AUTHENTICATED
U.S. GOVERNMENT
INFORMATION
GPO

6-4-93
Vol. 58 No. 106

federal register

Friday
June 4, 1993

United States
Government
Printing Office
SUPERINTENDENT
OF DOCUMENTS
Washington, DC 20402

OFFICIAL BUSINESS
Penalty for private use, $300

SECOND CLASS NEWSPAPER

Postage and Fees Paid
U.S. Government Printing Office
(ISSN 0097-6326)

6-4-93
Vol. 58 No. 106
Pages 31647-31892

federal register

Friday
June 4, 1993

FEDERAL REGISTER Published daily, Monday through Friday, (not published on Saturdays, Sundays, or on official holidays), by the Office of the Federal Register, National Archives and Records Administration, Washington, DC 20408, under the Federal Register Act (49 Stat. 500, as amended; 44 U.S.C. Ch. 15) and the regulations of the Administrative Committee of the Federal Register (1 CFR Ch. I). Distribution is made only by the Superintendent of Documents, U.S. Government Printing Office, Washington, DC 20402.

The **Federal Register** provides a uniform system for making available to the public regulations and legal notices issued by Federal agencies. These include Presidential proclamations and Executive Orders and Federal agency documents having general applicability and legal effect, documents required to be published by act of Congress and other Federal agency documents of public interest. Documents are on file for public inspection in the Office of the Federal Register the day before they are published, unless earlier filing is requested by the issuing agency.

The seal of the National Archives and Records Administration authenticates this issue of the **Federal Register** as the official serial publication established under the Federal Register Act. 44 U.S.C. 1507 provides that the contents of the **Federal Register** shall be judicially noticed.

The **Federal Register** is published in paper, 24x microfiche format and magnetic tape. The annual subscription price for the **Federal Register** paper edition is $375, or $415 for a combined **Federal Register**, Federal Register Index and List of CFR Sections Affected (LSA) subscription; the microfiche edition of the **Federal Register** including the Federal Register Index and LSA is $353; and magnetic tape is $37,500. Six month subscriptions are available for one-half the annual rate. The charge for individual copies in paper form is $4.50 for each issue, or $4.50 for each group of pages as actually bound; or $1.50 for each issue in microfiche form; or $175.00 per magnetic tape. All prices include regular domestic postage and handling. International customers please add 25% for foreign handling. Remit check or money order, made payable to the Superintendent of Documents, or charge to your GPO Deposit Account, VISA or MasterCard. Mail to: New Orders, Superintendent of Documents, P.O. Box 371954, Pittsburgh, PA 15250–7954.

There are no restrictions on the republication of material appearing in the **Federal Register.**

How To Cite This Publication: Use the volume number and the page number. Example: 58 FR 12345.

SUBSCRIPTIONS AND COPIES

PUBLIC

Subscriptions:

Paper or fiche	202–783–3238
Magnetic tapes	512–1530
Problems with public subscriptions	512–2303

Single copies/back copies:

Paper or fiche	783–3238
Magnetic tapes	512–1530
Problems with public single copies	512–2457

FEDERAL AGENCIES

Subscriptions:

Paper or fiche	523–5243
Magnetic tapes	512–1530
Problems with Federal agency subscriptions	523–5243

For other telephone numbers, see the Reader Aids section at the end of this issue.

Printed on recycled paper containing 100% post consumer waste

Contents

Federal Register

Vol. 58, No. 106

Friday, June 4, 1993

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

Agency for Health Care Policy and Research
NOTICES
Meetings; advisory committees:
June, 31717

Agriculture Department
See Animal and Plant Health Inspection Service
See Forest Service
See Soil Conservation Service
NOTICES
Agency information collection activities under OMB review, 31689

Air Force Department
NOTICES
Meetings:
Scientific Advisory Board, 31696

Animal and Plant Health Inspection Service
NOTICES
Environmental statements; availability, etc.:
Interstate movement and field testing of biological control agents—
Pythium rostratum, 31689

Army Department
NOTICES
Environmental statements; availability, etc.:
Base realignments and closures—
Redstone Arsenal, AL, 31696
Patent licenses; non-exclusive, exclusive, or partially exclusive:
Cannon projectile stabilizer, 31697

Blind or Severely Disabled, Committee for Purchase From People Who Are
See Committee for Purchase From People Who Are Blind or Severely Disabled

Centers for Disease Control and Prevention
NOTICES
Grants and cooperative agreements; availability, etc.:
Health promotion and disease prevention research centers, 31718
National/regional minority organizations HIV prevention projects, 31719
National/regional minority organizations HIV/STD prevention, immunization, and TB projects, 31721

Children and Families Administration
NOTICES
Privacy Act:
Systems of records, 31715

Commerce Department
See National Oceanic and Atmospheric Administration

Committee for Purchase From People Who Are Blind or Severely Disabled
NOTICES
Procurement list; additions and deletions, 31694, 31695

Comptroller of the Currency
PROPOSED RULES
Real estate appraisals:
Threshold level, 31878

Customs Service
NOTICES
Pressed and toughened (specially tempered) glassware; testing; comments solicitation, 31786

Defense Department
See Air Force Department
See Army Department
See Defense Logistics Agency

Defense Logistics Agency
NOTICES
Meetings:
Science Board task forces, 31696
Privacy Act:
Systems of records, 31697

Education Department
NOTICES
Agency information collection activities under OMB review, 31698
Grants and cooperative agreements; availability, etc.:
Accounting and financial management service reporting of final expenditures for expired discretionary grants, 31876

Employment Standards Administration
See Wage and Hour Division
NOTICES
Minimum wages for Federal and federally-assisted construction; general wage determination decisions, 31757

Energy Department
See Federal Energy Regulatory Commission
See Hearings and Appeals Office, Energy Department
NOTICES
Grant and cooperative agreement awards:
Petroleum Engineering Society, 31699
Mined geologic disposal system (MGDS) license applications preparation annotated outline; transmittal to NRC, 31699
Natural gas exportation and importation:
Sonat Marketing Co., 31700
Recommendations by Defense Nuclear Facilities Safety Board:
Critical experiment capability need, 31699

Environmental Protection Agency
RULES
Air quality implementation plans; approval and promulgation; various States:
Illinois, 31653

Oregon, 31654
PROPOSED RULES
Air and water programs:
Pulp, paper, and paperboard industry rulemaking; meetings, 31685
Toxic substances:
Pollution prevention—
Lead; dangerous levels identification rule; meetings, 31686
NOTICES
Environmental statements; availability, etc.:
Agency statements—
Comment availability, 31710
Weekly receipts, 31710
Grants, State and local assistance:
Grantee performance evaluation reports—
Missouri et al., 31711
Superfund; response and remedial actions, proposed settlements, etc.:
Mexam Trucking Removal Site, CA, 31712
Toxic and hazardous substances control:
Confidential business information claims policies and regulations; meeting, 31711

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

Federal Aviation Administration
RULES
Airworthiness directives:
Boeing, 31650
Pratt & Whitney, 31649
Textron Lycoming, 31647
Control areas, 31652
PROPOSED RULES
Airworthiness directives:
Fokker, 31681
NOTICES
Exemption petitions; summary and disposition, 31782

Federal Communications Commission
RULES
Radio stations; table of assignments:
Idaho, 31657
Minnesota, 31657
North Dakota, 31658
Oklahoma, 31658
PROPOSED RULES
Common carriers:
Redevelopment of spectrum to encourage innovation in use of new telecommunications technologies, 31686
Radio stations; table of assignments:
Colorado, 31687
Kentucky, 31687
Mississippi, 31688
Television stations; table of assignments:
California, 31686
NOTICES
Agency information collection activities under OMB review, 31713

Federal Deposit Insurance Corporation
PROPOSED RULES
Real estate appraisals:
Threshold level, 31878
NOTICES
Meetings; Sunshine Act, 31790

Federal Emergency Management Agency
NOTICES
Disaster and emergency areas:
Missouri, 31713
Oklahoma, 31713

Federal Energy Regulatory Commission
NOTICES
Environmental statements; availability, etc.:
Yukon Pacific Co. L.P., 31701
Hydroelectric applications, 31701
Natural Gas Policy Act:
State jurisdictional agencies tight formation recommendations; preliminary findings—
Kansas State Corporation Commission, 31706
Preliminary permits surrender:
Iowa Hydropower Development Corp., 31707, 31708
Applications, hearings, determinations, etc.:
Natural Gas Pipeline Co. of America, 31708
Northern Natural Gas Co., 31708
Rochester Gas & Electric Corp., 31709
Western Gas Interstate Co., 31709

