, section 1001).

§ 537.2 Submission of background information.

A management contractor shall submit the background information required in § 537.1 of this part:

(a) in sufficient time to permit the Commission to complete its background investigation by the time the individual is to assume management responsibility for, or the management contractor is to begin managing, the gaming operation; and

(b) within ten (10) days of any proposed change in financial interest.

§ 537.3 Fees for background investigations.

(a) A management contractor shall pay to the Commission or the contractor(s) designated by the Commission the cost of all background investigations conducted under this part.

(b) The management contractor shall post a bond, letter of credit, or deposit with the Commission to cover the cost of the background investigations as follows:

(1) Management contractor (party to the contract)—$10,000

(2) Each individual and entity with a financial interest in the contract—$5,000

(c) The management contractor shall be billed for the costs of the investigation as it proceeds; the investigation shall be suspended if the unpaid costs exceed the amount of the bond, letter of credit, or deposit available.

(1) An investigation will be terminated if any bills remain unpaid for more than thirty (30) days.

(2) A terminated investigation will preclude the Chairman from making the necessary determinations and result in a disapproval of a management contract.

(d) The bond, letter of credit or deposit will be returned to the management contractor when all bills have been paid and the investigations have been completed or terminated.

§ 537.4 Determinations.

The Chairman shall determine whether the results of a background investigation preclude the Chairman from approving a management contract because of the individual disqualifying factors contained in § 533.6(b)(1) of this chapter. The Chairman shall promptly notify the tribe and management contractor if any findings preclude the Chairman from approving a management contract or a change in financial interest.

PART 539—APPEALS

Sec.

539.1 Scope of this part.
539.2 Appeals.

Authority: 25 U.S.C. 81, 2706(b)(10), 2710(d)(9), 2711.

§ 539.1 Scope of this part.

This part applies to appeals from the Chairman's decision to approve or disapprove a management contract under this chapter, except that appeals from the Chairman's decision to require modification of or to void a management contract subsequent to his or her initial approval are addressed elsewhere in this chapter.

§ 539.2 Appeals.

A party may appeal the Chairman's disapproval of a management contract or modification under parts 533 or 535 of this chapter to the Commission. Such an appeal shall be filed with the Commission within thirty (30) days after the Chairman serves his or her determination pursuant to part 519 of this chapter. Failure to file an appeal within the time provided by this section shall result in a waiver of the

opportunity for an appeal. An appeal under this section shall specify the reasons why the person believes the Chairman's determination to be erroneous, and shall include supporting documentation, if any. Within thirty (30) days after receipt of the appeal, the Commission shall render a decision unless the appellant elects to provide the Commission additional time, not to exceed an additional thirty (30) days, to render a decision. In the absence of a decision within the time provided, the Chairman's decision shall constitute the final decision of the Commission.

[FR Doc. 93–1064 Filed 1–21–93; 8:45 am]
BILLING CODE 7565–01

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25 CFR Parts 571, 573, 575, 577

RIN 3141–AA02

Compliance and Enforcement Procedures Under the Indian Gaming Regulatory Act

AGENCY: National Indian Gaming Commission.

ACTION: Final rule.

SUMMARY: The National Indian Gaming Commission is publishing regulations to implement the compliance and enforcement provisions of the Indian Gaming Regulatory Act of 1988. The rule establishes procedures for monitoring and investigations, enforcement, civil fines, and appeals to the Commission.

EFFECTIVE DATE: This rule becomes effective on February 22, 1993.

FOR FURTHER INFORMATION CONTACT: Neil Stoloff at 202–632–7003 ext. 35, or by facsimile at 202–632–7066 (not toll-free numbers).

SUPPLEMENTARY INFORMATION:

Background

The Indian Gaming Regulatory Act (IGRA, or the Act), 25 U.S.C. 2701 *et seq.*, was signed into law on October 17, 1988. The Act establishes the National Indian Gaming Commission (NIGC, or the Commission). Under the IGRA, the Commission is charged with regulating class II gaming, and certain aspects of class III gaming.

On August 15, 1991, the Commission published a final rule (56 FR 40702) requiring class II gaming operations to compute and pay to the Commission the annual fees required by section 2717 of the Act. On April 9, 1992 (57 FR 12382), the Commission published a final rule that defines key statutory terms, notably clarifying the distinctions between class II gaming (regulated by tribes and the Commission) and class III gaming (regulated under negotiated tribal-state compacts).

On July 9, 1992 (57 FR 30584), the Commission proposed regulations to implement the Commission's authority to enforce federal and tribal gaming requirements. Those rules are being published in final form today. The Commission is publishing final rules separately regarding its review and approval of tribal gaming ordinances and resolutions under sections 2710 and 2712 of the Act, and its review and approval of management contracts under sections 2710(d)(9), 2711, and 2712 of the Act and 25 U.S.C. 81. The Commission published proposed rules regarding the Freedom of Information Act on November 24, 1992 (57 FR 55212). In the near future, the Commission will publish proposed rules regarding the National Environmental Policy Act and tribal self-regulation under section 2710(c) of the Act.

In the preamble to the proposed rule (57 FR 30584, July 9, 1992), the Commission provided a detailed discussion of the rule's provisions and invited the public to comment on both the basic approach of the regulations and any specific issues that commenters identified. Comments received and the Commission's responses to those comments are summarized below.

General Comments

One commenter asked that the Commission clarify the regulatory roles of the Commission, the states, and the tribes.

The IGRA classifies Indian gaming into class I, class II, and class III. Regulatory definitions of these terms can be found in 25 CFR part 502 (57 FR 12392, April 9, 1992). The tribes have exclusive jurisdiction over class I gaming. Class II gaming is regulated by the tribes and the Commission. Class III gaming is regulated by individual tribes and states under negotiated tribal-state compacts, with the Commission exercising a role that is limited mostly to its review, approval, and monitoring of management contracts and tribal ordinances related to gaming.

The Commission has added a new part 501, Purpose and Scope, that spells out the overlapping jurisdictions of a tribe, the Commission, and a state (when a tribal-state compact is in effect). Tribes may add their own requirements to Indian gaming so long as those requirements are consistent with and no less stringent than the IGRA, the Commission's regulations, or a compact for class III gaming.

A state official noted that class III tribal-state compacts may require that Indian gaming operations meet certain conditions, yet state officials have little authority on Indian lands to ensure that those conditions are met. According to this commenter, the Commission should address this situation directly in its rules because the Commission "may offer the only practical means of determining compliance with these compacts."

The Commission disagrees. Section 2710(d)(3)(C) of the IGRA authorizes a state to negotiate with a tribe over the allocation of criminal and civil jurisdiction over class III gaming on Indian lands, and to provide remedies in the compact for breach of contract. Section 2710(d)(7)(A) of the Act vests jurisdiction over compact disputes with the U.S. district courts.

One commenter suggested that the Commission establish "a formal mechanism whereby the Commission receives all notices of violations and complaints filed by the state or tribal regulatory bodies against Class II and III gaming establishments."

The Commission agrees that information relating to tribal and state enforcement of gaming requirements would help the Commission meet its responsibilities under the Act. These responsibilities include evaluating petitions for self-regulation, formulating an effective inspection scheme, and evaluating a respondent's history of violations under 25 CFR 575.4(c), among other things. Accordingly, the Commission has added a new paragraph (d) to § 571.7, which requires a gaming operation to maintain copies of all enforcement actions that the tribe or a state has taken against the operation, noting the final disposition of each case.

The same commenter questioned whether the regulations require class II and class III operations to submit "internal and accounting controls" to the Commission.

The Commission has elected not to require gaming operations to submit detailed descriptions of internal procedures. Under the IGRA, the tribe is the primary regulator of gaming on Indian lands, with the Commission playing an oversight role. As such, the tribes will ensure that adequate controls are in place to meet their obligations under the Act.

Part 571—Monitoring and Investigations

One commenter questioned whether under part 571, the Commission's representative would be authorized to take sworn statements from witnesses in class II and class III establishments.

The Commission does not intend to take sworn statements when conducting

routine inspections. When sworn testimony is needed as part of a Commission investigation or other proceeding, the Commission will follow the procedures contained in § 571.11.

The same commenter suggested that part 571 should include a requirement that all records "be complete, accurate and legible and stored in some type of order."

The Commission believes that such a requirement is already embodied in § 571.7(a), which requires a gaming operation to keep records "sufficient to establish" information to which the Commission requires access.

This commenter also questioned whether part 571 as proposed would permit a class II operation to microfilm or fiche records, than destroy the originals.

Although it may be prudent to archive original records rather than destroy them, the Commission has not imposed such a requirement in these rules. An information storage system that provides information in a form that is retrievable and susceptible to audit should meet the requirements of § 571.7(a).

Definitions

Authorized Representative

One commenter suggested that the defined term *authorized representative* in proposed § 571.2 should be revised to read "Commission's authorized representative" to conform to usage elsewhere in the regulations (for example, §§ 571.5(a) and 571.6(a)).

The Commission agrees and has made this change.

Party

One commenter suggested that the definition of *party* in § 571.2 should be revised "to require that the tribe be a party to all proceedings initiated under the Act or regulations with respect to the tribe's gaming operation."

The Commission does not agree that a tribe should be required to be a party in all cases, but rather, that a tribe should have the right to participate as a party in proceedings involving a gaming operation located on lands over which the tribe has jurisdiction if the tribe is not already a named party. Accordingly, the Commission has inserted a new § 577.12(b) (regarding intervention) to provide a tribe with the unqualified right to intervene in cases where it is not already a named party.

Presiding Official

One commenter suggested that the definition of *presiding official* in § 571.2 should be revised to ensure that the presiding official will be "both objective and experienced in Indian gaming." Specifically, this commenter argued that the definition should spell out the criteria for determining whether a person is "qualified" to serve as a presiding official and to clarify whether the presiding official may be a member or employee of the Commission.

Another commenter, arguing along the same lines, suggested that the presiding official should be selected "in a manner that maintains his total independence of the influence of the Chairman." This commenter offered the following language to be added to the definition of "presiding official" in § 571.2: "The presiding official is to be appointed by the Secretary of the Interior from a list of available candidates previously prepared by the Secretary of the Interior and deemed by him to be independent of any influence from the Commission."

The Commission agrees with these commenters that the presiding official must be both objective and qualified. The Commission believes, however, that the definition of "presiding official" is adequate as proposed. Under that definition, the presiding official must be "qualified to conduct an administrative hearing" and must have "had no previous role in the prosecution of a matter over which he or she will preside." Beyond that, the Commission does not believe it is necessary to detail specific qualifications in the regulations. Any party may question the impartiality or other qualifications of a presiding official during a proceeding or in a subsequent court challenge.

The Commission does not agree, however, that experience in Indian gaming is a necessary qualification for presiding over an administrative hearing, or that a Commissioner or other employee of the Commission who otherwise meets the rule's definition of presiding official should be ineligible to serve in that capacity. It is the Commission that will decide appeals at the administrative level; the presiding official will assist the Commission by rendering a recommended decision. The Commission will rely on the presiding official to conduct a hearing in a manner that will provide due process to the parties and that will yield an administrative record on which a reviewing court can rely. The Commission believes that no additional requirements of "independence" are necessary.

Respondent

The Commission has revised the definition of respondent in § 571.2 to refer to a "person" rather than the owner or operator of a gaming operation. As discussed below, the Commission also added a new paragraph (b) to § 575.9 that requires civil fines to be paid by the person assessed; they may not be treated as an operating expense of a gaming operation. These changes ensure that innocent parties will not be penalized. Note that "person" is defined in § 571.2 to mean "an individual, Indian tribe, corporation, partnership, or other organization or entity."

Subpart B, Inspection of Books and Records

One commenter suggested that proposed subpart B should be revised to require that inspections "shall not be conducted in a manner that disrupts normal business operations unless the NIGC has probable cause to believe that the disruption is necessary in order to uncover violations of the IGRA or tribal laws or regulations within the jurisdiction of the NIGC."

The Commission intends to conduct inspections in a manner that does not unduly disrupt gaming operations. In general, the Commission intends to implement the IGRA and these regulations in a reasonable manner. It would be neither feasible nor meaningful, however, to attempt to spell out a standard of reasonableness throughout the regulations.

Access to Records

One commenter argued that § 571.6 should be revised to require that offsite records be identified to the Commission and that the Commission has the authority to inspect such records.

The Commission disagrees. Section 571.6(b), as proposed and as promulgated today, provides the Commission with adequate access to off-site records.

One commenter stated that § 571.6(b) should be revised to permit the inspection of off-site records at an agreed-upon time and place, rather than as "unilaterally dictated by the Commission's representative."

The Commission disagrees. Section 2706(b)(4) of the Act authorizes the Commission to "demand access to and inspect" all papers, books, and records. The Commission intends to implement this authority in a reasonable manner, but the Commission's access to records simply is not negotiable under the Act.

The same commenter suggested that the undefined terms "manager" and "employee" used in § 571.6 should be replaced by "primary management official." According to this commenter, the latter term is defined and, "more importantly, requests for access to records should be directed to one with

access to the records and the authority to make them available."

The Commission agrees but does not believe that the primary management official is the only person who will be authorized to provide the Commission with access to records. The Commission has revised the regulations here and elsewhere to make the "gaming operation" the entity responsible for meeting regulatory requirements. It will be up to responsible officials of the operation to see that the operation meets the requirements of the Act and these regulations.

Record-keeping

One commenter stated that the Commission should provide more guidance regarding the required level of record-keeping. The commenter argued that, as proposed, § 571.7(b) would require a gaming operation to keep records of all paperwork on all transactions.

Section 571.7(a) requires records "sufficient to establish" the required information. The Commission does not believe that the extreme level of record-keeping described by the commenter is necessary to meet this regulatory standard.

One commenter suggested that proposed § 571.7(b) should be revised (apparently to be consistent with proposed paragraph (a)) to read: "The Commission may require a gaming operation *subject to regulation by the Commission* to submit statements, reports, * * *"

The Commission may impose regulatory requirements only upon a gaming operation that is "subject to regulation by the Commission." Therefore, the Commission has deleted this reference altogether from § 571.7.

Several commenters stated that the requirement of § 571.7(c) that a gaming operation maintain records for at least seven years is excessive. They recommended a shorter period, such as three years. Another commenter questioned whether it is reasonable to require in § 571.7(c) that records be maintained "for as long as their contents become material * * *" This commenter argued that, because an operator cannot know what records may become material, the Commission would be imposing a requirement for "perpetual storage."

The Commission proposed a minimum period of seven years for record-keeping because that is the longest period that a management contract may run under section 2711(b)(5) of the IGRA (and corresponding 25 CFR 531.1(h)); the Commission wanted to ensure that records would be maintained at least during the life of a management contract. Under that section of the Act, however, a management contract may run longer than five years only in extraordinary circumstances. Section 571.7(c), on the other hand, applies to all gaming operations. Therefore, the Commission has reduced the record-keeping period of § 571.7(c) from seven years to five. In addition, the Commission has deleted the reference to materiality, noting that gaming operations remain responsible under § 571.7(a), for maintaining records "sufficient to establish" the information required under the Act and these regulations.

Subpart C. Subpoenas and Depositions

One commenter suggested that § 571.8 should be revised to require that, before a deposition is taken, "reasonable notice must first be given to the Commission in writing by the party or his attorney proposing to take such deposition * * *", in conformance with section 2715(d) of the IGRA.

Section 571.8 relates to subpoenas of witnesses, whereas the cited statutory language concerns depositions. The IGRA's notice requirement for depositions is implemented in § 571.11(b), which the Commission has revised to clarify that notice of a proposed deposition must be provided to all parties.

The same commenter asked that § 571.8 (again, meaning § 571.11) be revised to specify procedures for depositions requested by a party in proceedings before the Commission.

Section 571.11(a) has been revised to clarify that a party wishing to depose a witness must file a request with the Commission (or the presiding official if one has been designated), that such a request will only be granted "for good cause shown," and that Commission staff may not be deposed (but may be directed to respond to interrogatories). Beyond these revisions, the Commission (or the presiding official under § 577.7(b)(4)) will establish the parameters of depositions on a case-by-case basis.

One commenter suggested that the Commission's authority under § 571.10 to require "(t)he attendance of witnesses and the production of books, papers, and documents * * * from any place in the United States at any designated place of hearing" should be qualified by the phrase "under reasonable circumstances."

As previously stated, the Commission intends to act reasonably. The commenter's suggested revision, however, would not add an enforceable standard. Note that under the Act and these regulations, witnesses are entitled to the same fees (including mileage) as are paid to witnesses in the courts of the United States.

One commenter asked that the Commission revise § 571.11(b) to provide that notice of each deposition must "be provided pursuant to part 519 to the tribal chairman, the designated tribal agent under proposed 25 CFR 519.1 and to the relevant tribal gaming authority, who shall have a right to be present at the deposition and to question the deponent."

Section 571.11(b) provides that notice of a proposed deposition is provided to the parties to a proceeding. A tribe would receive such notice if it is a party, either named or through intervention under § 577.12(b). Whether or not a party may question a deponent is within the discretion of the Commission or the presiding official when establishing the parameters of a deposition under § 577.7(b)(4).

The same commenter stated that, under § 571.11, the Commission should be required to notify a deponent of his or her right to be represented by legal counsel during the deposition.

The Commission agrees and has revised § 571.11(c) accordingly.

Subpart D, Audits

One commenter asked whether the Commission will conduct independent audits of gaming operations or simply receive copies of audits performed by state or tribal regulatory authorities, the minimum required by subpart D.

Under section 2706(b) of the Act, the Commission has the authority to conduct audits of Indian gaming operations, and will exercise that authority when necessary to carry out its duties under the Act. Subpart D implements the Act's requirement that tribes provide independent audits of their gaming operations to the Commission.

One commenter contended that the audit provisions of subpart D place "an unnecessary and expensive burden on Tribes who may already be complying with other federal audit requirements by preparing annual single audits."

The Commission has revised § 571.12 to clarify that audits under the IGRA may be conducted in conjunction with already existing tribal audits, as long as the requirements of these regulations are otherwise met.

One commenter stated that § 571.13 should be revised to provide that the annual audit report must be submitted to the Commission within 180 days after the end of a gaming operation's fiscal year, instead of the 120 days proposed.

The commenter provided no information to support his contention that the 120-day period is unreasonable.

The Commission believes that 120 days after the end of a gaming operation's fiscal year is sufficient time to conduct an audit and submit an audit report.

One commenter suggested that § 571.13 should be revised to provide an opportunity to seek an extension for filing audit results when, due to business complications or delay in the audit process, the audit results are not available within 120 days after the end of the fiscal year.

The Commission acknowledges that extraordinary circumstances could result in an extension of the 120-day requirement, but will deal with such situations on a case-by-case basis.

The Commission has revised § 571.13 to require that management letters be included with a tribe's audit report. This revision ensures that the Commission will be informed of problems identified and solutions recommended.

Part 573—Enforcement

In the preamble to the proposed rule (57 FR 30584, 30585 (July 9, 1992)), the Commission provided a flow chart that summarized the enforcement process. One commenter stated that part 573 should be revised to incorporate the statement at the beginning of the flow chart, which indicated that the Chairman or his or her representative, before issuing a notice of violation, will attempt to work with the tribe to ensure compliance and will oversee "on-the-spot" compliance when a violation is minor and readily correctable.

The statement to which the commenter referred represents the policy of the Commission. To transform this policy into a regulatory requirement, however, would be inconsistent with section 2713 of the IGRA, because it would limit the Chairman's ability to act immediately when necessary to enforce the Act. Nonetheless, as stated in the preamble to the proposed rule, "as a matter of policy the Commission will, whenever practicable, afford tribes the opportunity to address compliance problems in the first instance" (57 FR 30584 (July 9, 1992)).

Notices of Violation

One commenter asked that the Commission revise § 573.3 to incorporate the IGRA's provision (in section 2713(a)(3)) that a notice of violation "may not consist merely of allegations stated in statutory or regulatory language."

The Commission disagrees. Section 573.3(b)(2) requires that a notice of violation include a "description of the circumstances surrounding the violation, set forth in common and concise language." This provision ensures that the Commission will meet the IGRA's standard.

The same commenter suggested revising § 573.3(a) by deleting "owner or" and adding: "A copy of any notice of violation issued under the authority of this section shall be served on the chief executive officer of the tribe which is the owner of the facility."

The Commission disagrees. Part 519, Service, already provides for proper service of notice of violation, including the designation of an agent for service on a tribe. When a tribe is not the respondent, § 519.4 requires the Commission to transmit a copy of the notice to the tribe "as expeditiously as possible." The Commission believes that part 519 adequately addresses the commenter's concern.

One commenter argued that § 573.3(a) should be reconciled with § 519.4, "under which the Commission is required to send a copy of 'any official determination, order, or notice of violation to the appropriate tribal chairman, the designated tribal agent under § 519.1 and to the relevant tribal gaming authority'."

The Commission disagrees. Section 573.3(a) addresses the circumstances under which the Chairman may issue a notice of violation; part 519 describes the process for service or transmittal of the notice. The commenter identified no inconsistency between these provisions.

One commenter suggested adding a new subsection (c) to § 573.3: "Notwithstanding the provisions of subsections (a) and (b) of this section, no enforcement action will be taken by the Commission (sic) on any notice of violation on which the tribal owner is proceeding to take appropriate enforcement action under tribal law."

The commenter's proposed addition does reflect the Commission's regulatory approach. To incorporate it into the regulations, however, would be inconsistent with section 2713 of the IGRA because it could limit the Chairman's ability to take immediate action when necessary to enforce the Act. Therefore, the Commission has not adopted the suggested revision.

The Commission has revised § 573.3(a) to provide that the Chairman may issue a notice of violation to "any person." This revision reconciles § 573.3(a) with the Commission's revised definition of "respondent" in § 571.2 (discussed above).

Orders of Temporary Closure

One commenter stated that service of a closure order under § 573.6 should be reconciled with service provisions of part 519.

The Commission disagrees. Section 573.6 addresses the circumstances under which the Chairman may issue a closure order; part 519 describes the process for service or transmittal of the order. The commenter identified no inconsistency between these provisions.

Several commenters argued that the proposed compliance and enforcement regulations provide the Chairman with too much discretion to issue closure orders and assess civil fines. One commenter stated that "(m)any Indian tribes and Nations depend greatly upon the continued operation of their gaming facilities to generate funding for basic governmental services and essential services to their constituencies. Unilateral and discretionary closure absent valid and proper reason could inflict damages to the Tribe with potential administrative or injunctive relief arriving weeks later." This commenter asked that the Commission either impose a requirement that the Chairman "validate" an alleged offense prior to closure or civil fine assessment, or provide a reasonable time for an operator to correct a violation before the Chairman may impose closure or assess a civil fine.

The Commission disagrees. The regulations as proposed and as promulgated today implement the authority that the IGRA grants to the Chairman. Rather than providing the Chairman with too much discretion, these regulations define and limit the Chairman's discretion. For example, the IGRA authorizes the Chairman to issue an order of temporary closure when he or she finds "substantial" violations. The Act does not define the term "substantial," however. Section 573.6, on the other hand, lists all of the violations that the Commission deems substantial and thus may warrant closure. Moreover, any abuse of discretion by the Chairman is reviewable by both the Commission and the courts.

Similarly, another commenter complained that the rule as proposed would allow temporary closure to be effective "for up to 90 days before there has been a hearing as to whether a 'substantial violation' exists. By contrast, civil fines, which are not (as) punitive as closure, will not be levied until the tribe has exhausted its administrative appeal rights." This commenter suggested that 573.6 should be modified to provide that a closure

order may take effect only "following a hearing that clearly establishes a 'substantial violation' has occurred" and only "in situations where corrective actions are (not) more appropriate."

The Commission disagees. Section 2713(b) of the IGRA provides for a hearing after the Chairman issues an order of temporary closure, not before. Section § 573.6(c) and part 577 implement that provision. If corrective action or some other action is more appropriate than closure in a given case, the Chairman will refrain from issuing an order of temporary closure.

The same commenter suggested that § 573.6 should be revised to provide that an order of temporary closure must be lifted automatically prior to the running of the appeal period "at any such earlier time that the tribe has voluntarily corrected the alleged substantial violation."

The Commission disagrees. The IGRA contains no such limitation on the Chairman's closure authority. Section 573.6(c)(3) does provide that the Chairman may rescind an order of temporary closure "for good cause." In addition, § 577.9(a) provides that the parties may negotiate a settlement "disposing of the whole or any part of (a) proceeding."

One commenter argued that the Chairman's authority under § 573.6(a) to order closure for violations of an approved tribal ordinance or resolution should be limited to cases where a tribe has requested such action of the Chairman.

The Commission disagrees. The Chairman's closure authority under section 2713(b) of the IGRA extends to violations of a tribal ordinance or resolution approved by the Chairman, whether or not a tribe has requested the Chairman's assistance.

Substantial Violations

This commenter and another contended that most of the "substantial" violations listed in § 573.6(a) (specifically, violations listed in subsections (2), (6), (8), (9), (10), (11), and (12)) should be subject to a requirement that a tribe first be given the opportunity to cure the alleged violation before the Chairman may order closure.

The Commission has revised § 573.6(a) to provide that an order of temporary closure must be issued "(s)imultaneously with or subsequently to" a notice of violation. Thus, notice and an opportuunity to correct a violation will have been provided in all but emergency situations. Note also that § 573.6(b) would permit the Chairman to issue an order of temporary closure that takes effect following an opportuntiy to correct.

One commenter suggested that § 573.6(a)(1) should be deleted because it would impermissibly transform insubstantial violations (that have not been corrected) into substantial violations that may result in closure.

The Commission disagrees. A violation that has been the subject of notice and an opportunity to correct, but remains uncorrected, is a substantial violation within the meaning of section 2713(b) of the IGRA.

One commenter asked that § 573.6(a)(2) be revised to require notice to a tribe before closure for failure to pay the annual fee, thus protecting against closures resulting from inadvertent failure to make payment.

The Commission does not agree that such a revision is necessary. An order of temporary closure is the last measure, not the first, that the Chairman will take in the face of nonpayment of fees. A tribe will always have ample notice of the violation and an opportunity to correct it before an order of temporary closure becomes a possibility.

One commenter stated that it would be "patently unfair for the Commission to issue an order for temporary closure under proposed § 573.6(a)(3) (regarding operating without an approved ordinance) and (7) (regarding operating without an approved management contract) until such time as the Commission commences its regulatory authority under the Act * * *." The commenter suggested that these sections should be revised to establish an effective date, until which the Secretary of the Interior would continue to exercise authority under section 2709 of the IGRA.

The Commission agrees that an otherwise valid gaming activity remains valid until the Chairman disapproves the relevant tribal ordinance or management contract. Section 573.6(a)(3) and (7) has been revised to cite parts 522, 523, and 533, the effect of which is that no violation occurs until after a tribe has had an opportunity to obtain the Chairman's approval of the tribe's ordinance or management contract.

The same commenter stated that background investigations often take more than 60 days to complete, necessitating "conditional employment and licensing pending completion of the background investigation." Therefore, this commenter suggested that § 573.6(a)(5) should be revised to provide that a gaming operation may operate for business "pending completion of the background investigation."

The Commission has revised § 573.6(a)(5) to provide that closure may occur if a gaming operation operates for business "without either background investigations having been completed for, or tribal licenses granted to, all key employees and primary management officials, as provided in § 558.3(b) * * *." Section 558.3(b) provides 60 days for a tribe to complete a background investigation and 90 days to issue a license, during which time the tribe may employ key employees and primary management officials. The Commission believes that this time is sufficient.

One commenter stated that § 573.6(a)(8) (authorizing closure for submitting false or misleading information to the Commission or a tribe) should be deleted because removal of the person who submitted false or misleading information to the Commission or the tribe would be more appropriate than closure.

The Commission agrees that removal or prosecution of the guilty person often will be more appropriate than closure. In those cases, closure will not occur. Still, because this is a substantial violation that may warrant closure in some cases, the Commission has not deleted the provision as suggested. The Commission has revised § 573.6(a)(8) to refer to "any person" rather than the owner, operator, or other agent of a gaming operation. The Chairman (subject to review by the Commission) will determine, on a case-by-case basis, whether closure is warranted.

Refusal of Entry

One commenter argued that § 573.6(a)(9) (authorizing closure for refusal of entry) should be deleted because "the proper forum for an Indian gaming operation or an employee thereof to challenge the constitutionality of the Commission's authority to conduct warrantless searches of a gaming operation is in the federal distict courts in the first instance, rather than through the appeals procedure contemplated in part 577 * * *." The commenter cited *Marshall* v. *Barlow's, Inc.*, 436 U.S. 307, 98 S.Ct. 1816 (1978) for the proposition that the Fourth Amendment's prohibition against unreasonable searches may require the Commission to obtain a search warrant before it may lawfully enter to inspect Indian gaming operations under the IGRA.

The Commission disagrees. The Supreme Court did hold in *Barlow's* that the Fourth Amendment's prohibition against unreasonable searches applies to administrative inspections of private commercial property. In that case and

others, however, the Court established a "pervasively regulated" standard under which no reasonable expectation of privacy exists for industries that have had a history of government oversight. Because gaming is a pervasively regulated industry, the Commission has the authority to conduct warrantless searches of Indian gaming operations (*see Donovan v. Dewey*, 452 U.S. 594 (1981); *United States v. Biswell*, 406 U.S. 311, 316 (1972); and *Colonnade Catering Corporation v. United States*, 397 U.S. 72, 74, 77 (1970)). Although a gaming operation may challenge a warrantless search in court, denial of entry remains a substantial violation under the IGRA. Therefore, the Commission has not deleted this provision as requested.

One commenter suggested that § 573.6(a)(9) should be revised to read: "(i) The chief executive officer of a tribe or a primary management official of a gaming operation refuses to allow an authorized representative of the Commission or an authorized tribal official to enter or inspect a gaming operation, in violation of § 571.5 or § 571.6 of this chapter; or (ii) a primary management official of a gaming operation refuses to allow an authorized tribal representative to enter or inspect the gaming operation, in violation of (a) a tribal ordinance or resolution approved by the Chairman under 25 U.S.C. 2710 or 2712."

The Commission has revised the language in this section and elsewhere to make the responsible entity "the gaming operation." It is up to the operation to see that responsible officials comply with the requirements of the Act and these regulations.

One commenter stated that the reference to the IGRA in § 573.6(a)(10) should be changed from 2711(e) to 2710(b)(2)(f)(ii)(II).

The Commission has revised this section to refer to the corresponding regulatory provisions, §§ 558.2 and 558.5.

One commenter argued that § 573.6(a)(11) (authorizing closure when a gaming operation operates class III games in the absence of a tribal-state compact) should be deleted because it reflects a criminal violation that is "more appropriately left to the U.S. Attorney in the District involved."

The Commission disagrees. Operating class III games in the absence of a compact may constitute a crime (for example, if gambling devices are involved). Nonetheless, such activity also would be a violation of section 2710(d) of the IGRA, which the Chairman is authorized to enforce. Nothing in the IGRA precludes parallel civil and criminal proceedings. Therefore, the Commission has retained this provision.

One commenter asked that § 573.6(a)(12) be revised to require that the Chairman give notice and an opportunity to correct or contest the allegation of a threat to the environment or the public health and safety before he or she issues a closure order.

The Commission disagrees. In such a situation immediate closure may be necessary to protect public health and safety or the environment.

One commenter suggested that § 573.6(b) should be revised to provide that a closure order will be effective immediately upon issuance only if "the Chairman finds that immediate closure is necessary to protect the tribe or the gaming public," and that an order of temporary closure will not take effect before a respondent has had an opportunity to seek expedited review under § 573.6(c). The commenter also stated that § 573.6(c) should be revised to grant respondents the right to seek a stay of a temporary closure order on an expedited basis.

The standard for immediate closure suggested by the commenter is implicit in section 2713(b) of the IGRA and in the rule itself; it need not be spelled out. The IGRA contemplates that immediate closure may occur in some cases. Accordingly, § 573.6(b) provides that an order of temporary closure may or may not take effect upon issuance (before an opportunity for expedited review), as the circumstances dictate. In addition, the expedited review provided under § 573.6(c) is informal. A respondent may ask the Chairman to lift a closure order in the course of that review.

One commenter suggested that the Commission define the term "working days" as used in proposed § 573.6(c) (regarding informal expedited review).

The Commission has changed the term "working days" in § 573.6(c) to "days," which is defined in § 571.2 to mean calendar days.

The same commenter suggested that § 573.6(c)(1) be revised to read, "The Chairman shall *complete* the expedited review * * *."

The Commission agrees and has made this revision. The Commission also has revised § 573.6 (b) and (c) to clarify that service of the closure order, rather than receipt of issuance, makes the order effective and triggers the right to informal expedited review under paragraph (c) and review by the Commission under part 577.

Part 575—Civil Fines

In the IGRA, the term "civil penalties" refers to both civil money penalties and orders of temporary closure. Part 575 addresses only civil fines. Therefore, the Commission has revised the term "penalties" to read "civil fines" in part 575.

One commenter stated that the Commission should revise part 575 to account for situations where a tribe has a "legitimate difference of opinion" regarding the requirements of the "complicated Indian Gaming Regulatory Act."

The Commission believes the regulations as proposed address the commenter's concerns. Respondents have numerous opportunities to lay out their differences with the Chairman regarding civil fine assessments (see, for example, §§ 575.5(a), 575.5(c), and 577.3(a)(2)).

Continuing Violations

One commenter stated that the Commission's treatment of "each daily illegal act or omission (as) a separate violation" is an "overly broad extension" of 25 U.S.C. 2713, which refers to a maximum $25,000 civil fine "per violation" (see §§ 575.3, 575.4(a)(2)).

The Commission disagrees. A "violation" may occur once or it may occur hundreds of times a day (for example, every time an illegal machine game is played). Rather than broadening the Chairman's authority, the rule limits the Chairman's civil fine assessment authority to a maximum daily amount.

Criteria for Civil Fine Assessment

One commenter stated that § 575.4 would improperly subject to civil fines a tribe that does not operate its gaming, contrary to section 2713(a) of the IGRA. This commenter suggested that this section be revised to read, "The Chairman may assess a penalty * * * *against the tribal operator of an Indian game or a management contractor engaged in gaming*, for each notice of violation * * *."

The Commission does not agree that section 2713(a) exempts from civil fines tribes that relay on management contractors. As used in section 2713(a), the term "tribal operator" means any tribe or individual that has a proprietary interest in gaming conducted on Indian lands. The Chairman intends to cite for a violation the person(s) who committed the violation, whether that person is a management contractor, a tribe, or an individual operator on Indian lands. The IGRA imposes numerous obligations on tribes (for example, to submit annual audit reports and obtain the Chairman's approval of tribal ordinances and management contracts), violations of which the Chairman is

charged with enforcing. To interpret the IGRA as the commenter suggested would yield the absurd result that the Chairman would not be authorized to impose a civil fine for an uncorrected violation but would be authorized to close the operation under section 2713(b) (as implemented in § 573.6(a)(1)).

The Commission has revised § 575.4 to clarify that the Chairman may assess a civil fine "against a tribe, management contractor, or individual operating Indian gaming." In addition, a new paragraph (b) has been added to § 575.9, which provides that civil fines must be paid by the person assessed and may not be treated as an operating expense of the operation. This ensures that innocent parties will not be penalized.

One commenter stated that § 575.4(c)(1)–(3) should be simplified by providing that each violation that "becomes a final order of the Commission shall be considered whether or not it led to a civil penalty assessment."

The Commission has edited this language as suggested, but also to indicate that, to be considered in determining a respondent's history of violations, a final order of the Commission must not have been vacated. In addition, § 575.4(c)(1) has been modified to clarify that only violations cited by the Chairman must be the subject of a final order of the Commission. The Chairman also will consider other violations, such as those cited by a tribe (see the definition of "violation" in § 571.2).

One commenter suggested that § 575.4(e) (regarding good faith) should be revised to provide an exception "where the respondent exercises its appeal rights in good faith following a notice of violation." Otherwise, according to this commenter, "a tribe would be penalized whenever it disagrees with the Chairman's finding of a violation and decides to appeal a notice of a violation rather than to take the corrective action specified by the Chairman."

The Commission has deleted the word "adjust" in § 575.4(e) and replaced it with "reduce" to clarify that this criterion may only serve to reduce a civil fine. Bad faith actions by a respondent still would be addressed in § 575.4(d) (regarding willfulness). Note, however, that exercising one's right of appeal is not an indication of bad faith.

Civil Fine Assessment Procedures

One commenter stated that § 575.5(a) should be revised to provide an opportunity to request additional time to provide information about a violation to the Chairman.

The Commission agrees and has added after the word "violation" in the first sentence of § 575.5(a): "Or such longer period as the Chairman may grant for good cause".

The same commenter suggested that the phrase "when practicable" should be deleted from § 575.5(b) "to assure that all operators of games have an opportunity to comment on the proposed assessment."

The Commission disagrees. As used in § 575.5(b), the term "when practicable" refers to the time within which the Chairman will serve a proposed assessment, not whether the Chairman will serve the proposed assessment.

Settlement, Reduction, or Waiver of Civil Fine

One commenter suggested that § 575.6(a)(1) should be revised to provide that the Chairman may grant a request for a reduction or waiver of a proposed civil fine "within his or her discretion" (in line with language in proposed § 575.6(a)(3)).

The Commission has deleted this reference altogether as unnecessary. Section 2613(a) of the IGRA expressly provides that the Chairman's assessment of civil fines under the Act is discretionary.

Another commenter stated that § 575.6(a)(1) and 575.6(a)(3) should be reconciled so that the Chairman, whether granting or denying a request for a civil fine reduction or waiver, must "fully explain and document" the decision.

The Commission has deleted the cited language as unnecessary. The Chairman will fully document a decision on a request for a civil fine reduction or waiver. This need not be spelled out in the regulation. The Commission also has revised this section so that it follows a more logical sequence.

Part 577—Appeals Before the Commission

One commenter questioned whether the Administrative Procedure Act (APA) applies to proceedings under part 577.

The APA's adjudication provisions (5 U.S.C. 554, 556, and 557) only apply to administrative hearings that are conducted under a statute that specifically provides for hearings to be on the record (see 5 U.S.C.A. 554(a)). The IGRA does not; therefore, the APA's adjudication provisions do not apply to hearings provided under part 577.

One commenter suggested that part 577 should be revised to provide that, in an appeal from an order of temporary closure, "once an appeal has been filed, respondent may seek a stay from the presiding official, who shall grant the stay unless he specifically finds that the public interest requires immediate closure."

The Commission declines to delegate to the presiding official the authority to stay the Chairman's action before the Commission completes its review under part 577. A respondent may seek the equivalent of a stay from the Chairman under § 573.6(c) or § 577.9(a).

The same commenter suggested that part 577 should provide for "the negotiation of stays and their entry by consent order."

Section 577.9 provides for negotiation of an agreement "disposing of the whole or any part of the proceeding." The Commission believes that this provision would encompass a negotiated stay.

One commenter stated that part 577 should be revised to provide detailed hearing procedures, in particular to "set forth the role of the Chairman in post-closure hearings."

As noted above, hearings under part 577 are not subject to the adjudication provisions of the Administrative Procedure Act. Nevertheless, in today's final rule the Commission has provided additional hearing procedures in part 577. For example, under § 577.3, the respondent may ask to present oral testimony or witnesses, and may ask for a closed hearing. Under § 577.7, a respondent will always have the right, unless waived, to present an oral argument and to be represented by counsel in an appeal before the Commission. Unchanged from the proposed rule is the Commission's intention to vest discretion with the presiding official to conduct a hearing in a manner that will provide due process to the parties and that will yield an administrative record on which a reviewing court can rely. As for the Chairman's role in post-closure hearings, the IGRA provides that the Chairman is a member of the Commission and that the Commission hears an appeal from an order of temporary closure. In general, once an appeal is filed, the Chairman will be represented by Commission staff as a party to the proceeding.

Request for Hearing

One commenter stated that § 577.3(a) should be revised to provide that the 30-day appeal period commences with the "issuance" of a closure order (consistently with section 2713(b)(2) of IGRA), instead of upon service, as proposed.

The Commission disagrees. "Issuance" is not a defined term in the

IGRA; therefore, the suggested revision would not be meaningful. In any event, the Commission believes that issuance under the IGRA does not occur before an order is served. Note that part 519 provides for speedy service (for example, by facsimile).

The same commenter suggested that § 577.3(b) should be revised to require "only a notice of appeal sufficient to identify the order appealed from, followed at a later time by a prehearing brief detailing the reasons why the order appealed from is wrong."

The Commission agrees and has revised § 577.3(b) to provide that a notice of appeal need only reference the notice or order from which the appeal is taken. Under new paragraph (c) in § 577.3, within ten (10) days after filing a notice of appeal, the respondent will be required to file a supplemental statement. These revisions ensure that any potential for delay in meeting the IGRA's requirement (discussed below) for an expeditious hearing on an order of temporary closure will be within the control of the respondent.

Hearing Deadline

In the preamble to the proposed rule (57 FR 30584, 30587 (July 9, 1992)), the Commission discussed an apparent ambiguity in section 2713(b)(2) of the IGRA, which provides for a hearing before the Commission on an order of temporary closure. The issue was whether the right to request a hearing exists for 30 days from the date the order issues, or whether the hearing itself must be provided within that time. The Commission proposed a 30-day period for a tribe to request a hearing, and the Commission would be required to hold the hearing within 30 days after it receives a timely request.

Two commenters disputed the existence of any ambiguity. One of these commenters found "highly objectionable" the "unitary process" that the Commission proposed to use for appeals of all enforcement actions, "because it disregards the statutory time requirements for post-closure hearings."

The Commission disagrees. Section 577.4(b) distinguishes between hearings on orders of temporary closure and other hearings. Notwithstanding any other provision in part 577, and unless waived, the presiding official is required to provide a hearing on an order of temporary closure within 30 days after the Commission receives a timely notice of appeal. This provision ensures that the Commission will comply with the IGRA's requirements for post-closure hearings.

The ambiguity in section 2713(b)(2) of the IGRA is apparent from the fact that the provision does not impose any time by which a hearing must be requested. In contrast, 12 U.S.C. 1818(g)(3) entitles an official suspended by the Federal Deposit Insurance Corporation (FDIC) to request a hearing before the FDIC "(w)ithin thirty days from service of any notice of suspension * * *" and requires the FDIC to provide such a hearing "not more than thirty days after receipt of a request." The lack of similar specific language in section 2713(b)(2) of the IGRA leaves unanswered the question whether the right to request a hearing lasts 30 days or the hearing itself must be provided within that time. The Commission interprets the IGRA to mean that the right to a hearing lasts for 30 days. The result of accepting the commenters' interpretation of section 2713(b)(2) would be that a gaming operation that receives an order of temporary closure could request a hearing 30 days after the order issues, and the Commission would have to provide a hearing the same day.

Regarding the problem posed by this scenario, one commenter suggested that the Commission impose a short period (say, five days) within which a hearing must be requested, or include with the closure order itself a hearing date that meets the 30-day requirement of IGRA section 2713(b)(2).

As a practical matter, the Commission would not deny a request for a hearing filed within 30 days after a closure order issues. Furthermore, the Commission sees no value in scheduling a hearing that the respondent may decide not to request.

As discussed above, the Commission has revised § 577.3(b) to provide that a notice of appeal need only reference the notice or order from which the appeal is taken. Thus, a respondent could trigger the 30-day hearing deadline by filing a notice of appeal shortly after a closure order issues. Any potential for delay would be within the control of the respondent. Accordingly, the Commission has not revised § 577.4 as the commenters requested.

Service

One commenter suggested that § 577.6(a) be revised to provide that filings will be made with the presiding official only after the respondent receives notice that a presiding official has been designated.

The Commission agrees and has revised § 577.6(a) accordingly.

The same commenter stated that § 577.6(d) should be modified to read: "Whenever a representative (including an attorney) has entered an appearance for a party in a proceeding initiated under this part, service thereafter shall be made upon the representative."