Federal Highway Administration
NOTICES
Environmental statements; notice of intent:
Mason County, WV, 31783
Snohomish County, WA, 31783

Federal Housing Finance Board
NOTICES
Meetings; Sunshine Act, 31790

Federal Reserve System
PROPOSED RULES
Real estate appraisals:
Threshold level, 31878
NOTICES
Meetings; Sunshine Act, 31791
Applications, hearings, determinations, etc.:
Brunner, John A., Jr.; correction, 31713
Canfield, Bruce N., et al., 31714
PNC Bank Corp. et al., 31714

Fish and Wildlife Service
RULES
Endangered and threatened species:
Manatees; protection areas—
Lake Woodruff National Wildlife Refuge, FL, 31660
NOTICES
Lead fishing sinker use prohibition on National Wildlife Refuges and National Parks; petition consideration, 31740

Forest Service
NOTICES
Appeal exemptions; timber sales:
Eldorado National Forest, CA, 31690
Klamath National Forest, CA, 31691

General Services Administration
NOTICES
Agency information collection activities under OMB review, 31714

Health and Human Services Department
See Agency for Health Care Policy and Research
See Centers for Disease Control and Prevention

See Children and Families Administration
See National Institutes of Health
See Public Health Service
See Substance Abuse and Mental Health Services Administration

Health Resources and Services Administration
See Public Health Service

Hearings and Appeals Office, Energy Department
NOTICES
Special refund procedures; implementation, 31701

Housing and Urban Development Department
NOTICES
Grants and cooperative agreements; availability, etc.:
Facilities to assist homeless—
Excess and surplus Federal property, 31731
Lead-based paint hazard reduction in priority housing, 31848
Lead-based paint risk assessments, 31842
Public and Indian housing—
Drug elimination program, 31870
Meetings:
Occupancy Standards in Public and Assisted Housing Task Force, 31739

Interior Department
See Fish and Wildlife Service
See Land Management Bureau
See National Park Service

Interstate Commerce Commission
NOTICES
Motor carriers:
Compensated intercorporate hauling operations, 31753
Railroad operation, acquisition, construction, etc.:
Illinois Central Railroad Co., 31753

Joint Board for Enrollment of Actuaries
NOTICES
Meetings:
Actuarial Examinations Advisory Committee, 31754

Justice Department
See National Institute of Corrections
NOTICES
Pollution control; consent judgments:
American Felt & Filter Co., Inc., 31754
GEC Industries, Inc., 31754
Masco Corp., 31755
MSA Manufacturing, Inc., 31754
Texaco, Inc., 31754

Labor Department
See Employment Standards Administration
See Wage and Hour Division
NOTICES
Agency information collection activities under OMB review, 31756
Meetings:
Future of Worker-Management Relations Commission, 31756

Land Management Bureau
RULES
Public land orders:
Alaska, 31655
Idaho, 31656
Nevada, 31655
North Dakota, 31656
NOTICES
Environmental statements; availability, etc.:
Fort Cady Minerals Corp. borate solution mining project CA, 31745
Motor vehicle use restrictions:
Colorado, 31745
Oil and gas leases:
Wyoming, 31747
Opening of public lands:
Wyoming, 31748
Realty actions; sales, leases, etc.:
California, 31748
Nevada, 31751
New Mexico, 31750
Recreation management restrictions, etc.:
Moab District, UT; alcoholic beverage restrictions, 31751
Withdrawal and reservation of lands:
California, 31752
New Mexico, 31752, 31753

Maritime Administration
NOTICES
Mortgagees and trustees; applicants approval, disapproval, etc.:
Bank One, Texas, National Association, 31784

National Aeronautics and Space Administration
NOTICES
Meetings:
National facilities study; space operations and space research and development facilities, 31759

National Highway Traffic Safety Administration
RULES
Motor vehicle safety standards:
Child restraint systems—
Owner registration program; petition denied, 31658
NOTICES
Motor vehicle safety standards; exemption petitions, etc.:
General Motors Corp., 31784

National Institute for Literacy
NOTICES
Agency information collection activities under OMB review, 31759

National Institute of Corrections
NOTICES
Meetings:
Advisory Board, 31756

National Institutes of Health
NOTICES
Inventions, Government-owned; availability for licensing, 31728

National Oceanic and Atmospheric Administration
RULES
Fishery conservation and management:
Gulf of Alaska groundfish, 31679, 31680
Ocean salmon off coasts of Washington, Oregon, and California, 31664
PROPOSED RULES
Endangered and threatened species:
Sacramento River winter-run chinook salmon, 31688

NOTICES
Permits:
Marine mammals, 31693

National Park Service
NOTICES
Lead fishing sinker use prohibition on National Wildlife Refuges and National Parks; petition consideration, 31740

Nuclear Regulatory Commission
NOTICES
Environmental statements; availability, etc.:
Connecticut Yankee Atomic Power Co., 31760
Applications, hearings, determinations, etc.:
GE Nuclear Energy, 31761
Northeast Nuclear Energy Co., 31761

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

Public Health Service
See Agency for Health Care Policy and Research
See Centers for Disease Control and Prevention
See National Institutes of Health
See Substance Abuse and Mental Health Services Administration
NOTICES
Agency information collection activities under OMB review, 31728

Railroad Retirement Board
NOTICES
Agency information collection activities under OMB review, 31762

Securities and Exchange Commission
NOTICES
Self-regulatory organizations; proposed rule changes:
National Association of Securities Dealers, Inc., 31766, 31768, 31770, 31773
Philadelphia Stock Exchange, Inc., 31765
Applications, hearings, determinations, etc.:
Montgomery Funds et al., 31774
Munder Funds, Inc., et al., 31776
Newton Growth Fund, Inc., 31780
Newton Income Fund, Inc., 31781
Public utility holding company filings, 31762

Soil Conservation Service
NOTICES
Environmental statements; availability, etc.:
Oven Run Project Area, PA, 31692
Upper Buffalo Creek Watershed, WV, 31692

Substance Abuse and Mental Health Services Administration
NOTICES
Federal agency urine drug testing; certified laboratories meeting minimum standards; list, 31729

Thrift Supervision Office
PROPOSED RULES
Real estate appraisals:
Threshold level, 31878

Trade Representative, Office of United States
NOTICES
Committees; establishment, renewal, termination, etc.:
U.S. automobile taxes and corporate average fuel economy (CAFE) requirements; dispute settlement panel, 31788
Intellectual property rights protection, countries denying; policies and practices:
Brazil, 31788

Transportation Department
See Federal Aviation Administration
See Federal Highway Administration
See Maritime Administration
See National Highway Traffic Safety Administration

Treasury Department
See Comptroller of the Currency
See Customs Service
See Thrift Supervision Office
NOTICES
Committees; establishment, renewal, termination, etc.:
Bank Secrecy Act Advisory Group on Reporting Requirements, 31785

Wage and Hour Division
RULES
Family and Medical Leave Act; implementation, 31794

Separate Parts In This Issue

Part II
Department of Labor, Wage and Hour Division, 31794

Part III
Department of Housing and Urban Development, 31842

Part IV
Department of Housing and Urban Development, 31848

Part V
Department of Housing and Urban Development, 31870

Part VI
Department of Education, 31876

Part VII
Department of the Treasury, Comptroller of the Currency and Office of Thrift Supervision; Federal Reserve System; Federal Deposit Insurance Corporation, 31878

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

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

CFR PARTS AFFECTED IN THIS ISSUE

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

12 CFR

Proposed Rules:

34.....31878
225.....31878
323.....31878
545.....31878
563.....31878
564.....31878

14 CFR

39 (3 documents).....31647, 31649, 31650
71.....31652

Proposed Rules:

39.....31681

29 CFR

825.....31794

40 CFR

52 (2 documents).....31653, 31654

Proposed Rules:

Ch. I (2 documents).....31685, 31686

43 CFR

Public Land Orders:

6974.....31655
6977.....31655
6978.....31656
6979.....31656

47 CFR

73 (5 documents).....31657, 31658

Proposed Rules:

Ch. I.....31686
73 (4 documents).....31686 31687, 31688

49 CFR

571.....31658

50 CFR

17.....31660
661.....31664
672 (2 documents).....31679, 31680

Proposed Rules:

222.....31688
227.....31688

Rules and Regulations

Federal Register
Vol. 58, No. 106
Friday, June 4, 1993

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

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

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. 93–ANE–16; Amdt. 39–8584; AD 93–05–21]

Airworthiness Directives; AC, Textron Lycoming, and Rajay/Rotomaster-Modified Diaphragm Fuel Pumps

AGENCY: Federal Aviation Administration, DOT.

ACTION: Final rule, request for comments.