The Commission agrees and has revised § 577.6(d) accordingly.

One commenter suggested that the Commission revise § 577.6(e) to clarify the term "other nonbusiness day."

The commission has deleted this term from § 577.6(e) as unnecessary.

One commenter stated that § 577.6(e) should be revised to track the language of Rule 6(a) of the Federal Rules of Civil Procedure (adding, "the day of the act, event or default from which the designated period of time begins to run shall not be included").

The Commission has revised § 577.6(e) to achieve the same result as the language that the commenter offered. The Commission also revised § 577.6(c) to provide that service is complete upon transmittal, making it consistent with part 519, Service.

Conduct of Hearing

One commenter argued that the word "genuine" should be deleted from the first sentence in proposed § 577.7(a) because it "raises more questions than it answers." Another commenter suggested that proposed § 577.10 be revised "to clarify that the presiding official may find that there is no genuine issue of material fact only upon motion by a party."

The Commission has deleted proposed § 577.10 altogether and has revised § 577.7 to provide the respondent, in all cases, with a right to present written evidence and to present oral argument. This approach is in line with the U.S. Supreme Court's holding in *FDIC v. Mallen*, 486 U.S. 230 (1988). In that case, the Supreme Court held that in post-suspension actions analogous to closure under the IGRA, due process requires, at a minimum, the opportunity to present oral argument. Other evidentiary procedures, such as the cross-examination of witnesses, are within the discretion of the regulatory agency. Beyond this revision, the Commission will rely on the presiding official to establish suitable hearing procedures.

The same commenter stated that § 577.7(b)(1) should be revised to make it mandatory that any person giving testimony do so under oath.

The Commission agrees and has accomplished this result by replacing the word "may" with "shall" in § 577.7(b).

Discovery

One commenter contended that the Commission should provide for "much broader discovery * * * in conformance with the minimum

standards for discovery recommended by the Administrative Conference of the United States (ACUS). Administrative Conference Recommendation No. 21 (1970)."

The Commission disagrees. The ACUS Recommendation upon which the commenter relied is 22 years old and is based on an out-of-date version of the Federal Rules of Civil Procedure. More recently, in 1983 the Federal Rules were substantially amended to resolve problems arising from "duplicative, redundant, and excessive discovery." For example, rules 26(a)(1) and (b)(1) (General Provisions Governing Discovery) were amended to "encourage district judges to identify instances of needless discovery and to limit the use of the various discovery devices" (Fed. R. Civ. P. 26, annotation to 1983 Amendments). Moreover, the Administrative Procedure Act does not provide a right to discovery even for formal hearings conducted under its adjudication provisions.

The Commission believes that it has provided an appropriate standard for discovery in § 577.7(b)(4), which allows the presiding official to authorize exchanges of information among the parties when to do so would expedite the proceeding. The Commission has revised § 577.7(b)(4) to clarify that the taking of depositions and the submission of interrogatories are within the scope of prehearing exchanges of information that the presiding official may permit. Beyond that, the Commission will rely on the presiding official to provide for an appropriate level of discovery in each case. Any decision by a presiding official is subject to later review by the Commission or the courts.

Confidentiality

One commenter suggested that § 577.8 be revised by deleting or clarifying the limitation of its applicability to "proceedings involving more than two parties."

Section 577.8 is limited to proceedings involving more than two parties because, if only the Chairman and the respondent are parties, the Chairman is bound by the confidentiality provisions of § 571.3.

Regarding disclosure of confidential information, one commenter suggested that the Commission replace the language in § 577.8(b)(1), "within the context of the proceeding;" with "directly in connection with the hearing, before the presiding official."

The Commission has revised § 577.8(b)(1) to clarify that confidential information may only be used by a party "directly in connection with the hearing." The Commission does not agree, however, that such use must occur in the presence of the presiding official.

Intervention

One commenter stated that the presiding official should be given specific authority to proceed with a hearing "prior to the expiration of the time period specified in § 577.12 for the processing of the Petition for Intervention." The commenter expressed concern that, in the absence of such authority, "an independent third party might well cause the continuation of a Temporary Order of Closure for an extended period of time."

The Commission disagrees. Such authority already exists under § 577.4(b), which requires the presiding official to conclude a hearing on an order of temporary closure within 30 days, "(n)otwithstanding any other provision of this part."

One commenter argued that § 577.12(a) should be broader in providing for intervention by a tribe and narrower in providing for intervention by persons other than a tribe. The commenter suggested two additional criteria for § 577.12(a): "(4) Their claim or defense and respondent's appeal have a question of law or fact in common; and (5) Intervention would not unfairly prejudice existing parties or delay resolution of the proceedings."

The commenter did not explain why the first suggested addition would be helpful and the Commission saw no reason to adopt it. The Commission has adopted the commenter's second suggested addition in new paragraph (4) in § 577.12(a). The Commission also agrees that a tribe should have the right to intervene in any case that involves a gaming operation on lands over which the tribe has jurisdiction. Accordingly, the Commission has inserted a new paragraph (b) (and relettered the remaining paragraphs) in § 577.12 to read: "If a tribe has jurisdiction over lands on which there is a gaming operation that is the subject of a proceeding under this part, and the tribe is not already a named party, such tribe may intervene as a matter of right."

One commenter stated that § 577.12(a)(1) should be revised "to more closely follow the federal rule and to require that the proposed intervenor demonstrate that it claims an interest relating to the property or transaction which is the subject of the action and is so situated that the disposition of the action may as a practical matter impair or impede its ability to protect that interest."

The Commission disagrees. The commenter offered no reason why the suggested language should be preferred, and the Commission found none.

The same commenter suggested that § 577.12(e) (now (f)) should be revised to track Rule 29 of the Federal Rules of Appellate Procedure, under which the decision whether to allow participation as amicus curiae would be left to the discretion of the presiding official.

The Commission agrees and has revised the last sentence in § 577.12(f) by replacing the second "shall" with "may."

Transcripts

Two commenters argued that § 577.13 should be revised to provide that the Commission will "employ a court reporter who will provide transcripts on a daily expedited basis, so that the transcript will be available on the day following conclusion of the hearing." Moreover, these commenters questioned whether there is any good reason why the presiding official's recommended decision must await receipt of the transcript.

Prompt procurement of transcripts will be handled administratively, and need not be addressed in the rule. The Commission agrees that the presiding official's recommended decision need not always await receipt of the transcript. A new paragraph (c) has been added to § 577.7 to provide that the hearing is concluded once the presiding official closes the record.

Recommended Decision

One commenter stated that § 577.14(a) should be revised to clarify that, in reaching a decision based on the "whole record" of a proceeding, the presiding official may consider matters determined to be confidential.

The Commission does not agree that any revision is necessary. Section 577.8(f) provides: "When a decision by a presiding official is based in whole or in part on evidence not included in the public record, the decision shall so state, specifying the nature of the evidence and the provision of law under which disclosure was denied, and the evidence so considered shall be retained under seal as part of the official record." The Commission believes that this provision addresses the commenter's concern.

Review by Commission

One commenter argued that § 577.15 should be revised to address the apparent unfairness that results when the Chairman, as a member of the Commission, hears an appeal from an action of the Chairman.

The Commission disagrees. The IGRA vests the Chairman with dual authorities. The Commission has attempted to minimize the potential for conflict between these roles by providing for an objective trier of fact (the presiding official). Beyond that, the Chairman is obligated to perform the duties that the IGRA gives that person as Chairman and Commissioner. Note that it is not unusual for a Commission to initiate prosecutorial action, then hear an appeal from that action. This is not considered to be a violation of due process (see, for example, *Federal Trade Commission v. Standard Oil of Southern California*, 449 U.S. 232 (1980)).

In the proposed rule (57 FR 30584, 30593 (July 9, 1992)), the Commission provided that, in the absence of a majority vote by the Commission to affirm or reverse the recommended decision of the presiding official, the action of the Chairman that is the subject of the appeal would be deemed vacated. This approach stemmed from the IGRA's provision, in section 2713(b), requiring a vote of no fewer than two Commissioners to make an order of temporary closure permanent or to dissolve it. The Commission believes that an order of temporary closure should not be allowed to stand if at least two Commissioners fail to affirm it. In all other cases, however, the Commission believes that if the Commission fails to act on the recommended decision of the presiding official, the recommended decision should become the final decision of the Commission. Accordingly, the last sentence in § 577.15 has been revised to read: "In the absence of a majority vote by the Commission within the time provided by this section, the recommended decision of the presiding official shall be deemed affirmed *except that*, if the subject of the appeal is an order of temporary closure issued under § 573.6 of this chapter, the order of temporary closure shall be dissolved."

The Commission also made numerous minor editorial changes intended to correct typographical and stylistic errors contained in the proposed rule.

Regulatory Matters

Executive Order 12291 and the Regulatory Flexibility Act

The Commission has determined that this document is not a major rule under Executive Order 12291. The rule will not have any significant effects on the economy or result in major increases in costs or prices for consumers, individual industries, federal, state, or local governments, agencies, or geographical regions. The rule will not have any adverse effects on competition, employment, investment, productivity, innovation, or the export/import market.

Pursuant to the Regulatory Flexibility Act, 5 U.S.C. 601 *et seq.*, the Commission has determined that this rule will not have a significant economic impact on a substantial number of small entities. Because this rule is procedural in nature, it will not impose substantive requirements that could be deemed impacts within the scope of the Act.

Paperwork Reduction Act

The information collection requirements contained in this rule have been approved by the Office of Management and Budget (OMB) as required by 44 U.S.C. 3501 *et seq.* They have been assigned clearance number 3141–0001, and are approved through July 31, 1995.

National Environmental Policy Act

The Commission has determined that this rulemaking does not constitute a major federal action significantly affecting the quality of the human environment and that no detailed statement is required pursuant to the National Environmental Policy Act of 1969.

Executive Order 12778

The Chairman of the National Indian Gaming Commission has certified to OMB that this rule meets the applicable standards provided in sections 2(a) and 2(b)(2) of Executive Order 12778, "Civil Justice Reform," 56 FR 55195, October 25, 1991.

Anthony J. Hope,

Chairman, National Indian Gaming Commission.

List of Subjects

25 CFR Part 571

Gaming, Indian lands, Investigations, Reporting and recordkeeping requirements.

25 CFR Part 573

Administrative practice and procedure, Gaming, Indian lands.

25 CFR Part 575

Administrative practice and procedure, Gaming, Indian lands, Penalties.

25 CFR Part 577

Administrative practice and procedure.

Title 25, Chapter III of the Code of Federal Regulations is amended by adding new parts 571, 573, 575, and 577 to read as follows:

PART 571—MONITORING AND INVESTIGATIONS

Subpart A—General

Sec.
571.1 Scope.
571.2 Definitions.
571.3 Confidentiality.

Subpart B—Inspection of Books and Records

571.5 Entry of premises.
571.6 Access to papers, books, and records.
571.7 Maintenance and preservation of papers and records.

Subpart C—Subpoenas and Depositions

571.8 Subpoena of witnesses.
571.9 Subpoena of documents and other items.
571.10 Geographical location.
571.11 Depositions.

Subpart D—Audits

571.12 Audit standards.
571.13 Copies of audit reports.
571.14 Relationship of audited financial statements to fee assessment reports.

Authority: 25 U.S.C. 2706(b), 2710(b)(2)(C), 2715, 2716.

Subpart A—General

§ 571.1 Scope.

This part sets forth general procedures governing Commission monitoring and investigations of Indian gaming operations.

§ 571.2 Definitions.

As used in this chapter, the following terms have the specified meanings:

Commission's authorized representative means any persons who is authorized to act on behalf of the Commission for the purpose of implementing the Act and this chapter.

Day means calendar day unless otherwise specified.

Hearing means that part of a proceeding that involves the submission of evidence to the presiding official, either by oral presentation or written submission.

Party means the Chairman, the respondent(s), and any other person named or admitted as a party to a proceeding.

Person means an individual, Indian tribe, corporation, partnership, or other organization or entity.

Presiding official means a person designated by the Commission who is qualified to conduct an administrative hearing and authorized to administer oaths, and has had no previous role in the prosecution of a matter over which he or she will preside.

Resondent means a person against whom the Commission is seeking civil penalties under section 2713 of the Act.

Violation means a violation of applicable federal or tribal statutes, regulations, ordinances, or resolutions.

§ 571.3 Confidentiality.

Unless confidentiality is waived, the Commission shall treat as confidential any and all information received under the Act that falls within the exemptions of 5 U.S.C. 552(b) (4) and (7); *except* that when such information indicates a violation of Federal, State, or tribal statutes, regulations, ordinances, or resolutions, the Commission shall provide such information to appropriate law enforcement officials. The confidentiality of documents submitted in a multiple-party proceeding under part 577 of this chapter is addressed in § 577.8 of this chapter.

Subpart B—Inspection of Books and Records

§ 571.5 Entry of premises.

(a) The Commission's authorized representative may enter the premises of an Indian gaming operation to inspect, examine, photocopy, and audit all papers, books, and records (including computer records) concerning:

(1) Gross revenues of class II gaming conducted on Indian lands; and

(2) Any other matters necessary to carry out the duties of the Commission under the Act and this chapter.

(b) The Commission's authorized representative shall present official identification upon entering a gaming operation for the purpose of enforcing the Act.

§ 571.6 Access to papers, books, and records.

(a) Once the Commission's authorized representative presents proper identification, a gaming operation shall provide the authorized representative with access to all papers, books, and records (including computer records) concerning class II gaming or any other matters for which the Commission requires such access to carry out its duties under the Act.

(b) If such papers, books, and records are not available at the location of the gaming operation, the gaming operation shall make them available at a time and place convenient to the Commission's authorized representative.

(c) Upon the request of the Commission's authorized representative, the gaming operation shall photocopy, or allow the Commission's authorized representative to photocopy, any papers, books, and records that are requested by the Commission's authorized representative.

§ 571.7 Maintenance and preservation of papers and records.

(a) A gaming operation shall keep permanent books of account or records, including inventory records of gaming supplies, sufficient to establish the amount of gross and net income, deductions and expenses, receipts and disbursements, and other information required in any financial statement, report, or other accounting prepared pursuant to the Act or this chapter.

(b) The Commission may require a gaming operation to submit statements, reports, or accountings, or keep specific records, that will enable the Commission to determine whether or not such operation:

(1) Is liable for fees payable to the Commission and in what amount; and

(2) Has properly and completely accounted for all transactions and other matters monitored by the Commission.

(c) Books or records required by this section shall be kept at all times available for inspection by the Commission's authorized representatives. They shall be retained for no less than five (5) years.

(d) A gaming operation shall maintain copies of all enforcement actions that a tribe or a state has taken against the operation, noting the final disposition of each case.

Subpart C—Subpoenas and Depositions

§ 571.8 Subpoena of witnesses.

By majority vote the Commission may authorize the Chairman to require by subpoena the attendance and testimony of witnesses relating to any matter under consideration or investigation by the Commission. Witnesses so summoned shall be paid the same fees and mileage that are paid to witnesses in the courts of the United States.

§ 571.9 Subpoena of documents and other items.

By majority vote the Commission may authorize the Chairman to require by subpoena the production of certain documents and other items that are material and relevant to facts in issue in any matter under consideration or investigation by the Commission.

§ 571.10 Geographical location.

The attendance of witnesses and the production of books, papers, and documents, may be required from any place in the United States at any designated place of hearing.

§ 571.11 Depositions.

(a) Any party wishing to depose a witness shall file a request with the Commission or, if a presiding official has been designated under part 577 of this chapter, to the presiding official. Such a request shall not be granted except for good cause shown. A Commissioner or a presiding official may order testimony to be taken by deposition in any proceeding or investigation pending before the Commission at any stage of such proceeding or investigation, except that Commission personnel may not be questioned by deposition for the purposes of discovery, but may be questioned by written interrogatories as authorized by the Commission or a presiding official. Commission records are not subject to discovery under this chapter. The inspection of Commission records is governed by § 571.3 of this part and the Freedom of Information Act, 5 U.S.C. 552. Depositions under this section may be taken before any person designated by the Commission or a presiding official, and who has the power to administer oaths.

(b) A party or a Commissioner (or a person designated by a Commissioner under paragraph (a) of this section) proposing to take a deposition under this section shall give reasonable notice to the Commission and the parties, if any, of the taking of a deposition. Notice shall include the name of the witness and the time and place of the deposition.

(c) Every person deposed under this part shall be notified of his or her right to be represented by counsel during the deposition, and shall be required to swear or affirm to testify to the whole truth. Testimony shall be reduced to writing and subscribed by the deponent. Depositions shall be filed promptly with the Commission or, if a presiding official has been designated, with the presiding official.

(d) Witnesses whose depositions are taken as authorized in this section, and the persons taking the same, shall be severally entitled to the same fees as are paid for like services in the courts of the United States.

Subpart D—Audits

§ 571.12 Audit standards.

A tribe shall engage an independent certified public accountant to provide an annual audit of the financial statements of each gaming operation on Indian lands. Such financial statements shall be prepared in accordance with generally accepted accounting principles and the audit(s) shall be conducted in accordance with generally accepted auditing standards. Audit(s) of the gaming operation required under this section may be conducted in conjunction with any other independent audit of the tribe, provided that the requirements of this chapter are met.

§ 571.13 Copies of audit reports.

A tribe shall submit to the Commission a copy of the report(s) and management letter(s) setting forth the results of each annual audit within 120 days after the end of each fiscal year of the gaming operation.

§ 571.14 Relationship of audited financial statements to fee assessment reports.

A tribe shall reconcile its quarterly fee assessment reports, submitted under 25 CFR part 514, with its audited financial statements and make available such reconciliation upon request by the Commission's authorized representative.

PART 573—ENFORCEMENT

Sec.
573.1 Scope.
573.3 Notice of violation.
573.6 Order of temporary closure.

Authority: 25 U.S.C. 2705(a)(1), 2706, 2713, 2715.

§ 573.1 Scope.

This part sets forth general rules governing the Commission's enforcement of the Act, this chapter, and tribal ordinances and resolutions approved by the Chairman under part 522 or 523 of this chapter. Civil fines in connection with notice of violation issued under this part are addressed in part 575 of this chapter.

§ 573.3 Notice of violation.

(a) The Chairman may issue a notice of violation to any person for violations of any provision of the Act or this chapter, or of any tribal ordinance or resolution approved by the Chairman under part 522 or 523 of this chapter.

(d) A notice of violation shall contain:

(1) A citation to the federal or tribal requirement that has been or is being violated;

(2) A description of the circumstances surrounding the violation, set forth in common and concise language;

(3) Measures required to correct the violation;

(4) A reasonable time for correction, if the respondent cannot take measures to correct the violation immediately; and

(5) Notice of rights of appeal.

§ 573.6 Order of temporary closure.

(a) *When an order of temporary closure may issue.* Simultaneously with or subsequently to the issuance of a notice of violation under § 573.3 of this part, the Chairman may issue an order of temporary closure of all or part of an Indian gaming operation if one or more of the following substantial violations are present:

(1) The respondent fails to correct violations within:

(i) The time permitted in a notice of violation; or

(ii) A reasonable time after a tribe provides notice of a violation.

(2) A gaming operation fails to pay the annual fee required by 25 CFR part 514.

(3) A gaming operation operates for business without a tribal ordinance or resolution that the Chairman has approved under part 522 or 523 of this chapter.

(4) A gaming operation operates for business without a license from a tribe, in violation of part 558 of this chapter.

(5) A gaming operation operates for business without either background investigations having been completed for, or tribal licenses granted to, all key employees and primary management officials, as provided in § 558.3(b) of this chapter.

(6) There is clear and convincing evidence that a gaming operation defrauds a tribe or a customer.

(7) A management contractor operates for business without a contract that the Chairman has approved under part 533 of this chapter.

(8) Any person knowingly submits false or misleading information to the Commission or a tribe in response to any provision of the Act, this chapter, or a tribal ordinance or resolution that the Chairman has approved under part 522 or 523 of this chapter.

(9) A gaming operation refuses to allow an authorized representative of the Commission or an authorized tribal official to enter or inspect a gaming operation, in violation of § 571.5 or § 571.6 of this chapter, or of a tribal ordinance or resolution approved by the Chairman under part 522 or 523 of this chapter.

(10) A tribe fails to suspend a license upon notification by the Commission that a primary management official or key employee does not meet the standards for employment contained in § 558.2 of this chapter, in violation of § 558.5 of this chapter.

(11) A gaming operation operates class III games in the absence of a tribal-state compact that is in effect, in violation of 25 U.S.C. 2710(d).

(12) A gaming operation's facility is constructed, maintained, or operated in a manner that threatens the environment or the public health and safety, in violation of a tribal ordinance or resolution approved by the Chairman under part 522 or 523 of this chapter.

(b) *Order effective upon service.* The operator of an Indian gaming operation shall close the operation upon service of an order of temporary closure, unless the order provides otherwise.

(c) *Informal expedited review.* Within seven (7) days after service of an order of temporary closure, the respondent may request, orally or in writing, informal expedited review by the Chairman.

(1) The Chairman shall complete the expedited review provided for by this paragraph within two (2) days after his or her receipt of a timely request.

(2) The Chairman shall, within two (2) days after the expedited review provided for by this paragraph:

(i) Decide whether to continue an order of temporary closure; and

(ii) Provide the respondent with an explanation of the basis for the decision.

(3) Whether or not a respondent seeks informal expedited review under this paragraph, within thirty (30) days after the Chairman serves an order of temporary closure the respondent may appeal the order to the Commission under part 577 of this chapter. Otherwise, the order shall remain in effect unless rescinded by the Chairman for good cause.

PART 575—CIVIL FINES

Sec.
575.1 Scope.
575.3 How assessments are made.
575.4 When civil fine will be assessed.
575.5 Procedures for assessment of civil fines.
575.6 Settlement, reduction, or waiver of civil fine.
575.9 Final assessment.

Authority: 25 U.S.C. 2705(a), 2706, 2713, 2715.

§ 575.1 Scope.

This part addresses the assessment of civil fines under section 2713(a) of the Act with respect to notices of violation issued under § 573.3 of this chapter.

§ 575.3 How assessments are made.

The Chairman shall review each notice of violation and order of temporary closure in accordance with § 575.4 of this part to determine whether a civil fine will be assessed, the amount of the fine, and, in the case of continuing violations, whether each daily illegal act or omission will be deemed a separate violation for purposes of the total civil fine assessed.

§ 575.4 When civil fine will be assessed.

The Chairman may assess a civil fine, not to exceed $25,000 per violation, against a tribe, management contractor, or individual operating Indian gaming for each notice of violation issued under § 573.3 of this chapter after considering the following factors:

(a) *Economic benefit of noncompliance.* The Chairman shall consider the extent to which the respondent obtained an economic benefit from the noncompliance that

gave rise to a notice of violation, as well as the likelihood of escaping detection.

(1) The Chairman may consider the documented benefits derived from the noncompliance, or may rely on reasonable assumptions regarding such benefits.

(2) If noncompliance continues for more than one day, the Chairman may treat each daily illegal act or omission as a separate violation.

(b) *Seriousness of the violation.* The Chairman may adjust the amount of a civil fine to reflect the seriousness of the violation. In doing so, the Chairman shall consider the extent to which the violation threatens the integrity of Indian gaming.

(c) *History of violations.* The Chairman may adjust a civil fine by an amount that reflects the respondent's history of violations over the preceding five (5) years.

(1) A violation cited by the Chairman shall not be considered unless the associated notice of violation is the subject of a final order of the Commission and has not been vacated; and

(2) Each violation shall be considered whether or not it led to a civil fine.

(d) *Negligence or willfulness.* The Chairman may adjust the amount of a civil fine based on the degree of fault of the respondent in causing or failing to correct the violation, either through act or omission.

(e) *Good faith.* The Chairman may reduce the amount of a civil fine based on the degree of good faith of the respondent in attempting to achieve rapid compliance after notification of the violation.

§ 575.5 Procedures for assessment of civil fines.

(a) Within 15 days after service of a notice of violation, or such longer period as the Chairman may grant for good cause, the respondent may submit written information about the violation to the Chairman. The Chairman shall consider any information so submitted in determining the facts surrounding the violation and the amount of the civil fine.

(b) The Chairman shall serve a copy of the proposed assessment on the respondent within thirty (30) days after the notice of violation was issued, when practicable.

(c) The Chairman may review and reassess any civil fine if necessary to consider facts that were not reasonably available on the date of issuance of the proposed assessment.

§ 575.6 Settlement, reduction, or waiver of civil fine.

(a) *Reduction or waiver.* (1) Upon written request of a respondent received at any time prior to the filing of a notice of appeal under part 577 of this chapter, the Chairman may reduce or waive a civil fine if he or she determines that, taking into account exceptional factors present in a particular case, the fine is demonstrably unjust.

(2) All petitions for reduction or waiver shall contain:

(i) A detailed description of the violation that is the subject of the fine;

(ii) A detailed recitation of the facts that support a finding that the fine is demonstrably unjust, accompanied by underlying documentation, if any; and

(iii) A declaration, signed and dated by the respondent and his or her counsel or representative, if any, as follows: Under penalty of perjury, I declare that, to the best of my knowledge and belief, the representations made in this petition are true and correct.

(3) The Chairman shall serve the respondent with written notice of his or her determination under paragraph (a) of this section, including a statement of the grounds for the Chairman's decision.

(b) *Settlement.* At any time prior to the filing of a notice of appeal under part 577 of this chapter, the Chairman and the respondent may agree to settle an enforcement action, including the amount of the associated civil fine. In the event a settlement is reached, a settlement agreement shall be prepared and executed by the Chairman and the respondent. If a settlement agreement is executed, the respondent shall be deemed to have waived all rights to further review of the violation or civil fine in question, except as otherwise provided expressly in the settlement agreement. In the absence of a settlement of the issues under this paragraph, the respondent may contest the assessed civil fine before the Commission in accordance with part 577 of this chapter.

§ 575.9 Final assessment.

(a) If the respondent fails to request a hearing as provided in part 577 of this chapter, the proposed civil fine assessment shall become a final order of the Commission.

(b) Civil fines assessed under this part shall be paid by the person assessed and shall not be treated as an operating expense of the operation.

(c) The Commission shall transfer civil fines paid under this chapter to the U.S. Treasury.

PART 577—APPEALS BEFORE THE COMMISSION

Sec.

577.1 Scope.
577.3 Request for hearing.
577.4 Hearing deadline.
577.6 Service.
577.7 Conduct of hearing.
577.8 Request to limit disclosure of confidential information.
577.9 Consent order or settlement.
577.12 Intervention.
577.13 Transcript of hearing.
577.14 Recommended decision of presiding official.
577.15 Review by Commission.

Authority: 25 U.S.C. 2706, 2713, 2715.

§ 577.1 Scope.

(a) This part provides procedures for appeals to the Commission regarding:

(1) A violation alleged in a notice of violation;

(2) Civil fines assessed by the Chairman;

(3) Whether an order of temporary closure issued by the Chairman should be made permanent or be dissolved; and

(4) The Chairman's decision to void or modify a management contract under part 535 of this chapter subsequent to initial approval.

(b) Appeals from determinations of the Chairman under 25 U.S.C. 2710 and 2711 (regarding management contracts) and 2710 (regarding tribal gaming ordinances) are addressed in parts 539 and 524 of this chapter respectively.

§ 577.3 Request for hearing.

(a) A respondent may request a hearing to contest the matters listed in § 577.1(a)(1)–(4) by submitting a notice of appeal to the Commission within thirty (30) days after service of:

(1) A notice of violation;

(2) A proposed civil fine assessment or reassessment;

(3) An order of temporary closure; or

(4) An order voiding or modifying a management contract subsequent to initial approval.

(b) A notice of appeal shall reference the notice or order from which the appeal is taken.

(c) Within ten (10) days after filing a notice of appeal, the respondent shall file with the Commission a supplemental statement that states with particularity the relief desired and the grounds therefor and that includes, when available, supporting evidence in the form of affidavits. If the respondent wishes to present oral testimony or witnesses at the hearing, the respondent shall include a request to do so with the supplemental statement. The request to present oral testimony or witnesses shall specify the names of proposed witnesses and the general nature of their

expected testimony, and whether a closed hearing is requested and why. The respondent may waive in writing his or her right to an oral hearing and instead elect to have the matter determined by the Commission solely on the basis of written submissions.

§ 577.4 Hearing deadline.

(a) The Commission shall designate a presiding official who shall commence a hearing within 30 days after the Commission receives a timely notice of appeal from the respondent. At the request of the respondent, the presiding official may order the hearing to commence at a time more than 30 days after the respondent files a notice of appeal. The Commission shall transmit the administrative record of the case to the presiding official upon designation.

(b) If the subject of an appeal is whether an order of temporary closure should be made permanent or be dissolved, the hearing shall be concluded within 30 days after the Commission receives a timely notice of appeal, unless the respondent waives this requirement. Notwithstanding any other provision of this part, the presiding official shall conduct such a hearing in a manner that will enable him or her to conclude the hearing within the period required by this paragraph, while ensuring due process to all parties.

§ 577.6 Service.

(a) A respondent who initiates an appeal under this part shall serve copies of the initiating documents on the Commission at the address indicated in the notice or order that is the subject of the appeal. All filings shall be made with the Commission until a presiding official is designated and the parties are so notified, after which all filings shall be made with the presiding official. Any party or other person who subsequently files any other document with the Commission or the presiding officer shall simultaneously serve copies of that document on any other parties to the proceeding, except to that extent § 577.8 of this part may govern the disclosure of confidential information contained in a filing.

(b) Copies of documents by which a proceeding is initiated shall be served on all known parties personally, by facsimile, or by registered or certified mail, return receipt requested. All subsequent documents shall be served personally, by facsimile, or by first class mail.

(c) Service of copies of all documents is complete at the time of personal service or, if service is made by mail or facsimile, upon transmittal.

(d) Whenever a representative (including an attorney) has entered an appearance for a party in a proceeding initiated under this part, service thereafter shall be made upon the representative.

(e) In computing any period of time prescribed for filing and serving a document, the first day of the period so computed shall not be included. The last day shall be included unless it is a Saturday, Sunday, or federal legal holiday, in which case the period shall run until the end of the next business day.

(f)(1) The presiding official may extend the time for filing or serving any document except a notice of appeal.

(2) A request for an extension of time must be filed within the time originally allowed for filing.

(3) For good cause the presiding official may grant an extension of time on his or her own initiative.

§ 577.7 Conduct of hearing.

(a) Once designated by the Commission, the presiding official shall set the case for hearing. The respondent may appear at the hearing personally, through counsel, or personally with counsel. The respondent shall have the right to introduce relevant written materials and to present an oral argument. At the discretion of the presiding official, a hearing under this section may include an opportunity to submit oral and documentary evidence and cross-examine witnesses.

(b) When holding a hearing under this part, the presiding official shall:

(1) Administer oaths and affirmations;

(2) Issue subpoenas authorized by the Commission;

(3) Rule on offers of proof and receive relevant evidence;

(4) Authorize exchanges of information (including depositions and interrogatories in accordance with 25 CFR part 571, subpart C) among the parties when to do so would expedite the proceeding;

(5) Regulate the course of the hearing;

(6) When appropriate, hold conferences for the settlement or simplification of the issues by consent of the parties;

(7) At any conference held pursuant to paragraph (b)(6) of this section, require the attendance of at least one representative of each party who has authority to negotiate the resolution of issues in controversy;

(8) Dispose of procedural requests or similar matters;

(9) Recommend decisions in accordance with § 577.14 of this part; and

(10) Take other actions authorized by the Commission consistent with this part.

(c) The presiding official may order the record to be kept open for a reasonable period following the hearing (normally five days), during which time the parties may make additional submissions to the record. Thereafter, the record shall be closed and the hearing shall be deemed concluded. Within 30 days after the record closes, the presiding official shall issue a recommended decision in accordance with § 577.14 of this part.

§ 577.8 Request to limit disclosure of confidential information.

(a) If any person submitting a document in a proceeding that involves more than two parties claims that some or all of the information contained in that document is exempt from the mandatory public disclosure requirements under the Freedom of Information Act (5 U.S.C. 552), is information referred to in 18 U.S.C. 1905 (disclosure of confidential information), or is otherwise exempt by law from public disclosure, the person shall:

(1) Indicate that the document in its entirety is exempt from disclosure or identify and segregate information within the document that is exempt from disclosure; and

(2) Request that the presiding official not disclose such information to the parties to the proceeding (other than the Chairman, whose actions regarding the disclosure of confidential information are governed by § 571.3 of this chapter) except pursuant to paragraph (b) of this section, and shall serve the request upon the parties to the proceeding. The request to the presiding official shall include:

(i) A copy of the document, group of documents, or segregable portions of the documents marked "Confidential Treatment Requested"; and

(ii) A statement explaining why the information is confidential.

(b) A party to a proceeding may request that the presiding official direct a person submitting information under paragraph (a) of this section to provide that information to the party. The presiding official shall so direct if the party requesting the information agrees under oath and in writing:

(1) Not to use or disclose the information except directly in connection with the hearing; and

(2) To return all copies of the information at the conclusion of the proceeding to the person submitting the information under paragraph (a) of this section.

(c) If a person submitting documents in a proceeding under this part does not claim confidentiality under paragraph (a) of this section, the presiding official may assume that there is no objection to disclosure of the document in its entirety.

(d) If the presiding official determines that confidential treatment is not warranted with respect to all or any part of the information in question, the presiding official shall so inform all parties by telephone, if possible, and by facsimile or express mail letter directed to the parties' last known addresses. The person requesting confidential treatment then shall be given an opportunity to withdraw the document before it is considered by the presiding official, or to disclose the information voluntarily to all parties.

(e) If the presiding official determines that confidential treatment is warranted, the presiding official shall so inform all parties by facsimile or express mail directed to the parties' last known address.

(f) When a decision by a presiding official is based in whole or in part on evidence not included in the public record, the decision shall so state, specifying the nature of the evidence and the provision of law under which disclosure was denied, and the evidence so considered shall be retained under seal as part of the official record.

§ 577.9 Consent order or settlement.

(a) *General.* At any time after the commencement of a proceeding, but at least five (5) days before the date set for hearing under § 577.7 of this part, the parties jointly may move to defer the hearing for a reasonable time to permit negotiation of a settlement or an agreement containing findings and an order disposing of the whole or any part of the proceeding.

(b) *Content.* Any agreement containing consent findings and an order disposing of the whole or any part of a proceeding shall also provide:

(1) A waiver of any further procedural steps before the Commission;

(2) A waiver of any right to challenge or contest the validity of the order and decision entered into in accordance with the agreement; and

(3) That the presiding official's certification of the findings and agreement shall constitute dismissal of the appeal and final agency action.

(c) *Submission.* Before the expiration of the time granted for negotiations, the parties or their authorized representatives may:

(1) Submit to the presiding official a proposed agreement containing consent findings and an order;

(2) Notify the presiding official that the parties have reached a full settlement and have agreed to dismissal of the action, subject to compliance with the terms of the settlement; or

(3) Inform the presiding official that agreement cannot be reached.

(d) *Disposition.* In the event a settlement agreement containing consent findings and an order is submitted within the time granted, the presiding official shall certify such findings and agreement within thirty (30) days after his or her receipt of the submission. Such certification shall constitute dismissal of the appeal and final agency action.

§ 577.12 Intervention.

(a) Persons other than the respondent may be permitted to participate as parties if the presiding official finds that:

(1) The final decision could directly and adversely affect them or the class they represent;

(2) They may contribute materially to the disposition of the proceedings;

(3) Their interest is not adequately represented by existing parties; and

(4) Intervention would not unfairly prejudice existing parties or delay resolution of the proceeding.

(b) If a tribe has jurisdiction over lands on which there is a gaming operation that is the subject of a proceeding under this part, and the tribe is not already a named party, such tribe may intervene as a matter of right.

(c) A person not named as a party and who wishes to participate as a party under this section shall submit a petition to the presiding official within ten (10) days after the person knew or should have known about the proceeding. The petition shall be filed with the presiding official and served on each person who has been made a part at the time of filing. The petition shall state concisely:

(1) Petitioner's interest in the proceeding;

(2) How his or her participation as a party will contribute materially to the disposition of the proceeding;

(3) Who will appear for petitioner;

(4) The issues on which petitioner wishes to participate; and

(5) Whether petitioner wishes to present witnesses.

(d) Objections to the petition may be filed by any party within ten (10) days after service of the petition.

(e) When petitions to participate as parties are made by individuals or groups with common interests, the presiding official may request all such petitioners to designate a single representative, or he or she may recognize one or more petitioners.

(f) The presiding official shall give each petitioner, as well as the parties, written notice of the presiding official's decision on the petition. For each petition granted, the presiding official shall provide a brief statement of the basis of the decision. If the petition is denied, the presiding official shall briefly state the grounds for denial and may then treat the petition as a request for participation as amicus curiae (that is, "friend of the court").

§ 577.13 Transcript of hearing.

Hearings under this part that involve oral presentations shall be recorded verbatim and transcripts thereof shall be provided to parties upon request. Fees for transcripts shall be at the actual cost of duplication.

§ 577.14 Recommended decision of presiding official.

(a) *Recommended decision.* Within thirty (30) days after the record closes, the presiding official shall render his or her recommended decision. The recommended decision of the presiding official shall be based upon the whole record and shall include findings of fact and conclusions of law upon each material issue of fact or law presented on the record.

(b) *Filing of objections.* Within ten (10) days after the date of service of the presiding official's recommended decision, the parties may file with the Commission objections to any aspect of the decision, and the reasons therefor.

§ 577.15 Review by Commission.

The Commission shall affirm or reverse, in whole or in part, the recommended decision of the presiding official by a majority vote within thirty (30) days after the date on which the presiding official issued the decision. The Commission shall provide a notice and order to all parties stating the reasons for its action. In the absence of a majority vote by the Commission within the time provided by this section, the recommended decision of the presiding official shall be deemed affirmed except that, if the subject of the appeal is an order of temporary closure issued under § 573.6 of this chapter, the order of temporary closure shall be dissolved.

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Friday
January 22, 1993

Part III

Department of Transportation

Research and Special Programs Administration

49 CFR Parts 172 and 177

Training for Safe Transportation of Hazardous Materials; Revisions and Response to Petitions for Reconsideration; Final Rule

DEPARTMENT OF TRANSPORTATION

Research and Special Programs Administration

49 CFR Parts 172 and 177

[Docket No. HM-126F; Amdt. No. 172-126, 177-79]

RIN 2137-AB26

Training for Safe Transportation of Hazardous Materials; Revisions and Response to Petitions for Reconsideration

AGENCY: Research and Special Programs Administration (RSPA), DOT.

ACTION: Final rule; revisions and response to petitions for reconsideration.

SUMMARY: This rule revises a final rule published in the **Federal Register** on May 15, 1992 (57 FR 20944), which revised the Hazardous Materials Regulations to require training for hazardous materials (hazmat) employees. RSPA is delaying the compliance dates for training, primarily in response to petitions for reconsideration, and making editorial and technical corrections to the final rule.

EFFECTIVE DATE: February 22, 1993.

FOR FURTHER INFORMATION CONTACT: Jackie Smith, Office of Hazardous Materials Standards, RSPA, Department of Transportation, 400 Seventh Street, SW., Washington, DC 20590-0001, Telephone: (202) 366-4488.

SUPPLEMENTARY INFORMATION:

Background

On May 15, 1992, the Research and Special Programs Administration (RSPA) published a final rule under Docket HM-126F entitled, "Training for Safe Transportation of Hazardous Materials" (57 FR 20944) to enhance the training requirements for persons involved in the transportation of hazardous materials. This action was necessary to comply with the Hazardous Materials Transportation Uniform Safety Act of 1990 (HMTUSA) mandating that DOT regulate, under the Hazardous Materials Regulations (HMR; 49 CFR parts 171-180), the training of all hazardous materials (hazmat) employees. Based on information provided to RSPA through its hazardous materials incident reporting system, human error is the probable cause of most transportation incidents and associated consequences involving the release of hazardous materials. Training of hazmat employees is aimed at reducing the number and severity of hazardous materials incidents.

Subsequent to issuance of that final rule, RSPA received six petitions for reconsideration and two comments in support of petitions submitted by other parties. In this document, RSPA is revising the final rule based on the merits of these petitions. Also, RSPA is making other minor revisions to correct, clarify and simplify certain provisions of the final rule.

Petitions Granted

RSPA received petitions requesting an extension of the compliance dates. RSPA had specified an April 1, 1993 compliance date for current employees (employed on or before November 15, 1992), and a compliance date for new employees (hired after November 15, 1992) of within 90 days of employment for completion of training. Petitioners requested that the April 1, 1993 compliance date be extended to October 1, 1993, to coincide with a compliance date for new hazard communication and classification requirements implemented under Docket HM-181, "Performance-oriented Packaging Standards" (55 FR 52402, 56 FR 66124, *et al.*) Petitioners asserted that the April 1, 1993 compliance date would force hazmat employers to expend substantial resources training employees in both pre-HM-181 and post-HM-181 requirements. Petitioners stated that an extension of the training compliance date would allow hazmat employers to concentrate resources on educating hazmat employees on post-HM-181 requirements and relieve them of the administrative and financial burden of training employees on requirements which will soon be obsolete.

RSPA agrees with these petitions. Therefore, in this document RSPA is revising § 172.704(c)(1)(i) to require completion of training by October 1, 1993 for current employees and those hired on or before July 2, 1993 (i.e., 90 days or more prior to October 1, 1993) and is revising § 172.704(c)(1)(ii) to require completion of training within 90 days of employment for those hired after July 2, 1993. It should be noted that HMTUSA required each hazmat employee to begin training current employees within six months (i.e., by November 15, 1992) after issuance of the May 15, 1992 final rule. This revision to the final rule does not affect the HMTUSA requirement for commencement of training.

Petitions Denied

A railroad petitioned that the two-year recurrent training period be extended to a three-year cycle for consistency with Federal Railroad Administration (FRA) requirements in 49 CFR part 240 for certification of railroad engineers. RSPA denies this petition. Certification requirements for railroad engineers under 49 CFR part 240 are distinct from hazardous materials training requirements under 49 CFR part 172 and RSPA sees no pressing need for identical training cycles. RSPA has previously considered and rejected comments regarding alternative training periods in the May 15, 1992 final rule. This petitioner did not present any new information to warrant changing the requirement.

A maritime association requested an exception from the two-year recurrent training requirement for hazmat employees who handle hazardous materials as an incidental part of their employment (i.e., marine cargo handling and warehousing). In place of biannual training, training would be provided "* * * with such frequency necessary to provide employees with information on current regulation requirements." The petitioner stated that the definition of a "hazmat employee" remains ambiguous as to its application to longshoremen and believes that most longshoremen do not strictly fit into the definition since their employment does not "directly affect hazardous materials transportation safety." The petitioner stated that while necessary information and training should be provided to these employees, the frequency of the recurrent training requirement is considered to be excessive.

The maritime association also requested that they be allowed to maintain records of training for members of their union. The petitioner stated that labor is dispatched on a daily basis from a union hall. Individuals may work for multiple employers during the course of one week. Historically, the association stated that they have provided hazmat training to the union work force and petitions that the exact location where a hazmat employee's training record is kept should be determined by the employer.

RSPA denies this petition for the following reasons. First, a longshoreman or other employee who handles hazardous materials, regardless of frequency, affects transportation safety and is unquestionably a hazmat employee. An occasional employee who only handles hazardous materials occasionally needs recurrent training at least as often as an employee who regularly handles hazardous materials, to ensure the employee's continuing awareness of safety considerations and regulatory requirements. The information presented in the petition

does not justify an exception to the two-year recurring training requirement for hazmat employees who handle hazardous materials as an incidental part of their employment. Second, § 172.704(d) of the final rule requires that a record certifying each hazmat employee's current training be created and retained by the hazmat employer. The location of the record of training is not specified. If agreed to by both the hazmat employer and the union, the union could maintain the required records on behalf of the hazmat employer. Under the HMR, both could be held responsible for recordkeeping requirements. According, RSPA believes that no change to the requirement is necessary.

One petitioner asked RSPA to delay, until the first round of recurrent training is completed, the testing and certification of current hazmat employees who have already been trained. The petitioner stated that testing undertaken merely to meet the testing requirements would not be as effective as an integrated program; and that such a delay would allow employers to consider the most effective means of testing currently trained employees based on their job function and the type of training necessary.

The purpose of testing and certification is to ascertain whether the employee has familiarity with the general provisions of the Hazardous Materials Regulations (HMR), is able to recognize and identify hazardous materials, has knowledge of specific requirements of the HMR applicable to functions performed by the employee, and has knowledge of emergency response information, self-protection measures and accident prevention methods and procedures. By delaying the completion date for training current hazmat employees until October 1, 1993, RSPA is providing sufficient time for hazmat employers to train, test, and develop the recordkeeping documentation. Therefore, the petition is denied.

Except as adopted herein, all petitions for reconsideration received by RSPA regarding issues addressed by the final rule published on May 15, 1992, are denied. Any subsequent submission regarding issues relating to this rulemaking should be filed as a petition for rulemaking in conformance with 49 CFR 106.31.

Section-by-Section Review

Part 172; Hazardous Materials Table, Special Provisions, Hazardous Materials Communications, Emergency Response Information, and Training Requirements

Section 172.704. Paragraph (a)(1) is revised to correct punctuation. Paragraph (a)(2)(i) is amended to clarify that training is required for hazmat employees who perform functions subject to conditions specified by exemptions issued under the HMR. Paragraph (a)(2)(ii) is revised to clarify the acceptability of function-specific training under the ICAO Technical Instructions and the IMDG Code, to the extent that compliance with these regulations is authorized under the HMR (see §§ 171.11 and 171.12), as an alternative to function-specific training under corresponding provisions of the HMR.

As discussed above, the dates in paragraph (c)(1)(i) are revised to require completion of training by October 1, 1993, for hazmat employees employed on or before July 2, 1993. Also, the date in paragraph (c)(1)(ii) is revised to require training within 90 days of employment for employees employed after July 2, 1993.

Part 177—Carriage by Public Highway

Section 177.816. Editorial changes are made including deletion of carrier requirements that are not directly related to safety in a functional sense. In the final rule issued on May 15, 1992, RSPA inadvertently required that training in the Motor Carrier Safety Regulations, as required in paragraph (a), meet the frequency and recordkeeping requirements in § 172.704. Accordingly, paragraph (c) is revised and a new paragraph (d) is added to clarify that the frequency and recordkeeping requirements in § 172.704 apply only to the specialized requirements for cargo tanks and portable tanks in paragraph (b).

Rulemaking Analyses and Notices

A. Executive Order 12291 and DOT Regulatory Policies and Procedures

This final rule has been reviewed under the criteria specified in section 1(b) of Executive Order 12291 and is determined not to be a major rule. Although the underlying rule was considered to be "significant" under the regulatory procedures of the Department of Transportation, this document is considered to be non-significant because it clarifies and corrects provisions of the final rule and provides limited relief to the regulated industry. The regulatory evaluation for the final rule was reexamined, but was not modified because the changes made under this rule will result in a minimal economic benefit for the regulated industry.

B. Executive Order 12612

This action has been analyzed in accordance with the principles and criteria in Executive Order 12612. This final rule does not have sufficient Federalism implications to warrant the preparation of a Federalism Assessment.

C. Regulatory Flexibility Act

Based on limited information concerning size and nature of entities likely to be affected by this rule, I certify this rule will not have a significant economic impact on a substantial number of small entities under the criteria of the Regulatory Flexibility Act.

D. Paperwork Reduction Act

Under section 106(b)7 of the HMTA, the information management requirements of the Paperwork Reduction Act (44 U.S.C. 3501 *et seq.*) do not apply to this final rule.

List of Subjects

49 CFR Part 172

Hazardous materials transportation, Hazardous waste, Labeling, Packaging and containers, Reporting, recordkeeping, and training requirements.

49 CFR Part 177

Hazardous materials transportation, Motor carriers, Radioactive materials, Reporting and recordkeeping requirements.

In consideration of the foregoing, 49 CFR parts 172 and 177 are amended as follows:

PART 172—HAZARDOUS MATERIALS TABLE, SPECIAL PROVISIONS, HAZARDOUS MATERIALS COMMUNICATIONS, EMERGENCY RESPONSE INFORMATION, AND TRAINING REQUIREMENTS

1. The authority citation for part 172 continues to read as follows:

Authority: 49 App. U.S.C. 1803, 1804, 1805, and 1808; 49 CFR part 1, unless otherwise noted.

2. In § 172.704, paragraphs (a)(1), (a)(2), (c)(1)(i) and (c)(1)(ii) are revised to read as follows:

§ 172.704 Training requirements.

(a) Hazmat employee training shall include the following:

(1) *General awareness/familiarization training.* Each hazmat employee shall be provided general awareness/familiarization training designed to

provide familiarity with the requirements of this subchapter, and to enable the employee to recognize and identify hazardous materials consistent with the hazard communication standards of this subchapter.

(2) *Function-specific training.* (i) Each hazmat employee shall be provided function-specific training concerning requirements of this subchapter, or exemptions issued under subchapter B of this chapter, which are specifically applicable to the functions the employee performs.

(ii) As an alternative to function-specific training on the requirements of this subchapter, training relating to the requirements of the ICAO Technical Instructions and the IMDG Code may be provided to the extent such training addresses functions authorized by §§ 171.11 and 171.12 of this subchapter.

* * * * *

(c) * * *

(1) * * *

(i) Training for a hazmat employee employed on or before July 2, 1993, shall be completed prior to October 1, 1993.

(ii) Training for a hazmat employee employed after July 2, 1993, shall be complete within 90 days after employment.

* * * * *

PART 177—CARRIAGE BY PUBLIC HIGHWAY

4. The authority citation for part 177 continues to read as follows:

Authority: 49 App. U.S.C. 1803, 1804, 1805; 49 CFR part 1.

§ 177.816 [Amended]

5. In § 177.816, the following changes are made:

(a) In paragraph (a), the words "383, 387," are removed.

(b) In paragraph (a), the word "399" is removed and replaced with word "397".

(c) In paragraph (a)(4), the word "navigating" is removed and replaced with the word "maneuvering".

6. In § 177.816, paragraph (c) is revised and paragraph (d) is added to read as follows:

§ 177.816 Driver training.

* * * * *

(c) The training required by paragraphs (a) and (b) of this section may be satisfied by compliance with the current requirements for a Commercial Driver's License (CDL) with a tank vehicle or hazardous materials endorsement.

(d) Training required by paragraph (b) of this section must conform to the requirements of § 172.704 of this subchapter with respect to frequency and recordkeeping.

Issued in Washington, DC, on January 15, 1993 under authority delegated in 49 CFR part 1.

Douglas B. Ham,

Acting Administrator, Research and Programs Administration.

[FR Doc. 93–1515 Filed 1–21–93; 8:45 am]

BILLING CODE 4910–60–M

federal register

Friday
January 22, 1993

Part IV

Environmental Protection Agency

Incentives for Development and Registration of Reduced-Risk Pesticides Program Update; Notice

ENVIRONMENTAL PROTECTION AGENCY

[OPP-36184B;FRL-4184-7]

Incentives for Development and Registration of Reduced-Risk Pesticides Program Update

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice.

SUMMARY: This notice is a follow-up to the Environmental Protection Agency's initiative to establish incentives for the development, registration, and use of reduced-risk pesticides (57 FR 32140; July 20, 1992). It serves as an interim report of EPA's progress, an overview of plans for the future and describes the Agency's short-term and long-term strategies. A Pesticide Regulation (PR) Notice is being prepared and will be sent to all parties holding Federal pesticide registrations. The PR Notice will provide guidance on the EPA's interim process for identifying new active ingredients which may be eligible for priority treatment as lower-risk pesticides. Applicants seeking a new active ingredient registration are invited to provide an explanation accompanied by any supporting information on why their application and any associated tolerance petitions may qualify for special consideration as a reduced-risk pesticide. EPA's long-term plans include (1) developing criteria for identifying lower risk pesticides to use as a factor in setting priorities and scheduling reviews of applications to register new pesticides, (2) streamlining the overall registration process, (3) improving the information content of pesticide labels and promoting other educational efforts to better inform the public and encourage more informed user choice, and (4) considering legislative approaches to encourage the registration of new reduced-risk pesticides by extending the periods of exclusive use under FIFRA or patent term protection, to qualifying pesticides.

FOR FURTHER INFORMATION CONTACT: Stephanie R. Irene, Registration Division [H7505C], Office of Pesticide Programs, Environmental Protection Agency, 401 M St., SW., Washington, DC 20460, (703) 305-5447.

SUPPLEMENTARY INFORMATION:

Electronic Availability: This document is available as an electronic file on *The Federal Bulletin Board* at 9:00 a.m. on the date of publication in the **Federal Register**. By modem dial (202) 512-1387 or call (202) 512-1530 for disks or paper copies. This file is also available in Postscript, Wordperfect and ASCII.

I. Background

A. Introduction

EPA has embarked on a reduced-risk pesticide initiative with the primary objective of encouraging the development, registration and use of lower risk pesticides and pest management practices in order to lessen risks to human health and the environment. Because of the significance and complexity of the topic, EPA announced its interest in developing new policies in this area and solicited public comment via a **Federal Register** notice published July 20, 1992 (57 FR 32140), and a public workshop held October 5 and 6, 1992.

B. Public Involvement

1. **Federal Register** *Notice.* EPA identified two basic objectives for a reduced-risk policy with several possible actions for implementing each. The first objective is to create incentives for the development, registration, and use of lower risk pesticides; the second is to encourage the replacement of higher risk pesticides on the market. EPA also invited discussion on how the EPA should identify lower-risk and higher-risk pesticides.

EPA listed several possible incentives to encourage lower risk pesticides, including early counseling of applicants for registration, giving priority status to potentially lower risk pesticides in the review process, waiving fees, reducing or deferring data requirements, and allowing safety claims in labeling and in advertising to foster competition in favor of reduced-risk products. EPA described possible approaches for encouraging the replacement of higher risk pesticides, such as those which may in the past have been retained only because there were no cost-effective, lower-risk alternatives. The Agency suggested several possible actions with respect to such pesticides, including publishing a list of higher risk uses, screening applications claiming to replace higher risk uses and giving qualifying applications priority for review and waiving fees. EPA also suggested the possibility of reevaluating the registration of higher risk pesticides for potential regulatory action, i.e., restriction or cancellation, when safer, effective alternatives are registered.

2. *Public workshop.* Due to the potential impacts and complexity of this topic, EPA conducted a public workshop on October 5 and 6, 1992 to further explore the issues. Over 200 participants attended. The Agency appreciates the interest and enthusiasm of all attendees who provided candid, albeit differing viewpoints on how the Office of Pesticide Programs could accomplish its intended goals.

The period for accepting written comments was extended to November 5 to incorporate additional ideas and responses generated from the workshop. EPA has received a total of 152 written comments. EPA would like to thank everyone who provided valuable input by participating in the workshop and/or responding to the **Federal Register** notice. Many of the comments provided imaginative ideas and suggestions and will greatly assist the Agency in policy formulation.

II. Strategy

A. Short Term Approach

EPA is implementing an interim strategy while policy is being developed. The Agency wishes to capture good ideas that can be implemented quickly. The Office of Pesticide Programs (OPP) will be issuing a Pesticide Regulation (PR) Notice to all pesticide registrants. This PR Notice will announce that, in scheduling the review of pesticide applications involving new active ingredients, one of the factors EPA will consider is the opportunity for reduced risk. The Notice will provide general guidance and describe the type of information that OPP will need to evaluate such requests. By adopting this voluntary pilot program, EPA can test its feasibility, obtain additional comments from outside sources, and improve the Agency's ability to devise a long term strategy.

Applicants who believe they have developed a qualifying new active ingredient will be invited to submit a rationale substantiating their case as part of their application for registration. The applicants will be asked to discuss why their product(s) presents a reduced risk and make a comparison between the risks posed by the new active ingredient under consideration and the other pesticides for that use. Registrants should consider human health, environmental fate and ecological effects, other hazards and pest resistance management. In addition, they may consider the cost of the product relative to substitutes. An application's review priority will depend on the Agency's determination that the new active ingredient may pose significantly lower risks. The PR Notice will give additional details on topics that should be addressed in any such request for special consideration.

B. Long Term Approach

To develop a more comprehensive reduced-risk policy, EPA will focus on

four major issues. The plan is first to develop specific criteria for identifying lower risk pesticides for accelerated review and to work on streamlining the entire registration process for all products. Exploration of potential product label reform and the possible extension of exclusive use or patent terms, which could require more complex rulemaking or legislative changes, will follow. While EPA has decided not to publish a list of higher risk pesticides at this time, it may revisit the issue after the completion of the reregistration program, when a more complete data base should permit more reliable comparisons among pesticides. The four main elements of the longer term strategies are described below:

1. *Developing criteria.* EPA intends to establish a list of criteria for identifying a reduced-risk pesticide. These criteria should be science-based, and they should provide assurance of protection of public health and the environment. The application of each criterion should be sufficiently objective that incoming pesticide applications may be screened quickly to identify lower risk candidates before the detailed review begins. Therefore, the initial identification process should not significantly delay review of an incoming application regardless of whether it ultimately conforms to the reduced-risk standard. EPA intends to work with industry and academia to develop the criteria.

2. *Streamlining the registration process.* EPA currently has in place several teams or workgroups whose charge is to analyze the registration process to recommend efficiencies. The streamlining sought will affect all incoming actions and not be limited to those claiming lower risk. Areas where internal process improvements are being developed are new chemicals and tolerances, Fast Track registrations, and Special Local Needs (section 24(c)) registrations. Additionally, OPP is focusing on streamlining ecological effects and environmental fate data requirements, and revising pesticide tolerance crop groupings. Finally, we are considering the possibility of exempting from FIFRA registration requirements pesticidal materials recognized to be of low risk. Candidates may include some of the materials which EPA has recently found eligible for reregistration, such as dried blood and putrescent egg solids.

3. *Pesticide label reform and informational outreach.* In order to promote the goal of encouraging pesticide users to choose and utilize reduced-risk pesticides, EPA is considering revising its pesticide labeling policy, for example, by allowing registrants to make safety claims on their labels. Several workgroups within the Agency are addressing the complex and multifaceted issues which arise with labeling. These groups were established to seek improvements in the scope and utility of, policy for, and the process for developing pesticide labeling.

EPA will also consider other mechanisms to reach interested persons with improved information about pesticides that may affect them, others, or the environment in general. The Agency plans to improve the informational content of pesticide labels and develop other educational sources e.g., pesticide fact sheets and training programs to permit more informed choices by users and other affected parties. In addition, the Agency is considering allowing comparative-safety-and-efficacy claims in advertising materials to inform users of risks and benefits.

4. *Extending exclusive use or patent term extension incentives.* One of the strongest and more significant economic incentives, as expressed by representatives of the pesticide industry, would be the extension of the exclusive use period of a pesticide as established in FIFRA section 3(c)(1)(D) or the granting of an extension of the patent term for a lower risk pesticide. Currently, a portion of an applicant's period of patent protection is taken up by the Agency's review process, thus shortening the actual time the product is on the market under patent. If this period is extended, the registrants believe they would be able to recoup their research and development expenses more quickly, thereby encouraging the development of new pesticides. EPA will examine the options in this area for providing meaningful incentives for the development of lower risk pesticides.

EPA realizes that developing a comprehensive Reduced-Risk Policy incorporating the listed objectives will require significant time and resources. It believes, however, that the immediate actions being taken will result in progress toward the end of lessening risks from pesticides to human health and the environment.

Dated: January 13, 1993.

William K. Reilly,

Administrator, Environmental Protection Agency.

[FR Doc. 93-1499 Filed 1-21-93; 8:45 am]

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federal register

Friday
January 22, 1993

Part V

Environmental Protection Agency

Amitrole; Notice of Final Determination for Termination of the Amitrole Special Review

ENVIRONMENTAL PROTECTION AGENCY

[OPP-30000/38B; FRL4181-4]

Amitrole; Notice of Final Determination for Termination of the Amitrole Special Review

AGENCY: Environmental Protection Agency (EPA).

ACTION: Final determination and termination of Special Review.

SUMMARY: In a **Federal Register** Notice of October 8, 1992 (57 FR 46448), EPA proposed to terminate the Amitrole Special Review based on the determination that the benefits of use outweigh the risks. The Agency solicited public comments for a 30-day period and no comments were received. Therefore, with this Notice, EPA is announcing that it has terminated the Amitrole Special Review.

FOR FURTHER INFORMATION CONTACT: By mail Philip J. Poli, Review Manager, Special Review Branch, Special Review and Reregistration Division (H7508W), Office of Pesticide Programs, Environmental Protection Agency, 401 M St., SW. Washington, DC 20460. Office location and telephone number: Third floor, Westfield Bldg., 2800 Jefferson Davis Highway, Arlington, VA. (703) 308-8038.

SUPPLEMENTARY INFORMATION:

Electronic Availability: This document and the Preliminary Determination to Terminate the Amitrole Special Review are available as an electronic file on the *Federal Bulletin Board* at 9 a.m. on the date of publication in the **Federal Register**. By modem dial (202) 512-1387 or call (202) 512-1530 for disks or paper copies. This file and the Preliminary Determination are available in Postscript, Wordperfect 5.1 and ASCII. The Preliminary Determination was published in the **Federal Register** on October 8, 1992 at 57 FR 46448.

I. The EPA's Decision Regarding Special Review

This Notice concludes EPA's administrative Special Review of the risks and benefits of amitrole which was initiated in a **Federal Register** Notice of May 15, 1984 (49 FR 20546). In the October 8, 1992 **Federal Register** (57 FR 46448), EPA announced its intent to terminate the Amitrole Special Review. As stated in that document, based on its risk and benefits assessment, EPA has concluded that the benefits provided from the continued existing use of amitrole outweigh the risks. EPA has received no comments in response to the October 8, 1992 Notice. Accordingly, for the reasons set forth in the October 8, 1992 Notice (57 FR 46448), EPA is announcing that it has terminated the Amitrole Special Review.

II. Availability of Public Docket

EPA established a public docket for the Amitrole Special Review. This public docket includes this Notice; any other Notices pertinent to the Amitrole Special Review and to EPA's decision regarding the termination of the Amitrole Special Review; documents not considered Confidential Business Information; copies of written comments or other materials submitted to EPA at any time during the Special Review process by any person outside the government in response to the Amitrole Special Review; and a current index of materials in the public docket. The public docket is located in Rm. 1132, Crystal Mall 2, 1921 Jefferson Davis Highway, Arlington, VA. 22202 and can be viewed from 8 a.m. to 4 p.m. Monday through Friday, excluding legal holidays.

Dated: December 31, 1992.

Linda J. Fisher,

Assistant Administrator for Prevention, Pesticides and Toxic Substances.

[FR Doc. 93-1501 Filed 1-21-93; 8:45 am]

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federal register

Friday
January 22, 1993

Part VI

Department of Justice

Office of Juvenile Justice and Delinquency Prevention

Final Comprehensive Plan for Fiscal Year 1993; Notice

DEPARTMENT OF JUSTICE

Office of Juvenile Justice and Delinquency Prevention

Final Comprehensive Plan for Fiscal Year 1993

AGENCY: Office of Justice Programs, Office of Juvenile Justice and Delinquency Prevention.

ACTION: Notice of final comprehensive plan for Fiscal Year 1993.

SUMMARY: The Office of Juvenile Justice and Delinquency Prevention is publishing this Notice of its Final Comprehensive Plan for Fiscal Year 1993.

ADDRESSES: Office of Juvenile Justice and Delinquency Prevention, 633 Indiana Avenue NW., Washington, DC 20513.

FOR FURTHER INFORMATION CONTACT: Marilyn Silver, Information Dissemination Unit, (202) 307–0751. [This is not a toll-free number.]

SUPPLEMENTARY INFORMATION: The Office of Juvenile Justice and Delinquency Prevention (OJJDP) is a component of the Office of Justice Programs in the U.S. Department of Justice. Pursuant to the provisions of section 204(b)(5)(A) of the Juvenile Justice and Delinquency Prevention Act of 1974, as amended, 42 U.S.C. 5614(b)(5)(A) (hereinafter called the JJDP Act), the Acting Administrator of the Office of Juvenile Justice and Delinquency Prevention (OJJDP) is publishing a Final Comprehensive Plan describing the program activities which OJJDP intends to carry out during Fiscal Year 1993. The Final Plan includes activities specified in part C and part D of title II of the JJDP Act. Taking into consideration comments during the 45-day period beginning with the publication of the proposed plan in the **Federal Register** on November 9, 1992, this publication sets forth final new and continuation programs for Fiscal Year 1993 and concludes with a summary of the substantive comments received and the responses of OJJDP to those comments.

The 1984 Amendments to the JJDP Act established in OJJDP a Missing and Exploited Children's Program (title IV of the JJDP Act, also called the Missing Children's Assistance Act). Programs and activities proposed for funding under the Missing and Exploited Children's Program are not included in this Proposed Comprehensive Plan for Fiscal Year 1993. The Fiscal Year 1993 Missing Children's proposed program priorities have been separately published in the **Federal Register** for public comment as required by section 406(a) of the JJDP Act, 42 U.S.C. 5776(a).

The actual solicitation of grant applications under the Final Comprehensive Plan will be published separately, at a later date, in the **Federal Register**. No proposals, concept papers, or other forms of application should be submitted at this time.

Introduction

The National Commission on Children final report, "Beyond Rhetoric: A New American Agenda for Children and Families," chronicles the need to strengthen opportunities for children to develop their potential. These needs include improved educational opportunity and achievement, strong and supportive families, improved value development, and child and family protection and services.

The Report points out in Chapter 8, "Supporting the Transition to Adulthood," "* * * that most young people emerge from adolescence healthy, hopeful, and able to meet the challenges of adult life." This is extremely encouraging; however, we continue to be concerned about those in our youth population who continue to engage in high-risk behaviors that victimize themselves and others and threaten their futures.

In the area of delinquency, crime and violence, there were an estimated 2.3 million arrests of persons younger than 18 in 1991 (*Arrests of Youth 1991*, National Center for Juvenile Justice, table 1). Over 100,000 of these arrests were for violent crimes and over 700,000 were for serious property crimes. The number of arrests of persons younger than 18 for violent crimes increased 41 percent from 1982–1991 (*Arrests of Youth 1991*, National Center for Juvenile Justice, table 3). The violent crimes with the greatest proportionate increase in under age 18 arrests were murder (93 percent) and aggravated assault (72 percent). Arrests of those under age 18 for forcible rape increased 24 percent and robbery increased 12 percent. In 1991 nearly two-thirds (64 percent) of juvenile offenders taken into custody were referred by police to juvenile court. Juvenile courts process nearly 1.2 million delinquency cases annually (*Juvenile Court Statistics 1989*, National Center for Juvenile Justice, table 1, p. 13).

These alarming statistics contributed to Attorney General William P. Barr's recommendations pertaining to effective deterrence and punishment of violent youthful offenders. (See Combating Violent Crime: 24 Recommendations to Strengthen Criminal Justice, U.S. Department of Justice, July 1992).

OJJDP's Fiscal Year 1993 Program Plan is designed to reduce levels of serious, violent, and chronic juvenile crime through a range of prevention, intervention, and secure confinement sanctions and treatment strategies. Several of the initiatives in the plan incorporate the goals and objectives of OJJDP's Juvenile Justice and Delinquency Prevention Component of the Weed and Seed strategy. (See Weed and Seed: Juvenile Justice and Delinquency Prevention Component, OJJDP, November 1, 1992). This document, prepared in cooperation with the Coordinating Council on Juvenile Justice and Delinquency Prevention, is available upon request from OJJDP.

The overall Weed and Seed strategy addresses serious and violent crime through effective law enforcement, tough but fair sanctions, community revitalization, and prevention, education, and treatment programs. The first phase, "Weeding," is accomplished by utilizing the resources of the criminal justice system to remove and incapacitate violent criminals and drug traffickers from targeted neighborhoods, including the violent juvenile offender. The second phase, "Seeding," revitalizes the community by providing a broad range of prevention, intervention and treatment services along with meaningful economic opportunities for community residents. Community oriented policing serves as a bridge between the "Weed" and the "Seed" activities (see "Operation Weed and Seed: Reclaiming America's Neighborhoods," U.S. Department of Justice, 1992).

The Juvenile Justice Delinquency Prevention Component of the Weed and Seed strategy encourages the establishment of a broad range of basic program services for at-risk youths in order to develop each youth's full potential. Through the Coordinating Council on Juvenile Justice and Delinquency Prevention and in conjunction with the Executive Office for Weed and Seed, the Attorney General and OJJDP have encouraged Federal agencies with program responsibilities for youths to redirect existing program resources to serve youths at the greatest risk of delinquency. OJJDP will focus its program resources on implementing a broad range of prevention, intervention and treatment programs for youths who have come into contact with the juvenile justice system by committing criminal acts. These programs will stress accountability, immediate and effective intervention and tough but fair sanctions for criminally involved youths. These programs also aim to

protect the community from serious, violent and chronic juvenile offenders.

OJJDP's "graduated sanctions" program approach, when coordinated with the provision of basic services and primary (all youths) and secondary (youths at greatest risk) delinquency prevention programming, is designed to interrupt the cycle of at-risk behavior, escalating delinquent conduct and adult criminal careers. In conjunction with other Federal, State and local resources, the Weed and Seed Sites, as well as other jurisdictions who adopt this program approach, will provide a laboratory for OJJDP to test and demonstrate the extent to which this approach can contribute to the revitalization of our Nation's neighborhoods.

In implementing the Fiscal Year 1993 Program Plan, OJJDP will continue the process of developing, testing and demonstrating the graduated sanctions concept throughout its programs, while also maintaining an appropriate emphasis on Weed and Seed Sites.

- For both new competitive programs to be funded at the State or local level and new programs that provide funds to national organizations to provide services at the State and local level, a small competitive point preference may be given to applicants who propose to either provide services in Weed and Seed Sites or to Weed and Seed Sites eligible for such services, as appropriate.
- For continuation national project recipients, OJJDP has already focused a variety of program resources on Weed and Seed Sites and will continue an appropriate emphasis throughout Fiscal Year 1993. Many of these activities are noted under the various program descriptions and, where commitments are in place for Fiscal Year 1993, they are described.
- For other continuation awards OJJDP, will negotiate with grantees and task contractors to identify and ensure the provision of appropriate technical assistance, training, information, and direct program services to Weed and Seed Sites, other jurisdictions adopting the graduated sanctions program approach, and other eligible service recipients.

Through OJJDP's funding process, a broad spectrum of valuable program resources can be focused on a community's youths in a coordinated and effective manner. OJJDP will continue to serve a broad variety of critical program needs that assist State and local governments, private nonprofit agencies and practitioners to reduce delinquency and improve the operation of the juvenile justice system.

Fiscal Year 1993 Program Planning Activities

The OJJDP program planning process for Fiscal Year 1993 is coordinated with the Assistant Attorney General and the four other Program Bureau components of the Office of Justice Programs (OJP). The program planning process involved the following steps:

- Internal review of existing programs by OJJDP staff;
- Internal review of proposed programs by other Department of Justice components;
- Review of information and data from OJJDP grantees and contractors;
- Review of information contained in State comprehensive plans;
- Review of comments made by youth services providers, juvenile justice practitioners, and researchers;
- Consideration of suggestions made by juvenile justice policy makers concerning State and local needs; and
- Consideration of all comments received during the period of public comment on the Proposed Comprehensive Plan.

Discretionary Program Activities

Discretionary Grant Continuation Policy

OJJDP has listed in the following pages those projects currently funded in whole or in part with part C and part D funds and eligible for continuation funding in Fiscal Year 1993. Continuation funding consideration for an additional project period for previously funded discretionary grant programs will be based upon several factors, including:

- The extent to which the project responds to the applicable requirements of the JJDP Act;
- Responsiveness to OJJDP and Department of Justice Fiscal Year 1993 program priorities;
- Compliance with performance requirements of prior grant years;
- Compliance with fiscal and regulatory requirements;
- Compliance with any special conditions of award; and
- The availability of funds.

Continuation funding for an additional new budget period within an existing project period depends upon grantee compliance with established conditions of eligibility for additional budget period funding and achievement of the prior year's objectives.

New part C programs as well as those recommended for continuation funding for an additional project period must be awarded under a competitive process unless the Administrator waives this requirement in writing based on a Presidential declaration, under 42 U.S.C. 5121 et seq., that a major disaster or emergency exists or the Administrator finds that a particular program is uniquely qualified. An asterisk (*) indicates programs identified by Congress for funding.

Fiscal Year 1993 Program Listing

New Programs	
Accountability-Based Community (ABC) Intervention Program	$300,000
Serious, Violent, and Chronic Offender Program Development	300,000
Prevention of Delinquency through Child Centered Community-Based Policing	50,000
Training for Juvenile Detention Center Care Givers	50,000
Violence Study—Causes and Correlates	200,000
*Law-Related Education in the Juvenile Justice Setting	640,000
*Juvenile Gangs Prevention/Treatment Programs	1,200,000
*National Network of Children's Advocacy Centers	250,000
Hate Crime Study	100,000
Prevention of Hate Crimes	50,000
Due Process Advocacy Program Development	100,000
Continuation Programs	
Violent Crime and Gangs	
Serious Habitual Offender Comprehensive Action Program (SHOCAP)	150,000
National Youth Gang Clearinghouse	339,512
Targeted Outreach with a Gang Prevention and Intervention Component	400,000
Youth Gang Intervention Training	350,000
Victims	
*Advocacy for Abused and Neglected Children	2,000,000
*Improving the Juvenile and Family Courts' Handling of Child Abuse and Neglect Cases	500,000
*Permanent Families for Abused and Neglected Children	225,000
Research and Evaluation	
Independent Evaluations	640,000
Statistics, Information Systems, and Technology	
Children in Custody/Census	300,000
Juvenile Justice Clearinghouse	814,714
*Coalition for Juvenile Justice	600,000
Juvenile Justice Data Resources	55,000
Juvenile Justice Statistics and Systems Development	300,000
Juveniles Taken Into Custody (JTIC)/IAA	150,000
Juveniles Taken Into Custody (JTIC)/Assistance	450,000
National Juvenile Court Data Archive	615,000
Community Policing And Innovative Law Enforcement	
Juvenile Justice Training for Law Enforcement Personnel	288,000
Crime and Drug Abuse Prevention	
The Congress of National Black Churches: National Anti-Drug Abuse Program	200,000
Drug Abuse Prevention—Technical Assistance Voucher Project	200,000
Effective Strategies in the Extension Service Network, Phase III	75,000
Intensive Community-Based Aftercare Program	150,000
*Law-Related Education (LRE)	2,560,000

Native American Alternative Community-Based Program	400,000
Partnership Plan, Phase V (Cities in Schools)	300,000
Professional Development for Youth Workers	200,000
Reaching At-Risk Youth in Public Housing	300,000
Setellite Prep School Program and Early Elementary Schools for Privatized Public Housing	625,000
School Safety Center	200,000
Strategic Intervention for High Risk Youth	350,000
*Teens, Crime and Community: Teens in Action in the 90s	400,000
Intermediate Sanctions, Drug, Testing, and Offender Accountability	
Boot Camp for Juvenile Offenders: Constructive Intervention and Early Support OJJDP	750,000
BJA	600,000
Delay in the Imposition of Sanctions	100,000
Training and TA Curriculum for Drug ID, Screening and Testing in the JJ System	100,000
Enhancing Enforcement Strategies for Juvenile Impaired Driving Due to Drug and Alcohol Abuse	75,000
Juvenile Restitution	100,000
Testing Juvenile Detainees for Illegal Drug Use	100,000
Enhanced Prosecution, Adjudication, and Corrections	
Training and Technical Assistance for Juvenile Detention and Corrections (The James E. Gould Memorial Program)	250,000
Improvement in Correctional Education for Juvenile Offenders	200,000
Improving Conditions of Confinement: Training for Juvenile Corrections Staff	525,000
Improving Literacy Skills of Institutionalized Juvenile Delinquents	250,000
Insular Area Support	403,000
Juvenile Corrections Industries Ventures Program	75,000
*Juvenile Court Training	1,100,270
OJJDP Technical Assistance Support Contract	758,679
*A Study to Evaluate Conditions in Juvenile Detention and Correctional Facilities	100,000
*Technical Assistance to the Juvenile Courts	392,993
A Program to Reduce Minority Institutionalization (The Deborah Ann Wysinger Memorial Program)	1,200,000

Discussion and Comments

New and Continuation Programs

The following are brief summaries of each of the proposed new and continuation programs selected for Fiscal Year 1993. Although the continuation programs are listed under particular focus areas, many could also be listed in an additional focus area, particularly those that provide Weed and Seed program support in Weed and Seed Sites. New and continuation programs with a Weed and Seed focus or priority are denoted (W&S) after the program title. Specific programs remain subject to change with regard to their priority status, amount, sites for implementation, and other descriptive data and information based on grantee performance, application quality, fund availability, and other factors.

A number of programs contained in this document have been identified for funding by Congress. An asterisk (*) identifies those programs.

The Acting Administrator has selected programs reflecting the intent of Congress, the Administration, some public comments and the exercise of his programmatic discretion.

New Programs

Accountability-Based Community (ABC) Intervention Program (W&S)

$300,000

The Accountability-Based Community (ABC) Intervention Program is intended to be implemented in Weed and Seed Sites and other urban jurisdictions as a demonstration program. Its goal is to assist targeted youths in developing their full potential.

The ABC Intervention Program is a program strategy for community youths who have become involved in delinquency, particularly those likely to become chronic or serious offenders. It is not designed to provide residential services for serious and violent juvenile offenders.

This program is designed to provide different levels of accountability and responsibility contingent upon the behavior and prior delinquency of juveniles. In addition, intensive services will be provided to enhance life skills, treat chemical dependency, and provide educational services. Linkages to family and community social institutions are essential program elements.

Operated under public authority, the ABC Intervention Program will incorporate graduated sanctions, principles of accountability and responsibility, as well as treatment and rehabilitation services, in a comprehensive model. The program will provide a range of services so that each case plan is tailored to the individual needs of each participant.

Each ABC Intervention Program will consist of three program component levels and be administered by local judicial, probation and parole, or correctional agencies in cooperation with private nonprofit community-based organizations. Level A: Day treatment or other correctional service program(s) available through or housed at a Community Corrections Center, and providing intensive services for up to six months. Level B: Residential assignment to the Community Correctional Center, a group home, or other non-secure residential option for three to twelve months, followed by aftercare services under Level A. Level C: Residential assignment to a boot camp or secure community-based treatment facility for up to six months, again followed by aftercare services under Level A. Program components under Levels A and B might include restitution, victim mediation, and community service.

Aftercare will be a formal component for all residential placements, actively involving the family and the community in supporting and reintegrating the juvenile into the community.

This program is open to all interested applicants on a competitive basis.

Serious, Violent and Chronic Offender Program Development

$300,000

The major objectives of this program development project are: To develop target group criteria for each of seven strategies to comprehensively address serious, violent and chronic juvenile offenders, to develop comprehensive program designs for implementation, and to develop a plan for testing and demonstrating the comprehensive program models in selected sites. A comprehensive model will be developed for each of the following strategies: (1) Support and assistance to families and core social institutions, including development of a Youth Leadership and Service Program design; (2) delinquency prevention programs and services for at-risk youths, including youths who have had contact with the juvenile justice system; (3) immediate intervention for first-time and minor offenders; (4) a broad range of intermediate sanctions for serious and repeat offenders; (5) small secure community-based facilities; (6) training schools, reformatories and other congregate care facilities; and (7) waiver or transfer to the criminal justice system, including the availability of juvenile records in criminal proceedings. Each of the seven strategies, to be targeted for future implementation in competitively determined sites, will include: target group selection criteria; program components or elements described in relation to their appropriateness for high-risk youths and serious, violent and chronic juvenile offenders; and risk-needs assessments, comprehensive case planning, and aftercare, as appropriate. An implementation manual will be produced for use in demonstration sites and by other interested jurisdictions.

This program is open to all interested applicants on a competitive basis.

Prevention of Delinquency Through Child-Centered Community-Based Policing (W&S)

$50,000

The purpose of this project is to prepare technical assistance and training materials that can be used to replicate, in a selected number of Weed and Seed and other competitively selected Sites, the child-centered community based policing model developed by the Yale Child Development Center and the New Haven Police Department. The model was developed in response to the increasing number of young children who were perpetrators, victims, or witnesses of aggression and violence. The program attempts to change the "atmosphere" of police departments in relation to children and to increase the competence of police officers in their varied interactions with children and families. Essentially, the program seeks to reorient police officers in their interactions with children in order to optimize the psychological roles which they can play as providers of a sense of security, positive authority, and models for identification.

The program has three major components: the training of all incoming police recruits in the principles of child and adolescent development; clinical fellowships for veteran officers who have field supervisory roles; and a 24-hour consultation service for officers responding to calls in which children are either the direct victims or witnesses of violence.

The program's goal is to prevent youths who witness violence or who are victims of violence from identification with violent role models and from adaptation of violence as appropriate and reasonable modes of functioning. The program will document and develop training and technical assistance materials to inform jurisdictions interested in adopting and implementing the New Haven Child Development and Community-Based Policing Model.

This program is open to all interested applicants on a competitive basis. Future OJJDP funds may also be provided to the New Haven Agencies to serve as a host site for purposes of providing technical assistance.

Training for Juvenile Detention Center Care Givers

$50,000

Enhanced training of detention center care givers is needed to improve the administration of juvenile detention. The forthcoming results of the OJJDP "Conditions of Confinement" study document this need, particularly in such areas as education, health care, overcrowding reduction, gangs and drugs. In addition, this award will establish an infrastructure for subsequent training of detention professionals using new curriculum material in the "Desktop Guide to Detention," currently being prepared. Funds will be made available to enable line detention staff to develop, deliver, and participate in regional training sessions providing basic, in-service training for detention center care givers.

This program will be implemented by the National Juvenile Detention Association. No additional applications will be solicited in Fiscal Year 1993.

Violence Study—Causes and Correlates (W&S)

$200.000

OJJDP will support additional analyses of data collected under its Program of Research on the Causes and Correlates of Delinquency, conducted at the State University of New York at Albany, the University of Pittsburgh, and the University of Colorado. The draft final report, "Urban Delinquency and Substance Abuse," is under review. To utilize the collected data more fully, additional analyses need to be performed. These analyses are intended to benefit directly the serious, violent and chronic offender program development OJJDP will fund under the "Chronic, Serious, and Violent Offender Program Development" project. Topics for analysis will be determined by program development requirements. For example, development of risk assessment instruments would benefit from more specific analyses regarding risk factors and pathways to chronic, serious, or violent offending.

This program will be implemented by the current grantees listed above. The grantees will also carry out a comprehensive planning effort, including an in-depth analysis of data bases, and critically assess the Causes and Correlates Program design, methods, survey instruments, and data collection procedures for adaptation to three new sites, viz. Washington, DC; Los Angeles, California; and Milwaukee, Wisconsin. No additional applications will be solicited in Fiscal Year 1993.

*Law-Related Education in Juvenile Justice**

$640,000

This new program for law-related education (LRE) is established in compliance with section 299(e) of the JJDP Act Amendments of 1992 which provide that 20 percent of the funds appropriated for the national law-related education program under section 261(a)(6) shall be reserved each fiscal year for not less than two programs that did not receive Special Emphasis funding prior to October 1, 1992.

In 1990, OJJDP began experimenting with LRE for at-risk youths in a variety of juvenile justice settings through its consortium of grantees implementing its national LRE program in schools. Interim assessments of this effort suggest positive effects on youths. Administrators and staff of facilities and programs using LRE with this target population have been extremely supportive of the effort.

To expand and enhance upon these initial activities, OJJDP will fund organizations to provide training and technical assistance in law-related education that are focused on youths in juvenile justice settings. The primary purpose of this program is to increase the capabilities of juvenile justice personnel (including but not limited to teachers, line staff, administration, and community resource people) to implement LRE programs in juvenile justice settings.

The major objectives are to provide LRE awareness to the juvenile justice community; develop or adapt and disseminate LRE curricula and lesson plans focused on youths under the supervision of the juvenile court; provide training and technical assistance to teachers and others in the juvenile justice system; increase public awareness of LRE in juvenile justice settings; and develop an implementation model adaptable for a future evaluation of this intervention with these targeted youths.

The five primary grantees currently awarded OJJDP funds for LRE will not be eligible to complete for these funds.

The following two new programs were identified by Congress under the Fiscal Year 1993 appropriation for OJJDP:

*Juvenile Gangs Prevention and Treatment Programs**

$1,200,000

Continuation programs, as well as several potential new grants, will support locally-based part D gang prevention programs in the areas of training and educational opportunities to reduce drug dependency and gang involvement. These programs are designed to: (1) Reduce participation of juveniles in drug-related activities, (2) reduce juvenile involvement in gang-related activities, and (3) promote the

involvement of juveniles in lawful activities.

Programs address methods to: (1) Reduce delinquency and dropout rates, (2) provide educational opportunities for at-risk youths, (3) develop mentoring relationships between at-risk youths and responsible youths, (4) educate at-risk youths on mandatory penalties for drug crimes, and (5) address the problems of rural gangs.

Prospective applicants specifically identified by Congress for funding consideration under this program are: (a) New Community Corporation of Newark, New Jersey; (b) San Francisco State University and the San Francisco, California, Conservation Corps; (c) St. Louis, Missouri, Gang Program; (d) Ontario, Oregon, Gang Program; and (e) Sports Museum of New England, (Massachusetts). These entities have been invited to submit concept papers for consideration and will be eligible to receive a combined total of up to $500,000 of these funds. No additional applications, other than the five prospective applicants noted above, will be solicited in Fiscal Year 1993.

OJJDP is currently funding a number of part D programs that will be continued, in part, as identified by Congress. These projects, described under *Continuations,* are as follows: (1) Targeted Outreach with a Gang Prevention and Intervention Component, (2) Strategic Intervention for High Risk Youths, (3) Satellite Prep School Program and Early Elementary Schools for Privatized Public Housing, and (4) Reaching At-Risk Youths in Public Housing.

*National Network of Children's Advocacy Centers**

$250,000

This program will support the National Network of Children's Advocacy Centers through the development and implementation of coordinated training, technical assistance, and information sharing programs. The network links together local Children's Advocacy Center programs whose purpose is to provide multidisciplinary coordination in the investigation and prosecution of child abuse cases. Leaders in this effort are the National Children's Advocacy Center in Huntsville, Alabama; the University of Oklahoma's Justice Center in Tulsa, Oklahoma; and the National Children's Advocacy Center in Honolulu, Hawaii. An application will be solicited from one of these centers. No other applications will be solicited in Fiscal Year 1993.

The following three new programs were identified by the Juvenile and Justice Delinquency Prevention Amendments of 1992 as new programs to be funded in Fiscal Year 1993:

Hate Crime Study

$100,000

In accordance with section 248(a)(7)(A) of the JJDP Act, as amended, the Administrator will conduct a Hate Crime Study and submit a report to the Committee on Education and Labor of the House of Representatives and the Committee on the Judiciary of the Senate detailing the results of the study addressing each objective specified.