SUMMARY: This amendment adopts a new airworthiness directive (AD) that is applicable to AC, Textron Lycoming, and Rajay/Rotomaster-modified diaphragm fuel pumps. This action supersedes priority letter AD 93–05–21 that currently requires removal and replacement, prior to further flight, of all high pressure diaphragm fuel pumps overhauled by Aero Accessories Inc. (AAI) between June 18, 1991, and November 24, 1992; and removal and replacement, prior to further flight, of all low pressure diaphragm fuel pumps overhauled by AAI between November 1, 1991, and August 20, 1992. This action clarifies that all affected high pressure diaphragm fuel pumps must be replaced, regardless of compliance with priority letter AD 92–20–07. This amendment is prompted by the need to clear up a possible misinterpretation that affected high pressure diaphragm fuel pumps that have complied with priority letter AD 92–20–07 need not be replaced. The actions specified by this AD are intended to prevent disruption of fuel flow to the engine, which can result in a loss of engine power.

DATES: Effective June 21, 1993.

Comments for inclusion in the Rules Docket must be received on or before August 3, 1993.

ADDRESSES: Submit comments in triplicate to the Federal Aviation Administration (FAA), New England Region, Office of the Assistant Chief Counsel, Attention: Rules Docket No. 93–ANE–16, 12 New England Executive Park, Burlington, MA 01803–5299.

FOR FURTHER INFORMATION CONTACT: Jerry Robinette, Aerospace Engineer, Propulsion Branch, Atlanta Aircraft Certification Office, FAA, Small Airplane Directorate, 1669 Phoenix Parkway, suite 210C, Atlanta, GA 30349; telephone (404) 991–3810; fax (404) 991–3606.

SUPPLEMENTARY INFORMATION: On September 14, 1992, the Federal Aviation Administration (FAA) issued priority letter AD 92–20–07, to require removal and replacement, prior to further flight, of all diaphragm fuel pumps manufactured by AC or Textron Lycoming, and modified by Rajay/Rotomaster that were overhauled by Aero Accessories, Inc. (AAI) between November 1, 1991, and August 20, 1992. That priority letter AD was prompted by a report of an aircraft accident caused by an obstructed high pressure diaphragm fuel pump. Certain AC, Textron Lycoming, and Rajay/Rotomaster-modified diaphragm fuel pumps overhauled by AAI between November 1, 1991, and August 20, 1992, may contain a rubber washer manufactured from an improperly cured material. The material can absorb fuel and expand, causing the washer to dislodge from its position and block off the outlet valve of the pump. The FAA's investigation revealed three additional high pressure diaphragm fuel pumps with the washer dislodged. That condition, if not corrected, can result in disruption of fuel flow to the engine, which can result in a loss of engine power.

Since the issuance of priority letter AD 92–20–07, the FAA has received a report of an obstructed high pressure diaphragm fuel pump that resulted in a total loss of engine power due to fuel starvation. This engine failure resulted in a power-off emergency forced landing. The high pressure diaphragm fuel pump's outlet valve was blocked by a rubber washer that had been replaced in accordance with priority letter AD 92–20–07. The FAA's further investigation has revealed that all rubber washers installed by AAI during overhaul between June 18, 1991, and November 24, 1992, are susceptible to fuel absorption and subsequent expansion. On November 25, 1992, AAI began manufacturing washers composed of a rubber impregnated fabric that is more durable.

Priority letter AD 92–20–07 required replacement of rubber washers manufactured from an improperly cured material with serviceable rubber washers. However, the FAA has received no reports prior to or subsequent to the issuance of priority letter AD 92–20–07 of dislodged rubber washers on low pressure diaphragm fuel pumps. The FAA has determined that these low pressure diaphragm fuel pumps do not create enough force to dislodge properly cured rubber washers. Therefore, there is no need to replace properly cured rubber washers with rubber impregnated fabric washers on low pressure diaphragm fuel pumps. No further action is required for low pressure diaphragm fuel pumps if the requirements of priority letter AD 92–20–07 have been previously accomplished.

High pressure diaphragm fuel pumps, however, create sufficient force to dislodge the replacement rubber washers required by priority letter AD 92–20–07. Therefore, priority letter AD 93–05–21, issued on March 17, 1993, superseded priority letter AD 92–20–07 to require removal and replacement, prior to further flight, of all affected high pressure diaphragm fuel pumps, regardless of compliance with priority letter AD 92–20–07.

Since the issuance of priority letter AD 93–05–21, the FAA has determined that there is a need to clear up a possible misinterpretation that affected high pressure diaphragm fuel pumps that have complied with priority letter AD 92–20–07 need not be replaced. This amendment clarifies that all affected high pressure diaphragm fuel pumps, regardless of compliance with priority letter AD 92–20–07, must be replaced prior to further flight. No further action is required for all affected low pressure diaphragm fuel pumps that are in compliance with priority letter AD 92–20–07.

In addition, low pressure diaphragm fuel pump serial number 91K125 was inadvertently repeated in the Applicability paragraph of priority letter AD 93–05–21. The second reference to this serial number has been removed.

Since the unsafe condition described is likely to exist or develop on other fuel pumps of the same type design, this AD supersedes priority letter AD 93–05–21 to prevent disruption of fuel flow to the engine, which can result in a loss of engine power. The AD requires removal and replacement, prior to further flight, of all high pressure diaphragm fuel pumps overhauled by AAI between June 18, 1991, and November 24, 1992, regardless of compliance with priority letter AD 92–20–07; and removal and replacement, prior to further flight, of all low pressure diaphragm fuel pumps overhauled by AAI between November 1, 1991, and August 20, 1992, unless the requirements of priority letter AD 92–20–07 have been previously accomplished.

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

Comments Invited

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

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

Commenters wishing the FAA to acknowledge receipt of their comments submitted in response to this notice must submit a self-addressed, stamped postcard on which the following statement is made: "Comments to Docket Number 93–ANE–16." The postcard will be date stamped and returned to the commenter.

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

The FAA has determined that this regulation is an emergency regulation and that it is not considered to be major under Executive Order 12291. It is impracticable for the agency to follow the procedures of Order 12291 with respect to this rule since the rule must be issued immediately to correct an unsafe condition in aircraft. It has been determined further that this action involves an emergency regulation under DOT Regulatory Policies and Procedures (44 FR 11034, February 26, 1979). If it is determined that this emergency regulation otherwise would be significant under DOT Regulatory Policies and Procedures, a final regulatory evaluation will be prepared and placed in the Rules Docket. A copy of it, if filed, may be obtained from the Rules Docket at the location provided under the caption "ADDRESSES."

List of Subjects in 14 CFR Part 39

Air transportation, Aircraft, Aviation safety, Safety.

Adoption of the Amendment

Accordingly, pursuant to the authority delegated to me by the Administrator, the Federal Aviation Administration amends 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:

93–05–21 AC, Textron Lycoming, and Rajay/Rotomaster: Amendment 39–8584. Docket 93–ANE–16.

Applicability: AC, Textron Lycoming, and Rajay/Rotomaster-modified high pressure diaphragm fuel pumps, overhauled by Aero Accessories Inc. (AAI) between June 18, 1991, and November 24, 1992; AC model 41234, having AAI serial numbers (S/Ns) 91F006 through 92E050 and 92E052 through 92K008; AC model 40296, having AAI S/Ns 92B002 through 92I155; AC model 41812, having AAI S/N 91L142; Textron Lycoming model LW15473, having AAI S/Ns 91K049 through 92I151; Rajay/Rotomaster-modified model R00253–501, having AAI S/Ns 92D136 through 92J016; Rajay/Rotomaster modified model R00253–502, having AAI S/Ns 92D120 through 92H075; and Rajay/Rotomaster-modified model 103586–01, having AAI S/N 92J024; installed on but not limited to Textron Lycoming IO–320, LIO–320, IO–360, LIO–360, O–540–L3C5D, IO–540, TIO–540, and LTIO–540 piston engines; installed on but not limited to piston engine powered aircraft manufactured by Beechcraft, Bellanca, Cessna, Mooney, Piper, and Rockwell Commander (Models 112 and 114) aircraft; and

AC, Textron Lycoming, and Rajay/Rotomaster-modified low pressure diaphragm fuel pumps, overhauled by AAI between November 1, 1991, and August 20, 1992; AC model numbers 40174, 40295, 40595, 41270, 41271, 41272, 41452, 41617, 75246, 75247; Textron Lycoming model numbers LW14282, LW15399, LW15472, LW16335, LW16775, LW16947; and Rajay/Rotomaster-modified models 103396–01, RJ4033, and R00253–2; having AAI S/Ns 91K073 through 91K125, all S/Ns beginning with prefixes 91L, 92A, 92B, 92C, 92D, 92E, 92F, 92G, and 92H001 through 92H146; installed on but not limited to Textron Lycoming model O–235, O–290, O–320, O–360, LO–360, LTO–360, and O–540 piston engines; installed on but not limited to piston engine powered aircraft manufactured by Beechcraft, Bellanca, Cessna, Mooney, and Piper.