The JJDP Act requires that this study assess the characteristics of juveniles who commit hate crimes, including a profile of such juveniles based on the motives for committing hate crimes; the age, sex, race, ethnicity, education level, locality, and family income of such juveniles; whether such juveniles are familiar with publications or organized groups that encourage the commission of hate crimes; the characteristics of hate crimes committed by juveniles, including: The types of hate crimes committed; the frequency with which institutions and natural persons, separately determined, were the targets of such crimes; the number of persons who participated with juveniles in committing such crimes; the types of law enforcement investigations conducted with respect to such crimes; the law enforcement proceedings commenced against juveniles for committing hate crimes; and the penalties imposed on such juveniles as a result of such proceedings; and the characteristics of the victims of hate crimes committed by juveniles, including: The age, sex, race, ethnicity, locality of the victims and their familiarity with the offender; and the motivation behind the attack.

Because data collection on hate crimes is still in its early stages, the program will assess the state-of-the-art for such data collection and make specific recommendations for future information collection. This information will inform and direct future OJJDP programmatic efforts to reduce and respond to hate crimes.

This program is open to all interested applicants on a competitive basis.

Prevention of Hate Crimes

$50,000

This project is in response to section 261(a)(9), which requires the Administrator to establish or support programs designed to prevent and to reduce the incidence of hate crimes by juveniles. These programs includes: model educational programs that are designed to reduce the incidence of hate crimes, (i.e., addressing the specific prejudicial attitude of each offender; developing an awareness in the offender of the effect of the hate crime on the victim; educating the offender about the importance of tolerance in our society); and sentencing programs that are designed specifically for juveniles who commit hate crimes and that provide alternatives to incarceration.

OJJDP will provide funds to assess existing curriculum materials and to develop a multi-purpose curriculum that is appropriate for general educational settings and for use in institutional or placement settings. Under future funding, with guidance from the study on hate crimes, OJJDP will consider support for the development and demonstration of programs for youths who commit hate crimes.

This program is open to all interested applicants on a competitive basis.

Due Process Advocacy Program Development

$100,000

Section 261(a)(3) of the JJDP Act, as amended, requires the Administrator to establish or support advocacy programs and services that encourage the improvement of due process available to juveniles in the juvenile justice system and the quality of legal representation for such juveniles.

In furtherance of this goal, OJJDP will support a development effort in Fiscal Year 1993 to examine approaches to improving due process and the quality of representation for juveniles in the juvenile justice system and to determine which are the most promising and cost-effective. From this survey effort, the recipient of this award will develop a strategy for a nationwide program to improve due process and the quality of representation for juveniles in the juvenile jsutice system.

This program is open to all interested applicants on a competitive basis.

Continuation Programs

Weed and Seed Initiative

Programs that contain a Weed and Seed focus or priority are listed under the applicable program area and denoted by (W&S) after the program title.

Violent Crime and Gangs

Serious Habitual Offender Comprehensive Action Program (SHOCAP) (W&S)

$150,000

SHOCAP is an information and case management program involving police, probation, prosecution, social services, school, and corrections authorities. Its focus is on juvenviles who repeatedly commit serious crimes, with particular emphasis on sentencing dispositions. Public comments supporting this program were received from existing SHOCAP sites. The SHOCAP Program and sites have received funding support since 1983 in the total approximate amount of $5,587,795. The program has been demonstrated and replicated in 24 primary sites and over 300 affiliate and satellite sites. Because this program is an effective resources to identify, track, and prosecute the serious, violent and chronic offender, it is included in the Fiscal Year 1993 Program Plan as a new component of the Training and Technical Assistance Division's Gang and Drug Police Operations Leading to Improved Child and Youth Services (POLICY) Training Program.

The Gang and Drug POLICY Training Program provides training designed to improve law enforcement management practices and effectiveness in the juvenile justice area. It emphasizes law enforcement strategies for detecting and apprehending perpetrators of serious offenses and the habitual offender and addresses a coordinated community response to juvenile gang activities including recognition, deterrence and control issues. Gang and Drug POLICY Training Program focuses on drug abuse issues and strategies for coordinated community responses through prevention, education, intervention, model programs, and resource development.

The Gang and Drug POLICY Training Program assumed a leadership role in comprehensive community planning by working with Weed and Seed communities in Fiscal Year 1992 to assist steering committees, which are made up of community leaders, to develop a comprehensive Weed and Seed strategy for the community's juvenile population. The grant will further this comprehensive training effort by integrating the Gang and Drug SHOCAP Training Program into the Gang and Drug POLICY Training Program. This will effectively serve the goal of cooperation and coordination between law enforcement and other juvenile justice system components while increasing access to the SHOCAP model for a broad spectrum of interested jurisdictions.

OJJDP will supplement the Gang and Drug POLICY Training Program (see Youth Gang Intervention Training Program) in the amount of $150,000 to add this important new training component in Fiscal Year 1993. The current Special Emphasis grant to Public Administration Services (PAS) for the SHOCAP Program will continue with the existing grant fund balance through September 1993. No additional applications will be solicited in Fiscal Year 1993.

National Youth Gang Clearinghouse

$339,512

This contract provides funding for OJJDP's National Youth Gang Clearinghouse. The Clearinghouse (1) gathers and disseminates current information on model programs for combating violent juvenile gangs; (2) gathers and disseminates current statistical and descriptive information on violent juvenile gangs; and (3) assists in the coordination of Federal, State and local gang program development and training and technical assistance efforts by providing information to the field on relevant programs and activities. This program will continue to be administered by the current contractor, Digital Systems Research, Inc. No additional applications will be solicited in Fiscal Year 1993.

Targeted Outreach With a Gang Prevention and Intervention Component (W&S)

$400,000

This program is designed to enable local Boys and Girls Clubs to prevent youths from entering gangs and to intervene with gang members in the early stages of gang involvement to divert them away from gangs and toward more constructive programs. The National Office of Boys and Girls Clubs will provide training and technical assistance to the 57 existing sites and add 20 new gang prevention and 4 intervention sites. This program will give preference to Weed and Seed Sites that meet the Boys and Girls Clubs' selection criteria. The program will be implemented by the current grantee, Boys and Girls Clubs of America. No additional applications will be solicited in Fiscal Year 1993.

Youth Gang Intervention Training (W&S)

$350,000

The Gang and Drug POLICY (Police, Prosecution, Probation, Operations Leading to Improved Children and Youth Services) Training Program helps local jurisdictions develop a comprehensive strategy for combating gangs and drugs. The objectives of this training program are: (1) To provide a process for community leaders to recognize the benefits of cooperatively developing strategies to address the problems resulting from gang and drug activities; (2) to promote an awareness and recognition of (a) the problems of gangs and drugs, (b) justice system practices, (c) behavior patterns of gangs and gangs members, and (d) current system practices and demonstration projects; (3) to provide strategies and techniques for public and private interagency partnerships dealing with community gang and drug related problems; (4) to clarify and document the roles, responsibilities, and issues relating to an interagency approach to the prevention, intervention and suppression of these illegal activities of youth gangs; (5) to encourage leadership and innovation in the management and resolution of gang and drug problems; and (6) to develop or improve the response capacity to gang and drug issues through an effective interagency model which matches resources to demands.

As noted under the Serious Habitual Offender Comprehensive Action Program (SHOCAP), this program will receive an additional $150,000 in Fiscal Year 1993 to add a SHOCAP training component. This program will be funded in Fiscal Year 1993 under a competitive contract solicitation for award to a nonprofit organization.

Victims

Advocacy for Abused and Neglected Children

$2,000,000

The National Court Appointed Special Advocate Association (NCASAA) provides training and technical assistance to local and statewide programs; assists in program development; advocates the best interest of abused and neglected children; publicizes the Court Appointed Special Advocate (CASA) concept which helps recruit volunteers; develops management systems and standards to support and improve local CASA operations; provides a resource library and resource services; develops cooperative relationships with other national and regional organizations; and performs a variety of related services in furtherance of its goal of assuring that every child who needs one has a CASA. There are now 520 CASA programs in 49 States, with 28,000 volunteers. There

are 12 statewide programs mandated and State-funded, and 24 State associations and networks offering support services to their State's program. This program will be implemented by the current grantee (NCASAA) under separate assistance awards of $1 million each, one to provide technical assistance and training services and one to support the expansion of CASA programs in both new and existing jurisdictions. No additional applications will be solicited in Fiscal Year 1993.

*Improving the Juvenile and Family Courts' Handling of Child Abuse and Neglect Cases**

$500,000

The purpose of this project is to develop model approaches and programs to allow juvenile and family courts to improve handling of child abuse and neglect cases. The National Council of Juvenile and Family Court Judges has developed model programs to assist State courts in providing training and technical assistance to judicial personnel, attorneys and other key people in juvenile and family courts. Additional model programs will be designed to help state court systems develop more effective procedures for determining whether child service agencies have made "reasonable efforts" to prevent placement of children in foster care and for reuniting families thereafter. Procedures for sharing information among health professionals, social workers, law enforcement personnel, prosecutors, defense attorneys, and juvenile and family court personnel will also be strengthened. This project will continue to be implemented by the current grantee, The National Council of Family and Juvenile Court Judges. No additional applications will be solicited in Fiscal Year 1993.

*Permanent Families for Abused and Neglected Children**

$225,000

This is a national project to prevent unnecessary foster care placement of abused and neglected children; to reunify the families of children already in care; and to ensure permanent adoptive homes when reunification is impossible. The purpose of this project is to ensure that foster care is utilized only as a last resort and a temporary solution for children. Accordingly, the project is designed to ensure that government's responsibility to children in foster care is duly acknowledged by all appropriate disciplines. The project will continue to call upon judges, social service personnel, citizen volunteers, attorneys, and others to recognize and resolve the problems of children in foster care. Project activities include national training programs for judges, social service personnel, citizen volunteers and others in the Reasonable Efforts Provision of 42 U.S.C. 671(a)(15); training in selected lead States; and development of model questions to guide risk assessment. This program will be implemented by the current grantee, The National Council of Family and Juvenile Court Judges. No additional applications will be solicited in Fiscal Year 1993.

Research and Evaluations

Independent Evaluations

$640,000

OJJDP awarded a contract in 1991 to conduct independent third party evaluations of selected OJJDP-funded programs. Projects to be examined in Fiscal Year 1993 include:

(1) Satellite Pre-School Program;
(2) Law Related Education Programs;
(3) Horizons Plus;
(4) Gang and Drug Training and Technical Assistance; and
(5) Intensive Community-Based Aftercare Program.

This contract focuses on the efficacy, cost-effectiveness, and impact of OJJDP's discretionary programs. Assessment data will be made available to all concerned. The following criteria are considered in selecting programs for evaluation: (1) Continuations in order of number of years of funding and total expenditures; (2) new action programs being tested to serve as possible models; and (3) programs being considered for continuation. This program will be implemented by the current contractor, Caliber Associates. No additional applications will be solicited in Fiscal Year 1993.

Statistics, Information Systems, and Technology

Children is Custody Census

$300,000

This is a collaborative interagency program between the U.S. Bureau of the Census and OJJDP. All, or a major portion, of the funding will be provided by OJJDP for the biennial census of public and private juvenile detention and correctional facilities conducted by the Census Bureau. The census describes the subject facilities in terms of their resident population as well as programs and physical characteristics. This program will be implemented under an interagency agreement with the U.S. Census Bureau. No additional applications will be solicited in Fiscal Year 1993.

Juvenile Justice Clearinghouse

$814,714

The Clearinghouse provides support services to OJJDP in preparing the Office's publications; collecting, synthesizing, and disseminating information on all aspects of juvenile delinquency; and preparing specialized responses to information requests from the juvenile justice field. The clearinghouse maintains a toll-free number for information requests. This program will be implemented by the current contractor, Aspen Systems, Inc No additional applications will be solicited in Fiscal Year 1993.

*Coalition for Juvenile Justice**

$600,000

The Coalition for Juvenile Justice (Coalition) was established in 1983 as the National Coalition of State Juvenile Justice Advisory Groups. It was the renamed Coalition for Juvenile Justice effective January 1, 1993. The Coalition supports and facilitates the purposes and functions of State juvenile justice advisory groups. In 1984, Congress selected the Coalition to review Federal policies regarding juvenile justice and delinquency prevention, prepare and submit an Annual Report and recommendations to the President and Congress, and provide advice to the OJJDP Administrator. The Coalition is also authorized to develop an Information Center for Juvenile Justice and Delinquency Prevention Programs, to conduct an Annual Conference and to disseminate information, data, standards, advanced techniques, and program models. No additional applications will be solicited in Fiscal Year 1993.

Juvenile Justice Data Resources

$55,000

This is an interagency agreement between OJJDP and the University of Michigan. This program addresses the need to enhance the availability of juvenile justice data sets and technical assistance and training materials, continue the feasibility testing, analyze juvenile corrections data, and prepare reports. This program will be implemented under an interagency agreement with the University of Michigan. No additional applications will be solicited in Fiscal Year 1993.

Juvenile Justice Statistics and Systems Development

$300,000

The purpose of this program is to improve Federal, State and local statistics on juvenile justice as well as decision making and management information systems (MIS) within the juvenile justice system. The project is divided into two tracks, the National Statistics Track (NST) and Systems Development Track (SDT). The NST helps to formulate a comprehensive National Juvenile Justice Statistics program which will include a series of regular reports on the extent and nature of juvenile offending and victimization and the justice system's response to the same. A major product will be a *Report to the Nation on Juvenile Crime and Victimization*. The SDT will assess juvenile justice agencies' decision making, needs, and capabilities to generate and use information; develop models for decision making and related MIS; and develop and provide training and technical assistance to promote the adoption of model systems in test sites. This program will be implemented by the current grantee, the National Center for Juvenile Justice. No additional applications will be solicited in Fiscal Year 1993.

Juveniles Taken Into Custody (JTIC): Interagency Agreement

$150,000

The U.S. Bureau of the Census is working with OJJDP to develop a national comprehensive statistical reporting system that is responsive to the information requirements of the Juvenile Justice and Delinquency Prevention Act of 1974, as amended, and to the needs of the juvenile justice field for data on juvenile custody populations in order to assist State legislatures and juvenile justice professionals in planning and policy-making decisions. The Census Bureau acts as the data collection agent for the JTIC program. This program will be implemented under an interagency agreement with the U.S. Census Bureau. No additional applications will be solicited in Fiscal Year 1993.

Juveniles Taken Into Custody (JTIC): Assistance

$450,000

The purpose of this program is to develop a national comprehensive statistical reporting system that is responsive to the information requirements of the Juvenile Justice and Delinquency Prevention Act of 1974, as amended, and is also responsive to the needs of the juvenile justice field for relevant and timely data on juvenile custody populations and the requirements of State legislature and juvenile justice professionals for comprehensive planning and informed policy decisions. This is a continuation of the Juveniles Taken into Custody Research Program, currently funded under a cooperative agreement with the National Council on Crime and Delinquency. OJJDP plans to continue this award in Fiscal Year 1993. No additional applications will be solicited in Fiscal Year 1993.

*National Juvenile Court Data Archive**

$615,000

This program collects, processes, analyzes, and disseminates available data concerning the nation's juvenile courts. The Archive collects automated data and published reports from juvenile courts throughout the nation. Using the automated data, the Archive produces comprehensive reports on the activities of the juvenile courts. These reports examine referrals, offenses, intake, and dispositions, as well as specialized topics such as minorities in juvenile courts or specific offense categories. The Archive also provides assistance to jurisdictions in analyzing their juvenile court data. This program will be implemented by the current grantee, the National Center for Juvenile Justice. No additional applications will be solicited in Fiscal Year 1993.

Community Policing and Innovative Law Enforcement

Juvenile Justice Training for Law Enforcement Personnel

$288,000

This project provides technical assistance and training for Federal, State and local law enforcement agencies to promote a better understanding of the juvenile justice system. Three training programs are offered through this project. Police Operations Leading to Improved Children and Youth Services (POLICY) helps mid-level managers develop management strategies that integrate juvenile services into mainstream law enforcement operations and demonstrates step-by-step methods to improve police productivity in the juvenile justice area. The Child Abuse and Exploitation Investigative Techniques program provides law enforcement officers with state-of-the-art approaches for building a case against individuals charged with child abuse, sexual exploitation, or the abduction of children. The Managing Juvenile Operations program provides a series of training approaches for police executives which demonstrate simple, yet effective, methods to increase departmental efficiency and effectiveness by integrating juvenile services into the mainstream of police activity.

This program will be funded in Fiscal Year 1993 under a competitive contract solicitation for award to a nonprofit organization.

Crime and Drug Abuse Prevention

The Congress of National Black Churches: National Anti-Drug Abuse Program (W&S)

$200,000

The overall plan for this program calls for the development and implementation of a national public awareness and mobilization strategy to address the problem of drug abuse in targeted communities across the United States. The goals of the national mobilization strategy are to summon, focus, and coordinate leadership. The Department of Justice, other Federal agencies and organizations will support this effort and join forces to help mobilize groups of residents to combat community drug abuse and durg-related criminal activities. The program is currently operating in 20 cities. This award will provide funding to expand the program into 10 to 15 additional cities participating in the Weed and Seed initiative. This program will be implemented by the current grantee, The Congress of National Black Churches. No additional applications will be solicited in Fiscal Year 1993.

Drug Abuse Prevention—Technical Assistance Project (W&S)

$200,000

The major focus of this program is to provide support to community groups in their efforts to reclaim their communities, to drive out criminal activity, vandalism, and other anti-social behavior, and replace those undesirable activities with healthy, safe, and economically secure environments at the neighborhood and community levels. The project will provide technical assistance vouchers to neighborhood groups to establish or strengthen youth programs and activities which combat violence and reduce delinquency. This method of delivery allows these neighborhood groups to secure technical assistance inexpensively from sources which are familiar with their programs and their community characteristics. This program will be implemented by the National Center for Neighborhood

Enterprise. Qualified applicants serving Weed and Seed Sites will receive a preference in the award of vouchers. No additional applications will be solicited in Fiscal Year 1993.

Effective Strategies in the Extension Service Network, Phase III

$75,000

This is a collaborative interagency program between the OJJDP, the National Highway Traffic Safety Administration (NHTSA) of the Department of Transportation, and the Extension Service of the Department of Agriculture. OJJDP and NHTSA are providing the funding and the Extension Service is providing in-kind services. The purpose of this program is to establish community collaborations led by juvenile court judges and extension professionals with training and technical assistance provided by the Extension Service network. These collaborations will focus on youths' alcohol and other drug abuse, including impaired driving and other delinquent behavior. During Phase II, a national training and technical assistance center, a Center for Action, was established in partnership with the National Council of Juvenile and Family Court Judges. This program will be implemented by the current grantee, The National 4–H Council. No additional applications will be solicited in Fiscal Year 1993.

Intensive Community-Based Aftercare Program

$150,000

This initiative is designed to develop a Juvenile Aftercare Program Model which can be tested in the Juvenile Justice system. Under this initiative, an assessment of various aftercare programs was performed, prototype model with policies and procedures was developed, and a training and technical assistance package was developed for use in formal training and testing of the curriculum. This final stage of funding will complete training and technical assistance for seven States that were selected after a national competition, viz., North Carolina, New Jersey, Texas, Colorado, Nevada, Pennsylvania, and Michigan. This initiative will be implemented by the current grantee, Johns Hopkins University. No additional applications will be solicited in Fiscal Year 1993.

*Law-Related Education (LRE) (W&S)**

$2,560,000

The Law-Related Education (LRE) National Training and Dissemination Program currently involves five national LRE projects and programs which operate in 48 States and will support Weed and Seed Sites where appropriate. The purpose of this program is to provide training and materials to State and local school jurisdictions to encourage and guide them in establishing LRE delinquency prevention programs in the curricula of kindergarten through grade twelve and in juvenile justice settings. Grantees will be encouraged to place emphasis on drug abuse prevention programs in primary, middle, and secondary schools in minority urban communities. The major components of the program are: coordination and management, training and technical assistance, preliminary assistance to future sites, public information, program development, and assessment. This program will be implemented by the current grantees, the American Bar Association, the Center for Civic Education, the Constitutional Rights Foundation, the National Institute for Citizen Education in the Law, the Phi Alpha Delta Legal Fraternity and other qualified organizations. The originally proposed amount of $3,200,000 for this program has been reduced by 20 percent to expand the program to new grantees (see new program titled "Law-Related Education in Juvenile Justice") as required by section 299(e) of the JJDP Act, as amended in 1992. No additional applications will be solicited in Fiscal Year 1993.

Native American Alternative Community-Based Program

$400,000

This program is designed as a collaborative interagency effort between OJJDP and other public and private organizations having interests in Indian Affairs. The purpose of this program is to develop community-based alternative programs for Native American youths who have been adjudicated delinquent and to develop a re-entry program for Native American delinquents returning from institutional placement. The project sites are the Red Lake Band of Chippewa Indians, the Navajo Nation, the Gila River Indian Community and the Pueblo of Jemez. A multi-component design will be developed which will integrate the critical elements of the OJJDP Intensive Supervision and Community-Based Aftercare programs with cultural elements that have traditionally been utilized by Native Americans to control and rehabilitate offending youths. A training and technical assistance provider, The National Indian Justice Center, was selected to provide the sites with training and technical assistance. No additional applications will be solicited in Fiscal Year 1993.

Partnership Plan, Phase V (Cities in Schools) (W&S)

$300,000

This program is a continuation of a national school dropout prevention model that was developed and is implemented by Cities in Schools, Inc. (CIS). CIS provides training and technical assistance to States and local communities enabling them to adapt and implement the CIS model. The model focuses social, employment, mental health, drug prevention, entrepreneurship and other resources on high-risk youths and their families at the school level. Where CIS State organizations are established, they will assume primary responsibility for local program replication during "Partnership Plan, Phase V." This program is jointly funded by OJJDP and the U.S. Departments of Labor, Health and Human Services, and Commerce. Under this award, CIS is committed to establishing a traditional CIS program in at least one school within the target neighborhood in each of the ten Weed and Seed Sites where CIS has or is implementing an operational CIS program network. This project will be implemented by the current grantee, Cities in Schools, Inc. No additional applications will be solicited in Fiscal Year 1993.

Professional Development for Youth Workers

$200,000

The primary purpose of this program is to establish and promote professional development of youths and juvenile justice system providers through a formal training program. The program will be designed to include an inventory of existing training programs and their effectiveness, a needs assessment survey of training, the development of several curriculum areas, the design of a dissemination strategy, and an implementation plan for the second year of a two-year program. The overall goal of the program will be to enhance professionalism for youth workers who have responsibility for treating and caring for our nation's troubled youths. The Academy for Educational Development, Inc., initially funded in Fiscal Year 1992, will continue to implement this program in Fiscal Year 1993. No additional applications will be solicited in Fiscal Year 1993.

Reaching At-Risk Youths in Public Housing (W&S)

$300,000

This is a collaborative interagency program between OJJDP, the Bureau of Justice Assistance and the Department of Housing and Urban Development to establish Boys and Girls Clubs in public housing across the nation. HUD's Fiscal Year 1993 funding level commitment for this program is not determined. The dollar amount for this program represents OJJDP's contribution. These programs are designed to provide needed services to high-risk youths who live in public housing, thereby preventing their involvement in youth crime, drug abuse, and gangs. This program will support all official Weed and Seed Sites, provided there is a viable Boys and Girls Club structure and cooperation from the local Public Housing Authority. The program will be implemented by the current grantee, Boys and Girls Clubs of America. No additional applications will be solicited in Fiscal Year 1993.

Satellite Prep School Program and Early Elementary Schools for Privatized Public Housing (W&S)

$625,000

This is a continuation demonstration program, in which OJJDP supported the establishment of an early elementary school program in the Ida B. Wells Public Housing Development in Chicago, Illinois. This program is a collaborative effort between OJJDP, the Chicago Housing Authority (CHA), and the Westside Preparatory School and Training Institute (WSP) to establish a Prep School on the premises of the Ida B. Wells Housing Development for kindergarten to fourth grade children living in this public housing development.

The Wells Prep School opened with kindergarten and first grade students on September 14, 1992. The Prep School has been established and operates as an early intervention educational model based upon the Marva Collins Westside Preparatory School educational philosophy, curriculum, and teaching techniques. The Westside Preparatory School, a private institution located in Chicago's inner city, has had dramatic success in raising the academic achievement level of low-income minority children. The Ida B. Wells Housing Development is the Weed and Seed location for the City of Chicago, Illinois. The Wells Prep School is one of the primary "Seeding" projects in this site. Fiscal Year 1993 funds will be used to continue the operation and management of the school. Awards will be made to existing grantees. No additional applications will be solicited in Fiscal Year 1993.

School Safety Center

$200,000

This is a collaborative interagency program between OJJDP and Department of Education. The purpose of this program is to provide training and technical assistance on school safety to elementary and secondary schools, as well as to identify methods to diminish crime, violence, and illegal drug use in schools and on school campuses, with special emphasis on gang-related crime. The National School Safety Center (NSSC) maintains a library and clearinghouse with specialized information; provides research on school safety issues; and develops publications and training programs. These funds will focus on prevention of drug abuse and violence in schools and establish school safety trained personnel on the State level to provide technical assistance to localities. The Department of Education is supporting this transition to State level representatives with a transfer of $1,000,000 of Fiscal Year 1992 funds for expenditure in Fiscal Year 1993. This program will be implemented by the current grantee, the National School Safety Center at Pepperdine University. No additional applications will be solicited in Fiscal Year 1993.

Strategic Intervention for High Risk Youths (W&S)

$350,000

OJJDP, the Bureau of Justice Assistance (BJA) of the Office of Justice Programs and the Center on Addiction and Substance Abuse (Center) of Columbia University have undertaken a joint effort to help communities rescue their high risk pre-adolescents from the interrelated threats of crime and drugs. The program tests a specific intervention strategy for reducing and controlling illegal drugs and related crime in the target neighborhood and fosters healthy development among youths from drug and crime-ridden neighborhoods. Multi-service, multi-disciplinary neighborhood-based programs are being established which will provide a range of opportunities and diverse services for pre-adolescents and their families who are at high risk for involvement in illegal drugs and crime. Simultaneously, the criminal and juvenile justice systems are targeting resources to reduce illegal drug use and crime in the neighborhoods where these young people reside.

The Center has received funding from the Ford Foundation, the Pew Charitable Trusts, and the Rockefeller Foundation for this effort, which has been matched by OJJDP and BJA. Based on proposals submitted, five communities were selected to receive funds in Fiscal Year 1992 to implement programs over a three-year period: Seattle, Washington (Seattle is a Weed and Seed Site); Memphis, Tennessee; Bridgeport, Connecticut; Austin, Texas; and Savannah, Georgia. Foundation and government funding of between $500,000 and $1 million was allocated per community. This program will be implemented by the current grantee in the five communities. No additional applications will be solicited in Fiscal Year 1993.

Teens, Crime and Community: Teens in Action in the 90s (W&S)*

$400,000

This is a national scope continuation program between OJJDP, the National Crime Prevention Council (NCPC), and the National Institute for Citizen Education in the Law (NICEL). The Teens in Action in the 90s is a special application of the Teens, Crime and the Community program. The Teens, Crime, and Community program operates on two premises: 1) teens are disproportionately victims of crimes, and 2) teens can contribute substantially to making their schools and communities better, via a wide range of activities. With the Fiscal Year 1993 award, the national partners through the National Teens, Crime and the Community Program Center, will move to harness the energies of young people toward constructive activities, and reduce crime and violence. The partners will enlarge the Program Center to serve as a formal clearinghouse for information and materials dissemination and to provide technical assistance and training to communities in establishing the program, especially those in the Weed and Seed locations. This program will be implemented by the current grantees listed above. No additional applications will be solicited in Fiscal Year 1993.

Intermediate Sanctions, Drug Testing, and Offender Accountability

Boot Camps for Juvenile Offenders: Constructive Intervention and Early Support (W&S)

$750,000–OJJDP; $600,000–BJA

This initiative, which is jointly supported by OJJDP and BJA, provides boot camps for adjudicated nonviolent, juvenile offenders who are under 18

years of age. Each juvenile admitted to the program proceeds through four phases: selection, intensive training, preparedness and accountability. The program relies heavily on studies that support rehabilitation and character development within an ordered, highly regimented environment. It incorporates design elements from the military as well as a strong "challenge" component. This initiative will be implemented by the current grantees, Boys and Girls Clubs of Greater Mobile, Mobile, Alabama; Cuyahuga County Juvenile Court, Cleveland, Ohio; and Colorado Division of Youth Services, Denver, Colorado. (Denver is a Weed and Seed Site.) No additional applications will be solicited in Fiscal Year 1993.

Delay in the Imposition of Sanctions

$100,000

This project is a continuation of the research undertaken to study the delays in the delivery of sanctions to juveniles in the juvenile court system. If there are delays in the processing of juvenile court cases, the study will address the problems created by these delays and make realistic recommendations on how to correct the problems.

This will be the second year of funding. Phase I was funded in Fiscal Year 1992, which entailed determining the extent to which processing delays occurred and their reasons. Phase I also identified points in juvenile court case processing most susceptible to delays.

This announcement implements Phase II as an intensive site study which will involve evaluating the effect which case processing delays have on a juvenile court's effectiveness and efficiency in handling delinquency cases, including the effect on the juveniles themselves. Phase II will be implemented by the current grantee, the National Center for Juvenile Justice. No additional applications will be solicited in Fiscal Year 1993.

Training and Technical Assistance Curriculum for Drug Identification, Screening and Testing in the Juvenile Justice System

$100,000

The purpose of this project is to develop and present comprehensive training and technical assistance in drug identification, screening, and testing, which will assist juvenile justice system policy makers and program staff in on-site drug recognition and testing program implementation and will improve accountability of offenders using drugs. This program will be implemented by the current grantee, the American Probation and Parole Association. No additional applications will be solicited in Fiscal Year 1993.

Enhancing Enforcement Strategies for Juvenile Impaired Driving Due to Drug and Alcohol Abuse

$75,000

This is a collaborative interagency program between OJJDP and the National Highway Traffic Safety Administration (NHTSA). NHTSA's funding level commitment for this program is not yet final. The dollar amount of this program represents only OJJDP's portion. The purpose of this program is to combat the problem of youths involved in delinquent drinking and driving offenses by combining increased use of the arrest sanction and adopting uniform procedures for handling juvenile "driving under the influence" (DUI) arrestees. The result sought is an overall reduction in the incidence of drug- and alcohol-related accidents, injuries, and fatalities. During Phase I of the program, the project developed a system-wide enforcement model which unites key criminal justice agency components—police, prosecutors, judges, and probation officers—into one comprehensive DUI enforcement program. In this second phase of the project, the model will be demonstrated in up to five sites. These sites will receive a variety of technical assistance services. This program will be implemented by the current grantee, the Police Executive Research Forum. No additional applications will be solicited in Fiscal Year 1993.

Juvenile Restitution

$100,000

OJJDP plans to continue to support a juvenile restitution training and technical assistance program. The project design is based on practitioner recommendations for current needs in the field. OJJDP initiated a survey on how best to expand and institutionalize restitution as a viable juvenile justice disposition. In addition to the survey, a working group was convened to help map out the future course of OJJDP's support for optimum development of the various components of restitution. These components will include community service, victim reparation, victim-offender mediation, offender employment and supervision, employment development, and possible new program elements designed to establish restitution as a major aspect in our efforts to improve the juvenile justice system. This project will be guided by the need for community protection and offender competency development and accountability. The Division of Applied Research of Florida Atlantic University was competitively selected in Fiscal Year 1992 to implement this project. No additional applications will be solicited in Fiscal Year 1993.

Testing Juvenile Detainees for Illegal Drug Use

$100,000

The purpose of this program is to assess, develop, test, and disseminate information on new and innovative approaches to test for illegal drug use among juvenile detainees. An additional purpose is to improve resource allocation and treatment services for youths in detention facilities and offender accountability by developing more accurate and complete information on the use and control of illegal drugs. Drug testing is technical and complex. OJJDP has recognized this and embarked on an initiative to provide guidance, training, and technical assistance to the juvenile detention field in this area.

This program will be implemented by the current grantee, American Correctional Association. No additional applications will be solicited in Fiscal Year 1993.

Enhanced Prosecution, Adjudication, and Corrections

Training and Technical Assistance for Juvenile Detention and Corrections, (The James E. Gould Memorial Program)

$250,000

This project will continue to provide technical assistance and training to juvenile correctional and detention agencies. The program will also provide a national forum on juvenile corrections and detention, hold workshops on selected key issues; provide on-site technical assistance, hold a National Juvenile Day Treatment Conference, and continue efforts on literacy education and general networking. The project will emphasize intermediate sanctions for non-violent juveniles involved in drug-related offenses and illegal activities. This program will be implemented by the current grantee, The American Correctional Association. No additional applications will be solicited in Fiscal Year 1993.

Improvement in Correctional Education for Juvenile Offenders

$200,000

The purpose of this program is to assist juvenile corrections administrators in planning and implementing educational services for detained and incarcerated juvenile offenders. An assessment of various

correctional education programs has been performed and documented. This next stage will provide funds to analyze the correctional education programs at six to eight juvenile correctional institutions and to develop specialized training and technical assistance materials to assist each site. This program will be implemented by the current grantee, the National Office of Social Responsibility. No additional applications will be solicited in Fiscal Year 1993.

Improving Conditions of Confinement: Training for Juvenile Corrections Staff

$525,000

This is a collaborative interagency program between OJJDP and the National Institute of Corrections (NIC). OJJDP will continue the development of a comprehensive training program for juvenile corrections and detention staff through an interagency agreement with NIC. The program is designed to offer a core curriculum for juvenile corrections and detention administrators and mid-level management personnel in such areas as leadership development, management, training of trainers, legal issues, cultural diversity, gang activity, juvenile offenders, and overcrowding. The training will be conducted at the NIC Academy and issue-oriented training will be presented regionally. This program will be implemented in Fiscal Year 1993 under the existing interagency agreement with NIC. No additional applications will be solicited in Fiscal Year 1993.

Improving Literacy Skills of Institutionalized Juvenile Delinquents

$250,000

This is a competitively awarded program funding two grants: Mississippi University for Women ($125,000), and The Nellie Thomas Institute of Learning (125,000). Many juvenile delinquents in correctional institutions have a serious need to develop basic reading and writing skills. This program will improve the literacy levels of juvenile residents in these facilities while creating a national network of trained reading teachers and volunteers available to juvenile correctional facilities. The program will include training and follow-up technical assistance on methods, and a curriculum for use by the staff of detention and corrections facilities. This program will be implemented by the current grantees, The Mississippi University for Women, and The Nellie Thomas Institute of Learning. No additional applications will be solicited in Fiscal Year 1993.

*Insular Area Support**

$403,000

The purpose of this program is to provide supplemental financial support to the Virgin Islands of the United States, Guam, American Samoa, the Trust Territory of the Pacific Islands (Palau), and the Commonwealth of the Northern Mariana Islands. These funds are to be available to address the special needs and problems of juvenile delinquency in the insular areas, as specified by Section 261(e) of the JJDP Act, 42 U.S.C. 5665(e).

Juvenile Corrections Industries Ventures Program

$75,000

The purpose of this program is to assist juvenile corrections agencies in establishing joint ventures with private businesses and industries in order to provide new opportunities for the vocational training of juvenile offenders. The grantee has performed an assessment of corrections industries ventures programs, developed a policy and procedures manual, and produced training and technical assistance materials. The grantee is currently providing training and technical assistance to eight juvenile corrections agencies to assist in implementing the corrections ventures models. This program will be implemented by the current grantee, The National Office for Social Responsibility (NOSR). No additional applications will be solicited in Fiscal Year 1993.

*Juvenile Court Training**

$1,100,270

The primary purpose of this project is to allow the National Council of Juvenile and Family Court Judges to continue to refine the training presently offered and to provide technical assistance. The training objectives are to supplement law school curricula, provide judges with current information on developments in juvenile and family case law, and make available options for sentencing and treatment. Specifically, emphasis will be placed in the areas of drug testing, gangs and violence and intermediate sanctions. This project will provide foundation training both to newly elected or appointed judges and to experienced judges who have been recently assigned to the juvenile or family court bench. This program will be implemented by the current grantee, The National Council of Juvenile and Family Court Judges. No additional applications will be solicited in Fiscal Year 1993.

OJJDP Technical Assistance Support Contract

$758,679

The purpose of this project is to provide technical assistance and support to OJJDP, the National Institute for Juvenile Justice and Delinquency Prevention, OJJDP grantees, and the Coordinating Council on Juvenile Justice and Delinquency Prevention on all program development, evaluation, training, and research activities. This program will be implemented by the current contractor, Aspen Systems Inc. No additional applications will be solicited in Fiscal Year 1993.

A Study to Evaluate Conditions in Juvenile Detention and Correctional Facilities

$100,000

This project is a continuation of the research undertaken to study the conditions under which juveniles are held in juvenile detention and correctional facilities across the country. The study collected an extensive amount of valuable information from 1,000 juvenile facilities on such topics as life, health and safety issues, education and treatment programs, security and control measures, juvenile rights, physical plant, staffing ratios, etc. The first report presented the results of a primarily descriptive analysis of the facilities' conformance to nationally recognized standards and made recommendations for improvements. To utilize the collected data more fully, additional analysis needs to be performed.

This phrase of the project will support additional data analysis and dissemination of the study findings, including the production of special topical reports or bulletins; briefings to Congress and State legislatures and policy makers; and presentation of the findings at national, regional, and State forums of advocacy and service organizations. This program will be implemented by the current grantee, Abt Associates. No additional applications will be solicited in Fiscal Year 1993.

*Technical Assistance to the Juvenile Courts**

$392,993

The National Center for Juvenile Justice (NCJJ), the current grantee, is the research division of the National Council of Juvenile and Family Court Judges. The four types of technical assistance available under this grant are: (1) Information resources, (2) on-site consultation, (3) off-site consultation, and (4) cross-site consultation.

Emphasis will be placed on intermediate sanctions for handling juveniles involved in drug-related offenses and for gang activities. In addition, the project will examine appropriate use of juvenile records in adult court proceedings, including an examination of State laws and practices. This program will be implemented by the current grantee, the National Center for Juvenile Justice. No additional applications will be solicited in Fiscal Year 1993.§

Program to Reduce Minority Institutionalization, (The Deborah Ann Wysinger Memorial Program)

$1,200,000

Section 223(a)(23) of the JJDP Act, 42 U.S.C. 5663(a)(23), requires that States "address efforts to reduce the proportion of juveniles detained or confined in secure detention facilities, secure correctional facilities, jails, and lockups who are members of minority groups if such proportion exceeds the proportion such groups represent in the general population." Section 261(a)(7), 42 U.S.C. 5665(a)(7), authorizes the Administrator to award Special Emphasis discretionary funds for this purpose.

In Fiscal Year 1992 five demonstration grants were awarded to develop, test, and disseminate information on programs designated to reduce the disproportionate number of minority juveniles detained or confined in secure detention facilities, secure correctional facilities, or jails and lockups.

The purpose of the program is to help jurisdictions identify whether minorities are disproportionately confined in secure facilities, and if so, the extent and nature of that representation in the juvenile justice system (Phase I). This will then lead to the development of effective programs for responding to the problem from police arrest through disposition (Phase II). The five funded grantees eligible for Phase II awards in Fiscal Year 1993 are: Iowa Department of Human Rights; Arizona's Governor's Office for Children; North Carolina Department of Human Resources; Oregon Community Children and Youth Services; and Florida Department of Health and Rehabilitation. Portland State University will continue to provide technical assistance support to the five sites. No additional applications will be solicited in Fiscal Year 1993.

Discussion of Comments

OJJDP published its proposed Comprehensive Plan for Fiscal Year 1993 in the **Federal Register** on November 9, 1992, 57 FR 53339, for a 45-day period of public comment. The Office received 110 letters commenting on the proposed plan. All comments have been considered in the development of the Final Comprehensive Plan for Fiscal Year 1993.

The majority of the letters OJJDP received provided positive comments about the overall plan and its programs. Among the program areas that received the most interest and support was the program for Training for Juvenile Detention Center Care Givers.

The following is a summary of the substantive comments and the responses by OJJDP. Unless otherwise indicated, each comment was made by a single respondent.

1. *Comment.* A respondent expressed concern that the plan was not responsive to the JJDP Act, particularly as it was amended on November 4, 1992 (H.R. 5194, Pub. L. 102–586, 106 Stat. 4982). For example, there was no initiative to provide lawyer advocacy for delinquent youths. This commentor was also concerned that the Weed and Seed emphasis in the proposed plan could have a profound effect on overrepresentation of minorities in the juvenile justice system.

Response: OJJDP's Proposed Program Plan was being formulated during congressional consideration of the 1992 Amendments. Consequently, all the new program requirements, authorities and emphases were not incorporated in the proposed plan prior to publication. Those programs and activities mandated by the Amendments but not included in the proposed plan have been added to the Final Program Plan. They include: An NIJJDP study of hate crimes, including characteristics of juveniles who commit such crimes, and the nature of the crimes and their victims; development of a Special Emphasis program to prevent and reduce the incidence of hate crimes through model educational and sentencing programs that provide alternatives to incarceration; establishment of Special Emphasis advocacy programs and services that improve due process for juveniles in the juvenile justice system and the quality of legal representation for such juveniles; and a law-related education program focus on juveniles who have had contact with, or are likely to have contact with, the juvenile justice system.

In addition, most of OJJDP's new programs are clearly responsive to the 1992 Amendments. The Accountability-Based Community (ABC) Intervention program is responsive to the statutory emphasis on the development of graduated sanctions for juvenile offenders, including risk-needs assessments, comprehensive case planning and aftercare. The Serious, Violent and Chronic Offender Program Development program has a similar emphasis but will include family strengthening and involvement in treatment of delinquents (including overcoming language barriers), delinquency prevention and diversion to services, prevention and treatment in rural areas, coordination of services, gender specific services, and programs for juveniles in the criminal justice system. The program for Prevention of Delinquency Through Child-Centered Community-Based Policing is designed to have a delinquency prevention goal and to serve juveniles who are victims of crime. The Program of Training for Juvenile Detention Center Care Givers is responsive to the Amendment's emphasis on services for juveniles in custody and will include training in gender bias and gender specific services. In addition, planning for expansion of the "Violence Study—Causes and Correlates" will further inform future efforts to deal comprehensively and effectively with serious, violent and chronic offenders. Finally, the National Network of Children's Advocacy Centers is designed to provide multi-disciplinary coordination in the investigation and prosecution of child abuse cases.

OJJDP will incorporate many of the new statutory emphasis areas in funding continuation programs in Fiscal Year 1993, including coordination and cooperation in the delivery of services and program administration, prevention, diversion to services, prevention and treatment in rural areas, family strengthening and involvement in treatment programs. It will also incorporate health care, educational, recreational, and mental health services for juveniles in custody, due process and access to counsel for youths in the juvenile justice system, graduated sanctions and risk-needs assessments, and addressing issues related to juveniles in the criminal justice system, including waiver, certification and transfer. OJJDP believes that these efforts are responsive to the Amendments and, of course, that all OJJDP Programs further programs authorized by the JJDP Act.

With regard to Weed and Seed, OJJDP's emphasis, through its strategy to address serious, violent and chronic delinquency, is on Seed programs designed to serve the goals of prevention, intervention and treatment. The strategy is not designed to

incarcerate more youths. Rather, it is designed to provide family and community support, prevention services focused on at-risk youths and timely and effective intervention services to interrupt the cycle of delinquency and escalating criminal conduct. A goal of the Weed and Seed strategy is to reduce incarceration of youths and not to exacerbate the potential of increased minority institutionalization.

2. *Comment:* One commentor pointed out that JJDP Act references to recreation and recreation service programs, as being effective services to prevent and treat delinquency, were not reflected in the Proposed Program Plan. It was suggested that the plan fully reflect the recognition of recreation as an important juvenile justice system element.

Response: Agreed. OJJDP, recognizing the emphasis on and importance of recreational services in a comprehensive prevention program, has included recreation programs in the Juvenile Justice and Delinquency Prevention component of Weed and Seed and will incorporate this emphasis in future prevention programs.

3. *Comment:* OJJDP received forty-two responses to the proposed program, "Training for Juvenile Detention Center Care Givers." Respondents represented a broad range of professionals, including detention care givers, probation and other court officials, judges, detention administrators, youth services administrators, community-based facility administrators, and detention association members. All comments were supportive. Most respondents viewed this activity as filling a significant gap in juvenile justice system training. Others cited problems associated with overcrowded detention centers or unique problems of detained juveniles, including drug and alcohol abuse, gang affiliation, and involvement in serious and violent crime that would benefit from such training.

Response: Based on the strong support for this program from the field, it has been included in the Final Program Plan.

4. *Comment:* Seven respondents noted that the proposed continuation of the "Program of Research on the Causes and Correlates of Delinquency" did not include funds for continued data collection, only analysis of data already collected. All of these respondents urged continued funding of longitudinal data collection, because the projects have made and continue to make, major contributions to our understandings of delinquency and violence.

Response: OJJDP agrees with the respondents regarding the value of this research which OJJDP has supported since Fiscal Year 1986 for a total of $9.2 million. However, limited resources preclude additional funding for data collection at this time.

5. *Comment:* Four responses were received supporting the proposed "Youth Leadership and Service Program." These respondents noted the potential value of this program approach in rural areas, which are generally neglected because funded programs target larger numbers of youths.

Response: OJJDP agrees with the comment and recognizes the importance of this program. The development of Youth Leadership and Service Program remains one of the seven areas of focus in the Serious, Violent and Chronic Offender Program Development initiative which will be funded.

6. *Comment:* Six responses were received in support of the "Accountability-Based Community (ABC) Intervention Program." It was viewed as an innovative program holding promise for rehabilitating juvenile offenders at risk of becoming chronic or serious juvenile offenders.

Response: The Office believes that juvenile offenders who are at risk of becoming chronic or serious juvenile offenders will benefit substantially from a three-level accountability-based community intervention program.

The ABC Intervention Program is designed to provide different levels of accountability and responsibility contingent upon the behavior and prior delinquency of juveniles. This program will be adopted in the Final Program Plan.

7. *Comment:* One OJJDP training grantee expressed concern that its program and relationship with OJJDP grant monitors would be compromised by participation in a National Consortium of OJJDP training grantees. Other commentators expressed concern that the program would add additional bureaucratic levels in accessing training services.

Response: While OJJDP appreciates that concerns expressed, the intent of the Training Consortium program is to strengthen OJJDP's current training programs. The Consortium concept is designed to enhance communication between OJJDP staff and grantees to maximize use of scarce resources, eliminate duplication and overlap, and promote interdisciplinary training. Due to limited funds, the Office will use existing resources for the purpose of coordinating its training programs.

8. *Comment:* One respondent was very positive about the proposed Delinquency Prevention Child Centered Community-Based Policing program, citing its community's efforts in this area and its use of the Yale Child Study Center in developing its program.

Response: OJJDP was pleased to hear of its positive contact with the Yale Child Study Center. The collaboration of the New Haven Police Department and the Yale Study Center is resulting in significant positive results for community residents, and the Police Department. It promises to offer an added innovation to the concept of community-based policing as a result of its focus upon mitigating the trauma of children exposed to violence. Funds will be included in the Final Program Plan to support documentation of the New Haven Child Centered Community-Based Policing program, for purposes of future replication.

9. *Comment:* Two respondents were pleased to see a program aimed at highlighting the impact upon youths of viewing violence on television. One respondent compared the need to that of the anti-smoking compaigns of recent years.

Response: This program has not been included in the Final Program Plan, but will be implemented during Fiscal Year 1993 with existing program resources.

10. *Comment:* A respondent recommended the use of the Constitution as a specific tool for enhancing the Law-Related Education Program.

Response: The Law Related Education Program makes extensive use of the Constitution in its curriculum, as it is the foundation of law in this country.

11. *Comment:* A respondent inquired about funds available to support local restitution programs from the OJJDP funded program in Fiscal Year 1993.

Response: The OJJDP funded Restitution program is a developmental program, and may support technical assistance and training once appropriate strategies have been identified. This program does not support operational costs of restitution programs.

12. *Comment:* One respondent felt that the proposed plan was comprehensive, but raised the question "Where is the family?"

Response: The Office is aware and desirous of the need to involve the family in programming for troubled and delinquent youths. Programs such as the Cities in Schools, the Ida B. Wells Satellite Prep School, and several of the new program initiatives for Fiscal Year 1993 include components that focus on the family. In addition, OJJDP recently sponsored a conference on strengthening families which identified approximately thirty promising programs to support and strengthen

families. This conference was the culmination of a five-year study of promising family programs. Information from this study and the conference will be utilized by OJJDP to inform program development and build family components into future programs.

13. *Comment:* A respondent identified several successful models for court-ordered community service already in existence, including one in Dane County, Wisconsin. This respondent suggested there may be a need to disseminate information about these models, but was of the opinion that the Office should not spend money to create one. The respondent also suggested that a community should be required to apply for a package of programs rather than approaching program issues "piecemeal," citing a need for a "balanced approach."

Response: OJJDP has determined that it will not proceed with the Court-Ordered Community Service program in Fiscal Year 1993. OJJDP is aware of the models available, some of which began as a result of OJJDP's restitution initiative that was funded from 1978 to 1982. The newly funded Restitution Education, Specialized Training and Technical Assistance Program initiative may be in a position to disseminate information about these models.

OJJDP agrees that communities should take a comprehensive approach to planning for and implementing programs for youths. It is because of this commitment that the Office has made the Weed and Seed strategy a part of our overall approach, and also why the Office has rearranged some training programs to enhance this approach and reduce duplication.

14. *Comment:* A respondent pointed out the high statistical incidence of crimes committed by black males and that many of these youths have come from single-parent families without the benefit of male role models. This respondent encouraged the office to support secondary prevention approaches that include comprehensive social services, skills development and mentoring.

Response: The office has addressed secondary prevention through such programs as the Accountability-Based Community (ABC) Intervention Program and the Serious, Violent and Chronic Offender Program Development programs, which includes a youth leadership and service component. Continuation programs such as Partnership Plan Phase IV (Cities in Schools) and the Boys and Girls Clubs programs are additional examples of these types of programs. All of these programs include or will include comprehensive approaches, mentoring and competency development on the part of the youths.

15. *Comment:* One respondent supported continuation of the program Reaching "At Risk" Children in Public Housing.

Response: The office appreciates the support expressed in this comment.

16. *Comment:* OJJDP received twenty-four letters from existing sites supporting the Serious Habitual Offender Comprehensive Action Program (SHOCAP). These letters were from sheriffs, school administrators, police officials, prosecutors, a state commissioner of education and probation officials in SHOCAP sites. These comments support the comprehensive nature of the SHOCAP program and the SHOCAP process.

Response: The SHOCAP Special Emphasis Program has received $5,587,795 since 1983. The current Special Emphasis grant award to Public Administration Services, Inc., (PAS) is being continued with existing grant carryover. Because this program is an effective resource to identify, track, and prosecute the serious, violent and chronic offender, it will also be included in the Fiscal Year 1993 Program Plan as a new component of the Training and Technical Assistance Division's Gang and Drug POLICY Training Program (See SHOCAP Continuation Program Description).

17. *Comment:* A respondent asked whether language in the Program Plan referring to Weed and Seed Sites referred only to Weed and Seed demonstration/pilot sites or also included officially recognized Weed and Seed Sites.

Response: Both funded demonstration/pilot Weed and Seed Sites (19), and sites which have been officially recognized as a Weed and Seed Community by the Attorney General (8 to date), are eligible to apply for new program funds or to receive training, technical assistance, and other services from existing OJJDP grantees.

18. *Comment:* One respondent noted that its jurisdiction had adopted the Weed and Seed strategy without funding from the Federal government and felt that the jurisdiction ought to be eligible for priority funding.

Response: Only Weed and Seed demonstration/pilot and officially recognized sites will be eligible to receive a preference for funding and services. The respondent is encouraged to contact the Executive Office for Weed and Seed to request guidelines concerning the official recognition process.

19. *Comment:* A respondent praised OJJDP's three tiered program approach for delinquency prevention, intervention and treatment. However, several other commentors expressed concern that the focus of new competitive programs at Weed and Seed Sites is too exclusionary. One recommended that a specific percentage of funds be made available to Weed and Seed Sites while leaving the remaining percentage open to other communities.

Response: Jurisdictions that are not Weed and Seed Sites will be eligible to apply for and receive funding under all OJJDP competitive programs. Although Weed and Seed Sites may be given a small competitive point preference in the award of funds, or receive a priority in the receipt of program services provided by discretionary grantees, OJJDP encourages all eligible jurisdictions to compete for funding.

20. *Comment:* Two respondents strongly supported the array of proposed programs that are designed to strengthen the capacity of the Weed and Seed Sites to deal with juvenile crime and drug abuse.

Response: OJJDP appreciates the support for the programs and will work closely with sites in the Weed and Seed program to assure that juvenile justice components are strengthened or added to the "Seed" program mix.

21. *Comment:* A respondent expressed a concern about the substantial growth in crime by Asian youths which is affecting the Twin Cities of Minneapolis and St. Paul and raised the question that if one of the goals of OJJDP is prevention, how will the OJJDP Program Plan respond to the emerging need of communities where the rates of youth criminal activity are growing exponentially? This respondent encouraged the broadening of the geographic focus of the plan.

Response: The plan addresses these issues through the serious, violent and chronic offender program strategy and such programs as the Accountability-Based Community (ABC) Intervention program and the Gang Suppression and Intervention program. The Minneapolis-St. Paul area is encouraged to adopt the strategy approach and to apply for funding under OJJDP programs.

22. *Comment:* A respondent thought it important that OJJDP fund programs which take a united community approach to addressing gangs.

Response: The plan addresses this concern through the Juvenile Gangs Prevention and Treatment Program and Youth Gang Intervention Training. New or continuation projects selected under the Juvenile Gangs Prevention and Treatment Program will be required to

work with a gang consortium or other groups co-operatively in their area. OJJDP also provides training to key decision-makers of communities involved in or who are interested in developing a united community approach to solving or preventing the gang problem.

23. *Comment:* A respondent, citing language in the 1992 JJDP Act reauthorization which specifies "the need for gender specific services," noted that the need for services for girls was not mentioned in the Proposed Program Plan. This respondent also raised another question: Is there any way to provide services before juveniles become involved with the juvenile justice system?

Response: OJJDP funded programs may not discriminate in the provision of program services. However, applicants for new OJJDP programs, who wish to develop services specifically designed to meet the needs of female participants, are encouraged. The plan addresses prevention issues through the comprehensive graduated sanctions program model development and the crime problem through programs like the Accountability-Based Community (ABC) Intervention program and the Gang Suppression and Intervention program.

24. *Comment:* Two respondents expressed concern that many immigrants arrive in the United States with very limited resources and start their new lives as ethnically and linguistically isolated persons who are easily susceptible to gangs and other criminal elements. The neighborhoods in which they live are frequently infested with violent crime, illicit drug trafficking and gang activity. One of these respondents encouraged the Office to consider designating a portion of available program funds under the "Juvenile Gangs Prevention and Treatment Program" initiative for immigrant youths and their families.

Response: The Office is aware of the unique problems faced by immigrant juveniles and their families and has funded programs that address the needs of this population. The Office will require applicants to identify the needs of this population under the Juvenile Gangs Prevention and Treatment Program initiative and other programs which have the potential to benefit immigrant juveniles and their families. However, as a policy consideration, OJJDP has determined that the establishment of minimum dollar requirements for specific activities is not an effective way of budgeting funds, developing programs, and addressing priority needs.

25. *Comment:* One respondent expressed concern that the OJJDP Proposed Comprehensive Plan for Fiscal Year 1993 does not address the problem of Fetal Alcohol Syndrome and Fetal Alcohol Effects.

Response: Other Federal agencies such as the Department of Health and Human Services currently direct a portion of their program resources to this important issue.

26. *Comment:* A respondent expressed concern that the number one growing health problem of American youths is binge drinking.

Response: OJJDP is funding several programs that could address youth binge drinking issues, from both the prevention and intervention perspectives, including "Effective Strategies in the Extension Service Network, Phase II" and "Enhancing Enforcement Strategies for Juvenile Impaired Driving Due to Drug and Alcohol Abuse." OJJDP will explore targeted educational and other programs activities related to this issue with these grantees. Other Federal agencies have primary responsibility for addressing this problem, including the National Institute for Alcohol Abuse and Alcoholism, and the Center for Substance Abuse Prevention.

OJJDP thanks all commentors for the time, effort, concern, and interest that was reflected in each of the 110 comments received. The information and insights expressed were carefully considered in arriving at OJJDP's Final Program Plan Priorities for Fiscal Year 1993. It is because of this careful consideration that OJJDP was unable to finalize the Program Plan by the statutory December 31, 1992, deadline. However, OJJDP believes the two-week delay was necessary to produce a quality Final Program Plan.

Gerald (Jerry) P. Regier,

Acting Administrator, Office of Juvenile Justice and Delinquency Prevention.

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Part VII

Environmental Protection Agency

40 CFR Part 172
Microbial Pesticides; Experimental Use Permits and Notifications; Proposed Rule

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 172

[OPP-50668A; FRL-3887-9]

[RIN No. 2070-AB77]

Microbial Pesticides; Experimental Use Permits and Notifications

AGENCY: Environmental Protection Agency (EPA).

ACTION: Proposed rule.

SUMMARY: EPA proposes to amend its experimental use permit regulations for pesticides to clarify the circumstances under which an experimental use permit is presumed not to be required. As part of that amendment, EPA proposes to implement a screening procedure that requires notification to the Agency before initiation of small-scale testing of certain microbial pesticides. Three options for defining which microbial pesticides would be subject to the notification requirement are discussed. The Agency will review notifications to assess the potential for adverse impacts on human health or the environment and will then determine whether to require an experimental use permit. This notification scheme would implement provisions of the Agency's policy statement of June 26, 1986, with modifications.

DATES: Comments identified by the docket control number [OPP-50668A] must be received on or before March 23, 1993.

ADDRESSES: Submit written comments by mail to: Program Resources Section, Public Response and Program Resources Branch, Field Operations Division (H7506C), Environmental Protection Agency, 401 M St., SW., Washington, DC 20460. In person, bring comments to: Rm. 1132, Crystal Mall #2, 1921 Jefferson Davis Highway, Arlington, VA 22202.

FOR FURTHER INFORMATION CONTACT: By mail: Frederick Betz, Acting Chief, Science Analysis and Coordination Staff, Environmental Fate and Effects Division (H7507C), Environmental Protection Agency, 401 M St., SW., Washington, DC 20460. Office location and telephone number: Rm. 1016A, Crystal Mall #2, 1921 Jefferson Davis Highway, Arlington, VA, (703-305-6307).

SUPPLEMENTARY INFORMATION:

Electronic Availability: This document is available as an electronic file on *The Federal Bulletin Board* at 9 a.m. the day of publication in the **Federal Register**. By modem dial 202-512-1387 or call 202-512-1530 for disks or paper copies. This file is available in Postscript, Wordperfect 5.1 and ASCII.

Section 5 of the Federal Insecticide, Fungicide, and Rodenticide Act (FIFRA), 7 U.S.C. 136c, and 40 CFR part 172 provide for issuance by the Agency of experimental use permits (EUPs) for the testing of new pesticides or new uses of existing pesticides. Such permits are generally issued for large-scale testing of pesticides.

Large-scale tests include any terrestrial application to more than 10 acres of land or any aquatic application to more than 1 surface acre of water. EPA has generally presumed that smaller tests would not require EUPs. However, the Agency believes that small-scale environmental studies with some microbial pesticides may pose sufficiently different risk considerations from conventional pesticides that a closer evaluation at the small-scale testing stage may be warranted. Therefore, the Agency proposes to amend 40 CFR part 172 to require notification before initiation of small-scale testing in the environment of certain microbial pesticides so that the EPA may determine whether these tests should be conducted under an EUP.

This proposal would codify the notification provisions of the Agency's policy statement of June 26, 1986 (51 FR 23302), with modifications. Three options for defining the scope of microbial pesticides that would be subject to the notification requirement are discussed. The approach that the Agency is proposing could limit the scope of the notification requirement to a smaller group of microbial pesticides than is currently subject to notification. Until this rulemaking process is complete, however, the Agency will continue to operate under the provisions of the June 26, 1986 policy statement.

I. Statutory Authority and Regulatory Background

Section 5 of FIFRA provides that any person wishing to test an unregistered pesticide or a registered pesticide for an unregistered use may apply for an EUP. As stated in the preamble proposing the issuance of regulations under section 5 (39 FR 11306, March 27, 1974), "The purpose behind section 5 is to facilitate the generation of data necessary to support an application for registration under section 3 and yet provide sufficient regulatory control to prevent adverse environmental effects."

EPA shall issue an EUP only if issuance of such a permit will not cause unreasonable adverse effects on the environment. Similarly, EPA may revoke an existing EUP if it is determined that the terms and conditions of the permit are inadequate to avoid unreasonable adverse effects, 7 U.S.C. 136c; 40 CFR 172.10. Section 2(bb) of FIFRA, 7 U.S.C. 136(bb), defines "unreasonable adverse effects on the environment" as "any unreasonable risk to man or the environment, taking into account the economic, social and environmental costs and benefits of use of [the] pesticide."

When the EUP regulations, 40 CFR part 172, were originally promulgated (40 FR 18782, April 30, 1975), the Agency recognized that the development of an effective pesticide, culminating in registration, is a multistage process that warrants a scaling in the level of oversight by EPA. Initial testing of a substance is for the purpose of evaluating its value for pesticidal purposes or for determining its toxicity or other properties. This initial testing may include laboratory screening for pesticidal activity, laboratory and greenhouse screening for spectrum of activity, and limited outdoor testing to evaluate pesticidal activity under actual use conditions. Later testing may involve use of larger test plots, often in multiple areas. Both the initial and later testing generate information necessary for registration under section 3 of FIFRA. An EUP issued pursuant to section 5 authorizes limited use of a pesticide on a limited number of acres, under specific and controlled conditions, to develop the necessary data.

In proposing the existing regulations governing the issuance of EUPs, EPA stated:

> The most important environmental consideration in the development of these proposed regulations is the necessity of striking a balance between facilitating — or, at a minimum, not unduly impeding — pesticide research and development and protecting against human and environmental injury. Experimental use of pesticides can, of course, pose both human and environmental hazards.... On the other hand, experimental use and testing are essential to the development of new, less hazardous, more effective pesticides, including both chemical and biological agents. In short, there are both risks and benefits associated with experimental use of pesticides (39 FR 11306, March 27, 1974).

Given these considerations, EPA set forth procedures that would "...place experimental programs under reasonable constraints without imposing burdens unrelated to needed protection of human health and the environment" (39 FR 11306, March 27, 1974). EPA believed that because small-scale tests generally are controlled by the researchers, involve small quantities of

pesticides, and are conducted by highly trained personnel, they would pose minimal hazards. Thus, the final regulations included a presumption that EUPs would not be required for most small-scale tests (40 CFR 172.3). However, the regulations also explicitly recognized that a wide variety of testing situations may arise and that a flexible regulatory approach is needed to deal with these situations. EPA retains and exercises the authority to require an EUP for small-scale testing if it determines that such Agency oversight is warranted.

The Agency recognizes that there has been a long history of safe use of microbial pesticides. With respect to small-scale testing of most microbial pesticides, the Agency believes that the likelihood that such tests will result in significant adverse impacts on human health or the environment is sufficiently low that Agency oversight is unnecessary. Thus, the Agency believes that, in most instances, small-scale tests (e.g., tests on 10 acres or less of land or on 1 surface acre or less of water) with microbial pesticides should continue to be excluded from the requirement for an EUP.

However, since the issuance of the existing EUP regulations, new and different microbial pesticides have been developed that warrant a closer review before being excluded from the EUP requirements. Specifically, the Agency believes that certain microbial pesticides may pose sufficiently different risk considerations from conventional chemical pesticides and other microbial pesticides that screening by EPA through a notification process, before they are used in the environment, is warranted.

In amending the EUP regulations, the Agency's goal is to set forth a system that focuses on the characteristics and risks of the product, protects human health and the environment, establishes a screening mechanism that does not unduly impede potentially beneficial research, and is designed to accommodate rapid advances in biotechnology. To achieve this goal, particularly in terms of establishing a screening process that does not unduly impede research, the scope of coverage should clearly describe the kinds of microbial pesticides subject to notification in a way that is uniformly interpretable.

In the 1988 amendments to FIFRA, Congress specifically addressed the question of EPA oversight of the use of unregistered pesticides and clarified the enforcement mechanism for failure to comply. Section 3(a) of FIFRA, 7 U.S.C. 136a(a), provides that "[to] the extent necessary to prevent unreasonable adverse effects on the environment, [EPA] may by regulation limit the distribution, sale, or use ... of any pesticide that is not registered ... and is not the subject of an experimental use permit under section 5 or an emergency exemption under section 18." Violations of such regulations are enforceable under sections 12(a)(2)(S) and 13 of FIFRA. In addition to section 5, these regulations are being proposed pursuant to sections 3(a) and 25 of FIFRA.

II. Historical Development

In 1984, EPA issued an interim policy statement entitled "Microbial Pesticides: Interim Policy on Small-Scale Field Testing" (49 FR 40659, October 17, 1984). This statement announced that the presumption in the 1975 EUP regulations (40 CFR 172.3) would not automatically apply to tests using genetically altered and nonindigenous microbial pesticide products and that the Agency should be notified before initiation of any such testing. Since 1984, the Agency has used this notification scheme to evaluate small-scale tests involving genetically altered and/or nonindigenous microbial pesticides for possible risk to human health or the environment and to determine whether EUPs would be required before the tests could be initiated.

Subsequent to publication of the Interim Policy, this same basic position was published for comment in EPA's section of the Office of Science and Technology Policy (OSTP) "Proposal for a Coordinated Framework for Regulation of Biotechnology" (49 FR 50856, December 31, 1984). The final OSTP statement of policy was published on June 26, 1986 (51 FR 23302, June 26, 1986). In the 1986 Policy Statement, the Agency stated its intention to codify the major elements of the notification procedure in the EUP regulations (40 CFR part 172). The development of this proposed rule began at that time.

In June 1988, as required by FIFRA section 25, the Agency made available copies of a draft proposal to the U.S. Congress and the U.S. Department of Agriculture (USDA). A subpanel of the FIFRA Scientific Advisory Panel (SAP) reviewed, in a public meeting held November 22, 1988, a draft similar to that reviewed by USDA and Congress, but modified to reflect USDA's comments. On February 15, 1989 (54 FR 7026, February 15, 1989), the Agency issued a **Federal Register** notice requesting comments on three issues, and announcing availability of a draft proposal (dated January 12, 1989) in the public docket to facilitate comment. Both of the draft rule proposals included for review and comment, a scope definition essentially equivalent to the scope identified as Option 1 in this proposal.

Public comments on the 1984 Interim Policy, the 1984 "Proposal for a Coordinated Framework for Regulation of Biotechnology," the 1986 statement of policy in the "Coordinated Framework for Regulation of Biotechnology," the EPA's January 1989 draft proposal, and in response to the February 15, 1989 **Federal Register** notice are available in the public docket. These comments have been taken into consideration in development of this proposal. The docket also contains the comments provided by the USDA and the FIFRA SAP subpanel in 1988, together with the Agency's responses.

In 1989, the Ecological Society of America (ESA) and the National Academy of Sciences (NAS) published reports on the assessment of potential impacts related to the use of genetically modified organisms in the environment. Respectively, these reports are titled "The Planned Introduction of Genetically Engineered Organisms: Ecological Considerations and Recommendations" (Tiedje, J. M. *et al.*, 1989, Ecology 70:297–315) and "Field Testing Genetically Modified Organisms: Framework for Decisions," (National Academy Press, 1989, Washington, DC). The Agency has considered both reports in the development of this proposed rule.

Also in October 1989, a subcommittee of the Federal government's interagency Biotechnology Science Coordinating Committee (BSCC) was charged with drafting principles for the scope of organisms subject to Federal oversight of planned introductions into the environment. The subcommittee developed a preliminary definition that was made available, along with three other approaches it had examined, for public meetings of the EPA's Biotechnology Science Advisory Committee (BSAC) and USDA's Agricultural Biotechnology Research Advisory Committee (ABRAC). Both committees commented on the preliminary definition.

Subsequently, the OSTP, in coordination with the Biotechnology Working Group of the President's Council on Competitiveness, developed a proposed policy, based on the preliminary definition reviewed by the BSAC and ABRAC, entitled "Principles of Scope of Oversight for the Planned Introduction into the Environment of Organisms with Modified Hereditary Traits" which was published for public

comment in the Federal Register of July 31, 1990 (55 FR 31118).

In September 1990, the Agency made available copies of a draft proposed rule (dated September 4, 1990) which included a scope definition that used language adapted from the July 1990 proposed policy on scope of oversight. That definition was similar to Option 2 in this proposal. The September 1990 draft also included for comment the initial scope definition, set forth as Option 1 in this proposal, that was directly tailored to FIFRA and pesticides. At a public meeting held September 7, 1990, a subcommittee of the BSAC reviewed these two scope definitions. The subcommittee developed a third scope definition that attempted to merge the two options contained in the September 4, 1990 draft and provided recommendations in a final report dated November 14, 1990. The final report is available in the public docket and is summarized in Unit VII.A. of this preamble.

On September 26, 1990, a subpanel of the FIFRA SAP reviewed the September 4, 1990 draft proposal containing scope definitions essentially equivalent to Options 1 and 2 in this proposal, as well as the draft third definition developed by the BSAC subcommittee at its September 7, 1990 meeting. The recommendations of the FIFRA SAP subpanel are summarized together with the Agency's responses in Unit VII.B. of this preamble. The full report of the subpanel (dated October 9, 1990) is available in the public docket.

Subsequently, additional guidance by the United States Government concerning Federal oversight of biotechnology products was provided in the four principles of regulatory review recommended in the "Report on National Biotechnology Policy," issued in February 1991 by the President's Council on Competitiveness. The first principle indicates that agencies should focus on the characteristics and risks of the biotechnology product, and not on the process by which it is created. The second principle states that for biotechnology products that require review, regulatory review should be designed to minimize regulatory burden while assuring protection of public health and welfare. This includes developing expedited review procedures for products likely to pose lesser risk, and clarifying the jurisdictions of the regulatory agencies to avoid unnecessary confusion and delay. The third principle states that regulatory programs should be designed to accommodate the rapid advances in biotechnology, and performance-based standards are generally preferable to design-based standards. The fourth principle indicates that all regulation in environmental and health areas should use performance-based standards for compliance.

On February 27, 1992 (57 FR 6753), the OSTP published a policy announcement entitled "Exercise of Federal Oversight Within Scope of Statutory Authority: Planned Introductions of Biotechnology Products Into the Environment," which finalized the proposed policy that was published July 31, 1990. This notice set forth the basis for Federal agencies' exercise of oversight within the scope of discretion afforded by their statutes. It indicated that oversight should be exercised only where the risk posed by the introduction is unreasonable, that is, when the value of the reduction in risk obtained by oversight is greater than the cost thereby imposed.

The Agency notes that the final OSTP policy statement rejected an approach that relied upon exclusion categories that were substantially similar to the five exclusion categories provided for in Option 2. As discussed in that document, the proposed OSTP exclusion categories were rejected for several reasons, in part because an appropriate risk basis for these exclusions had not been provided. The Agency believes that exclusion categories can be used effectively to reduce the burden of regulations, but that such categories should only be used when they are supported by appropriate risk-based rationales.

Because Option 2 is substantially similar to the approach in the proposed policy on oversight, the Agency is no longer considering Option 2. EPA has retained Option 2 in the preamble only for illustrative and comparative purposes and will not consider Option 2 during development of the final rule. As indicated above, EPA currently prefers Option 1, but is also interested in comments on Option 3.

The principles espoused in the 1991 National Biotechnology Policy and the February 27, 1992 announcement are to encourage the use of innovative new biotechnology products, and EPA has used these concepts in developing this proposal. The rule now being proposed reflects changes in the September 1990 draft made in response to public comments, the recommendations of the 1990 FIFRA SAP subpanel and 1990 BSAC subcommittee, and the 1990, 1991 and 1992 Federal biotechnology policy statements. In addition to scope Options 1 and 2, which have been reviewed and commented on one or more times by the FIFRA SAP subpanel and the BSAC subcommittee, this proposal also contains a third option, Option 3, which was developed recently during interagency discussions. Option 3 has not been reviewed by EPA's SAP or BSAC, nor has it been a part of the public comment process prior to this proposal.

III. Proposed Regulatory Changes

A. Rationale for Notification

Pesticides by their very nature are designed to disrupt or alter the environment in which they are used. To achieve their intended beneficial purpose, they must have an adverse or otherwise limiting effect on some organism.

Microbial pesticides achieve their effect in a number of ways. They may, for example, produce a substance that exerts a toxic effect; they may be pathogens that cause disease in the organisms they infect; or by simply being present, they may outcompete and displace certain types of pests. As with other types of pesticides, a microbial pesticide may also affect nontarget organisms.

EPA, to date, has registered 24 different microbial pesticides in hundreds of different formulations. These microbial pesticides have, in general, enjoyed a history of safe use. They appear to be kept in check by various factors such as the actions of other organisms and the parameters of the physical environment that exist in the environment where the microbial pesticide is used. For example, microorganisms that are present in the environment of use may interact with the microbial pesticide in a number of ways. Indigenous microorganisms may compete with the microbial pesticide for space and nutrients; they may modify the environment to repel other microorganisms such as the microbial pesticide; or they may prey on the microorganisms comprising the microbial pesticide. Environmental conditions, such as temperature, humidity, pH, and available nutrients also limit the applied pesticide's survival and growth. These factors together are referred to in this preamble as "natural control mechanisms." The characteristics of the microbial pesticide play a role in the effectiveness of natural control mechanisms. If the microorganism is too weak to compete effectively against other microorganisms, or to withstand environmental conditions, it will be easily held in check by natural control mechanisms. Experience suggests natural control mechanisms exist in most environments where the microbial pesticides developed to date have been

applied. Because of the likelihood that natural control mechanisms will limit microbial pesticides, the Agency has generally presumed that the relatively small amounts of microbial pesticides used in small-scale testing would not pose unreasonable adverse effects, i.e., the benefits of these types of tests would outweigh the risks.

However, as first indicated in the 1984 Interim Policy Statement, it is now possible to develop microbial pesticides expressing new pesticidal properties. Such properties may allow for significantly new or expanded host ranges, new or enhanced toxin production, and new fitness and survivability characteristics. In addition, the genetic components responsible for the added or altered pesticidal properties may be mobile and may allow for transfer of the pesticidal traits to other organisms that would otherwise be unable or unlikely to acquire these pesticidal properties.

Many of these kinds of microbial pesticides would have been unlikely to arise under natural conditions, and may not be subject to existing natural control mechanisms. Because these microbial pesticides may raise different risk concerns than the more traditional microbial pesticides in small-scale testing, the Agency believes that the presumption that they would not pose unreasonable adverse effects should not automatically apply.

In 1984, the Agency set forth a notification requirement that had a broad scope of coverage: specifically, all genetically altered and nonindigenous microbial pesticides would be subject to screening before application in the environment.

Since then, the Agency has had almost 8 years experience reviewing over 75 notifications for small-scale testing with genetically altered and nonindigenous microbial pesticides. Based on that experience, and a growing body of information from other sources such as the scientific literature, EPA has concluded that certain of these microbial pesticides need not be subject to the limited screening involved in the EPA notification process.

Accordingly, one goal in developing the scope of coverage for this proposed rule is to reduce regulatory burden by eliminating the notification requirement for those microbial pesticides that scientific knowledge, experience, or expertise indicate do not warrant review because they are unlikely to pose unreasonable adverse effects at this stage of development. In other words, the scope of coverage for this rule should be reduced, from that articulated in 1986, to focus only on those microbial pesticides for which the Agency has risk concerns or where the Agency lacks sufficient information or knowledge to conclude that their use at small-scale is unlikely to cause unreasonable adverse effects. Another EPA goal is to implement a scope that clearly identifies those microbial pesticides subject to the notification requirement in a way that could be easily understood and used. Such a scope would make sufficiently clear to the regulated community, the Agency and other interested parties, whether a specific microbial pesticide is subject to the notification requirement.

B. Description of Notification

A notification would contain sufficient data and information to allow EPA to review the proposed test, including the identity of the microbial pesticide, a characterization of its relevant biology and ecology, a description, if applicable, of how the microbial pesticide has been modified, and a description of the objectives, experimental design, and other relevant parameters of the proposed test. Proposed subpart C at § 172.48 includes a discussion of the kinds of data and information to be submitted in a notification.

The notification could be in the form of a letter. It may describe a range of testing, from a single specific test to a complete research program. A notification for a research program could address, for example, multiple year testing in multiple sites with multiple microbial pesticides. This approach has been employed with some of the notifications submitted under the 1984 and 1986 policy statements, and EPA finds it advantageous to both the Agency and submitters to treat a series of field tests that are variations on a theme under a single notification.

Data and information provided to the Agency in a notification may be claimed as confidential business information (CBI), and should be accompanied by comments substantiating the CBI claims. (See § 172.46(d)).

Agency review of a notification would be completed within 90 days. At the conclusion of the review, the Agency may make one of the following determinations: approve the test; approve the test without requiring an EUP as long as certain modifications in the proposed test plan are incorporated; require additional information; require an EUP for the test; or disapprove the test because of the potential for unreasonable adverse effects.

In the past, EPA has, in several instances, informed submitters on an individual basis when no further notification to EPA was required for certain specific microbial pesticides, even though these microbial pesticides were within the scope of the 1984 and 1986 policies. The Agency has taken this action in those instances where sufficient information was available to EPA to approve a range of future small-scale testing without specific prior notification for each test. EPA anticipates it will continue this approach, where warranted, under the current policy and when a final rule is in place.

C. Proposed Regulatory Scheme

The Agency proposes to revise 40 CFR 172.3 to clarify its rationale for presuming that an EUP is not required prior to small-scale testing with most pesticides. The Agency would modify the language of the rule to clarify that the determination of whether an EUP is required is based on risk considerations, rather than on a definitional presumption about whether the substance is a pesticide. Whether a substance is a pesticide, and therefore under the jurisdiction of FIFRA, is governed by the definition in section 2(u) of FIFRA; whether a pesticide should be regulated under FIFRA is governed by risk/benefit considerations and the availability of appropriate regulatory alternatives. EPA believes that EUPs are usually not warranted for small-scale testing because most applications of most pesticides are presumed not to involve unreasonable adverse effects to human health or the environment.

The Agency also proposes, by adding a subpart C to the existing EUP regulation (40 CFR part 172), to incorporate the requirement that the Agency be notified before initiation of small-scale testing with microbial pesticides whose pesticidal properties have been enhanced or imparted by the introduction of genetic material that has been deliberately modified. This is referred to in this preamble as Option 1. Two other scope definitions, designated Options 2 and 3, are also discussed in this preamble. Currently, the Agency requires notification for small-scale testing of all genetically altered and nonindigenous microbial pesticides. EPA now, in the proposed regulatory text, proposes to limit the focus of the notification requirement to a smaller group of microbial pesticides.

The proposed notification scheme would codify the Agency procedure of screening planned small-scale tests to evaluate the potential for adverse effects on human health or the environment and allow the Agency to take further action, if appropriate. Testing

conducted in a facility with adequate containment and inactivation controls would not be subject to the notification requirement. Responsibility for selection and use of adequate containment and inactivation controls would lie with the researcher or institution conducting the test (See Unit V.A. of this preamble).

A mechanism for designating, in the future, exemptions from the requirement for notification prior to testing at the small-scale stage, as information and/or experience indicates this is warranted, is included at proposed § 172.52. Using this mechanism, certain subgroups of the microbial pesticides, otherwise subject to notification, could, on the basis of scientific knowledge and experience, be added to a list of exemptions from the notification requirement.

Proposed §§ 172.57 and 172.59 are included to enable the Agency to address situations where small-scale tests covered by subpart C result in unanticipated and untoward effects.

Proposed § 172.57 addresses situations where a person using a microbial pesticide in small-scale testing obtains information concerning the potential for unreasonable adverse effects, but there is no threat of immediate or serious harm to human health or the environment. This section would require that person to submit such information to EPA within 30 days so that the Agency can evaluate the information and take any necessary action to minimize the potential for adverse effects. In situations where threat of harm to human health or the environment is immediate and serious, proposed § 172.59(a) sets out the manner in which EPA would act immediately to prevent adverse impacts. For example, if necessary and appropriate to the specific situation, EPA may use its authority under FIFRA section 16(c) to prevent continuance of the experiment. Such actions would be taken only when there is a tangible threat of serious harm that must be attended to without delay. EPA does not intend to use the authority in proposed § 172.59(a) to respond to situations that could be addressed in other, less precipitous ways.

The provisions set forth in proposed Subpart C (§§ 172.43 through 172.59) for the review of small-scale tests of certain microbial pesticides would not affect the already established Agency procedures for the review of pesticides for EUPs or for registration purposes.

Together, the notification procedure and the existing EUP procedures would provide oversight of microbial pesticides that meets EPA's objectives under FIFRA, as well as those set forth in the 1986 "Coordinated Framework for Regulation of Biotechnology," the 1990 "Proposed Principles on Scope of Oversight," the 1991 "Report on National Biotechnology Policy," and the 1992 "Exercise of Federal Oversight Within Scope of Statutory Authority." EPA believes that this notification procedure is also consistent with the recommendations contained in the ESA and NAS reports, and the recommendations of the FIFRA SAP and BSAC concerning the assessment and screening of microbial pesticides.

IV. Options for Scope of Coverage

A. Identification of the Options

To provide a full opportunity for analysis and comment by the public, this preamble discusses three options for redefining the scope of microbial pesticides subject to screening before small-scale testing in the environment. The Agency's goal in setting forth these options is to discuss alternative approaches to identifying those microbial pesticides having the greatest potential to pose risks, or those where sufficient information and knowledge are lacking about the potential risk when the microbial pesticide is introduced into the environment. Each option is accompanied by definitions and/or footnotes that have been developed to provide the necessary specificity for use within the regulatory context of FIFRA.

The three options are presented below, followed by the Agency's analysis of the options in Unit IV.B. of this preamble, and a discussion of the implementation of these options within the FIFRA regulatory context in Unit IV.B.4. of this preamble. For a variety of reasons discussed in the analysis and in the summary in Unit VI. of this preamble, the Agency prefers Option 1, and it is embodied in the proposed regulatory text. EPA is also interested in comments on Option 3. As noted above, Option 2 is discussed for illustrative and historical reasons.

Option 1: Microbial pesticides whose pesticidal properties have been imparted or enhanced by the introduction of genetic material that has been deliberately modified.

Key terms used in Option 1 are defined as follows:

1. "Pesticidal property" means a characteristic exhibited by a microorganism that contributes to the intentional use of the microorganism to prevent, destroy, repel, or mitigate a pest or to act as a plant regulator, defoliant, or desiccant.

2. "Introduction of genetic material" means the movement of nucleotide sequence(s) into a microorganism, regardless of the technique used.

3. "Deliberately modified" means the directed addition, rearrangement, or removal of a nucleotide sequence(s) to or from genetic material.

Option 2: Microbial pesticides that have been deliberately modified in hereditary traits, with the exception of:

1. Microorganisms modified solely:

a. Through chemical or physical mutagenesis.

b. By the movement of nucleic acids using physiological processes including, but not limited to, transduction, transformation, or conjugation;[1] or

c. By plasmid loss or spontaneous deletion.

2. Organisms that have been modified by the introduction of noncoding, nonexpressed nucleotide sequences that cause no phenotypic or physiological changes in the parental organism.[2]

3. Organisms resulting from a deletion, rearrangement, or amplification,[3] within a single genome, including its extrachromosomal elements.[4]

This definition uses several key terms and phrases that require further clarification as follows:

a. "Deliberately modified in hereditary traits" means modified by alteration of the genome.

b. "Genome" means the sum total of chromosomal and extrachromosomal genetic material of an isolate and any descendants derived under axenic culture conditions from that isolate.

c. "Organisms" means microorganisms.

d. "Movement of nucleic acids" means movement of nucleotide sequences into a microorganism.

e. "Physiological processes" means there has been no directed addition, rearrangement, or removal of a nucleotide sequence(s) to or from the nucleic acids that are moved. In addition, the recipient microorganism must not have lost the ability to recognize and cleave foreign genetic material and must not have been exposed to conditions to induce competence artificially by treatments that render the microorganism surface

[1] Also excluded are microorganisms modified solely by anastomosis.

[2] Also excluded are microorganisms modified as in 1 or 3 above that have also been modified by the introduction of noncoding, nonexpressed nucleotide sequences that cause no phenotypic or physiological changes.

[3] Applies only to microorganisms where the amplification has not imparted, enhanced, or altered pesticidal properties.

[4] Also excluded are microorganisms resulting solely from a point mutation.

structure permeable to transforming genetic material.

f. "Organisms resulting from rearrangements" means microorganisms resulting from translocations or inversions.

g. "Noncoding, nonexpressed nucleotide sequences" means the nucleotide sequences are not transcribed and are not involved in gene expression or replication. Examples of noncoding, nonexpressed nucleotide sequences that cause no phenotypic or physiological changes in the recipient include linkers, adaptors, homopolymers, and flanking sequences.

Option 3: Indigenous microbial pesticides for which specific pesticidal activities have been created or increased by deliberate processes or techniques.

Notification is not required for microbial pesticides whose pesticidal activities have been increased, but which are unlikely to pose a greater risk in the test site environment, in terms of increased host range, competitiveness, survivability, or genetic mobility, compared to the microorganism(s) from which they were derived.

Notification is not required for microorganisms whose phenotype has been changed only by the microorganism's introduction into a new environment, but which are unlikely to pose a greater risk in the test site environment resulting from an increase in host range, competitiveness, survivability, or genetic mobility.

Key terms used in Option 3 are defined as follows:

1. "Pesticidal activities," for the purpose of this option, means hazard characteristics expressed by the microorganism, which is the active ingredient, that prevent, repel, destroy or mitigate a pest or act as a plant growth regulator, defoliant, or desiccant through toxin production, infectivity, pathogenicity, or virulence. Pesticidal activities do not include noncytotoxic modes of action such as those brought about by niche exclusion, substrate competition, or nutrient sequestration.

2. "Created" means the microorganism has been given a pesticidal activity that is not part of the normal genetic complement of the species in nature.

3. "Increased pesticidal activity" means an augmentation of a pesticidal activity that can be shown to be part of the normal genetic complement of the species in nature.

4. "Deliberate processes or techniques" means the intentional movement of the microorganism to a new environment or a change in the genetic information of the microorganism resulting from natural breeding, selection for spontaneous mutations, chemical or physical mutagenesis, transduction, transformation, conjugation, cell fusion, recombinant DNA or other genetic manipulations.

5. "Test site environment" means the immediate test site and the area surrounding the test site to which the microorganism or its genetic material may reasonably be expected to be dispersed.

6. "Genetic mobility" means the horizontal movement [i.e., from the genome of one species to the genome of another] of genetic material.

Option 1 uses an "inclusionary" scope. This approach is termed "inclusionary" because it is based on an initial statement that describes which microbial pesticides are included in the scope and therefore subject to notification. Options 2 and 3 are termed "exclusionary" because they both begin by circumscribing a larger group of microbial pesticides and then delineate subsets to be excluded from the scope.