Compliance: Required prior to further flight, unless accomplished previously.

To prevent disruption of fuel flow to the engine, which can result in a loss of engine power, accomplish the following:

(a) Remove from service affected low pressure diaphragm fuel pumps and replace with a serviceable pump.

(b) For the purposes of paragraph (a) of this AD, a serviceable low pressure diaphragm fuel pump is either an AC, Textron Lycoming, or Rajay/Rotomaster-modified pump that has never been overhauled by AAI, or has an "S" stamped on the flange above the inlet port of the fuel pump to indicate previous compliance with priority letter AD 92–20–07.

(c) No further action is required for all affected low pressure diaphragm fuel pumps that have complied previously with priority letter AD 92–20–07.

Notes:

1. The model number is located on the edge of the mounting flange.

2. The S/N is located on the "housing backbone" between the mounting flange and the round spring housing.

3. For further information, see Aero Accessories, Inc. Mandatory Service Bulletin No. 001, dated August 21, 1992. Copies of

this service bulletin may be obtained from Aero Accessories, Inc., 1240 Springwood Church Road, Gibsonville, NC 27249, telephone (919) 449–5054.

(d) Remove from service affected high pressure diaphragm fuel pumps and replace with a serviceable pump.

(e) For the purposes of paragraph (d) of this AD, a serviceable high pressure diaphragm fuel pump is either an AC, Textron Lycoming, or Rajay/Rotomaster-modified pump that has never been overhauled by AAI, or has an "S2" stamped on the flange above the inlet port of the fuel pump to indicate previous compliance with priority letter AD 93–05–21.

(f) All affected high pressure diaphragm fuel pumps must be replaced, regardless of compliance with priority letter AD 92–20–07.

Notes:

1. The model number is located on the edge of the mounting flange.

2. The serial number is located on the "housing backbone" between the mounting flange and the round spring housing.

3. For further information, see Aero Accessories, Inc. Mandatory Service Bulletin No. 002, dated February 25, 1993. Copies of this service bulletin may be obtained from Aero Accessories, Inc., 1240 Springwood Church Road, Gibsonville, NC 27249, telephone (919) 449–5054.

(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, Atlanta Aircraft Certification Office. The request should be forwarded through an appropriate FAA Maintenance Inspector, who may add comments and then send it to the Manager, Atlanta Aircraft Certification Office.

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

(h) This amendment supersedes priority letter AD 93–05–21, issued March 17, 1993.

(i) This amendment becomes effective on June 21, 1993.

Issued in Burlington, Massachusetts, on April 28, 1993.

Jay J. Pardee,

Acting Manager, Engine and Propeller Directorate, Aircraft Certification Service.

[FR Doc. 93–13213 Filed 6–3–93; 8:45 am]

BILLING CODE 4910–13–P

---

14 CFR Part 39

[Docket No. 92–ANE–16; Amdt. 39–8566; AD 93–08–18]

Airworthiness Directives; Pratt & Whitney PW4000 Series Turbofan Engines

AGENCY: Federal Aviation Administration, DOT.

ACTION: Final rule.

SUMMARY: This amendment supersedes an existing airworthiness directive (AD), applicable to Pratt & Whitney PW4000 series engines, that currently requires switching the ENGINE ANTI ICE "ON" prior to every takeoff and keeping it "ON" for any flight operation below 15,000 feet, and placing a placard in the cockpit to make the crew aware of this requirement. This amendment limits the requirements of the AD to those engines which are not equipped with an improved electronic engine control (EEC). This amendment is prompted by the development of new EEC software that provides for more cooling flow at lower idle speeds. The actions specified by this AD are intended to prevent a high pressure compressor failure caused by excessive blade tip to airseal interference, that can result in total loss of engine thrust.

DATES: Effective July 6, 1993.

ADDRESSES: The service information referenced in this AD may be obtained from Airbus Industrie, Product Support Directorate, 1 Rond Point Maurice Bellonte, 31707 Blagnac Cedex France. This information may be examined at the Federal Aviation Administration (FAA), New England Region, Office of the Assistant Chief Counsel, 12 New England Executive Park, Burlington, Massachusetts.

FOR FURTHER INFORMATION CONTACT: Chris Gavriel, Aerospace Engineer, Engine Certification Office, ANE–141, FAA, Engine and Propeller Directorate, 12 New England Executive Park, Burlington, Massachusetts 01803–5299; telephone (617) 273–7084, fax (617) 270–2412.

SUPPLEMENTARY INFORMATION: A proposal to amend part 39 of the Federal Aviation Regulations by superseding AD 91–05–20, Amendment 39–6919 (56 FR 8707, March 1, 1991) which is applicable to Pratt & Whitney PW4000 series turbofan engines, was published in the **Federal Register** on December 11, 1992 (57 FR 58751). That action proposed to limit the requirements of AD 91–05–20 to those engines that are not equipped with the improved EEC as identified by part numbers.

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

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

There are approximately 41 installed PW4000 series engines of the affected design that are installed on aircraft of U.S registry. The FAA estimates that the proposed change will decrease fuel consumed by the affected engines by about 0.7%, or an estimated cost per year per engine of $52,500. Relieving operators of this burden will save approximately $2,152,500 per year in decreased fuel costs.

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, 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 39–39–6919 (56 FR 8707, March 1, 1991) and by adding a new airworthiness directive, Amendment 39–8566, to read as follows:

93–08–18 Pratt & Whitney: Amendment 39–8566. Docket 92–ANE–16. Supersedes AD 91–05–20, Amendment 39–6919.

Applicability: Pratt & Whitney Model PW4152, PW4156, and PW4158 model

turbofan engines equipped with electronic engine control (EEC) Part Numbers 50D436, 50D791, 50D824, 51D037, and 51D053, installed on but not limited to Airbus A310 and Airbus A300 series aircraft.

Compliance: Required within 30 days after the effective date of this airworthiness directive (AD), unless accomplished previously.

To prevent a high pressure compressor failure that can be caused by excessive blade tip to airseal interference, which can result in total loss of engine thrust, accomplish the following:

(a) The ENGINE ANTI ICE must be switched to "ON" prior to takeoff and must be in the "ON" position for any flight operation below 15,000 feet.

(b) Install placards in the cockpit of Airbus A310–300 and A300–600 aircraft, just above the Captain and the First Officer Primary Flight Displays, indicating the following: "BEFORE TAKE OFF, SET ENG. ANTI ICE ON. KEEP ENG. ANTI ICE ON FOR ANY OPERATION BELOW 15,000 FT."

Note: Further information on the placards may be obtained from Airbus Industrie Service Information Letter 72–001, Revision 1, dated September 18, 1990.

(c) An alternative method of compliance or adjustment of the compliance time that provides an acceptable level of safety may be used if approved by the Manager, Engine Certification Office. The request should be forwarded through an appropriate FAA Principal Maintenance Inspector, who may add comments and then send it to the Manager, Engine Certification Office.

Note: Information concerning the existence of approved alternative method of compliance with this airworthiness directive, if any, may be obtained from the Engine Certification Office.

(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) This amendment becomes effective on July 6, 1993.

Issued in Burlington, Massachusetts, on April 28, 1993.

Jay J. Pardee,

Acting Manager, Engine and Propeller Directorate, Aircraft Certification Services.

[FR Doc. 93–13212 Filed 6–3–93; 8:45 am]

BILLING CODE 4910–13–P

---

14 CFR Part 39

[Docket No. 92–NM–230–AD; Amdt. 39–8594; AD 93–11–02]

Airworthiness Directives; Boeing Model 707 and 720 Series Airplanes

AGENCY: Federal Aviation Administration, DOT.

ACTION: Final rule.

SUMMARY: This amendment supersedes an existing airworthiness directive (AD), applicable to certain Boeing Model 707 and 720 series airplanes, that currently requires repetitive inspections to detect cracks in the inboard nacelle strut midspar fittings, and replacement, if necessary. This amendment adds a requirement to replace the fittings with improved fittings; when accomplished, such replacement constitutes terminating action for the repetitive inspections. This amendment is prompted by the development of improved fittings that will correct the fatigue cracking problem addressed in the existing AD. The actions specified by this AD are intended to prevent separation of an inboard engine from an airplane.

DATES: Effective July 6, 1993.

The incorporation by reference of certain publications listed in the regulations was approved previously by the Director of the Federal Register as of October 8, 1992 (57 FR 43890, September 23, 1992).

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, Airframe Branch, ANM–120S, FAA, Transport Airplane Directorate, Seattle Aircraft Certification Office, 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 92–19–15, Amendment 39–8373 (57 FR 43890, September 23, 1992), which is applicable to certain Boeing Model 707 and 720 series airplanes, was published in the **Federal Register** on January 27, 1993 (58 FR 6198). The action proposed to require repetitive inspections to detect cracks in the inboard nacelle strut midspar fittings, and replacement, if necessary; and replacement of the fittings with improved fittings, which, when installed, would constitute terminating action for the repetitive inspections.

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 commenter, Boeing Commercial Airplane Group, requests that the FAA revise the applicability of the proposed rule to exclude airplanes that are not modified with hush kits. Boeing states that accomplishment of the structural modifications required by AD 91–07–19 (56 FR 13073, March 29, 1991) and the repetitive inspections required by AD 92–19–15 will maintain the structural integrity of the subject parts on airplanes that are not modified with hush kits; therefore, those airplanes should not be included in the applicability of the proposed rule.

The FAA does not concur with the commenter's request to exclude airplanes from the applicability of the rule that are not modified with hush kits. While AD 91–07–19 requires certain structural modifications of the affected airplanes, those modifications are not required until after an airplane reaches its design life goal. The FAA finds that the affected airplanes must be modified prior to reaching the design life goal.

In addition, the FAA has determined that long term continued operational safety will be better assured by actual replacement of the midspar fittings on these airplanes with new, improved fittings to remove the source of the problem, rather than by repetitive inspections, as required by AD 92–19–15. These long term inspections may not be providing the degree of safety assurance necessary for the transport airplane fleet. This, coupled with a better understanding of the human factors associated with numerous repetitive inspections, has led the FAA to consider placing less emphasis on special procedures and more emphasis on design improvements. The replacement requirement of this AD is in consonance with these considerations.

Boeing also requests that the FAA revise the proposed rule to require repetitive inspections of airplanes modified with hush kits following accomplishment of the proposed terminating action. Boeing states that a fatigue analysis of the failed parts was conducted to establish the integrity of the replacement part. Boeing adds that the analysis was based on the history of part failures only on Boeing Model 707 and 720 series airplanes designed and built to the original certification basis. Results of that fatigue analysis revealed that a significant portion (over 33 percent) of the fatigue damage occurred due to flight conditions involving lateral loading. Boeing indicates that any nacelle configuration that increases inlet length and area produces higher loading, particularly lateral loading,

which is the case with the airplanes modified with hush kits.

Boeing emphasizes that the FAA recognized the differences in fatigue loading and crack growth rates on the nacelle fittings between baseline airplanes and airplanes modified with hush kits by requiring shorter inspection intervals in AD 92–19–15 for the latter group. Consequently, Boeing questions the FAA's reasoning in not recognizing the differences in the fatigue life of the replacement fittings between these two nacelle configurations in regard to the proposed terminating action. Boeing concludes that the FAA is taking an unnecessary risk in allowing replacement of the midspar fittings to constitute terminating action for airplanes modified with hush kits.

The FAA does not concur with the commenter's request to revise the proposed rule to require post-modification inspections of airplanes modified with hush kits. The FAA finds that accomplishment of the actions required by this final rule addresses adequately the identified fatigue cracking problem in the area of the midspar fittings. Currently, the FAA is unaware of any service difficulties associated with the installation of the new improved fittings on these airplanes. In addition, AD 85–12–01 (50 FR 26690, June 28, 1985) requires periodic inspections of this area on airplanes that have been modified with hush kits, as well as those that have not been modified with hush kits, which would detect any cracking that may develop subsequently in the midspar fittings. If the FAA receives reports indicating that cracks have been detected in the new improved fittings, further rulemaking may be considered to address that service difficulty.

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

There are approximately 187 Model 707 and 720 series airplanes of the affected design in the worldwide fleet. The FAA estimates that 53 airplanes of U.S. registry will be affected by this AD, that it will take approximately 260 work hours per airplane to accomplish the required actions, and that the average labor rate is $55 per work hour. Required parts will cost approximately $7,800 per airplane. Based on these figures, the total cost impact of the AD on U.S. operators is estimated to be $1,171,300, or $22,100 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 39–8373 (57 FR 43890, September 23, 1992), and by adding a new airworthiness directive (AD), amendment 39–8594, to read as follows:

93–11–02 Boeing: Amendment 39–8594. Docket 92–NM–230–AD. Supersedes AD 92–19–15, Amendment 39–8373.

Applicability: Model 707 and 720 series airplanes; line numbers 1 through 906, inclusive; including Model 707 and 720 series airplanes that have been modified in accordance with Supplemental Type Certificates (STC's) SA2699NM, SA3595NM, or SA4015NM; certificated in any category.

Compliance: Required as indicated, unless accomplished previously.

To prevent separation of an inboard engine from an airplane, accomplish the following:

(a) Perform a close visual inspection of the midspar fittings to detect cracks in accordance with Boeing Service Bulletin 3183, Revision 4, dated July 8, 1992, unless accomplished previously in accordance with Boeing Service Bulletin 3183, Revision 2, dated January 28, 1988, at the time specified in paragraph (a)(1), (a)(2), (a)(3), or (a)(4), of this AD, as applicable.

(1) For Model 707–300B/C series airplanes modified by installation of a "hush kit" in accordance with Supplemental Type Certificate (STC) SA2699NM, at the later of the times specified in paragraph (a)(1)(i) or (a)(1)(ii) of this AD:

(i) Prior to the accumulation of 12,000 flight hours; or

(ii) Within 650 flight hours or 250 flight cycles after October 8, 1992 (the effective date of AD 92–19–15, Amendment 39–8373), whichever occurs first.

(2) For Model 707–100B and 720B series airplanes modified by installation of a "hush kit" in accordance with STC SA3595NM or SA4015NM, at the later of the times specified in paragraph (a)(2)(i) or (a)(2)(ii) of this AD:

(i) Prior to the accumulation of 12,000 flight hours; or

(ii) Within 650 flight hours or 325 flight cycles after October 8, 1992 (the effective date of AD 92–19–15, Amendment 39–8373), whichever occurs first.

(3) For Model 707–300, 707–400, and 707–300B/C series airplanes, at the later of the times specified in paragraph (a)(3)(i) or (a)(3)(ii) of this AD:

(i) Prior to the accumulation of 12,000 flight hours; or

(ii) Within 1,100 flight hours or 400 flight cycles after October 8, 1992 (the effective date of AD 92–19–15, Amendment 39–8373), whichever occurs first.

(4) For Model 707–100, 707–100B, 707–200, 720 and 720B series airplanes, at the later of the times specified in paragraph (a)(4)(i) or (a)(4)(ii) of this AD:

(i) Prior to the accumulation of 12,000 flight hours; or

(ii) Within 1,100 flight hours or 550 flight cycles after October 8, 1992 (the effective date of AD 92–19–15, Amendment 39–8373), whichever occurs first.

(b) Repeat the inspection required by paragraph (a) of this AD thereafter at the intervals specified in paragraph (b)(1), (b)(2), (b)(3), or (b)(4) of this AD, as applicable, in accordance with Boeing Service Bulletin 3183, Revision 4, dated July 8, 1992.

(1) For Model 707–300B/C series airplanes modified by installation of a "hush kit" in accordance with STC SA2699NM: At intervals not to exceed 750 flight hours or 300 flight cycles, whichever occurs first.

(2) For Model 707–100B and 720B series airplanes modified by installation of a "hush kit" in accordance with STC SA3595NM or SA4015NM: At intervals not to exceed 750 flight hours or 375 flight cycles, whichever occurs first.

(3) For Model 707–300, –400, and –300B/C series airplanes: At intervals not to exceed 1,200 flight hours or 450 flight cycles, whichever occurs first.

(4) For Model 707–100, 707–100B, 707–200, 720, and 720B series airplanes: At

intervals not to exceed 1,200 flight hours or 600 flight cycles, whichever occurs first.

(c) If any cracks are found in the midspar support fittings as a result of the inspections required by paragraph (a) or (b) of this AD, prior to further flight: Conduct an eddy current inspection, replace both midspar support fittings, and modify or repair all other structure specified in the service bulletin, in accordance with Boeing Service Bulletin 3183, Revision 1, dated May 13, 1977, or Revision 2, dated January 28, 1988. If a currently-installed fitting is replaced by a new fitting of the same part number, that new fitting must be inspected in accordance with the compliance times and procedures required by paragraphs (a) and (b) of this AD.