B. Analysis of Options

1. *Options 1 and 2.* Options 1 and 2 are discussed together because they share many of the same key terms and definitions. Options 1 and 2 are approaches in which the EPA has made the initial assessment of the potential risk presented by certain categories of small-scale testing with microbial pesticides. In these options, EPA directly indicates in the scope definitions the categories of microbial pesticides subject to notification. Options 1 and 2 are based on three major premises: (1) Notification should be limited to tests involving microbial pesticides with the potential for presenting new and different hazard traits and/or a potential that organisms which heretofore might not have been exposed to these traits could be exposed, particularly when this exposure occurs through new or additional routes; (2) that a site-specific analysis of risk potential for tests other than those in (1) above is not necessary, and these tests can be excluded from the notification requirement; and (3) the decision of which tests are subject to notification is made by EPA, and encoded in the scope definition. EPA's decision is based on its 40 years of experience in regulating microbial pesticides, including 8 years of experience evaluating genetically altered and nonindigenous microbial pesticides at all stages of product development and registration, as well as the knowledge and expertise of its personnel and other scientists in fields such as microbial ecology, plant and insect pathology, soil microbiology and molecular biology.

Options 1 and 2 create a structure (See Unit IV.B.3. of this preamble) wherein the assessment of whether a test is subject to notification to EPA is made on the basis of simple and directly addressable criteria that form the scope definitions. Under these approaches, all interested parties (e.g., industry, researchers, public interest groups, EPA) would, in most instances, deduce from a reading of the definitions alone whether a test involving a specific microbial pesticide is subject to the notification requirement. Both options significantly reduce the number of notifications that would be sent to EPA relative to existing EPA policy.

Option 1 focuses the scope of microbial pesticides subject to notification through a single statement that directly describes the types of tests that would be subject to notification. Option 2 defines the scope of microbial pesticides subject to notification through a somewhat broader initial statement, which is then narrowed by exclusions. Option 1 identifies and focuses attention on microbial pesticides with (1) new or different hazard trait(s); and (2) the potential to present new or different exposures, e.g., organisms which heretofore might not have been exposed to a particular substance might now be exposed to that substance through the microbial pesticide. EPA judges pesticides in these categories to present relatively greater potential for risk than those microbial pesticides EPA would no longer subject to the notification requirement.

The following discussion provides the rationale for EPA's determination of those microbial pesticides which would be subject to the notification requirement and those that would not under Options 1 and 2. Examples are provided in order to illustrate the types of issues presented by microbial pesticides covered by Options 1 and 2.

Useful and effective microbial pesticides can now be developed by introducing new pesticidal properties into a microorganism. This can be accomplished, for example, by giving a microorganism the ability to produce a toxin that heretofore, it could not produce. A gene encoding a toxin could be isolated, for example, from a parasitic wasp, introduced into a microorganism, and be functionally expressed by the microorganism (Example 1). Such a microbial pesticide might present new hazard and exposure considerations. The microorganism, which had no previous pesticidal properties, is now able to produce a potent toxin, which

might present a new hazard consideration.

The microorganism's acquisition of the ability to produce the toxin also creates a potential for either increased exposures of nontargets, or exposure of a different range of nontarget organisms. For example, when the toxin is produced by the parasitic wasp, generally only those insects preyed upon by the wasp are exposed to and affected by the toxin. However, when the toxin is produced by the microorganism, a new range of organisms may be exposed to the toxin. If the microorganism colonizes leaves or roots, then any insects or other organisms feeding on, or living in close association with, a plant colonized by the microorganism could be exposed to the toxin and could be adversely affected by such exposure.

A newly acquired toxin production capability may also impart selective advantage and/or competitive characteristics such that the microbial pesticide could establish itself in the environment and continuously present these new exposures. It is possible that the newly acquired trait could assist in overcoming natural control mechanisms. For example, organisms killed by the toxin may serve as an additional source of nutrients for the microorganism. This may allow the pesticidal microorganism to exhibit superior multiplication and dissemination compared to other microorganisms whose populations are kept in check because they do not have access to additional nutrients.

There is also the possibility that the genetic material encoding the pesticidal trait could move, under natural environmental conditions, from the microorganism that was the original recipient, into other microorganisms that would have otherwise been unlikely to acquire it. These other microorganisms may occupy different environmental niches than the original recipient. Such unintended movement may allow for ever increasing environmental exposure as the gene is transferred from one type of microorganism to another. A wider variety and greater number of nontarget organisms could thereby be exposed to the toxin.

The ability of a microorganism to function as a microbial pesticide can also be increased by enhancing the pesticidal properties that the microorganism already possesses. For example, the efficacy of *Bacillus thuringiensis* could be enhanced by modifying its delta endotoxin gene so it encodes a more potent toxin. It may also be possible to broaden the target spectrum of the microbial pesticide through modification of the gene encoding the toxin. For example, in the case of *B. thuringiensis*, the microorganism produces a protein molecule which itself does not have insecticidal activity; i.e., the microorganism produces a protoxin. In order for toxic activity to occur, the protoxin must be broken down into fragments or subunits, one of which is toxic. It is believed that most insects are unaffected by *B. thuringiensis* because their gastrointestinal tract does not degrade the protoxin to produce the toxic subunit. If the gene producing the protoxin were modified so that the *B. thuringiensis* produced only the insecticidally active subunit, and the active subunit were coupled with another protein to enhance transport across membranes, additional insect species could be susceptible to this microbial pesticide (Example 2). Such microbial pesticides may be able to compete in the environment and could thus become a permanent part of the *B. thuringiensis* population. A microorganism's pesticidal activity could also be enhanced by changes to genes other than those that encode the toxin, but which nonetheless, affect pesticidal properties. For example, changes could be made in genes controlling host specificity. When this is done, the range of hosts the microorganism can affect could be decreased, or increased to encompass other types of organisms that were not previously affected by the microbial pesticide (Example 3).

Some modifications can be undertaken to increase the ability of the microorganism to survive. For example, modifications enhancing resistance to UV radiation could increase microorganisms' ability to survive solar radiation (Example 4). Such an ability would be important for microorganisms living on plant leaves, and could lead to microbial pesticides with increased pesticidal properties. For example, if a toxin producing microorganism persisted longer in the environment because of an ability to resist solar radiation, additional nontarget organisms might be adversely affected because these nontargets have greater opportunity to chance upon the toxin, and/or might be exposed to the toxin for a sufficiently long period of time for the adverse effects to occur.

The above are examples of the kinds of microbial pesticides that are the general focus of Options 1 and 2. They are directly the focus of Option 1 since it identifies microbial pesticides whose pesticidal properties have been imparted or enhanced with the term "enhanced" interpreted broadly. For example, "enhanced" would include circumstances involving an increase in the ability of a microbial pesticide to survive. It would also include any increase, improvement, extension, augmentation, intensification, or amplification of a pesticidal property, and would include situations where the mobility of the pesticidal property is increased. Option 2 indirectly focuses on these microbial pesticides through a broader initial scope and exclusions for categories of microbial pesticides which do not have these properties. Because of the potential for microbial pesticides covered by Options 1 and 2 to express new or enhanced pesticidal traits, and to disseminate and increase in numbers and biomass, the Agency believes that the risk issues associated with such microbial pesticides should be considered by EPA at the small-scale testing stage, rather than deferring EPA consideration to later stages of testing and development.

Both Options 1 and 2 exclude from notification all microbial pesticides comprised of microorganisms simply isolated from the environment (naturally occurring), and laboratory generated microbial pesticides similar to those that would be likely to occur in microbial populations in nature. As mentioned previously, EPA has a significant amount of experience with naturally occurring microbial pesticides. EPA's experience to date suggests that the populations of most microbial pesticides of this type are limited, often by natural control mechanisms, so that they generally die off or return to low numbers. Thus, these microbial pesticides are not likely to present new hazard or exposure issues when tested at small-scale, and do not necessitate a site-specific analysis of potential risk. (The exception to this statement may be certain nonindigenous microorganisms. See Unit IV.B.5. of this preamble for a discussion of EPA's position on such microorganisms.)

EPA believes that certain laboratory-generated microbial pesticides will behave like the population from which that microbial pesticide was derived. No population of microorganisms in the environment is homogenous in genetic composition, or in traits expressed. Members of a population change their characteristics through, for example, random loss of genetic material (i.e., random deletions, including plasmid and chromosome loss) and rearrangement of genetic material within a microorganism. Random loss and rearrangement of genetic material can result from exposure to UV radiation, starvation, and exposure to

mutagenic chemicals, as well as from errors when the microorganism duplicates its genetic material. These types of conditions and events occur in nature, and some members of a population will, at any time, experience loss or rearrangement of genetic material. Therefore, microorganisms that have experienced these types of changes in the laboratory, are likely to exhibit characteristics within the range of characteristics exhibited by populations in the environment.

A microbial pesticide that results from the transfer of genetic information, under conditions simulating conditions in nature, would also be likely to be similar to members of the population in nature. Bacteria, for example, engage in such transfer through: (1) transduction, a process in which a virus can pick up the genetic information encoding for a heritable trait(s) of one bacterium and transfer it to the bacterium that it subsequently infects; (2) transformation, a process in which a bacterium takes up genetic material from the environment (perhaps released into the environment by the death of another microorganism); and (3) conjugation, a process in which genetic material is transferred from one bacterium to another through direct physical contact.

Successful transfer of genetic information depends, among other things, on the ability of the recipient microorganism to incorporate and express the genetic information. Transfer of genetic information is restricted generally to members of a single population, since the cellular machinery that expresses genetic information generally is highly organism specific. Occasionally, members of more distantly related populations of microorganisms may exchange genetic information, e.g., in conjugation, but these wider exchanges have limitations. In any event, these types of transfers of, and changes, in genetic information are likely to occur in nature. Therefore, some members of each population probably already possess genetic information that can be transferred into the population by natural transduction, transformation, and conjugation.

Thus, microorganisms produced in the laboratory under conditions simulating conditions in nature are likely to be the same as, or similar to, variants found in natural microbial populations. Thus, they, would not present new hazard or exposure issues and would be subject to the constraints imposed by the environment.

Although Options 1 and 2 are similar with respect to the kinds of microbial pesticides covered and not covered, the two options differ in two important respects. First, while Option 2 includes most modifications that enhance, impart, or alter pesticidal properties by the introduction of modified genetic material, it is not limited to this group of modifications. For example, Option 2 would also cover microbial pesticides modified by the introduction of marker genes that have been inserted only to improve the ability to identify and detect the microbial pesticide. Option 2, which is not as specifically targeted to pesticides as Option 1, includes these kinds of microbial pesticides since the exclusion categories on which it is based are not so precisely drawn as to exclude only marker genes. Therefore, Option 2 casts a somewhat broader net in order to capture for review, the few microbial pesticides that may fall in the same category as marker genes and that may pose risk concerns.

A second area where the options differ is that Option 1 would encompass within the scope, microbial pesticides in which pesticidal properties have been altered by the deletion or rearrangement of genetic material within the genome of the microorganism when the deletion or rearrangement has been brought about by isolating a segment of genetic material from a microorganism, deliberately modifying it, and subsequently returning that segment to the microorganism. Option 2 does not capture this category of microorganism within its scope.

The argument supporting the approach in Option 2 is that these kinds of deletions and rearrangements can only: (1) inhibit the expression of characteristics possessed by the parent organism or, (2) allow previously unexpressed characteristics to manifest themselves. Since no new genetic material is added, no characteristic can be expressed that could not potentially have been expressed by the parental microorganism, or that may not already be expressed by a variant in the natural population. The microorganism is not likely to possess characteristics outside the range of those that could occur in the environment. It would, thus, be subject to natural constraints.

However, for microbial pesticides, the intent underlying such modifications would usually be to cause the microorganism to exhibit specific pesticidal characteristics, such as enhanced toxin production, increased virulence or expanded host range. It is well documented that changes in these kinds of characteristics can result from deletion and rearrangement of genetic material. Deletions and rearrangements brought about by deliberately modifying a segment of genetic material from a microorganism and returning that segment to the microorganism (i.e., targeted changes) may present somewhat different considerations than microbial pesticides that have acquired such characteristics randomly as a result of insults such as UV radiation, exposure to toxic chemicals or starvation conditions.

Targeted modifications minimize the possibility of unintended changes occurring in other parts of the microorganism's genetic information that could render it less fit for survival, or that could trigger rounds of repair activity leading to changes in the desired modification. Moreover, targeted changes can be engineered to be more stable, and, on average, less likely to revert to the characteristic that existed prior to the change. Targeted changes in pesticidal properties may result in microbial pesticides with a relatively higher potential for maintaining and expressing the changed characteristic(s) than those microorganisms resulting from random changes. Thus, targeted deletions and rearrangements in microbial pesticides may present relatively higher levels of potential risk than random changes.

As a result, EPA has, consistent with the advice of the FIFRA SAP subpanel (see Unit VII.B. of this preamble), elected in Option 1 to propose that some microbial pesticides resulting from a targeted deletion or rearrangement would be subject to the notification requirement. However, EPA proposes in this rulemaking a mechanism that could be used to exempt categories of microbial pesticides (See Unit V.B. of this preamble). Should experience and/or public comment indicate it is warranted, EPA could exempt from notification those microbial pesticides that result from a targeted deletion or rearrangement. EPA requests comment at Unit VIII.G. on this issue.

2. Option 3. Option 3 is an approach in which the researcher (or research institution) makes the initial assessment of the potential for risk presented by the test. Option 3 is based on three major premises: (1) Notification should be limited to microbial pesticides that have the potential to pose greater risk because of increased hazard and/or exposure compared to their parental(s); (2) the researcher (or the research institution) is in the best position to make the initial determination of whether notification is required for a test; and (3) the researcher can choose to evaluate the potential risks of the specific small-scale experiment (including the test site environment) and determine if it satisfies premise (1) above.

Option 3 defines the scope of microbial pesticides potentially subject to notification through a broad initial statement that brings in many tests; it then proceeds to narrow the scope focus in two ways. First, certain key terms and definitions narrow the scope. Second, Option 3 narrows the scope through two exclusions based on exposure considerations. These terms and definitions were developed to give researchers addressable criteria from which to determine the need to notify EPA of a planned test.

The breadth of the initial statement of scope is determined by the words "by deliberate processes or techniques." For this option, "by deliberate processes or techniques" refers to changes in the genetic information possessed by the microorganism and/or the intentional movement of the microorganism to a new environment.

A change in the genetic information of the microorganism can be effected in a number of ways, and all of these are within the initial statement of scope. These include natural breeding, selection for spontaneous mutations, chemical or physical mutagenesis, transduction, transformation, conjugation, and recombinant DNA, or other genetic changes such as those arising from anastomosis, plasmid loss, site-directed mutagenesis, and cell fusion.

Selection for spontaneous mutation would include the deliberate use of selective pressure to affect the efficacy of the microbial pesticide. For example, viruses whose virulence has been enhanced by serial passage would be within the initial statement of scope. In serial passage, a host is successively inoculated with the virus; the progeny viruses are then screened and those progeny with the most pesticidal activity are selected. This process is repeated sequentially, if needed, to increase the virus' virulence. The term "natural breeding" would include microorganisms that have been cultured.

The initial statement of scope also includes microbial pesticides moved from one environment of testing to another, different or "new environment," whether they have experienced changes in genetic information or not. The "new environment" could be a significant change in geographic location, climatic condition, ecosystem or habitat.

The broad initial statement of scope is then narrowed by several other key terms and definitions. First, the definition of "pesticidal activities" narrows the scope to address only those microbial pesticides which exert their pesticidal effects through the specific modes of action of toxicity and/or host-pathogen interactions. Microbial pesticides that act through other mechanisms are outside of the scope and would not be subject to the notification requirement. "Pesticidal activities" do not include noncytotoxic modes of action such as those brought about by niche exclusion, substrate competition, or nutrient sequestration.

The terms "created" and "increased" further limit the scope. In Option 3, "created" means that the microbial pesticide has acquired the ability to perform as a pesticide via toxin production and/or host-pathogen interaction, as a result of the deliberate introduction of genetic material that is not part of the normal genetic complement of the species in nature. "Increased" means that the ability of the microorganism to act as a pesticide through toxin production and/or host-pathogen interaction has been augmented, and that the genetic material controlling these activities is part of the normal genetic complement found in the species in nature. Microorganisms whose genetic information has not been changed but whose pesticidal activity is increased by movement to a new environment would fall in this category. Microorganisms whose pesticidal activities have not been changed or have been decreased, through changes in genetic information or movement from one environment to another, would not be within the scope. For example, attempts are being made to reduce the host range of the plant pathogen, *Sclerotinia sclerotiorum*, and should this pathogen be field tested as a microbial pesticide, it would not trigger notification under Option 3 because its pesticidal activities have been decreased.

Having narrowed the scope through these key terms and definitions, Option 3 then utilizes two exclusions to remove certain other microbial pesticides from the notification requirement. These exclusions are based on an evaluation of several exposure considerations.

The first exclusion operates through a comparative analysis of the risk potential of the microbial pesticide whose pesticidal activities have been increased with the potential risk of the microorganism(s) from which it was derived. This comparison is conducted within the context of the area to which the microorganism or its genetic material may reasonably be expected to spread, and the likelihood of increased risks that may occur due to greater exposure potential because of increased host range, competitiveness, or survivability of the microbial pesticide, or because of increased genetic mobility. Consideration of these factors is intended to focus the evaluation on the potential for increased exposure of the microbial pesticide, its genetic material, or the products of the microorganism, to susceptible nontarget organisms.

Increased competitiveness means the microbial pesticide is able to survive, reproduce and spread in the environment in a way that is more effective than its parental(s). For example, it would be able to increase its numbers at the expense of other organisms, or it would become established in a new niche thereby increasing opportunities for exposure. Either of these mechanisms implies that the microbial pesticide would be better suited to survive and expand its population and thus pose a greater potential risk to the environment relative to the parental organism(s). Similarly, greater survivability means the microbial pesticide persists longer than its progenitor(s) and, thus, there may be greater opportunities for exposures to nontarget organisms. Mobility refers to the horizontal movement of genetic material from the genome of one organism to the genome of another organism(s). The significance of genetic mobility depends on what material is moved and the nature of the recipient species. For example, if the mobility of a toxin gene is increased, the gene may be transferred to organisms where it did not exist previously and would not be expected to exist naturally. The result of this transfer may be to confer greater competitiveness or survivability on the recipient organism, and/or to allow the recipient to become established in a new niche, thereby increasing exposure to the toxin.

The second exclusion considers similar exposure factors except that it specifically applies to microorganisms whose pesticidal activities are increased by movement to a new environment. It would apply to microbial pesticides arising from natural breeding and microorganisms selected from one environment for use in a new environment.

Under the exclusion mechanisms, the researcher would consider the host of factors that may affect hazard and exposure to determine whether a test, in which the microorganism's pesticidal activity is increased, is eligible for exclusion from the notification requirement, with "increased" referring to an augmentation of the ability of the microorganism to act as a pesticide and the genetic material controlling these activities being part of the normal genetic complement of the species in nature. When pesticidal activity has

been created, rather than increased, the resulting microbial pesticide would not be eligible for consideration under the exclusions.

Under the exclusions of Option 3, the researcher would make an assessment of the potential risk of the test, considering variables such as environment, exposure, and toxicity or pathogenicity. If, for example, the test has confinement measures/features designed to control the movement of the microorganism, the effective "test site environment," may be diminished. With sufficient confinement controls, the microorganism and its genetic material may only be reasonably expected to occur in the immediate test site and not disperse to any surrounding area. In this case, the immediate test site is the "test site environment." As the effective test site environment is narrowed, the researcher's assessment of the interactions between the microorganism and the environment becomes simpler because opportunities for unintended exposures that may increase potential risks—resulting from an increased host range, competitiveness, survivability or genetic mobility—are reduced. Thus, the researcher's determination as to whether any particular test qualifies for an exclusion requires an assessment of the likelihood of an incremental increase in exposure in the test site environment taking into account the adequacy of the confinement measures.

In order to determine whether a test is eligible for exclusion, a researcher would first make a determination of whether there is an increase in pesticidal activity (e.g., increased toxin production) of the microorganism, and then if there is an increase in environmental exposure (e.g., an expanded host range). If the answer is "yes" to both parts of these questions, then notification would be required because the test poses a potentially greater risk.

When the answer to the question of whether the microbial pesticide has greater survivability is "yes," the test would require notification, assuming an increase in pesticidal activities. Here, the evaluation may focus on the characteristics that give the microorganism a greater chance to live and reproduce, such as increased reproductive rate, greater temperature or pH tolerance, or better defense mechanisms against predators, when compared with the progenitor(s). The researcher must then consider whether these enhanced characteristics will actually increase exposure to nontarget organisms inside the test plot or outside the test plot given the test's confinement measures. If the answer is "yes," notification to EPA is required.

Another exposure element that must be considered by the researcher to determine if notification is necessary is host range, specifically whether the host range of the microorganism has increased relative to that of the progenitor(s) in the test site environment. Such an evaluation would focus on whether different or additional types of nontarget organisms would potentially be exposed and whether any of these nontargets are likely to be in or around the test site environment, as well as the potential for actual exposure taking into account the test's confinement measures. When the answer is "yes," notification would be required for the test (again assuming an increase in pesticidal activities) because the relative risk of the microorganism in the test may have been increased.

EPA anticipates that many microbial pesticides included under the initial scope of Option 3 would, through the exclusion mechanisms, be removed from the requirement of notifying EPA. However, because of the experiment-specific nature of the analysis involved in the exclusion mechanisms, it is not possible to indicate a priori which microbial pesticides would qualify for exclusion.

3. Comparison of the Options. A primary objective in designing and selecting a scope of coverage is to provide a risk-based approach to identify those microbial pesticides subject to notification to EPA. The three options discussed in this proposal offer different conceptual approaches to meet this objective. These conceptual differences lead to differences in the type and number of microbial pesticides covered by each option, and necessitate differences in implementation.

EPA anticipates that the three options will require notification for many of the same microbial pesticides, although it may be that some of the microbial pesticides subject to notification under Options 1 and 2 will not require notification under Option 3. Conversely, some microbial pesticides covered by Option 3 may not be covered by Options 1 and 2. In order to illustrate the relative coverage of the options and the decision process for evaluating whether the tests are subject to notification, the examples discussed in Unit IV.B.1. of this preamble are analyzed below:

- It is anticipated that a microbial pesticide comprised of a microorganism functionally expressing the gene for a toxin from a parasitic wasp would be subject to notification under all three options (Example 1 in Unit IV.B.1. of this preamble).
- A microbial pesticide such as that discussed as Example 2 in Unit IV.B.1. of this preamble (wherein the active subunit of a toxic protein is coupled to another protein to enhance transport of the toxic moiety across membranes) would be covered under Option 1. It would be covered under Option 2 unless the sequence for the recognition subunit was from the same genome as the sequence for the toxic subunit. It would likely be covered under Option 3 if pesticidal activities were increased and there was a greater risk in the test site environment in terms of increased host range, competitiveness, survivability or genetic mobility compared to the microorganism from which it was derived.
- A microbial pesticide with changes in genes controlling host range specificity (Example 3 in Unit IV.B.1. of this preamble) would be covered under Option 1, if the change were to enhance pesticidal properties and involved the introduction of genetic material that had been deliberately modified. The pesticide in Example 3 probably would not, under Option 2, be subject to the notification requirement because most changes in host range currently result from deletions or rearrangements within a single genome. For Option 3, if the host range were increased, the microbial pesticide in Example 3 would likely be subject to the notification requirement. However, if the host range were decreased or shifted, the microbial pesticide would not be subject to the notification requirement, unless the shift resulted in an increase in infectivity, pathogenicity or virulence and there was a greater risk in the test site environment in terms of competitiveness, survivability, or genetic mobility.
- Example 4 in Unit IV.B.1 of this preamble discusses increases in the ability of the microorganism to survive. This example would be covered by Option 1 if the change were to enhance pesticidal properties through introduction of genetic material that had been deliberately modified. It might be subject to the notification requirement under Option 2 depending on whether the ability to better resist solar radiation was due to rearrangements or deletions in a single genome. It would be covered under Option 3 if the ability to better survive increased the ability of the microbial pesticide to act as a pathogen, and there was an increase in competitiveness, survivability, or genetic mobility.

Options 1 and 2 can be considered more centralized decision-making approaches than Option 3, which would, in contrast, be considered a

decentralized approach. For Options 1 and 2, EPA made a generic determination, based on its experience and general knowledge, that for certain categories of microbial pesticides it has sufficient information to determine that the probability of unreasonable adverse effects during small-scale testing is low. The Option 1 and 2 scope definitions are structured so that these categories of microbial pesticides fall outside the scope (i.e., they are not covered by the notification requirement). Other categories are within the scope, and are described by EPA in the Options 1 and 2 scope definitions. A centralized approach leads to greater consistency in decision-making. There is one standard—that provided by EPA. The researcher determines whether a notification is required for a test based on that standard, which does not require interpretation to be implemented. The potential for differing interpretations is limited because of the nature of the scope criteria.

Option 3 shifts responsibility to the researcher for evaluating whether there is an increase in risk potential in a test, and whether there should be notification to EPA. This determination could be made without direct EPA involvement.

Under Option 3, essentially all tests of indigenous microbial pesticides would be evaluated by the researcher, taking into account site-specific factors, to determine whether the Option 3 criteria have been met (i.e., whether there is an increase in risk potential for the specific test). The initial range of microbial pesticides in Option 3 is broadly defined as those developed by deliberate processes or techniques, including those with changes in genotype and those with changes in phenotypic expression resulting from environmental factors. It, thus, includes both naturally occurring microorganisms and microorganisms that have experienced deliberate genetic modification. Hence, the initial range, or the starting point, for Option 3 is far broader than for Options 1 and 2.

The type and extent of evaluation or assessment researchers must make to determine whether notification to EPA is required for a microbial pesticide test also differs between Option 3 and the other two options. Options 1 and 2 present the researcher with a limited number of factors that must be evaluated to determine notification status. For example, under Option 1, the researcher would need to answer only the following questions: (1) Have pesticidal properties been affected; (2) has genetic material been introduced; and (3) has the introduced genetic material been modified? Under Option 1, notification to EPA is required if the answer is "yes" to all three questions. Option 2 uses an analogous approach.

Option 3 may require the researcher to consider more factors, including a consideration of the test site environment and an analysis to determine whether the Option 3 criteria regarding hazard and exposure have been met. For example, to determine whether a microbial pesticide will potentially "pose a greater risk, in the test site environment in terms of increased host range, competitiveness, survivability, or genetic mobility, compared to the microorganism(s) from which [it was] derived" the researcher would evaluate such factors as the test site, including confinement measures; the range of nontarget organisms likely to be exposed; the mechanism(s) by which organisms may be adversely affected by the microbial pesticide; and specific differences in the microbial pesticide compared to the microorganism(s) from which it was derived. For this option, as with the other two options, if the researcher finds during an analysis of notification status that a particular consideration would exclude the test from the notification requirement, then no further assessment of other factors would be necessary.

EPA, in devising Options 1 and 2, generically considered environmental risk issues in determining whether microbial pesticides should be subject to the notification requirement. Two issues that were given particular consideration are the probability that the microbial pesticides not subject to the notification requirement would be competitive enough to result in significant exposures beyond the test site environment, and whether nonsubject microbial pesticides would be likely to have greater survivability or genetic mobility compared to the organisms from which they were derived.

The decentralized approach of Option 3 shifts the responsibility for evaluation of these factors, and, thus, the determination of the notification status of a small-scale test from EPA to the researcher. Each pesticide to be tested or each change in environment or set of environmental conditions requires the researcher to evaluate the test to determine whether it is within the initial scope established by Option 3, and whether it is eligible for exclusion from the notification requirement. A consideration of the factors laid out as relevant to Option 3 would be made on site by the researcher rather than by EPA.

Another difference among the options is that the boundaries circumscribing the categories of microbial pesticides subject to notification are more dynamic and fluid in Option 3 than they are in Options 1 or 2. For example, Option 3 relies on the term "new environment." The determination of what constitutes a "new environment" must be made on a case-by-case basis. The decentralized approach of Option 3 places greater responsibility on the researcher and can result in variations in decisions regarding the notification status of a test, as well as the need for confinement or other measures.

There are also differences between the options in terms of which types of microbial behavior are considered to raise hazard concerns meriting evaluation, with Option 3 covering a subset of the hazard endpoints addressed by Options 1 and 2. Option 3 only addresses the hazard endpoints associated with the creation or increase of toxin production, pathogenicity, infectivity, or virulence. Thus, Option 3 does not address hazard endpoints resulting from other mechanisms by which risk potentially can be presented. For example, Option 3 does not address the potential risks presented by competitive displacement. The narrower hazard focus of Option 3 is premised on the argument that the likelihood of significant environmental harm from competitive displacement is low for small-scale tests and therefore, microbial pesticides that act through this mechanism should not be subject to the notification requirement. Other mechanisms by which microorganisms exert adverse effects, such as the immobilization of substances important to other organisms, production of substances (e.g., lactic acid) that inhibit or repel other organisms, predation and some forms of parasitism, would not be covered by Option 3.

One of the goals of this rulemaking is to create a system which could accommodate advances in the understanding of the hazards and exposures of microbial pesticides. All three options were crafted to achieve this goal. However, they differ in how they would achieve it. Options 1 and 2, which are centralized options, provide a means by which information would be transmitted to EPA, which would then use this information in evaluating notifications as discussed in Unit III.B. of this preamble, establishing exemptions (Unit V.B. of this preamble), or ultimately as a basis for changing scope of coverage. Option 3, the decentralized option, places on the researcher the responsibility of determining whether notification to

EPA is necessary for a particular experiment. As the researcher gains information on potential risks, this information will be reflected in the specific determinations performed by that researcher. To the extent the researcher shares information with other researchers (e.g., publication in scientific journals), information concerning the potential for risk associated with specific types of tests could be disseminated to a wider community.

4. Implementation. The first three sections of Unit IV.B. of this preamble describe three approaches, Options 1, 2 and 3, for defining the scope of microbial pesticides to be subject to notification. In order to function in a regulatory context, each option must be implemented with the appropriate procedures to create equitable, accountable, consistent oversight that fulfills the goals of the regulation. This section identifies and discusses the use of four separate implementation procedures, and their utility, cost, and relevance for each option. The four procedures are: (1) Guidance from EPA on the considerations used in making a determination of whether a microorganism is covered by the scope; (2) documentation of the determination; (3) review of the determination by a third party; and, (4) retention of the records of the determination.

"Guidance from the Agency" could consist of a "points to consider" document describing appropriate issues to consider before arriving at a determination.

"Documentation of the determination" is a written account of the considerations evaluated in making the determination of whether a microorganism is covered by the scope, the conclusions of the evaluation, and how the conclusions were reached.

"Retention of the documentation" addresses where, and for how long, documentation of the determination will be maintained.

"Third party review of the determination" involves a review of the determination by a party other than the individual or group conducting the research activity.

Both Options 1 and 2 are crafted such that the researcher would consider a limited number of simply addressable factors, answerable with a "yes" or "no," to determine whether the notification requirement applies. The answers to the questions posed are readily apparent and would normally be part of the researcher's test protocols and records. Therefore, to determine whether a test would be subject to notification, researchers would look to their laboratory notebooks. For most of the considerations, the answers are relatively straightforward. For example, in Option 1, one of the key considerations is whether genetic material has been introduced. The determination can be made relatively simply since the test protocol either involves introduction of genetic material or does not.

Option 3 may require the researcher to consider a broader range of factors than the other options, including a consideration of the specific environment in which the test would take place, and requires individual researchers to judge whether their tests are excluded from the notification requirement. Although Option 3 may, in some cases, increase the burden on the researcher by requiring the consideration of a broader range of factors, it may also allow a broader range of tests to be excluded from the notification requirement. As with Options 1 and 2, researchers may not need to evaluate every factor before determining that a test is excluded from the notification requirement. In some instances under all the options, the decision could be made early in the evaluation process without EPA's involvement.

An additional consideration has a bearing on the implementation of Option 3—exclusion/inclusion of a specific microbial pesticide is substantially influenced by the individual judgment of the researcher. Although the qualifications and experience of researchers may vary, Option 3 is based on the premise that the individual or institution conducting the research is in the best position to make the required judgments concerning the potential risks associated with a specific test. As in Options 1 and 2, researchers must ultimately answer a series of "yes" or "no" questions; however, Option 3 may require researchers to consider other factors—not just material within their laboratory notebooks—in order to support their conclusions. Although Option 2 may, in some cases, increase the burden on the researcher by requiring the consideration of a broader range of factors, by taking a broader range of factors (including site-specific factors) into account, it may provide the opportunity for a broader range of tests to be excluded.

Under FIFRA, the Agency must structure its regulatory program so that use of the microbial pesticides excluded from the notification requirement is unlikely to pose unreasonable adverse effects on human health and the environment. To meet this requirement, EPA, in determining what will be subject to the notification requirements and what will not, balances risks and benefits. When the potential benefits of the test outweigh the potential risks, the no-unreasonable-adverse-effects standard imposed by FIFRA has been attained.

Therefore, the Agency must structure its program so that the risk determinations for anything excluded from the notification requirement, whether made by the Agency or the researcher, will support a risk/benefit balancing where the benefits outweigh the risks. Within this risk/benefit framework, EPA must make an initial determination to identify the types of microbial pesticides it believes warrant exclusion from notification. Because Options 1 and 2 identify specific categories of microbial pesticides, EPA would be relying on its own assessment of risks and benefits to exclude those microbial pesticides not within the scope of Options 1 and 2 from the notification requirement. Option 3 lays out an experiment-specific framework that places more responsibility with the researcher for determining whether the experiment is eligible for exclusion based on an assessment of risk. For Option 3, EPA would be relying on several factors in order to conclude that those experiments eligible for exclusion do not pose unreasonable adverse effects. These factors include: (1) The nature of the experiments (limited field tests); (2) the availability of appropriate guidance for researchers, (3); the traditional care taken in research; and (4) the potential liability to researchers and institutions.

As discussed below, EPA believes that, in light of the discretion afforded the researcher under Option 2, Agency guidance will be an important part of the regulatory structure for this option. For the same reason, the Agency also believes that third party review of the determination is necessary under Option 2. EPA requests comment on this approach. EPA also requests comment on whether and how the following mechanisms could be used in Option 3: (1) Documentation of the determination; and (2) retention of the documentation for a specific period of time following review. EPA also requests comment on the need for any or all of the four implementation mechanisms for Options 1 and 2 (See Unit VIII.B. of this preamble).

The following paragraphs discuss EPA's current thinking on the applicability and utility of the four implementation procedures as they relate to the three options. With regard to guidance provided by the Agency, for

Options 1 and 2, EPA believes that the determination of notification status is relatively straightforward, and the selection criteria set forth in the scope definitions provide sufficient guidance from the Agency. No additional guidance is needed. Option 3 involves consideration of a larger number of factors in determining whether notification is required. As a result, EPA believes there is a greater potential for inconsistency among researchers in the interpretation of this option than for Options 1 and 2. To address this possibility, Agency guidance becomes a more important component of the regulatory approach. EPA anticipates such guidance would be based on the considerations identified in the "Exercise of Federal Oversight Within Scope of Statutory Authority" published in the February 27, 1992 Federal Register.

In regard to review by a third party, there may be two types of benefits associated with this implementation component. First, independent reviewers may have experience and perspectives that complement and extend the experience and perspectives of the researcher, thereby improving the evaluation. Second, the use of independent reviewers will help provide consistency to the whole program and help ensure that individual decisions fall within mainstream thinking in the scientific community. Third party review could be performed by a local review group, composed of individuals with expertise in, for example, microbial ecology, molecular biology, human health, community and systems ecology, and toxicology. The third party could be similar to, or could actually be, the Institutional Biosafety Committees (IBCs) described in the National Institutes of Health (NIH) "Guidelines for Research Involving Recombinant DNA Molecules" (51 FR 16958, May 7, 1986), or some other responsible group or individual(s) in the research organization. Alternatively, the researcher could request that EPA serve as the third party reviewer.

Some small scale experiments involving microbial pesticides are currently being reviewed, either voluntarily or through the specific requirements of mechanisms such as the NIH Guidelines, by a third party within the researcher's specific institutional setting. Because of the nature of Options 1 and 2, EPA does not believe that an EPA requirement for third party review is generally necessary. However, because of the breadth of factors to be weighed under Option 3, EPA currently believes that third party review of the researcher's determination that a microbial pesticide is not subject to the notification requirement may be appropriate, and is interested in comments on this issue.

In terms of documentation of the decision, notebooks and test protocols would contain the information to support a determination under Options 1 and 2. Thus, for these options the documentation already routinely part of the research is adequate. Option 3 presents a different situation, since some of the information used in the determination would not likely be maintained as a matter of course in researchers' notebooks and test protocols. Given the availability of appropriate Agency guidance and the conditions under which research is typically developed and performed, it is likely that the appropriate factors will be considered. The Agency requests comment, however, on whether researchers should write down the key points of their analyses, to show that the relevant considerations have been evaluated and appropriate choices made.

In terms of retention of records, many researchers would ordinarily maintain the necessary documentation as part of the records of the research activities. However, when the information important to the risk analysis is not a part of the research protocol, or ordinarily considered by the researcher, there may be a need to go to other sources to obtain the information. While researchers usually retain their laboratory notebooks for many years, this may not be true for the additional information gathered for the risk analysis required under Option 3. EPA requests comment on whether it would be appropriate to establish a period of time (perhaps 3 years) during which these records should be maintained. A related issue is who would retain the records once they are compiled and reviewed. The documentation could be maintained by the individual or group that made the initial determination, or reviewer(s) of that material.

5. Microbial Pesticides Covered by Current Notification Policy but not Covered by the Option. Since 1984, EPA has had in place policies that require notification to EPA for small-scale testing of all genetically altered and nonindigenous microbial pesticides. For the purposes of this rule EPA is using the definition of "nonindigenous" published in the 1986 "Coordinated Framework for the Regulation of Biotechnology" (51 FR 23302, June 26, 1986), which stated that a microorganism would be considered to be nonindigenous to "any one of the geographic areas listed below if it is isolated from outside that area: (1) The continental United States, including Alaska, and the immediately adjoining countries; (2) the Hawaiian Islands; (3) the Caribbean Islands including Puerto Rico and the U.S. Virgin Islands."

Some of the microbial pesticides covered by the 1984 and 1986 policy statement would no longer be subject to the notification requirement, should this proposal become a final rule. Under Options 1 and 2, two groups of microbial pesticides would no longer be subject to the notification requirement. These are: (1) Naturally occurring nonindigenous microbial pesticides; and (2) all microbial pesticides that have been genetically altered (whether they are indigenous or nonindigenous), but that do not fall within the scope of Options 1 or 2.

Naturally occurring nonindigenous microbial pesticides would also be excluded from Option 3. Because of the nature of Option 3, EPA cannot a priori determine which other microbial pesticides currently covered by the 1984 Interim Policy Statement would no longer be subject to the notification requirement, should Option 3 become the scope of a final rule. Moreover, because Option 3 has a broad initial scope, some microbial pesticides that were not included in the 1984 scope would be initially captured under this option (e.g., some naturally occurring), although many of these microbial pesticides might be eligible for the exclusions of Option 3. Some genetically altered microbial pesticides would also be captured within the initial scope, although many of these would also be eligible for exclusion.

Those pesticides EPA would exempt from the notification requirement, under the authority of FIFRA section 25(b), would be exempted because EPA has determined them to be adequately regulated by another Federal agency, or to be of a nature as to not require regulation.

For naturally occurring nonindigenous microbial pesticides used at small-scale, the Agency believes adverse effects are most likely to occur in the areas of animal or plant pathogenicity or human health. Nonindigenous microorganisms that may have plant pest or adverse animal health effects are regulated by the Animal and Plant Health Inspection Service (APHIS). Under its own authority, and pursuant to its responsibilities under the National Environmental Policy Act (NEPA), 42 U.S.C. 4321 *et seq.*, APHIS considers the human health and environmental impacts associated with nonindigenous microorganisms that are potential plant

or animal pests. In recent years, the Agency has worked closely with APHIS in the review of nonindigenous microbial pesticides. The Agency believes that small-scale tests involving nonindigenous microbial pesticides, favorably acted upon by APHIS (i.e., granted a permit or determined that a permit is unnecessary), are unlikely to cause any significant impact on the environment. Another measure of oversight is provided by the U.S. Public Health Service, which regulates the importation and subsequent distribution of microorganisms that are of human health concern.

EPA believes that it should review, prior to environmental release, nonindigenous microbial pesticides that pose a potential for significant risk to human health or the environment when used in testing at small-scale, that are not otherwise reviewed by another Federal agency, provided that a category of such microorganisms can be identified. However, the Agency is not aware of the existence of such a category of nonindigenous microbial pesticides and believes that continued imposition of the notification requirement for all nonindigenous microbial pesticides would constitute unnecessary duplicative oversight of research and development of these products. Thus, the Agency believes that review by EPA is unnecessary at this stage and is, therefore, willing to presume that small-scale tests with such naturally occurring nonindigenous microbial pesticides would not present an unreasonable adverse effect and would not require an EUP under FIFRA. Hence, the Agency proposes not to require notifications for these microbial pesticides.

Indigenous microbial pesticides that do not otherwise fall within the scope of Options 1 and 2 would no longer be subject to the notification requirement. EPA judges these microbial pesticides to be less likely to pose significant risks to human health or the environment when applied in small-scale tests than those that would be covered under the options. In arriving at this conclusion, the Agency has taken into account its experience with naturally occurring microbial pesticides, and those altered by both classical and newer genetic techniques that would be similar to naturally occurring microbial pesticides. EPA particularly draws upon its experience since 1984 with the assessment of these types of microbial pesticide products at the small-scale testing stage. Therefore, under the conditions discussed for each option, the Agency is willing to presume that small-scale tests of microbial pesticides containing microorganisms other than those in the scope definitions do not need EUPs, and is proposing that these microbial pesticides not be subject to a notification requirement.

V. Other Provisions

A. Testing in Contained Facilities

For any scope option, it is important to clearly distinguish circumstances where testing of those microbial pesticides otherwise within the scope would not be subject to notification. One such circumstance is testing within a contained facility, such as a laboratory or greenhouse, where appropriate containment procedures and controls are employed. EPA does not propose to require notification for testing occurring in such facilities, because it does not believe such testing raises sufficient risk concerns that notification is warranted.

However, excluding testing in contained facilities raises the need to describe what constitutes a contained facility where appropriate containment procedures and controls are employed. One alternative would be to set a single standard with specific containment parameters for all microbial pesticides. Another approach would be to identify several increasingly stringent levels of containment and issue guidance on how the various microbial pesticides would be matched to the appropriate level of containment. Both of these approaches could be complex and unwieldy for EPA to develop and implement. Because of their prescriptive nature, such approaches would reduce the Agency's and the researcher's flexibility in defining appropriate containment for specific testing, and could result in EPA regulating based on a rigid standard rather than exempting the research. Each change in a prescriptive standard would have to be incorporated into the standard through rule amendments or variance procedures.

EPA has chosen, therefore, to propose a "performance standard" to establish the boundary between research conducted in a contained facility and other testing. Under this proposal, the individual or institution conducting the testing is given the discretion to select and use procedures and controls appropriate to achieve adequate containment and inactivation in light of the characteristics of the microorganism being tested. These methods and controls would take into account the microorganism's ability to survive in the environment, potential routes of release, procedures for transfer of materials, and plans for routine and emergency clean-up and test termination. Under this performance standard, EPA would not establish a rigid prescriptive approach on how containment and inactivation are to be achieved, but would reserve the right to judge whether the selected controls are adequate to prevent unreasonable adverse effects.

EPA's approach accepts, in this instance, the judgment of the individual or institution conducting the research, which EPA would not generally question. The approach recognizes that many different kinds of microorganisms displaying a wide range of characteristics could be used in research, and that a single containment standard may not be appropriate for all. For example, for certain microorganisms, emanation of small numbers of viable microorganisms could be of concern, while emanation of large quantities of other microorganisms would not. The approach also recognizes that the type of containment or inactivation controls (e.g., procedural, mechanical, and/or engineering) appropriate for one microorganism might have limited relevance to other microorganisms. EPA expects that the researcher will be cognizant of these factors when selecting controls appropriate to the microorganisms being studied. In addition, the researcher may choose to refer to existing standards such as the containment levels described in Appendix G of the National Institutes of Health (NIH) "Guidelines for Research Involving Recombinant DNA Molecules" (51 FR 16958, May 7, 1986).