(d) Replace the midspar fittings with new, improved fittings, in accordance with Boeing Service Bulletin 3183, Revision 2, dated January 28, 1988, at the later of the times specified in paragraph (d)(1) or (d)(2) of this AD.

(1) Prior to the accumulation of 12,000 flight hours; or

(2) Within 4 years or 4,800 flight cycles after the effective date of this AD, whichever occurs first.

(e) Replacement of the midspar fittings with new, improved fittings, in accordance with Boeing Service Bulletin 3183, Revision 2, dated January 28, 1988, constitutes terminating action for the inspections required by this AD.

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

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

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

(h) The inspection, replacement, modification, and repair shall be done in accordance with Boeing Service Bulletin 3183, Revision 1, dated May 13, 1977, or Boeing Service Bulletin 3183, Revision 2, dated January 28, 1988, or Boeing Service Bulletin 3183, Revision 4, dated July 8, 1992. 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 October 8, 1992 (57 FR 43890, September 23, 1992). 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.

(i) This amendment becomes effective on July 6, 1993.

Issued in Renton, Washington, on May 27, 1993.

Bill R. Boxwell,

Acting Manager, Transport Airplane Directorate, Aircraft Certification Service.

[FR Doc. 93–13211 Filed 6–3–93; 8:45 am]

BILLING CODE 4910–13–P

---

14 CFR Part 71

[Docket No. 27317]

Amendment to the Pacific Low Additional Control Area

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Final rule; removal of temporary amendment.

SUMMARY: Effective April 1, 1993, the FAA temporarily amended the base altitude of the Pacific Low additional control area from 5,500 feet MSL to 5,000 feet MSL. The temporary amendment reinstated the base altitude that existed in this offshore airspace area prior to the promulgation of the Offshore Airspace Reconfiguration Final Rule. This action enabled the FAA to conduct a micro-review of the air traffic control (ATC) operations conducted within this airspace area to determine the amount of controlled airspace necessary to contain certain ATC operations. The micro-review of the west coast validated that the floor of the Pacific Low could be raised to 5,500 feet MSL as originally determined in the Offshore Airspace Reconfiguration Final Rule. This action revokes the temporary amendment and reestablishes the floor of the airspace area at 5,500 feet MSL.

EFFECTIVE DATE: This amendment is effective on July 6, 1993.

FOR FURTHER INFORMATION CONTACT: Mr. William M. Mosley, ATP–230, Air Traffic Rules Branch, Federal Aviation Administration, 800 Independence Avenue SW., Washington, DC 20591, telephone (202) 267–9251.

SUPPLEMENTARY INFORMATION:

Background

The Offshore Airspace Reconfiguration Final Rule, published March 2, 1993 (58 FR 12128), amended the Federal Aviation Regulations (FAR), in pertinent part, by designating additional control areas as offshore airspace areas or en route domestic airspace areas, as appropriate. Further, the offshore airspace areas were divided into high and low areas. In addition to combining and simplifying the offshore airspace areas, an effort was made to establish a uniform floor of 5,500 feet MSL, to the extent practicable. However, just before the change was to become effective, it was discovered that not every specific air traffic control operation that requires controlled airspace was considered or evaluated when the base altitudes of the overall offshore airspace areas were established. Therefore, the FAA took action to reduce the floor of the Pacific Low offshore airspace area back to the floor previously specified for the Newport, OR, San Francisco, CA, and Santa Barbara, CA additional control areas (58 FR 17494). This enabled the FAA to conduct a micro-review of the air traffic control operations conducted within this airspace area. The micro-review of the west coast validated that the floor of the Pacific Low could be raised to 5,500 feet MSL as originally determined in the Offshore Airspace Reconfiguration Final Rule. The Pacific Low additional control area was published in FAA Order 7400.7A-Supplement dated February 24, 1992, and effective April 1, 1993, which is incorporated by reference in 14 CFR 71.1.

The Rule

This amendment to part 71 of the FAR's revokes the temporary amendment to the Pacific Low additional control area published on April 5, 1993 (58 FR 17494). It reinstates the base altitude of the Pacific Low additional control area from 5,000 to 5,500 feet MSL. Because the public needs to be made immediately aware of the reinstatement of this altitude, notice and public procedure under 5 U.S.C 553(b) are unnecessary.

The FAA has determined 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) does not warrant preparation of a regulatory evaluation as the anticipated impact is so minimal.

List of Subjects in 14 CFR Part 71

Airspace, Incorporation by reference, Navigation (Air).

Adoption of the Amendment

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

PART 71—[AMENDED]

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

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

§71.1 [Amended]

2. The incorporation by reference in 14 CFR 71.1 of the Federal Aviation Administration Order 7400.7A—Supplement dated February 24, 1993, and effective April 1, 1993, is amended as follows:

Section 71.163 Designation of Additional Control Areas

* * * * *

Pacific Low [temporarily revised April 1, 1993, through July 22, 1993] [Removed].

* * * * *

Issued in Washington, DC on May 28, 1993.

Willis C. Nelson,

Acting Manager, Airspace—Rules and Aeronautical Information Division.

[FR Doc. 93–13177 Filed 6–3–93; 8:45 am]

BILLING CODE 4910–13–M

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 52

[IL 12–22–5638; FRL–4662–4]

Reconsideration of Certain Federal RACT Rules for Illinois

AGENCY: U.S. Environmental Protection Agency (USEPA).

ACTION: Notice of partial stay and reconsideration.

SUMMARY: On August 26, 1992, USEPA announced a 3-month partial stay and reconsideration of certain Federal rules requiring reasonably available control technology (RACT) to control volatile organic compound (VOC) emissions in the Illinois portion of the Chicago ozone nonattainment area. More specifically, the stay was issued to Allsteel, Incorporated ("Allsteel") and pertained to the metal furniture painting operations at its Montgomery (Kane County), Illinois facility. That action was taken pursuant to Clean Air Act (CAA) section 307(d)(7)(B), 42 U.S.C. 7607(d)(7)(B), which authorizes the Administrator to stay the effectiveness of a rule during reconsideration. Elsewhere in the August 26, 1992, **Federal Register** at (57 FR 38650) USEPA proposed to extend the stay beyond the 3-month period, if and as long as necessary to complete reconsideration of the subject rules (including any appropriate regulatory action), pursuant to CAA sections 110(c) and 301(a)(1), 42 U.S.C. 7410(c) and 7601(a)(1). Public comment was solicited on USEPA's proposed extension of the stay and an opportunity to request a public hearing was provided.

No public comments were received in response to USEPA's proposed rulemaking. This rulemaking announces USEPA's final rule imposing a stay for the rules under reconsideration, but only as long as necessary to complete reconsideration of these rules.

EFFECTIVE DATE: May 24, 1993.

ADDRESSES: The docket for this action (Docket No. 5AR92–8) is located for public inspection and copying at the following addresses. We recommend that you contact Randolph O. Cano before visiting the Chicago location and Jacqueline Brown before visiting the Washington, DC location. A reasonable fee may be charged for copying.

U.S. Environmental Protection Agency, Region 5, Regulation Development Branch, 77 West Jackson Street, Chicago, Illinois 60604. (312) 886–6036

U.S. Environmental Protection Agency, Docket No. 5AR92–8, Public Information Reference Unit (PM–211D) Room 2904, Waterside Mall, 401 M Street SW., Washington, DC 20460. (202) 260–7548

FOR FURTHER INFORMATION CONTACT: Randolph O. Cano (AR–18J), Regulation Development Branch, U.S. Environmental Protection Agency, Region 5, 77 West Jackson Boulevard, Chicago, Illinois 60604. (312) 886–6036.

SUPPLEMENTARY INFORMATION: On August 26, 1992 (57 FR 38650) USEPA proposed to extend a 3 month stay issued on that date (57 FR 38615) for the RACT Rules, including the applicable compliance dates, for Allsteel's metal furniture painting operations. More specifically the stay was proposed to be extended for the emission limitations and standards for metal furniture coating operations at Allsteel's manufacturing facility in Montgomery, Illinois (at 55 FR 26868–26874, codified at 40 CFR 52.741(e)).

The proposed stay beyond the three months expressly provided in section 307(d)(7)(B) was to remain in effect until withdrawn by a subsequent rule, but only as long as necessary to complete USEPA's rulemaking on the reconsidered actions. The August 26, 1992, notice proposed to issue the stay pursuant to CAA sections 110(c) and 301(a)(1), 42 U.S.C. 7410(c) and 7601(a)(1).

Final Rulemaking Action

Because no public comments were received concerning USEPA's proposed rulemaking action to extend the stay beyond the three months provided in section 307(d)(7)(B) of the CAA, USEPA announces an extension of the stay for Allsteel Incorporated's metal furniture painting operation, but only as long as necessary to complete reconsideration of the rule identified in the proposal. At that time, USEPA will publish a rule in the **Federal Register** notifying the public of the withdrawal of this stay.

USEPA intends to complete its reconsideration of the rules and, following notice and comment procedures of section 307(d) of the CAA, take appropriate action. The reconsideration will include an appropriate compliance period. In essence, USEPA will seek to ensure that the affected parties are not unduly prejudiced by the Agency's reconsideration. Note that, like the rules themselves, any USEPA proposal regarding the appropriate compliance period would be subject to the notice and comment procedures of CAA section 307(d).

USEPA recognizes the interests of the State of Wisconsin in this matter. The regulatory requirements that are affected by this rule were undertaken in the context of a settlement agreement between USEPA and the States of Wisconsin and Illinois. In recognition of those obligations, USEPA will reconsider the rules in question as expeditiously as practicable.

This stay will be effective immediately upon signature of the Administrator pursuant to the Administrative Procedure Act, 5 U.S.C. 533(d) (1) and (3) for good cause and because it relieves a restriction.

Under Executive Order 12291, this action is not "Major". It has been submitted to the Office of Management and Budget for review.

List of Subjects in 40 CFR Part 52

Air pollution control, Ozone.

Dated: May 24, 1993.

Carol M. Browner,

Administrator.

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

PART 52—APPROVAL AND PROMULGATION OF IMPLEMENTATION PLANS

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

Authority: 42 U.S.C. 7401–7671q.

Subpart O—Illinois

2. Section 52.741 is amended by revising paragraph (z)(5) to read as follows:

§52.741 Control strategy: Ozone control measures for Cook, DuPage, Kane, Lake, McHenry, and Will Counties.

* * * * *

(z) * * *

(5) The following rule is stayed from May 24, 1993 until USEPA completes its reconsideration: 40 CFR 52.741(e) only as it applies to the metal furniture painting operations at the Allsteel, Incorporated facility located in Kane County. When USEPA concludes its reconsideration, it will publish its decision and any actions required to effectuate that decision in the **Federal Register.**

[FR Doc. 93–13058 Filed 6–3–93; 8:45 am]
BILLING CODE 6560–50–M

---

40 CFR Part 52

[OR 25–1–5796; FRL–4657–6]

Approval and Promulgation of Implementation Plans: Oregon

AGENCY: Environmental Protection Agency (EPA).

ACTION: Final rule.

SUMMARY: EPA is approving revisions to Oregon's Sampling Manual (Volumes I and II) and the inclusion of a new Continuous Emission Monitoring Manual into the Oregon State Implementation Plan (SIP). The revisions were submitted on October 14, 1992, in response to the requirements of section 110 and Part D of the Clean Air Act (hereinafter the Act). The manuals are intended to support Oregon's Interim Operating Permit Fees Rule, PM–10 Nonattainment Area control strategy(ies), existing Pulp and Paper Industry Rules and other Oregon Administrative Rules.

EFFECTIVE DATE: This action will be effective on August 3, 1993 unless notice is received before July 6, 1993 that someone wishes to submit adverse or critical comments. If such notice is received, EPA will open a formal 30-day comment period.

ADDRESSES: Documents which are incorporated by reference are available for public inspection at the Public Information Reference Unit, Environmental Protection Agency, 401 M Street, SW., Washington, DC. Copies of material submitted to EPA may be examined during normal business hours at the following locations: Public Information Reference Unit, Environmental Protection Agency, 401 M Street, SW., Washington, DC 20460; Air Programs Branch, Environmental Protection Agency, Docket #OR 25–1–5796, 1200 Sixth Avenue, AT–082, Seattle, Washington 98101; Oregon Department of Environmental Quality, 811 SW., Sixth, Portland, Oregon 97204. Comments should be addressed to: Rindy Ramos, Air Programs Branch, AT–082, Environmental Protection Agency, 1200 Sixth Avenue, Seattle, Washington 98101.

FOR FURTHER INFORMATION CONTACT: Rindy Ramos, Air Programs Branch, AT–082, Environmental Protection Agency, 1200 Sixth Avenue, Seattle, Washington 98101, Telephone: (206) 553–6510.

SUPPLEMENTARY INFORMATION:

1. Background

Oregon's Source Sampling Manual was last revised in 1981. Since that time, new source testing methods have been developed and existing methods have undergone minor revisions. Oregon proposes to replace their existing Source Sampling Manual with a new manual to ensure that their existing methods will be consistent with EPA reference methods. The manual also contains additional methods commonly used in source testing Oregon's stationary sources. Sampling methods that are identical to EPA reference methods have been incorporated by reference. Methods unique to Oregon have been revised to be consistent with EPA reference methods to the extent possible and still retain the unique and necessary features of the methods.

The proposed Continuous Monitoring Manual is a new document that provides criteria for the installation, calibration, maintenance, and operation of Continuous Monitoring Systems (CMS). It also establishes the quality assurance and quality control requirements for CMS.

The Oregon Environmental Quality Commission (OEQC) adopted these revisions on January 23, 1992, and they were effective on February 4, 1992..

II. This Action

EPA is approving revisions to Oregon's Source Testing Manual and the new Continuous Monitoring Manual as revisions to the State of Oregon Implementation Plan.

III. Administrative Review

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

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

The public should be advised that this action will be effective 60 days from the date of this **Federal Register** notice. However, if notice is received within 30 days that someone wishes to submit adverse or critical comments on any or all of these revisions approved herein, the action on these revisions will be withdrawn and two subsequent notices will be published before the effective date. One notice will withdraw the final action on those revision and another will begin a new rulemaking by announcing a proposal of the action on these revisions and establish a comment period.

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

Under 5 U.S.C. 605(b), I certify that this revision will not have a significant economic impact on a substantial number of small entities (See 46 FR 8709).

The Office of Management and Budget has exempted this rule from the requirements of section 3 of Executive Order 12291.

This action has been classified as a Table 3 action by the Regional Administrator under the procedures published in the **Federal Register** January 19, 1989 (54 FR 2214–2225). On January 6, 1989, the Office of Management and Budget waived Table 2 and 3 SIP revisions (54 FR 2222) from the requirements of section 3 of Executive Order 12291 for a period of two years.

Under section 307(b)(1) of the Act, petitions for judicial review of this action must be filed in the United States Court of Appeals for the appropriate circuit by August 3, 1993. Filing a petition for reconsideration by the

Administrator of this final rule does not affect the finality of this rule for the purposes of judicial review nor does it extend the time within which a petition for judicial review may be filed and shall not postpone the effectiveness of such rule or action. This action may not be challenged later in proceedings to enforce its requirements. (See 42 U.S.C. 7607(b)(2))

List of Subjects in 40 CFR Part 52

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

Dated: May 11, 1993.

Dana A. Rasmussen,

Regional Administrator.

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

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

PART 52—[AMENDED]

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

Authority: 42 U.S.C. 7401–7671q.

Subpart MM—Oregon

2. Section 52.1970 is amended by adding paragraph (c)(98) to read as follows:

§52.1970 Identification of plan.

* * * * *

(c) * * *

(98) On October 14, 1992 the Director of the Department of Environmental Quality submitted revisions to Oregon's Sampling Manual (Volumes I and II) and the inclusion of a new Continuous Emission Monitoring Manual as revision to the State of Oregon's Air Quality Control Plan Volume 2 (The Federal Clean Air State Implementation Plan and Other State Regulations).

(i) Incorporation by reference.

(A) October 14, 1992 letter from the Director of the Department of Environmental Quality to EPA Region 10 submitting amendments to the Oregon state implementation plan.

(B) Oregon's Sampling Manual (Volumes I and II) as adopted by the Oregon Environmental Quality Commission on January 23, 1992 and effective on January 23, 1992.

(C) Continuous Emission Monitoring Manual as adopted by the Oregon Environmental Quality Commission on January 23, 1992, and effective on February 4, 1992.

[FR Doc. 93–12937 Filed 6–3–93; 8:45 am]

BILLING CODE 6560–50–P

DEPARTMENT OF THE INTERIOR

Bureau of Land Management

43 CFR Public Land Order 6974

[AK–932–4210–06; AA–65185]

Partial Revocation of Public Land Order No. 725 for Selection of Land by the State of Alaska; Alaska

AGENCY: Bureau of Land Management, Interior.

ACTION: Public Land Order.