This proposed approach would enable EPA to review and evaluate the control measures, although the Agency does not anticipate such reviews becoming routine. In the limited number of instances where EPA does request to review the control measures, and as a result of that review determines that further action is called for to prevent unreasonable adverse effects, the proposal provides a flexible range of options that the Agency can use depending upon the specific situation. For example, in instances where improvement in containment is advisable, but there is no immediate problem, the Agency could recommend modifications to controls for future tests. Where a problem needs to be addressed in the current test, the Agency could request that the modifications be made immediately. Failure to comply with EPA's request would result in revocation of the exemption from the requirement to submit a notification.

A performance standard approach such as that outlined above may be questioned as being somewhat "vague," and therefore not having much regulatory utility. EPA believes that the

standard provided is sufficiently clear for its intended purpose, while providing flexibility and discretion to the researcher. EPA believes this less prescriptive, performance standard approach is less burdensome than other alternative approaches to defining what constitutes a contained facility, while still meeting the objective of ensuring adequate containment.

The Agency is also considering whether minimal recordkeeping to document the selection and use of the containment and inactivation controls should be required for eligibility for the exemption. Specifically, EPA is considering whether § 172.45(e)(2) should be modified and § 172.45(e)(3) should be added as follows:

(2) The selection of containment and inactivation controls shall be approved in writing by an authorized official of the organization that is conducting the test prior to commencement of the test.

(3) Records shall be maintained describing the selection and use of the containment and inactivation controls that will be used during the test. These records shall be made available, upon request, for inspection at the test facility. In addition, these records shall be submitted to EPA at the EPA's written request and within the timeframe specified in EPA's request.

Under such an option, the individual or institution would maintain records demonstrating that the choices made were appropriate for ensuring the testing is adequately contained. The type of information that would be in these records would include: An identification of the microorganism, a description of the containment and inactivation measures selected, and a brief statement of why these measures were selected. The controls selected could be indicated by a simple reference to existing standards, such as the containment levels described in the NIH Guidelines. Such a proposal would require the researcher to keep records showing adequate containment, but would allow the researcher flexibility to decide what specific records should be kept.

Those people who favor a recordkeeping provision believe it need not be overly burdensome nor require a significant change in the activities of researchers. Recordkeeping is currently an accepted standard practice among those conducting research in contained facilities under the NIH Guidelines. In most cases, laboratory notebooks normally kept in the course of research should contain the information that would be required by this provision. The level of recordkeeping to document the use of the controls selected for containment and inactivation would be at the discretion of the researcher. The extent of recordkeeping would be correlated with the characteristics of the microorganism and standard practices employed to address concerns. Thus, documentation could range from identification of routine standard operating procedures, to specific notations in laboratory notebooks, to daily log entries for microorganisms that present the greatest concerns.

Others believe that records showing adequate containment was selected and employed are unnecessary, because the probability that microbial pesticides released from laboratories or greenhouses would subsequently establish in the environment in a manner harmful to humans or the environment is so low that the additional burden of a recordkeeping requirement is not warranted. They believe recordkeeping may increase the costs of research, and place a requirement on those who are supposed to be exempt under this proposal. They also believe it to be inconsistent with the rest of EPA's proposal which reduces burden and provides regulatory relief. These opponents would argue that the recordkeeping requirement by its existence increases the Federal presence in the laboratory, even if EPA does not routinely inspect the records, and this may be a disincentive to researchers. Finally, they question whether EPA should spend its limited resources determining if records have been kept; rather, they assert higher priority risk considerations should be the focus of EPA's efforts.

EPA is requesting comment on these issues and the merits of its proposed approach on containment in Unit VIII.D. of this preamble. In addition, the Agency is requesting comment on whether minimal recordkeeping to document the selection and use of the containment and inactivation controls should be a required element for the exemption.

B. Exemptions from the Notification Requirement

The Agency has included in the proposal at § 172.52, a mechanism for exempting, as information warranting such action becomes available, certain subgroups of microbial pesticides from the notification requirement. This provision allows EPA, on its own or in response to a petition, to initiate rulemaking to exempt a specific individual microbial pesticide or a class of microbial pesticides from the notification requirement. The exemption, which could be used in conjunction with any of the three options, would be based on supporting information that would allow the Agency to conclude that the microbial pesticide would not pose unreasonable adverse effects to human health or the environment. This provision was part of the January 1989 draft; no adverse comments were received on this provision.

VI. Summary and Findings

EPA has reviewed various possibilities for addressing small-scale testing of microbial pesticides, and has concluded that the regulatory scheme included in this proposal is adequate to protect human health and the environment from unreasonable adverse effects. In arriving at this conclusion, EPA has taken into account its interactions with other Federal agencies, comments received from various sectors, and its own experiences with risk issues associated with microbial pesticides, particularly its experiences since 1984 with reviewing small-scale tests using microbial pesticides. The Agency has also been mindful of the potential in this area for the development of generally safer, more beneficial pesticides, and the need to strike "a balance between facilitating—or, at a minimum, not unduly impeding—pesticide research and development and protecting against human and environmental injury" (39 FR 11306, March 27, 1974).

Perhaps the most critical factor in the Agency's decisionmaking process is the selection of an appropriate scope of coverage. All three scope options address issues likely to be relevant to small-scale use of microbial pesticides; however, the options differ in the breadth of microbial pesticides covered with regard to the starting point for analysis, the kinds of risk issues addressed, the extent of site-specific analysis, who performs the analysis, and the extent to which additional measures may be necessary for consistent, effective implementation.

EPA believes that while Options 1 and 3 provide risk-based definitions for the scope of coverage, each accomplishes the goal of identifying subject microbial pesticides in a different way. Option 1 incorporates an inclusionary definition that is designed to minimize regulatory burden by directly identifying the specific microbial pesticides covered by the regulation. It has the highest degree of regulatory clarity, and thus, is more easily understood and used by the researcher (or research institution) and EPA. Moreover, because the majority of the analysis to determine whether notification is required has been made by EPA, Option 1 requires less analysis

by the researcher and fewer measures to ensure effective implementation.

Options 2 and 3 are exclusionary definitions in that they provide broad general definitions that are subsequently narrowed by exclusions. These are in turn modified by explanatory footnotes to provide the necessary specificity for regulatory use. EPA is concerned that these options may introduce various degrees of complexity that could render the regulation more difficult to interpret, understand, and use than would be the case with Option 1. This complexity could ultimately result in both the Agency and the regulated community expending valuable resources to clarify whether a given microbial pesticide is within the scope. In particular, Option 3 involves site-specific analysis by the researcher to determine notification status and the Agency believes that procedure may be associated with relatively higher cost and effort relative to either Option 1 or 2. However, by taking a broader range of factors (including site-specific factors) into account, Option 2 may provide the opportunity for a broader range of tests to be excluded from the notification requirement.

EPA believes that satisfaction of the unreasonable adverse effects criterion for Options 1 and 2 can be achieved without requiring additional implementation procedures. However, for Option 3, the Agency currently believes that a determination of no-unreasonable-adverse-effects should be premised on inclusion of specific implementation procedures, specifically guidance to researchers and third party review, to assure the adequacy of the decision on the notification status of the microbial pesticide.

Considering all factors, including the four priniciples enunciated in the "Report on National Biotechnology Policy," the FIFRA SAP and BSAC recommendations and public comments, EPA prefers Option 1. The Agency believes Option 1 identifies the appropriate microbial pesticides for notification, most reduces the burden for the researcher, and has the highest degree of effective regulatory utility.

The proposed regulatory scheme includes specific procedures to be followed by EPA and submitters in order to facilitate an expeditious and effective screening process. Similarly, flexible data requirements are included to provide the information necessary for the Agency to review the proposed testing. EPA believes that, taken together, the proposed scope of coverage, procedures, and data requirements are sufficient to allow the Agency to screen small-scale testing of microbial pesticides in a manner that will adequately protect human health and the environment. Therefore, experimental use of microbial pesticides as described in this proposal will not pose unreasonable adverse effects.

Finally, in order to reduce the regulatory burden at this stage of pesticide development, the proposal contains several provisions for exempting certain microbial pesticides from review, including an exemption mechanism that would allow the Agency to further reduce the scope of coverage at a later date.

EPA continues to believe that small-scale tests of microbial pesticides adequately contained in research facilities are unlikely to pose unreasonable adverse effects to human health or the environment, and therefore do not warrant review. EPA also believes that it should not continue to review small-scale use of nonindigenous microbial pesticides, not otherwise captured within the scope, since at this time EPA has not been able to identify any pesticides in this category that raise risk concerns that are not already being reviewed by other Federal agencies. Therefore, EPA believes that the risk/benefit analysis for these pesticides results in a conclusion that use of them is unlikely to cause unreasonable adverse effects.

VII. Statutory and Other External Review

A. EPA Biotechnology Science Advisory Committee

The BSAC met on September 7, 1990, to review and comment on the issue of scope of coverage of microbial pesticides for notification before small-scale testing. The BSAC was provided with an issue paper that presented and described two scope definitions. After reviewing the two scope definitions, the BSAC developed, with annotation, the following definition for the Agency's consideration:

"Microbial pesticides[5] whose pesticidal properties have been imparted, enhanced, or modified by alteration of the genome would be subject to oversight before small-scale testing, with the exception of:

1. Microorganisms modified solely: (a) Through chemical and physical mutagenesis; (b) by movement of nucleic acids using the physiological processes[6] of transduction or conjugation; (c) by movement of nucleic acids by transformation between organisms that engage in natural exchange;[7] (d) by plasmid loss or spontaneous deletion; and (e) by anastomosis.

2. Microorganisms modified solely by point mutations, deletions, or rearrangements of sequences (i.e., translocation and inversions) within a single genome,[8] including its extrachromosomal elements.

3. Microorganisms modified as in 1 or 2 above that also have been modified by the introduction of noncoding, nonexpressed nucleotide sequences that cause no phenotypic or physiological changes in the recipient microorganism."[9]

The BSAC recommended this scope of coverage in their final report dated November 14, 1990.

EPA Response: The Agency has not provided this specific definition as an option for discussion in this preamble because it is encompassed by Options 1 and 2. Several of the BSAC's specific recommendations have been incorporated in drafting Options 1 and 2.

B. FIFRA Scientific Advisory Panel

Pursuant to section 25 of FIFRA, a Subpanel of the FIFRA SAP reviewed drafts of these proposed part 172 regulations in public meetings held November 22, 1988, and September 26, 1990. In 1988, the Subpanel agreed with the Agency's overall intent in revising 40 CFR part 172, but believed it was premature to codify, at that time, the scope of microbial pesticides to be subject to notification at the small-scale testing stage. The Subpanel believed that EPA oversight should continue under the existing 1984 and 1986 policy statements until after the Agency had the opportunity to consider the reports under development at that time by the NAS and the ESA.

The NAS and ESA reports were to address criteria for the assessment of potential impacts related to the release

[5] The Subcommittee suggests EPA should add a footnote referring to active ingredients. [Note: Specifically, the Subcommittee wished to ensure that consideration of microbial pesticides included both the active ingredients and any inerts.]

[6] "By physiological processes" means there has been no directed addition to, rearrangement of, or removal of nucleic acids from the nucleotide sequences that are introduced.

[7] The Agency should develop a definition specifically addressing physiological processes as applied to transformation such that only transformations between microorganisms that exchange genetic material in nature are excluded.

[8] A "single genome" means the genome of a single isolate or a single strain, or a single species with "species" defined as organisms sharing a certain (to be defined) percentage of DNA relatedness as demonstrated under supra-optimal conditions for DNA reassociation.

[9] "Noncoding, nonexpressed nucleotide sequences that cause no phenotypic or physiological changes in the recipient microorganism" means sequences not involved in gene expression or replication.

of genetically modified microorganisms. These reports have now been published, and the Agency has considered them in developing this proposed rule. In its final written report (November 1988), the Subpanel also made several specific recommendations on the 1988 draft proposed regulation. These recommendations, together with the Agency's response, are available in the public docket.

Subsequently, the Subpanel reviewed and commented on a draft proposal (dated September 4, 1990) and an addendum which together outlined three approaches for defining the scope of coverage for microbial pesticides. The September 1990 draft proposal contained the same two definitions of scope reviewed by the BSAC and the addendum contained the scope language developed by the BSAC as presented above in section A of this Unit. In its final report (dated October 9, 1990), the Subpanel strongly supported the timely promulgation of part 172, and noted that EPA's leadership in this area is "important to bring focus to this topic for the benefit of industry, government and public-interest groups." The SAP Subpanel also made several specific recommendations which are discussed below, together with the Agency's response.

1. With regard to the three scope definitions, the Subpanel concluded that the proposals now embodied in Options 1 and 2, as well as the BSAC attempt to merge the two into a single approach, were all potentially acceptable. However, the majority of the Subpanel preferred the scope embodied by Option 1. The Subpanel explained their preference as follows: "(i) This is the clearest statement defining the group of microbial pesticides that require oversight, (ii) it defines a slightly more appropriate group for oversight than Option 2 or the BSAC approach by including organisms that contain certain deletions, (iii) it is risk-based and focuses on the qualities of the product, and (iv) it appears to allow less opportunity for unintended gaps in oversight." Finally, the Subpanel recommended that the notification requirement should include organisms containing any introduced nucleotide sequences produced by restriction enzymes.

EPA Response: Each of the scope alternatives reviewed by the SAP (Options 1 and 2) offers certain advantages and disadvantages. EPA agrees with the Subpanel's recommendation and believes that on balance, Option 1 comes the closest to meeting the Agency's requirements for regulatory clarity and scientific soundness.

2. The Subpanel stated that because some deletions may lead to large alterations in virulence and/or in host range, host-associated microbial pesticides obtained by deletion should not be exempted from notification before small-scale testing.

EPA Response: With respect to coverage of microbial pesticides obtained by deletion, the Agency agrees (See Unit IV.B.1. of this preamble) with the Subpanel that certain deletions or rearrangements of genetic material within a single genome could impart or enhance characteristics of potential concern (e.g., expanded host range or virulence). Option 1 has been developed to include these microbial pesticides for coverage. However, as noted by the Subpanel, the long-term survival and/or competitiveness of these kinds of organisms may be compromised by the modification. Therefore, one could argue that they may not warrant notification before small-scale testing. The Agency has requested comment (See Unit VIII.G. of this preamble) on excluding some or all of these microorganisms from coverage at the small-scale testing stage.

3. The Subpanel recommended that coverage should include those situations where there has been directed addition to, rearrangement of, or removal of nucleic acids from the nucleotide sequences that are introduced into a microbial pesticide regardless of how the genetic material is introduced into the recipient microorganism.

EPA Response: EPA agrees with the Subpanel's suggestion, and Options 1 and 2 have been developed to be consistent with this recommendation.

4. The Subpanel suggested that for a claim of natural genetic exchange to be acceptable, the exchange must occur under physical/chemical conditions typical of the organism's natural habitat and that the recipient organism and the organism that is the source of the DNA must coexist in the same habitat in nature. In addition, the Subpanel concluded that claims of natural genetic exchange and anastomosis made for the purpose of the scope definition must be evaluated within the context of the natural frequency of these events, so as not to include those that occur only very rarely, and when the microorganisms are kept under stringent selection conditions.

EPA Response: The Agency agrees with the Subpanel's recommendation concerning clarification of the term "natural exchange." To achieve the intent of this recommendation, the Agency has developed Option 2 such that the movement of nucleic acids by physiological processes is limited by three conditions: Recipient microorganisms must not have lost their ability to recognize and cleave foreign genetic material; must not have been exposed to conditions to induce competence artificially; and the nucleotide sequences that are moved must not have been altered.

5. With regard to the BSAC comments on the issue of scope (See Unit VII.A. of this preamble), the Subpanel recommended that the definition of a single genome be restricted to a single strain. They did not believe it should be broadened to encompass a species concept for the definition.

EPA Response: EPA agrees with the Subpanel's recommendation on the definition of a single genome. The Agency believes that a broader definition could possibly allow for the exclusion of microbial pesticides that warrant coverage before small-scale testing. In addition, a definition of genome based on "percentage of DNA relatedness as demonstrated under supraoptimal conditions for DNA reassociation" would be difficult and costly to implement. As a result, genome is defined in Option 2 as the "sum total of chromosomal and extrachromosomal genetic material of an isolate and any descendants derived under axenic culture conditions from that isolate." This focus of attention on the strain, as defined above, recognizes the differences in risk potentials that may exist between strains of the same species, and is also consistent with the manner in which microbial pesticides are handled under FIFRA for the purpose of pesticide product registration.

6. The Subpanel noted that the "environmental release of microbial pesticides could be made more acceptable if the organisms were engineered with unique genetic markers that enable their detection to a high level of sensitivity in the environment and, where possible, selection from the population of ambient organisms." The Subpanel recommended that EPA consider requiring such markers for microbial pesticides to be used in small-scale field tests.

EPA Response: The Agency acknowledges the benefits that could accrue from requiring that certain microbial pesticides be engineered with unique genetic markers, and has carefully considered including such a requirement in this proposal. The Agency believes that there may be instances where compliance with such a requirement could pose technical

difficulties that outweigh the benefits of having the microbial pesticide so marked.

The draft proposal reviewed by the Subpanel already contained the requirement for specific identification and detection of the microbial pesticide using sensitive detection methods. The Agency has added language in this proposal at § 172.48 to encourage researchers to mark their microbial pesticides with unique genetic markers that enable sensitive identification in the environment. The Agency may require such markers on a case-specific basis.

7. In response to an EPA question, the Subpanel indicated that the data and information EPA proposes to require to support an assessment (as specified in the September 1990 draft) were appropriate, and offered two additional suggestions. First, the Subpanel suggested it would be useful to have an explicit statement calling for a literature review of information available on relevant aspects of the ecology and biology of the parent organisms. Second, the Subpanel suggested that EPA review the USDA's Agricultural Biotechnology Research Advisory Committee (ABRAC) guidelines and establish as much consistency as possible.

EPA Response: With regard to the first suggestion, the Agency has included language at § 172.48 of this proposal concerning the need to provide information on relevant aspects of the ecology and biology of the parent organism(s). Concerning the second suggestion, the Agency agrees that consistency among Federal agencies is desirable and is working with other agencies to achieve the consistency attainable in light of the various statutes and guidelines used to oversee biotechnology products.

8. The Subpanel noted that responsibility for oversight of the introduction into the environment of potentially harmful microbiological agents is split among several Federal agencies, particularly EPA and USDA. Therefore, the Subpanel recommended that EPA, along with the other appropriate regulatory agencies, adopt a more formal mechanism to ensure close coordination of the agencies and to avoid gaps in regulatory coverage.

EPA Response: The Agency believes that coordination among Federal agencies for the review and approval of small-scale testing has been efficient and successful thus far. However, EPA agrees that a more formal mechanism for coordination may be appropriate and has initiated work with the appropriate groups to develop such a coordination.

C. U.S. Congress and U.S. Department of Agriculture

In accordance with FIFRA section 25, a draft of this proposed regulation was submitted in June 1988 to the U.S. Congress and USDA. USDA provided written comments on that draft in September 1988. These comments, together with the Agency's response, are available in the public docket.

In July 1991, a second draft of the proposed regulation (dated June 28, 1991) was submitted to the U.S. Congress and USDA. USDA provided written comments on that draft on November 1, 1991. USDA strongly supported "EPA's intent to eliminate any unnecessary burden on research activity which could impede the development of useful alternative pesticide products," commended the Agency for defining, in Options 1 and 2, a risk-based scope of organisms to be covered, and agreed with EPA that scope Option 1 is preferable for use under FIFRA. USDA also agreed that EPA should review, prior to small-scale testing, those nonindigenous microbial pesticides that may pose a potential for significant risk to human health or the environment that are not otherwise reviewed by another Federal agency, provided that a category of such microorganisms can be identified. In its comments, USDA indicated that it was not aware of any such category of microorganisms. USDA also provided several specific suggestions which are discussed below, together with the Agency's response.

1. USDA indicated that some of the discussion in the preamble could be interpreted to suggest that EPA believes that high risks are routinely associated with testing microbial pesticides. Understanding that this is not EPA's position, USDA suggested several editorial changes to reflect more accurately EPA's position. USDA also stated that it would be helpful to include in the preamble a more complete presentation of the potential risks to be addressed by the notification scheme as well as an indication of which risk concerns are addressed by other Federal authorities.

EPA Response: EPA believes that testing with microbial pesticides will not routinely pose high risks to human health or the environment and the preamble has been modified as recommended.

EPA agrees that it is important to provide a discussion of the kinds of concerns to be addressed by the notification scheme. The Agency has chosen to discuss this area in the context of the analysis of the options for scope of microorganisms to be subject to notification. Thus, in Unit IV.B. of the preamble, the Agency has developed an in-depth discussion of specific concerns, and the manner in which they are addressed.

2. USDA responded favorably to the discussion of rationales for scope Options 1 and 2, but felt that the discussion could be improved by replacing or modifying a reference to Dutch Elm disease in order to more accurately illustrate potential risk from the introduction of a microbial pesticide.

EPA Response: EPA has modified the discussion as recommended.

3. USDA stated its belief that the definition of pesticidal property as it appeared in the June 28, 1991 draft, "any characteristic exhibited by a microorganism that contributes to the ability of the microorganism to prevent, destroy, repel, or mitigate a pest or to act as a plant regulator, defoliant, or desiccant," was too broad and seemed "to go beyond the intent of FIFRA in defining pesticidal properties." USDA expressed concern that the definition might expand the definition of pesticide to cover microorganisms that have not in the past been regulated under FIFRA as pesticides. For example, USDA was concerned that the definition "might be applied to plant-associated microorganisms modified solely for the purpose of improving their ability to perform natural functions associated with plant growth protection."

EPA Response: EPA agrees with USDA that the term "pesticidal property" as used in Options 1 and 2 in this proposed regulation should be consistent with FIFRA and the Agency did not intend to suggest an enlargement of the scope of microorganisms subject to FIFRA. Whether a microorganism is subject to FIFRA authority depends on whether it falls within the statutory definition of a pesticide, which cannot be extended by promulgation within a regulation. To address the USDA's concern of a perception of an enlargement, however, the Agency has modified the definition of "pesticidal property" to focus on characteristics contributing to the intentional use of the microorganism to prevent, destroy, repel, or mitigate any pest or intended for use as a plant growth regulator, defoliant, or desiccant.

With regard to plant associated microorganisms, such microorganisms would only be subject to FIFRA if they met the statutory definition of pesticide. Once a plant-associated microorganism is determined to be a pesticide, it would only be subject to notification if it met the conditions specified in EPA's final

scope. It is not, and has never been, EPA's intention to broaden the definition of pesticide by the terms used in this proposed regulation. EPA believes that the language modification discussed above will clarify the Agency's position.

4. USDA stated that a requirement to maintain records describing the selection and use of containment and inactivation controls is not justified, and is so vague as to not have much regulatory utility.

EPA Response: EPA has more fully developed the preamble discussion (See Unit V.A. of this preamble) to clarify the provision on the selection and use of containment and inactivation controls, and the advantages and disadvantages of the provision, and has modified the regulatory text.

In terms of the comment that the provision is vague, EPA reiterates its perception that this less prescriptive, performance standard approach is less burdensome than other alternative approaches to defining what constitutes a contained facility, while still meeting the objective of ensuring adequate containment.

5. USDA provided several comments concerning the requirements for a notification in § 172.48 of the proposal. USDA suggested that the request to provide "Means and limit of detection using the most sensitive and specific methods available" was not appropriate for "risk screening during notification." Additional comments focused on the need for unique genetic markers, use of data from the scientific literature, and the identification of habitat for endangered species.

EPA Response: EPA believes that the use of sensitive and specific detection methods is essential, but agrees that there will be instances where use of the "most sensitive and specific methods available" may not be warranted. Therefore, this provision has been modified to more clearly reflect the Agency's position. EPA also agrees with USDA's additional comments, and has modified § 172.48 accordingly.

6. In § 172.50(a), EPA states that the Agency will review each notification within 90 days. USDA noted that this section further states that "under no circumstances shall the proposed test proceed until the submitter has received notice from EPA of its approval...." USDA interpreted this latter statement as giving EPA unlimited review time, and suggested that it be deleted.

EPA Response: EPA is committed to reviewing Notifications in an expeditious manner. EPA believes that the regulation formalizes this commitment, rather than providing unlimited review time and has therefore not deleted the phrase.

VIII. Request for Comment

The Agency is requesting comment on this proposed rule only to the extent that it would amend or change the existing regulations. The Agency is not soliciting comments on provisions of the existing regulations that would not be changed by this proposal. Specifically, and notwithstanding the inclusion of some of the existing language from 40 CFR 172.3 in this proposal, the Agency will only entertain comments to the extent that they address the proposed changes in that section. 40 CFR 172.3 is reproduced in its entirety solely for clarity and to facilitate understanding of how the changes and amendments fit within the existing regulatory structure.

A. Scope of Coverage for the Notification Scheme

Under the 1984 and 1986 Policy Statements, notification to EPA prior to initiation of small-scale testing with any genetically modified or nonindigenous microbial pesticide is required. As described in Units III. and IV. of this preamble, the Agency now believes that a smaller subset of these microbial pesticides should be subject to notification prior to initiation of small-scale testing in the environment. The Agency recognizes there may be multiple approaches for identifying the scope of coverage and has discussed three options in Unit IV. of this preamble.

The Agency requests comment on the scientific merit of Options 1 and 3 and the extent to which they focus attention on risk issues that warrant consideration before small-scale testing. Specifically, the Agency requests comment on the regulatory clarity of these options, considered in light of the definition of terms for each option, the variability of the criteria for determining whether a microbial pesticide is covered, the level of analysis necessary to determine whether a microbial pesticide is covered, and any explanatory footnotes included for the option. The Agency is particularly interested in commenters' opinions regarding ambiguity or confusion in the meaning or interpretation of terms or footnotes for determining whether a microbial pesticide is subject to notification. Is the Option 3 scope definition with its footnotes sufficient for the researcher to make a determination on the need for notification, or is additional guidance needed? If additional guidance is needed, what criteria or standards should be established for evaluating the relevant risk concerns?

The Agency also requests comment on the following issues. Is the inclusion, within the initial scope of Option 3, of microbial pesticides arising from "natural breeding" appropriate? With regard to Option 1, does the somewhat higher risk probability associated with targeted changes resulting from deletions and rearrangements of genetic material directly contributing to the microorganism's ability to act as a pesticide justify a requirement for notification at the small-scale testing stage?

The definition of "pesticidal properties" in Option 1 addresses a broader set of potential risk endpoints than the definition of "pesticidal activities" in Option 3. "Pesticidal properties" addresses all mechanisms, including those that are indirect, by which microbial pesticides prevent, repel, destroy, or mitigate a pest, or act as plant regulators, defoliants, or desiccants. "Pesticidal activities" address a subset of mechanisms (toxin production, infectivity, pathogenicity, or virulence) through which a microorganism prevents, repels, destroys, or mitigates a pest or acts as a plant regulator, defoliant or desiccant. Specifically excluded from the definition of "pesticidal activities" in Option 3 are noncytotoxic modes of action such as those brought about by niche exclusion, substrate competition, or nutrient sequestration. Is the broader range of risk endpoints addressed by Option 1 appropriate, or is the Option 3 focus on toxicity and host-pathogen interactions sufficient?

Option 3 has a broader initial range or starting point than Option 1 and 2. However, it is probable that many of the microbial pesticides initially covered will ultimately be eligible for exclusion. Do the benefits associated with this approach outweigh the time and effort expended in evaluating, to determine eligibility for exclusion, the microbial pesticides captured by the broader initial starting point?

Are the Option 3 exclusions appropriately focused on survivability, competitiveness, and genetic mobility, or should other characteristics also be taken into consideration? Does the second exclusion of Option 3 provide sufficient guidance to researchers to allow them to make a determination of whether their test is eligible for exclusion? Is there sufficient guidance to allow researchers to determine that there is an increase in pesticidal activity when a microorganism is moved from one environment to another?

B. Implementation Procedures

Unit IV.B.4. of this preamble discusses four mechanisms of implementation: guidance, documentation, third-party review, and retention of records, and discusses the merits of the mechanisms for each scope option. It also indicates the relative need for, and burden associated with, each component for each option. The Agency requests comment on the relative burden posed by these implementation procedures for each option in light of the benefits derived from each approach.

EPA is considering a "points to consider" guidance document as a part of Option 3 to help guide researchers in arriving at a determination on whether to notify the Agency about a test. Are there appropriate models or criteria for this guidance? What are the benefits of issuing such guidance; and what burdens (if any) would such guidance impose on the research community? EPA also solicits comment on the need for (and, where needed, the nature of) several implementation mechanisms, including documentation, mandatory third-party review, and record retention. In commenting on these mechanisms, EPA is particularly interested in the likelihood that such tests could cause harm, the burden of carrying out these procedures, and their effect on research in this area.

EPA also solicits comments on the merits of relying on the scientific judgment of the researcher (and the associated institution) in assessing the broad range of hazard and exposure characteristics associated with small-scale field tests. Will the researcher be cognizant of the risks of the test? Will good experimental practices avoid any significant risk scenarios?

EPA also solicits comment on the existence of other mechanisms or incentives that would be effective in limiting the risks of these tests. Such mechanisms may include the use of enforcement measures and existing State liability law. Or, alternatively, does § 172.59 provide adequate enforcement powers to address tests that pose unreasonable adverse effects?

Are there mechanisms other than the four implementation procedures discussed in this preamble that could assure the Agency that an appropriate risk/benefit balance can be achieved for each test and the FIFRA standard of "no unreasonable adverse effects" can be attained?

EPA is specifically requesting comment on one procedure for implementing Option 3—third-party review of determinations of whether a microbial pesticide is within the scope. The Agency is proposing that the third party could be local peer review groups such as IBCs, or some other responsible group or individual(s) in the affected organization. The Agency also requests comments on whether this third-party review should be voluntary or mandatory.

In the February 15, 1989 **Federal Register** notice (54 FR 7026, February 15, 1989), EPA specifically asked for comment on the merit and feasibility of establishing specific, formal, EPA-approved type of local peer review groups, Environmental Biosafety Committees (EBCs). While there was some support for this concept in principle, a large number of issues were raised in the comments. These included: Liability of the individual members and the supporting institution/company; consistency and equality of reviews; allocation of costs and burdens of establishing and maintaining committees; availability of peer review groups to those who could not afford to establish them; delegation of Agency authority; public access to proceedings and records; conflict of interest; protection of CBI; timeliness of committee reviews; amount of discretion allowed peer review groups in decision-making; availability of experts to staff them; avoidance of duplicative reviews; need for procedures to govern nomination, selection and removal of members and consultants; and, need for a process that would allow an interested party to petition EPA to review the committee's decisions.

The third-party review procedure EPA would utilize to implement Option 3 differs in several important ways from the 1989 approach to EBCs, and thus avoids some of the concerns raised by the public with regard to that proposal. The primary function of the third-party review associated with Option 3 would be to ensure that a researcher's determination of whether a microbial pesticide test is subject to the notification process is appropriate. EPA is not proposing to place specific membership requirements, certification procedures, conflict-of-interest provisions, approval procedures or provisions for public participation on the third party that would evaluate the status of tests involving microbial pesticides potentially subject under Option 3. Some issues the public raised concerning EBCs can be resolved, others may be obviated, and others remain outstanding by the third-party review procedures of Option 3. However, EPA believes that some type of third-party review is essential to integrating the scope set out by Option 3 into the FIFRA regulatory structure. In this context, the advantages of third-party review outweigh the disadvantages.

EPA requests comment on the utility of third-party review, including the possible use of biosafety committees to implement Option 3. Finally, EPA requests comment on whether researchers, if given the choice, would prefer to have the biosafety committee or EPA perform the third-party review to ensure the determination of notification status is appropriate.

C. Nonindigenous Microbial Pesticides

In Unit IV.B.5. of this preamble, EPA stated its rationale for excluding from the notification requirement naturally occurring nonindigenous microbial pesticides. The Agency requests comment on whether a category can be identified at this time consisting of nonindigenous microbial pesticides that pose a potential for significant risk to human health or the environment when used in testing at small-scale that are not otherwise reviewed by another Federal agency.

D. Testing in Contained Facilities

The Agency does not propose to require notification for testing conducted in facilities for which there are adequate containment and inactivation controls. As discussed in Unit V.A. of this preamble, selection and use of specific containment and inactivation controls would be at the discretion of the individual or institution conducting the test. EPA requests comment on the scientific merit, regulatory utility and burden of this approach, particularly with regard to whether the regulatory text is sufficiently clear to allow researchers to comply. In addition, EPA is requesting comment on whether records describing the selection and use of the containment and inactivation controls should be required, and how this type of documentation might best be accomplished. For example, the Agency seeks comment on what level of documentation (e.g., protocols and operational records) would be appropriate to support a claim that adequate containment controls are in place during testing and whether there is a need for additional Agency guidance on containment. EPA also requests comment on how these provisions might be handled for Option 3, which has a broader initial scope of coverage.

E. Substantiation of Claims for Confidential Information

The Agency requests comment on the proposed requirement (§ 172.46(d)) that any claim of confidentiality must be substantiated at the time the claim is made. Specifically, the Agency seeks comment on how to achieve the best balance between the burden on industry to provide substantiation before public disclosure becomes an active issue (e.g., in preparation for SAP meetings) and industry's desire to receive timely responses on notifications. This balance must take into consideration the needs of pesticide developers to protect information they believe to be critical to maintaining their competitiveness and the public's need for access to information related to environmental releases and their potential environmental or human health effects. EPA believes that, given the Agency's procedural requirements for CBI determinations, without up front substantiation, a 90–day response time would be difficult or impossible when it becomes necessary to resolve the issue of CBI before a decision can be made.

F. Voluntary Submissions

Interested parties representing industry and public interest groups have suggested that, in addition to the notification requirement, the Agency offer industry the opportunity to obtain review from a Federal agency on a voluntary basis, (e.g., a "courtesy letter") before the initial introduction of any microorganism that the company believes could benefit by such a review, regardless of the scope of coverage for notification in the final rule. For example, certain microbial pesticides not covered by the scope, would be evaluated to confirm that they are indeed excluded from the scope of coverage, and that no further notification is necessary until large-scale testing. This approach, although more burdensome for the Agency, would provide additional assurance to non-Federal agencies and the public that the responsible Federal authorities are informed of the testing, and would assure that the researcher and the regulatory authority are in agreement on whether the microbial pesticide is excluded from the scope. The Agency requests comment on this suggestion.

G. Potential Exemptions from the Scope of Coverage

EPA requests comment on the scientific merit of adding one or more of the following categorical exemptions to Option 1, by adding these categories to § 172.45 (d)(1): (1) Microorganisms modified solely by rearrangement (i.e., translocation or inversion) or deletion of nucleotide sequences, within a single genome, including its extrachromosomal elements; or, (2) microorganisms that do not have a host dependent stage and that have been modified solely by rearrangement (i.e., translocation or inversion) or deletion of nucleotide sequences, within a single genome, including its extrachromosomal elements. ("Genome" would be defined as the sum total of chromosomal and extrachromosomal genetic material of an isolate and any descendant derived under axenic culture conditions from that isolate.) Option 1, as set forth in § 172.45, already excludes all microbial pesticides modified by deletions or rearrangements that do not affect pesticidal properties. It also excludes deletions and rearrangements that may affect pesticidal properties but do not involve the introduction of modified genetic material. Similarly, Options 2 and 3 could be further modified by the addition of exclusion categories.

IX. Regulatory Requirements

A. Executive Order 12291

Under Executive Order 12291, EPA must judge whether a rule is "major" and, therefore, subject to the requirement of a Regulatory Impact Analysis. The Agency has evaluated this proposal against the requirements of E.O. 12291 and concludes that the proposal is not a major rule. This proposal has been submitted to the Office of Management and Budget (OMB) for review as required by section 3 of E.O. 12291.

B. Regulatory Flexibility Act

Under the Regulatory Flexibility Act (5 U.S.C. 605 (b)), EPA certifies that this proposed rule will not have a significant economic impact on a substantial number of small businesses. This conclusion is based on the fact that this proposal is only the codification, with modification, of relevant operative provisions of the June 26, 1986 Policy Statement. As such, this proposal will not create any additional impacts on affected small businesses or other small entities beyond those currently in effect. In fact, this proposal would reduce the number and scope of microbial pesticides requiring EPA oversight from those covered under the current policy.

C. Paperwork Reduction Act

The information collection requirements in this proposed rule were submitted to OMB for approval under the Paperwork Reduction Act, 44 U.S.C. 3501 *et seq.*

Public reporting burden for this collection of information is estimated to vary from 45 to 181 hours per response when no EUP is required and to vary from 2,887 to 4,475 hours per response when an EUP is required. The average number of burden hours are estimated to be 113 and 3,681 hours per response, respectively. This includes time for reviewing instructions, searching existing data sources, gathering and maintaining the data needed, and completing and reviewing the collection of information.

Send comments regarding the burden estimate or any other aspect of this collection of information, including suggestions for reducing this burden, to Chief, Information Policy Branch, PM–223, U.S. Environmental Protection Agency, 401 M St., SW., Washington, DC 20460; and to the Office of Information and Regulatory Affairs, Office of Management and Budget, Washington, DC 20503, marked "Attention: Desk Officer for EPA." The final rule will respond to any OMB or public comments on the information collection requirements contained in this proposal.

List of Subjects in 40 CFR Part 172

Environmental protection, Intergovernmental relations, Labeling, Pesticides and pests, Recordkeeping and reporting requirements, Research.

Dated: January 14, 1993.

William K. Reilly,

Administrator.

Therefore, it is proposed that 40 CFR part 172 be amended as follows:

PART 172—[AMENDED]

1. The authority citation for part 172 would be revised to read as follows:

Authority: 7 U.S.C. 136a, 136c, 136v, and 136w.

2. By revising § 172.3 to read as follows:

§ 172.3 Scope of requirement.

(a) An experimental use permit is generally required for testing of any unregistered pesticide or any registered pesticide for a use not previously approved by EPA in the pesticide's registration. However, as described below in paragraph (b) of this section, certain of such test using a pesticidal substance or mixture of substances are presumed not to involve unreasonable risks and, therefore, do not require an experimental use permit.

(b) Except as provided in subpart C of this part or as specifically determined

by EPA, it may be presumed that experimental use permits are not required when:

(1) The experimental use of the substance or mixture of substances is limited to:

(i) Laboratory or greenhouse tests,

(ii) Limited replicated field trials as described in paragraph (c) of this section to confirm such tests, or

(iii) Other tests as described in paragraph (c) of this section whose purpose is only to assess the pesticide's potential efficacy, toxicity, or other properties; and

(2) The producer, applicator, or any other person conducting the test does not expect to receive any benefit in pest control from the pesticide's use.

(c) For purposes of paragraphs (b)(1)(ii) and (b)(1)(iii) of this section, the following types of experimental tests are presumed not to need an experimental use permit:

(1) A small-scale test involving use of a particular pesticidal substance or mixture of substances that is conducted on a cumulative total of no more than 10 acres of land, provided that:

(i) When more than one intended target pest occurs at the same time in the same locality, the 10 acre limitation shall encompass all of the intended target pests.

(ii) When more than one target pest is intended, and they do not occur at the same time or in the same locality (or application of the pesticide would not be at the same time), up to 10 acres may be treated for each target pest.

(iii) Any food or feed crops involved in, or affected by, such tests (including, but not limited to, crops subsequently grown on such land which may reasonably be expected to contain residues of the tested pesticidal substances) shall be destroyed or consumed only by experimental animals unless a tolerance or an exemption from a tolerance has been established under the Federal Food, Drug, and Cosmetic Act for residues of the pesticide in or on the crop.

(2) A small-scale test involving the use of a particular pesticidal substance or mixture of substances that is conducted on a cumulative total of no more than 1 surface acre of water, provided that:

(i) When more than one intended target pest occurs at the same time in the same locality, the 1 acre limitation shall encompass all of the intended target pests.

(ii) When more than one target pest is intended, and they do not occur at the same time or in the same locality (or application of the pesticide would not be at the same time), up to 1 acre may be treated for each target pest.

(iii) Waters which are involved in or affected by such tests are not used for irrigation purposes, drinking water supplies, or body contact recreational activities.

(iv) Testing shall not be conducted in any waters which contain or affect fish, shellfish, plants, or animals taken for recreational or commercial purposes and used for food or feed, unless a tolerance or exemption from a tolerance has been established under the Federal Food, Drug, and Cosmetic Act for residues of the test substance in or on the crop.

(3) Animal treatment tests involving the use of a particular pesticidal substance or mixture of substances that are conducted only on experimental animals which will not be used for food or feed, unless a tolerance or an exemption from a tolerance has been established for animal products and byproducts.

(d) The examples in paragraphs (c)(1) and (c)(2) of this section are all-inclusive and do not preclude testing in larger areas or larger numbers of units if the intended use meets the criteria of paragraph (b) of this section. However, tests which do not come within the examples in paragraphs (c)(1) and (c)(2) of this section, absent a specific determination by EPA to the contrary, require an experimental use permit. Subdivision I of the Pesticide Assessment Guidelines specifies, by way of further example, testing which requires an experimental use permit. Persons intending to conduct tests who are uncertain whether the testing may be conducted without a permit may submit a request for determination to the Registration Division, Office of Pesticide Programs. Such a request shall include the information listed in § 172.4(b)(1)(ii) and (b)(1)(iii), and in the case of an unregistered product, the information in § 172.4(b)(3)(i).

(e) Notwithstanding paragraphs (b) through (d) of this section, EPA may, on a case-by-case basis, require that certain testing of a particular pesticide or class of pesticides be carried out under an experimental use permit, if it is determined that such EPA oversight is warranted.

(f) No experimental use permit is required for a substance or mixture of substances being put through tests for the sole purpose of gathering data required for approval of such substances or mixture under the Federal Food, Drug, and Cosmetic Act (21 U.S.C. 301 et seq.) as:

(1) A "new drug" (21 U.S.C. sec. 321(p) and sec. 355).

(2) A "new animal drug" (21 U.S.C. sec. 321(w) and sec. 360(b)), or

(3) An "animal feed" (21 U.S.C. sec. 321 (x)) containing a "new animal drug" (21 U.S.C. sec. 360(b)).

(g) Paragraph (f) of this section shall not apply when a purpose of such test is to accumulate information necessary to register a pesticide under section 3 of the Act.

3. By establishing a new subpart C to read as follows:

Subpart C—Notification for Certain Genetically Modified Microbial Pesticides

Sec.

172.43 Definitions.
172.45 Requirement for a Notification.
172.46 Submission of a Notification.
172.48 Data requirements for a Notification.
172.50 Response to a Notification.
172.52 Notification exemption process.
172.57 Submission of information regarding potential unreasonable adverse effects.
172.59 Enforcement.

Subpart C—Notification for Certain Genetically Modified Microbial Pesticides

§ 172.43 Definitions.

Terms used in this subpart shall, with the exception of those defined below, have the meaning set forth in the Act and in § 172.1.

Containment and inactivation controls means any combination of mechanical, procedural, or biological controls designed and operated to restrict environmental release of viable microorganisms from a facility.

Deliberately modified means the directed addition, rearrangement, or removal of a nucleotide sequence(s) to or from genetic material.

Introduction of genetic material means the movement of a nucleotide sequence(s) into a microorganism, regardless of the technique used.

Microbial pesticide means any pesticide whose active ingredient is a bacterium, fungus, alga, virus, or protozoan intended for preventing, destroying, repelling, or mitigating any pest, or intended for use as a plant regulator, defoliant, or desiccant.

Pesticidal property means a characteristic exhibited by a microorganism that contributes to the intentional use of the microorganism to prevent, destroy, repel, or mitigate a pest or to act as a plant regulator, defoliant, or desiccant.

Small-scale test means the experimental use of a microbial pesticide in a facility such as a laboratory or greenhouse, or use in limited replicated field trials or other tests as described in § 172.3(c).

Test or *testing* means any use of a microbial pesticide consistent with

section 5 of the Act, including limited replicated field trials and associated activities.

§ 172.45 Requirement for a Notification.

(a) *Who must submit a Notification.* Notwithstanding § 172.3, any person who plans to conduct small-scale testing of a type of microbial pesticide identified in paragraph (c) of this section must submit a Notification to EPA and obtain prior approval for either of the following tests:

(1) Small-scale tests that involve an intentional environmental introduction of that microbial pesticide.

(2) Small-scale tests performed in a facility without adequate containment and inactivation controls as provided in paragraph (e) of this section.

(b) *Alternative to Notification.* In lieu of a Notification, any person required to submit a Notification under paragraph (a) of this section may submit an application for an experimental use permit (EUP) to EPA for approval.

(c) *Small-scale testing that requires a Notification.* As provided in paragraph (a) of this section, and notwithstanding any other approval, EPA review and approval are required prior to the initiation of any small-scale test involving microbial pesticides whose pesticidal properties have been imparted or enhanced by the introduction of genetic material that has been deliberately modified.

(d) *Small-scale testing that does not require a Notification.* (1) Testing conducted with microbial pesticides exempt pursuant to § 172.52 does not require a Notification. The following microbial pesticides (or classes of pesticides) identified in paragraph (c) of this section are exempt from the notification requirement in paragraph (a) of this section:

(i) [Reserved]

(ii) [Reserved]

(2) Testing conducted in a facility with adequate containment and inactivation controls, as provided in paragraph (e) of this section does not require a Notification.

(e) *Selection and use of containment and inactivation controls.* (1) Selection and use of containment and inactivation controls for a particular microorganism shall take into account the following:

(i) Factors relevant to the microorganism's ability to survive in the environment.

(ii) Potential routes of release in air, solids, and liquids; in or on waste materials and equipment; in or on people (including maintenance and custodial personnel); and in or on other organisms such as insects and rodents.

(iii) Procedures for transfer of materials between facilities.

(iv) Plans for routine or emergency clean-up and test termination.

(2) The selection of containment and inactivation controls shall be approved by an authorized official of the organization that is conducting the test prior to commencement of the test.

(3) [Reserved]

(4) Subsequent to any EPA review of the containment/ inactivation controls selected under paragraph (e)(1) of this section, changes to the controls necessary to prevent unreasonable adverse effects must be made upon EPA request. Failure to comply with EPA's request shall result in automatic revocation of the exemption from the requirement to submit a Notification.

§ 172.46 Submission of Notification.

(a) *When to submit a Notification.* A Notification shall be submitted for approval at least 90 days prior to the initiation of the proposed test.

(b) *Where to submit a Notification.* A Notification shall be submitted to the Registration Division (H7505C), Office of Pesticide Programs, Environmental Protection Agency, 401 M St., SW., Washington, DC 20460, and clearly marked "ATTN: Biotechnology Notification Review."

(c) *How to format a Notification.* A Notification submitted under this section must comply with the following procedures, but is not required to comply with the format and other provisions governing submission of data in §§ 158.32 and 158.33 of this chapter. However, because data submitted with the Notification may subsequently be used to support other regulatory actions (e.g., used in EUP or registration applications), it is recommended that such data comply with EPA requirements.

(1) Each Notification must be accompanied by a transmittal document that clearly identifies the EPA action supported as a Biotechnology Notification Review.

(2) Five copies of each Notification must be submitted to EPA.

(3) Any claims of confidentiality for information submitted in the Notification must be made as described in paragraph (d) of this section.

(d) *How to make confidential business information (CBI) claims in a Notification.* Although it is strongly recommended that the submitter minimize the amount of data and other information claimed as CBI, a submitter may assert a claim of confidentiality for all or part of the information submitted to EPA in a Notification. (See part 2, subpart B of this chapter.) To assert such a claim, the submitter must comply with the following procedures:

(1) Any claim of confidentiality must accompany the information at the time the information is submitted to EPA. Failure to assert a claim at that time will be considered a waiver of confidentiality for the information submitted, and the information may be made available to the public, subject to section 10(g) of the Act, with no further notice to the submitter.

(2) Of the five copies of the Notification required by paragraph (c) of this section, four copies must be complete with the information that is claimed confidential clearly marked in the manner described in § 2.203(b) of this chapter. All information claimed as confidential must be deleted from the fifth copy, but it must be otherwise complete. The first page of the fifth copy must be marked "Contains no information claimed as confidential." EPA may include the fifth copy in a public file. EPA will consider incomplete a Notification containing information claimed as CBI that is not submitted in accordance with this paragraph and will suspend the review period on the Notification until such procedures are followed.

(3) Any claim of confidentiality must be accompanied, at the time the claim is made, by comments substantiating the claim and explaining why the submitter believes that the information should not be disclosed. The submitter should refer to § 2.204(e)(4) of this chapter for points to address in the substantiation. If such comments are marked confidential when submitted to EPA, they will be treated as such in accordance with § 2.205(c) of this chapter. EPA will consider incomplete all Notifications containing information claimed as CBI that are not accompanied by substantiation, and will suspend the review period on such Notifications until the required substantiation is provided.

(4) EPA will disclose information that is subject to a claim of confidentiality asserted under this section only to the extent and by means of the procedures set forth in section 10 of the Act, in this subpart, and in part 2 of this chapter.

§ 172.48 Data requirements for a Notification.

This section identifies the data and information to be included in each Notification. When specific information is not submitted, an explanation of why it is not practical or necessary to provide the information is to be provided.

(a) The identity of the microorganism which constitutes the microbial pesticide including:

(1) Summary of data supporting the taxonomic designation and its interpretation.

(2) Means and limit of detection using sensitive and specific methods (e.g., note the use of any markers that are used to distinguish the introduced population from native microorganisms). Introduction into the microorganism of a unique genetic marker is encouraged.

(b) Description of the natural habitat of the parental strain of the microorganism including information on:

(1) Physical and chemical features important to growth and survival of the microorganism.

(2) Biological features that would have an impact on the microorganism (e.g., presence of phages that infect the microorganism).

(3) Competitors.

(c) Information on the host range of the microorganism, if any, with an assessment of infectivity and pathogenicity to nontarget organisms.

(d) Information on survival and ability of the microorganism to increase in numbers (biomass) in the environment (e.g., in the environment into which the microbial pesticide will be introduced, and in substantially different environments that may be in the immediate vicinity). These data may be derived from the scientific literature or from tests conducted in a laboratory or other containment facility.

(e) The identity of possible transmission vectors (e.g., insects).

(f) Data on relative environmental competitiveness compared to the parental strain of the microorganism.

(g) Description of the methods used to genetically modify the microorganism.

(h) The identity and location of the gene segments that have been rearranged or inserted/deleted (host source, nature, and, for example, base sequence data, or restriction enzyme map of the gene(s)).

(i) Information on the control region of the gene(s), and a description of the new trait(s) or characteristic(s) that are expressed.

(j) Data on potential for genetic transfer and exchange with other organisms and on genetic stability of any inserted sequence.

(k) A description of the proposed testing program including:

(1) The purpose or objectives of the proposed testing.

(2) Designation of the pest organism(s) involved (common and scientific names).

(3) The State(s) in which the proposed program will be conducted.

(4) The exact location of the test site(s) (including proximity to residences and human activities, surface water, etc.).

(5) The crops, fauna, flora, geographical description of sites, modes, dosage rates, frequency, and situation of application on or in which the pesticide is to be used.

(6) The total amount of pesticide product proposed for use in the testing.

(7) The method of application.

(8) A comparison of the natural habitat of the microorganism with the proposed test site.

(9) The number of acres, structural sites, or animals/plants by State, to be treated or included in the area of experimental use.

(10) Procedures to be used to protect the test area from intrusion by unauthorized individuals.

(11) The proposed date(s) or period(s) during which the testing program is to be conducted, and the manner in which supervision of the program will be accomplished.

(12) Description of procedures for monitoring the microorganism within and adjacent to the test site during the test.

(13) The method of sanitation or disposal of plants, animals, soils, farm tools, machinery etc., that will be exposed to the microbial pesticide during or after the test.

(14) Means of evaluating potential adverse effects and methods of controlling the microorganism if detected beyond the test area.

(l) A statement of composition for the formulation to be tested, giving:

(1) The name and percentage by weight (or other suitable units) of each ingredient, active and inert.

(2) Production methods.

(3) Extraneous microorganisms present as contaminants.

(4) Amount and potency of any toxin present.

(5) Where applicable, the number of viable microorganisms per unit weight or volume of the product or other appropriate system for designating the quantity of active ingredient.

(m) Any additional factual information regarding the potential for unreasonable adverse effects on the environment.

§ 172.50 Response to a Notification.

(a) EPA will review and evaluate each Notification as expeditiously as possible and will make a determination no later than 90 days after receipt of the complete Notification; however, under no circumstances shall the proposed test proceed until the submitter has received notice from EPA of its approval of such test.

(b) For each Notification, EPA may make the following determinations:

(1) Require additional information from the submitter to assess the proposed test adequately.

(2) Approve the proposed test.

(3) Approve the proposed test provided that the submitter makes certain modifications to the test proposal.

(4) Require an experimental use permit for the test.

(5) Disapprove the proposed test because of the potential for unreasonable adverse effects. Such disapproval by EPA shall be considered the equivalent of denial of an experimental use permit and the remedies for such denial provided by § 172.10 are available to the submitter.

(c) If the proposed test is approved by EPA, then the submitter shall perform the test in the same manner described in the Notification, subject to any requirements imposed under paragraph (b)(3) of this section.

§ 172.52 Notification exemption process.

(a) *Initiation of the exemption process.* Pesticides may be added to the list of exemptions in § 172.45(d) by rule at EPA's initiative or in response to a petition submitted in accordance with paragraph (f) of this section.

(b) *Petitions for exemption from the requirement for a Notification*—(1) *Who may submit a petition.* Any person may submit a petition requesting an exemption from the notification requirements of this subpart for a specific microbial pesticide or class of microbial pesticides.

(2) *Where to submit a petition.* All petitions shall be submitted to the following location: Registration Division (H7507C), Office of Pesticide Programs, Environmental Protection Agency, 401 M St., SW., Washington, DC 20460.

(3) *Content of petition.* Each petition shall contain the following:

(i) Name and address of petitioner and name, address, and telephone number of person who may be contacted for further information.

(ii) Description of the exemption requested, including the specific microorganisms or class of microorganisms to be tested.

(iii) Basis for the petitioner's contention that the specific microbial pesticide or class of microbial pesticides meets the criteria of § 172.3 for small-scale tests of pesticides that do not require an experimental use permit.

(iv) Discussion of the extent to which the microbial pesticide or class of microbial pesticides covered by the petition differ from microbial pesticides that are already registered or subject to an experimental use permit under the Act.

(4) *Administrative action on a petition.* EPA will review and evaluate petitions as expeditiously as possible and may request further information from the petitioner to assess the proposed exemption adequately. No later than 180 days after the submission of a petition, or 90 days after the last submission of additional information by the petitioner, whichever is later, EPA will take one of the following actions with respect to the petition:

(i) Grant the petition and publish a notice of proposed rulemaking in the Federal Register for a 30–day comment period proposing the exemption requested by the petitioner.

(ii) Grant the petition and publish a notice of proposed rulemaking in the Federal Register for a 30–day comment period proposing an exemption under such terms and conditions as EPA deems appropriate.

(iii) Deny the petition and provide the petitioner with a written explanation of EPA's decision.

(5) *Confidential business information (CBI) claims.* To assert a claim of confidentiality, the petitioner must comply with the applicable procedures in § 172.46(d).

(6) *Supplements, amendments, and withdrawals.* The petitioner may supplement, amend, or withdraw his or her petition in writing without EPA approval at any time prior to the granting or denial of the petition under paragraph (b)(4) of this section. The withdrawal of a petition shall be without prejudice to the resubmission of the petition at a later date.

§ 172.57 Submission of information regarding potential unreasonable adverse effects.

Any person using a microbial pesticide in small-scale testing covered by this subpart who obtains information regarding potential unreasonable adverse effects on health or the environment must within 30 days of receipt of such information submit the information to EPA, unless the person has actual knowledge that EPA has been adequately informed of such information. The requirement to submit information applies both to those microbial pesticides subject to the notification requirements under § 172.45(c) and those that are exempt under § 172.45(d).

§ 172.59 Enforcement.

(a) *Imminent threat of substantial harm to health or the environment.* The use of a microbial pesticide in small-scale testing covered by this subpart (whether subject to the notification requirements of § 172.45(c) or exempt under § 172.45(d)) in a manner that creates an imminent threat of substantial harm to health or the environment is prohibited, and is considered a violation of section 12(a)(2)(S) of the Act.

(b) *EPA response to violations.* Under sections 14 and 16(c) of the Act, EPA may at any time take appropriate action against violators to prevent or otherwise restrain use of a microbial pesticide in small-scale testing if it is determined that:

(1) Such use would create an imminent threat of substantial harm to health or the environment that is prohibited under paragraph (a) of this section; or

(2) The terms or conditions on which approval of the testing was granted under §§ 172.43 through 172.55 are violated.

[FR Doc. 93–1596 Filed 1–19–93; 9:57 am]
BILLING CODE 6560–50–F

federal register

Friday
January 22, 1993

Part VIII

The President

Executive Order 12832—Amendments Relating to the National Research Council

Executive Order 12833—Addition to Level V of the Executive Schedule: Transition Manager for the United States Enrichment Corporation



Federal Register
Vol. 58, No. 13
Friday, January 22, 1993

Presidential Documents

Title 3—

The President

Executive Order 12832 of January 19, 1993

Amendments Relating to the National Research Council

By the authority vested in me as President by the Constitution and the laws of the United States of America, and in order to update the National Research Council, it is hereby ordered that Executive Order No. 2859, as amended, is further amended to read as follows:

"National Research Council of the National Academy of Sciences

"WHEREAS (1) the congressional charter of the National Academy of Sciences ('Academy') charges it, upon call from any U.S. Government Department, to investigate, examine, experiment, and report upon any subject of science or art and (2) the actual expenses of the Academy for such investigations, examinations, experiments, and reports shall be paid to the Academy through one or more of the following: private gifts and bequests; appropriations for the benefit of the Academy; grants-in-aid, contracts, and other forms of financial agreement with executive departments and agencies, provided that the Academy shall receive no compensation whatever for any services to the Government of the United States; and

"WHEREAS the National Research Council ('Council') was organized in 1916 at the request of the President by the National Academy of Sciences, under its congressional charter, as a measure of national preparedness; and

"WHEREAS the Council is the principal operating agency of the National Academy of Sciences and the National Academy of Engineering, the latter having been established in 1964 under the charter of the National Academy of Sciences; and

"WHEREAS the Institute of Medicine of the National Academy of Sciences, established in 1970 under the Academy's charter, conducts its programs and activities under the approval, operating, and review procedures of the Council; and

"WHEREAS in recognition of the work accomplished through the Council in organizing research, in furthering science, and in securing cooperation of government and nongovernment agencies in the solution of their problems, the Council has been perpetuated by the Academy as requested by the President in Executive Order No. 2859 of May 11, 1918; and

"WHEREAS the effective prosecution of the Council's work may require the close cooperation of the scientific and technical branches of the Government, both military and civil, and makes participation by officers and employees of the Government in the work of the Council desirable; and

"NOW, THEREFORE, by the authority vested in me as President by the Constitution and the laws of the United States of America, it is ordered as follows:

"1. The functions of the Council shall be as follows:

"(a) To stimulate research in the mathematical, physical, biological, environmental, and social sciences, and in the application of these sciences to engineering, agriculture, medicine, and other useful arts, with the object of increasing knowledge, of strengthening the national security including the contribution of science and engineering to economic growth, of ensuring the health of the American people, of aiding in the attainment of environmental goals, and of contributing in other ways to the public welfare.

"(b) To survey the broad possibilities of science, to formulate comprehensive projects of research, and to develop effective means of utilizing the scientific and technical resources of the country for dealing with such projects.

"(c) To promote cooperation in research, at home and abroad, in order to secure concentration of effort, minimize duplication, and stimulate progress; but in all cooperative undertakings to give encouragement to individual initiative, as fundamentally important to the advancement of science.

"(d) To serve as a means of bringing American and foreign investigators into active cooperation with the scientific and technical services of the Federal Government.

"(e) To direct the attention of scientific and technical investigators to the importance of military and industrial problems in connection with national security, to the importance of environmental problems in connection with public health and the economy, and to aid in the solution of these problems by organizing specific research.

"(f) To gather and collate scientific and technical information, at home and abroad, in cooperation with governmental and other agencies, and to disseminate such information to duly accredited persons and the public.

"2. Scientists, engineers, and other technically qualified professionals who are officers or employees of departments and agencies of the executive branch of the Government are encouraged to participate in the work of the Council as requested by the Council to the extent authorized by the head of the officer's or employee's agency or department and permitted by law.

"3. To the extent permitted by law and regulation, and in accordance with the congressional charter of the Academy, the actual expense of investigations, examinations, experiments, and reports by the Academy for the executive branch of the Government shall be paid to the Academy through one or more of the following: private gifts and bequests; appropriations for the benefit of the Academy; grants-in-aid, contracts, and other forms of financial agreement with executive departments and agencies. The Academy shall receive no compensation whatever for any services to the Government of the United States. Further, the Academy shall be subject to all provisions of OMB Circular A–122, 'Cost Principles for Non-Profit Organizations,' and to such other requirements regarding or limiting the Academy's recovery of costs as the Director of the Office of Management and Budget may specify from time to time in writing to the Academy and to agencies and departments of the Government.

"4. When a department or agency of the executive branch of the Government determines that the Academy, because of its unique qualifications, is the only source that can provide the measure of expertise, independence, objectivity, and audience acceptance necessary to meet the department's or agency's program requirements, acquisition of services by the Academy may be obtained on a noncompetitive basis if otherwise in accordance with applicable law and regulations."

George Bush

THE WHITE HOUSE,
January 19, 1993.

[FR Doc. 93–1853
Filed 1–21–93; 11:54 am]
Billing code 3195–01–M

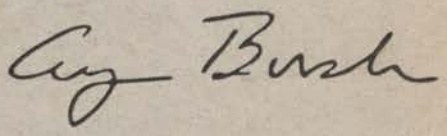
Presidential Documents

Executive Order 12833 of January 19, 1993

Addition to Level V of the Executive Schedule: Transition Manager for the United States Enrichment Corporation

By the authority vested in me as President by the Constitution and the laws of the United States of America, including section 5317 of title 5 of the United States Code, and in order to place additional positions in level V of the Executive Schedule, section 1–102 of Executive Order No. 12154, as amended, is hereby further amended by adding the following new subsection:

"(g) Transition Manager, United States Enrichment Corporation."



THE WHITE HOUSE,
January 19, 1993.

[FR Doc. 93–1857
Filed 1–21–93; 12:04 pm]
Billing code 3195–01–M

federal register

Friday
January 22, 1993

Part IX

The President

Executive Order 12834—Ethics Commitments by Executive Branch Appointees

Proclamation 6525—National Day of Fellowship and Hope, 1993



Federal Register
Vol. 58, No.13
Friday, January 22, 1993

Presidential Documents

Title 3—

The President

Executive Order 12834 of January 20, 1993

Ethics Commitments by Executive Branch Appointees

By the authority vested in me as President of the United States by the Constitution and laws of the United States of America, including section 301 of title 3, United States Code, and sections 3301 and 7301 of title 5, United States Code, it is hereby ordered as follows:

Section 1. *Ethics Pledges.* (a) Every senior appointee in every executive agency appointed on or after January 20, 1993, shall sign, and upon signing shall be contractually committed to, the following pledge ("senior appointee pledge") upon becoming a senior appointee:

> "As a condition, and in consideration, of my employment in the United States Government in a senior appointee position invested with the public trust, I commit myself to the following obligations, which I understand are binding on me and are enforceable under law:
>
> "1. I will not, within five years after the termination of my employment as a senior appointee in any executive agency in which I am appointed to serve, lobby any officer or employee of that agency.
>
> "2. In the event that I serve as a senior appointee in the Executive Office of the President ('EOP'), I also will not, within five years after I cease to be a senior appointee in the EOP, lobby any officer or employee of any other executive agency with respect to which I had personal and substantial responsibility as a senior appointee in the EOP.
>
> "3. I will not, at any time after the termination of my employment in the United States Government, engage in any activity on behalf of any foreign government or foreign political party which, if undertaken on January 20, 1993, would require me to register under the Foreign Agents Registration Act of 1938, as amended.
>
> "4. I will not, within five years after termination of my personal and substantial participation in a trade negotiation, represent, aid or advise any foreign government, foreign political party or foreign business entity with the intent to influence a decision of any officer or employee of any executive agency, in carrying out his or her official duties.
>
> "5. I acknowledge that the Executive order entitled 'Ethics Commitments by Executive Branch Appointees,' issued by the President on January 20, 1993, which I have read before signing this document, defines certain of the terms applicable to the foregoing obligations and sets forth the methods for enforcing them. I expressly accept the provisions of that Executive order as a part of this agreement and as binding on me. I understand that the terms of this pledge are in addition to any statutory or other legal restrictions applicable to me by virtue of Federal Government service."

(b) Every trade negotiator who is not a senior appointee and is appointed to a position in an executive agency on or after January 20, 1993, shall (prior to personally and substantially participating in a trade negotiation) sign, and upon signing be contractually committed to, the following pledge ("trade negotiator pledge"):

> "As a condition, and in consideration, of my employment in the United States Government as a trade negotiator, which is a position

invested with the public trust, I commit myself to the following obligations, which I understand are binding on me and are enforceable under law:

"1. I will not, within five years after termination of my personal and substantial participation in a trade negotiation, represent, aid or advise any foreign government, foreign political party or foreign business entity with the intent to influence a decision of any officer or employee of any executive agency, in carrying out his or her official duties.

"2. I acknowledge that the Executive order entitled 'Ethics Commitments by Executive Branch Appointees,' issued by the President on January 20, 1993, which I have read before signing this document, defines certain of the terms applicable to the foregoing obligations and sets forth the methods for enforcing them. I expressly accept the provisions of that Executive order as a part of this agreement and as binding on me. I understand that the terms of this pledge are in addition to any statutory or other legal restrictions applicable to me by virtue of Federal Government service."

Sec. 2. *Definitions.* As used herein and in the pledges:

(a) "Senior appointee" means every full-time, non-career Presidential, Vice-presidential or agency head appointee in an executive agency whose rate of basic pay is not less than the rate for level V of the Executive Schedule (5 U.S.C. 5316) but does not include any person appointed as a member of the senior foreign service or solely as a uniformed service commissioned officer.

(b) "Trade negotiator" means a full-time, non-career Presidential, Vice-presidential or agency head appointee (whether or not a senior appointee) who personally and substantially participates in a trade negotiation as an employee of an executive agency.

(c) "Lobby" means to knowingly communicate to or appear before any officer or employee of any executive agency on behalf of another (except the United States) with the intent to influence official action, except that the term "lobby" does not include:

(1) communicating or appearing on behalf of and as an officer or employee of a State or local government or the government of the District of Columbia, a Native American tribe or a United States territory or possession;

(2) communicating or appearing with regard to a judicial proceeding, or a criminal or civil law enforcement inquiry, investigation or proceeding (but not with regard to an administrative proceeding) or with regard to an administrative proceeding to the extent that such communications or appearances are made after the commencement of and in connection with the conduct or disposition of a judicial proceeding;

(3) communicating or appearing with regard to any government grant, contract or similar benefit on behalf of and as an officer or employee of:

(A) an accredited, degree-granting institution of higher education, as defined in section 1201(a) of title 20, United States Code; or

(B) a hospital; a medical, scientific or environmental research institution; or a charitable or educational institution; provided that such entity is a not-for-profit organization exempted from Federal income taxes under sections 501(a) and 501(c)(3) of title 26, United States Code;

(4) communicating or appearing on behalf of an international organization in which the United States participates, if the Secretary of State certifies in advance that such activity is in the interest of the United States;

(5) communicating or appearing solely for the purpose of furnishing scientific or technological information, subject to the procedures and conditions applicable under section 207(j)(5) of title 18, United States Code; or

(6) giving testimony under oath, subject to the conditions applicable under section 207(j)(6) of title 18, United States Code.

(d) "On behalf of another" means on behalf of a person or entity other than the individual signing the pledge or his or her spouse, child or parent.

(e) "Administrative proceeding" means any agency process for rulemaking, adjudication or licensing, as defined in and governed by the Administrative Procedure Act, as amended (5 U.S.C. 551, *et seq.*).

(f) "Executive agency" and "agency" mean "Executive agency" as defined in section 105 of title 5, United States Code, except that the term includes the Executive Office of the President, the United States Postal Service and the Postal Rate Commission and excludes the General Accounting Office. As used in paragraph 1 of the senior appointee pledge, "executive agency" means the entire agency in which the senior appointee is appointed to serve, except that:

(1) with respect to those senior appointees to whom such designations are applicable under section 207(h) of title 18, United States Code, the term means an agency or bureau designated by the Director of the Office of Government Ethics under section 207(h) as a separate department or agency at the time the senior appointee ceased to serve in that department or agency; and

(2) a senior appointee who is detailed from one executive agency to another for more than sixty days in any calendar year shall be deemed to be an officer or employee of both agencies during the period such person is detailed.

(g) "Personal and substantial responsibility" "with respect to" an executive agency, as used in paragraph 2 of the senior appointee pledge, means ongoing oversight of, or significant ongoing decision-making involvement in, the agency's budget, major programs or personnel actions, when acting both "personally" and "substantially" (as those terms are defined for purposes of sections 207(a) and (b) of title 18, United States Code).

(h) "Personal and substantial participation" and "personally and substantially participates" mean acting both "personally" and "substantially" (as those terms are defined for purposes of sections 207(a) and (b) of title 18, United States Code) as an employee through decision, approval, disapproval, recommendation, the rendering of advice, investigation or other such action.

(i) "Trade negotiation" means a negotiation that the President determines to undertake to enter into a trade agreement with one or more foreign governments, and does not include any action taken before that determination.

(j) "Foreign Agents Registration Act of 1938, as amended" means sections 611-621 of title 22, United States Code.

(k) "Foreign government" means "the government of a foreign country," as defined in section 1(e) of the Foreign Agents Registration Act of 1938, as amended (22 U.S.C. 611(e)).

(l) "Foreign political party" has the same meaning as that term in section 1(f) of the Foreign Agents Registration Act of 1938, as amended (22 U.S.C. 611(f)).

(m) "Foreign business entity" means a partnership, association, corporation, organization or other combination of persons organized under the laws of or having its principal place of business in a foreign country.

(n) Terms that are used herein and in the pledges, and also used in section 207 of title 18, United States Code, shall be given the same meaning as they have in section 207 and any implementing regulations issued or to be issued by the Office of Government Ethics, except to the extent those terms are otherwise defined in this order.

Sec. 3. *Waiver.* (a) The President may grant to any person a waiver of any restrictions contained in the pledge signed by such person if, and to the extent that, the President certifies in writing that it is in the public interest to grant the waiver.

(b) A waiver shall take effect when the certification is signed by the President.

(c) The waiver certification shall be published in the **Federal Register**, identifying the name and executive agency position of the person covered by the waiver and the reasons for granting it.

(d) A copy of the waiver certification shall be furnished to the person covered by the waiver and filed with the head of the agency in which that person is or was appointed to serve.

Sec. 4. *Administration.* (a) The head of every executive agency shall establish for that agency such rules or procedures (conforming as nearly as practicable to the agency's general ethics rules and procedures, including those relating to designated agency ethics officers) as are necessary or appropriate:

(1) to ensure that every senior appointee in the agency signs the senior appointee pledge upon assuming the appointed office or otherwise becoming a senior appointee;

(2) to ensure that every trade negotiator in the agency who is not a senior appointee signs the trade negotiator pledge prior to personally and substantially participating in a trade negotiation;

(3) to ensure that no senior appointee or trade negotiator in the agency personally and substantially participates in a trade negotiation prior to signing the pledge; and

(4) generally to ensure compliance with this order within the agency.

(b) With respect to the Executive Office of the President, the duties set forth in section 4(a), above, shall be the responsibility of the White House Counsel or such other official or officials to whom the President delegates those duties.

(c) The Director of the Office of Government Ethics shall:

(1) subject to the prior approval of the White House Counsel, develop a form of the pledges to be completed by senior appointees and trade negotiators and see that the pledges and a copy of this Executive order are made available for use by agencies in fulfilling their duties under section 4(a) above;

(2) in consultation with the Attorney General or White House Counsel, when appropriate, assist designated agency ethics officers in providing advice to current or former senior appointees and trade negotiators regarding the application of the pledges; and

(3) subject to the prior approval of the White House Counsel, adopt such rules or procedures (conforming as nearly as practicable to its generally applicable rules and procedures) as are necessary or appropriate to carry out the foregoing responsibilities.

(d) In order to promote clarity and fairness in the application of paragraph 3 of the senior appointee pledge:

(1) the Attorney General shall, within six months after the issuance of this order, publish in the **Federal Register** a "Statement of Covered Activities," based on the statute, applicable regulations and published guidelines, and any other material reflecting the Attorney General's current interpretation of the law, describing in sufficient detail to provide adequate guidance the activities on behalf of a foreign government or foreign political party which, if undertaken as of January 20, 1993, would require a person to register as an agent for such foreign government or political party under the Foreign Agents Registration Act of 1938, as amended; and

(2) the Attorney General's "Statement of Covered Activities" shall be presumed to be the definitive statement of the activities in which the senior appointee agrees not to engage under paragraph 3 of the pledge.

(e) A senior appointee who has signed the senior appointee pledge is not required to sign the pledge again upon appointment to a different office, except that a person who has ceased to be a senior appointee, due to

termination of employment in the executive branch or otherwise, shall sign the senior appointee pledge prior to thereafter assuming office as a senior appointee.

(f) A trade negotiator who is not also a senior appointee and who has once signed the trade negotiator pledge is not required to sign the pledge again prior to personally and substantially participating in a subsequent trade negotiation, except that a person who has ceased employment in the executive branch shall, after returning to such employment, be obligated to sign a pledge as provided herein notwithstanding the signing of any previous pledge.

(g) All pledges signed by senior appointees and trade negotiators, and all waiver certifications with respect thereto, shall be filed with the head of the appointee's agency for permanent retention in the appointee's official personnel folder or equivalent folder.

Sec. 5. *Enforcement.* (a) The contractual, fiduciary and ethical commitments in the pledges provided for herein are enforceable by any legally available means, including any or all of the following: debarment proceedings within any affected executive agency or judicial civil proceedings for declaratory, injunctive or monetary relief.

(b) Any former senior appointee or trade negotiator who is determined, after notice and hearing, by the duly designated authority within any agency, to have violated his or her pledge not to lobby any officer or employee of that agency, or not to represent, aid or advise a foreign entity specified in the pledge with the intent to influence the official decision of that agency, may be barred from lobbying any officer or employee of that agency for up to five years in addition to the five-year time period covered by the pledge.

(1) The head of every executive agency shall, in consultation with the Director of the Office of Government Ethics, establish procedures to implement the foregoing subsection, which shall conform as nearly as practicable to the procedures for debarment of former employees found to have violated section 207 of title 18, United States Code (1988 ed.), set forth in section 2637.212 of title 5, Code of Federal Regulations (revised as of January 1, 1992).

(2) Any person who is debarred from lobbying following an agency proceeding pursuant to the foregoing subsection may seek judicial review of the administrative determination, which shall be subject to established standards for judicial review of comparable agency actions.

(c) The Attorney General is authorized:

(1) upon receiving information regarding the possible breach of any commitment in a signed pledge, to request any appropriate federal investigative authority to conduct such investigations as may be appropriate; and

(2) upon determining that there is a reasonable basis to believe that a breach of a commitment has occurred or will occur or continue, if not enjoined, to commence a civil action against the former employee in any United States District Court with jurisdiction to consider the matter.

(d) In such civil action, the Attorney General is authorized to request any and all relief authorized by law, including but not limited to:

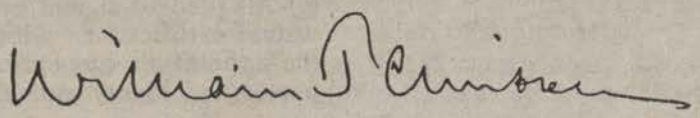
(1) such temporary restraining orders and preliminary and permanent injunctions as may be appropriate to restrain future, recurring or continuing conduct by the former employee in breach of the commitments in the pledge he or she signed; and

(2) establishment of a constructive trust for the benefit of the United States, requiring an accounting and payment to the United States Treasury of all money and other things of value received by, or payable to, the former employee arising out of any breach or attempted breach of the pledge signed by the former employee.

Sec. 6. *General Provisions.* (a) No prior Executive orders are repealed by this order. To the extent that this order is inconsistent with any provision of any prior Executive order, this order shall control.

(b) If any provision of this order or the application of such provision is held to be invalid, the remainder of this order and other dissimilar applications of such provision shall not be affected.

(c) Except as expressly provided in section 5(b)(2) of this order, nothing in the pledges or in this order is intended to create any right or benefit, substantive or procedural, enforceable at law by a party against the United States, its agencies, its officers, or any person.



THE WHITE HOUSE,
January 20, 1993.

[FR Doc. 93–1871
Filed 1–21–93; 12:29 pm]
Billing code 3195–01–M

Presidential Documents

Proclamation 6525 of January 20, 1993

National Day of Fellowship and Hope, 1993

By the President of the United States of America

A Proclamation

As I assume the office of President, I stand humbly before God and ask for His guidance and blessings for our great Nation. At the same time, I ask the citizens of America to join me in renewing our commitment to the American ideals of fellowship and hope.

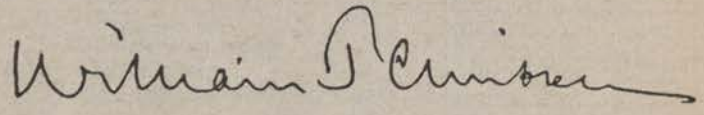
The obligation of a President is more than the fulfillment of a set of constitutional duties. The President must carry the mantle of hope and optimism in the battle against fear and despair. I ask that every American help as we attempt, in the words of the Reverend Martin Luther King, Jr., "to hew out of the mountain of despair a stone of hope" and "transform the jangling discords of our nation into a beautiful symphony of brotherhood."

We must always remember that the essence of our democracy is the recognition that we are united in a common purpose, working toward a common good.

In renewing our commitment to fellowship throughout our great Nation, we recall the spirit of Thomas Jefferson, who said on the occasion of his first inaugural address, "Let us, then, fellow citizens, unite with one heart and one mind. Let us restore to social intercourse that harmony and affection without which liberty and even life itself are but dreary things."

NOW, THEREFORE, I, WILLIAM J. CLINTON, President of the United States of America, by the authority vested in me by the Constitution and laws of the United States, do hereby proclaim January 22, 1993, a National Day of Fellowship and Hope and call upon the citizens of this great Nation to reflect on their obligations to their fellow Americans and look forward to the challenges of the new year with a spirit of hope.

IN WITNESS WHEREOF, I have hereunto set my hand this twentieth day of January, in the year of our Lord nineteen hundred and ninety-three, and of the Independence of the United States of America the two hundred and seventeenth.



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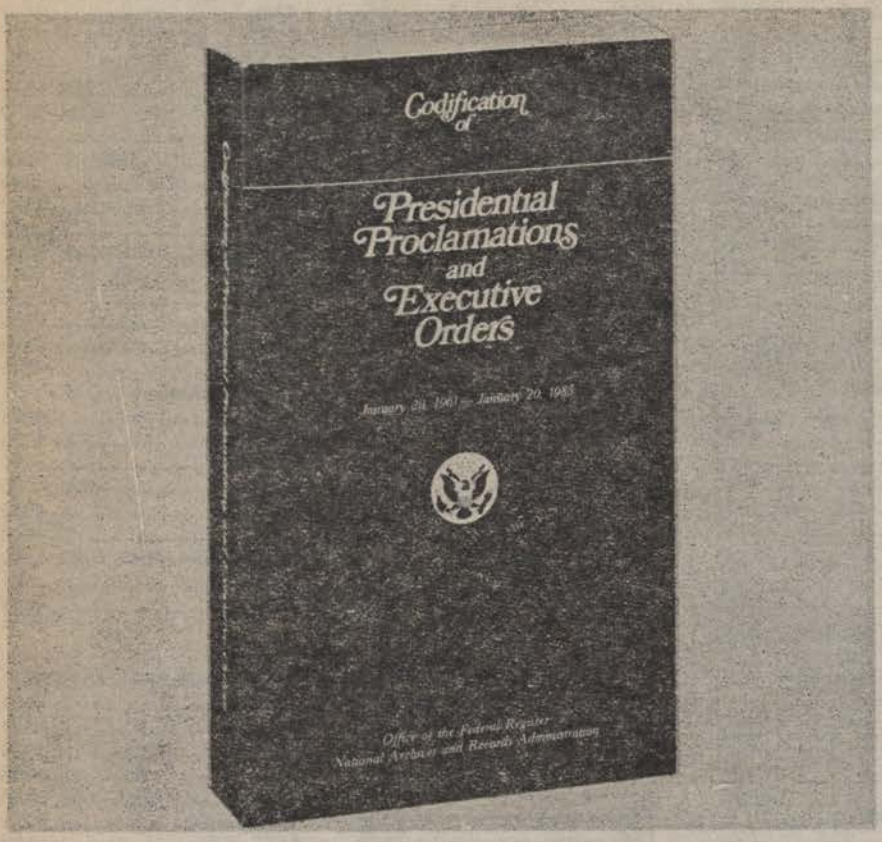
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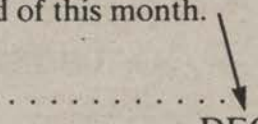
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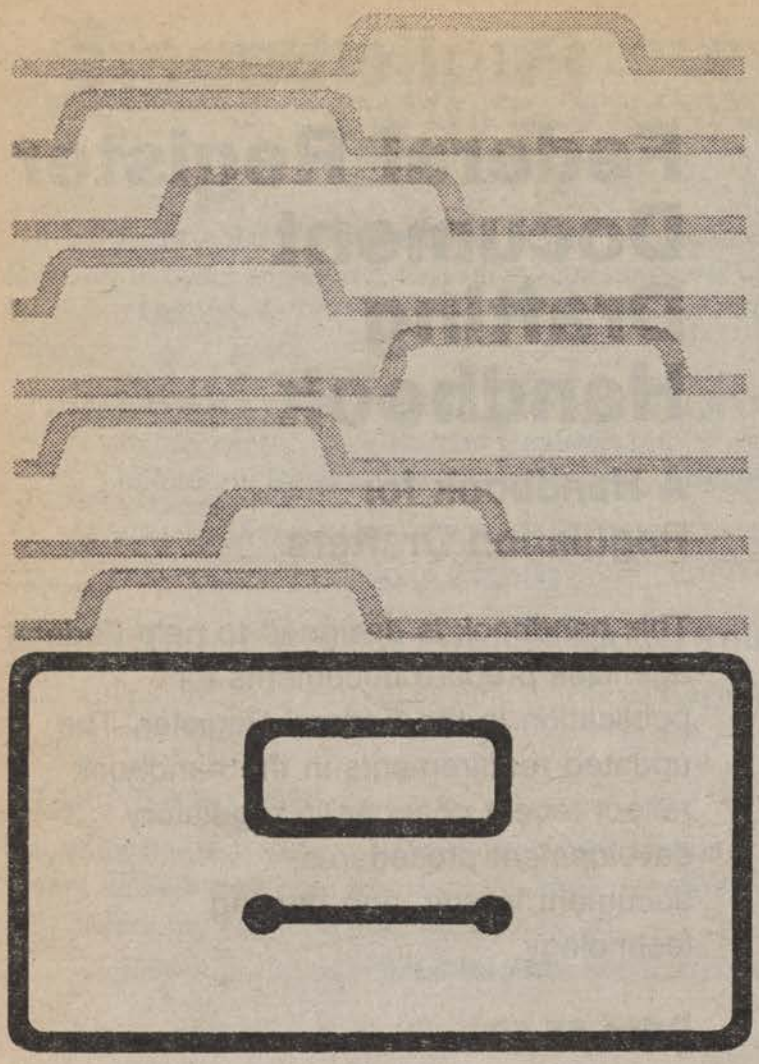
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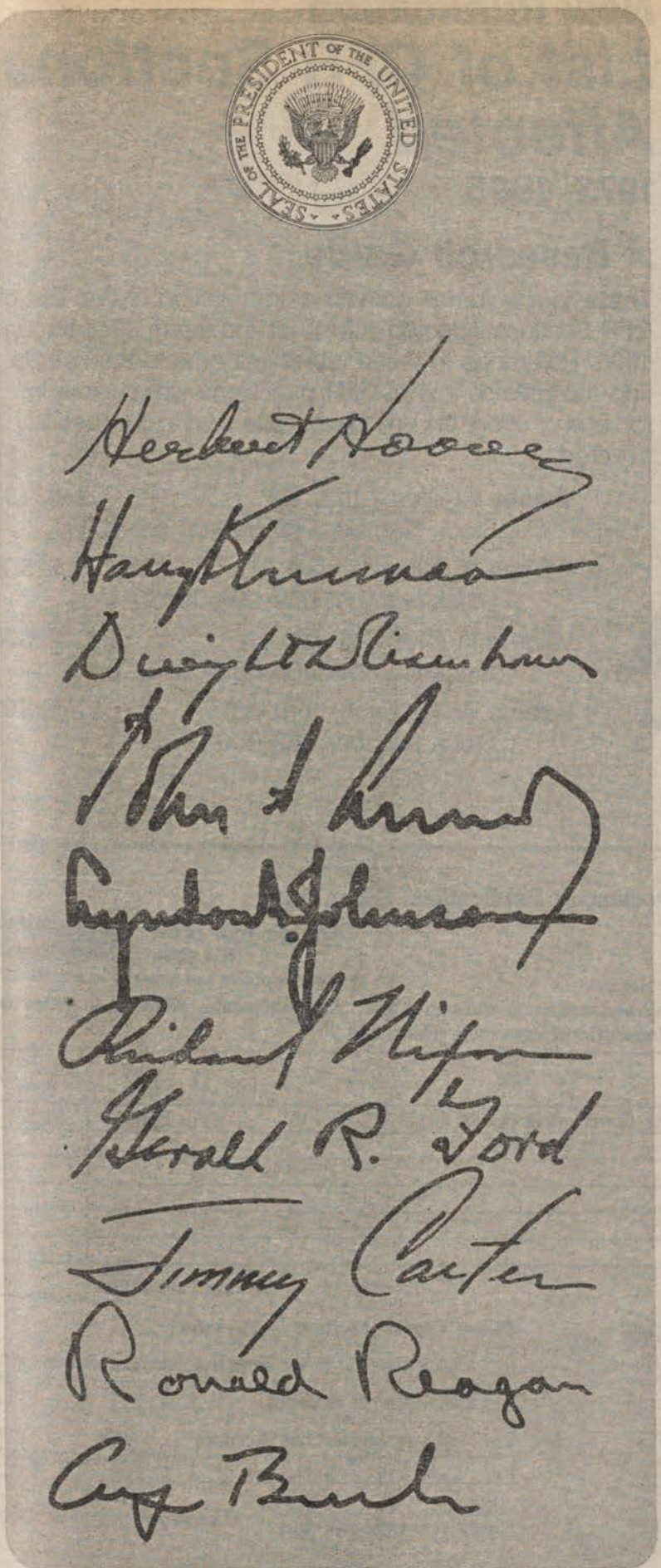
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