SUMMARY: This order revokes a public land order insofar as it affects approximately 110 acres of National Forest System land withdrawn for use by the Forest Service, Department of Agriculture, known as the Summit Lake Recreation Area. The land is no longer needed for the purpose for which it was withdrawn. This action also opens the land for selection by the State of Alaska, if such land is otherwise available. Any land described herein that is not conveyed to the State will be subject to the terms and conditions of the Chugach National Forest reservation and any other withdrawal of record.

EFFECTIVE DATE: June 4, 1993.

FOR FURTHER INFORMATION CONTACT: Sandra C. Thomas, BLM Alaska State Office, 222 W. 7th Avenue, No. 13, Anchorage, Alaska 99513–7599, 907–271–5477.

By virtue of the authority vested in the Secretary of the Interior by section 204 of the Federal Land Policy and Management Act of 1976, 43 U.S.C. 1714 (1988), it is ordered as follows:

1. Public Land Order No. 725 is hereby revoked insofar as it affects the following described land:

Seward Meridian

A parcel of land located in sec. 5, T. 6 N., R. 1 W., and more particularly described as:

Commencing at the intersection of the Seward Highway and Tenderfoot Campground Road; thence southeasterly along Tenderfoot Campground Road for a distance of 2,324 feet to a 6" x 6" wooden post on the west edge of the road; thence N. 50° W., a distance of 14 feet to the intersection with the mean high water line of Summit Lake, said intersection being the point of beginning;

Thence S. 50° E. for a distance of 1,320 feet and passing through the aforementioned 6" x 6" wooden post;

Thence northerly and parallel with and 1,320 feet distance from the mean high water line of Summit Lake to the intersection with the north-south section line common to secs. 5 and 6, T. 6 N., R. 1 W., (unsurveyed);

Thence southerly along the aforementioned section line to the intersection with the mean high water line of Summit Lake;

Thence northeasterly and following along the mean high water line of Summit Lake to the point of beginning.

The area described contains approximately 110 acres.

2. Subject to valid existing rights, the land described above is hereby opened for selection by the State of Alaska under the Alaska Statehood Act of July 7, 1958, 48 U.S.C. note prec. 21 (1988).

3. The State of Alaska application for selection made under section 6(a) of the Alaska Statehood Act of July 7, 1958 and section 906(e) of the Alaska National Interest Lands Conservation Act, 43 U.S.C. 1635(e) (1988), becomes effective without further action by the State upon publication of the public land order in the **Federal Register**, if such land is otherwise available. Land not conveyed to the State will be subject to the terms and conditions of the Chugach National Forest reservation and any other withdrawal of record.

Dated: May 21, 1993.

Bob Armstrong,

Assistant Secretary of the Interior.

[FR Doc. 93–13184 Filed 6–3–93; 8:45 am]

BILLING CODE 4310–JA–M

43 CFR Public Land Order 6977

[NV–930–4210–06; N–52757]

Withdrawal of Public Land for Protection of Blue Link Spring and its Associated Reservoir; Nevada

AGENCY: Bureau of Land Management, Interior.

ACTION: Public land order.

SUMMARY: This order withdraws 11.6 acres of public land from surface entry and mining for a period of 20 years for the Bureau of Land Management to protect Blue Link Spring and its associated reservoir in Mineral County. The land has been and remains open to mineral leasing.

EFFECTIVE DATE: June 4, 1993.

FOR FURTHER INFORMATION CONTACT: Vienna Wolder, BLM Nevada State Office, P.O. Box 12000, Reno, Nevada 89520, 702–785–6526.

By virtue of the authority vested in the Secretary of the Interior by section 204 of the Federal Land Policy and Management Act of 1976, 43 U.S.C. 1714 (1988), it is ordered as follows:

1. Subject to valid existing rights, the following described public land is hereby withdrawn from settlement, sale,

location, or entry under the general land laws, including the United States mining laws (30 U.S.C. ch. 2 (1988)), but not from leasing under the mineral leasing laws, to protect Blue Link spring and its associated reservoir, which is the habitat for the federally listed endangered Hiko White River Springfish:

Mount Diablo Meridian

T. 5 N., R. 37 E., (unsurveyed),
Sec. 5, an area 400 feet in radius around Blue Link Spring and the adjoining reservoir. The center of the withdrawal is located at the midpoint between the spring and reservoir, approximately 86.5 feet from either.

The area described contains 11.6 acres in Mineral County.

2. The withdrawal made by this order does not alter the applicability of those public land laws governing the use of the lands under lease, license, or permit, or governing the disposal of their mineral or vegetative resources other than under the mining laws.

3. This withdrawal will expire 20 years from the effective date of this order unless, as a result of a review conducted before the expiration date pursuant to section 204(f) of the Federal Land Policy and Management Act of 1976, 43 U.S.C. 1714(f) (1988), the Secretary determines that the withdrawal shall be extended.

Dated: May 25, 1993.

Bob Armstrong,

Assistant Secretary of the Interior.

[FR Doc. 93–13186 Filed 6–3–93; 8:45 am]

BILLING CODE 4310–HC–M

43 CFR Public Land Order 6978

[ID–943–4210–06; IDI–15710 01, IDI–15072 01]

Partial Revocation of Secretarial Orders Dated April 18, 1927, and April 26, 1938; Idaho

AGENCY: Bureau of Land Management, Interior.

ACTION: Public land order.

SUMMARY: This order revokes two Secretarial orders insofar as they affect 37.52 acres of public land withdrawn for the Bureau of Land Management's Powersite Classification No. 175 and the Bureau of Reclamation's Boise Reclamation Project. The land is no longer needed for the purposes for which it was withdrawn. This action will open 37.52 acres to surface entry and mining and will permit the sale of the land to resolve three occupancy trespasses. The land has been and will remain open to mineral leasing.

EFFECTIVE DATE: July 6, 1993.

FOR FURTHER INFORMATION CONTACT: Larry R. Lievsay, BLM Idaho State Office, 3380 Americana Terrace, Boise, Idaho 83706, 208–384–3166.

By virtue of the authority vested in the Secretary of the Interior by section 204 of the Federal Land Policy and Management Act of 1976, 43 U.S.C. 1714 (1988), it is ordered as follows:

1. The Secretarial Orders dated April 18, 1927, and April 26, 1938, which withdrew public land for the Bureau of Land Management's Powersite Classification No. 175 and the Bureau of Reclamation's Boise Reclamation Project respectively, are hereby revoked insofar as they affect the following described land:

Boise Meridian

T. 10 N., R. 4 E.,
Sec. 13, lots 1 to 4, inclusive, and lots 6 and 7.

The area described contains 37.52 acres in Boise County.

2. At 9 a.m. on July 6, 1993, the land described in paragraph 1, will be opened to the operation of the public land laws generally, subject to valid existing rights, the provisions of existing withdrawals, other segregations of record, and the requirements of applicable law. All valid applications received at or prior to 9 a.m. on July 6, 1993, shall be considered as simultaneously filed at that time. Those received thereafter shall be considered in the order of filing.

3. At 9 a.m. on July 6, 1993, the land described in paragraph 1, will be opened to location and entry under the United States mining laws, subject to valid existing rights, the provisions of existing withdrawals, other segregations of record, and the requirements of applicable law. Appropriation of any of the land described in this order under the general mining laws prior to the date and time of restoration is unauthorized. Any such attempted appropriation, including attempted adverse possession under 30 U.S.C. 38 (1988), shall vest no rights against the United States. Acts required to establish a location and to initiate a right of possession are governed by State law where not in conflict with Federal law. The Bureau of Land Management will not intervene in disputes between rival locators over possessory rights since Congress has provided for such determinations in local courts.

Dated: May 25, 1993.

Bob Armstrong,

Assistant Secretary of the Interior.

[FR Doc. 93–13185 Filed 6–4–93; 8:45 am]

BILLING CODE 4310–GG–M

43 CFR Public Land Order 6979

[MT–930–4210–06; NDM 79193]

Withdrawal of Public Lands for Waterfowl Production Areas; North Dakota

AGENCY: Bureau of Land Management, Interior.

ACTION: Public Land Order.

SUMMARY: This order withdraws 4,988.84 acres of public lands from surface entry and mining for a period of 40 years for the Fish and Wildlife Service to protect waterfowl production areas. The lands have been and will remain open to mineral leasing.

EFFECTIVE DATE: June 4, 1993.

FOR FURTHER INFORMATION CONTACT: James Binando, BLM Montana State Office, P.O. Box 36800, Billings, Montana 59107, 406–255–2935.

By virtue of the authority vested in the Secretary of the Interior by section 204 of the Federal Land Policy and Management Act of 1976, 43 U.S.C. 1714 (1988), it is ordered as follows:

1. Subject to valid existing rights, the public lands described in the Notice of Proposed Withdrawal published July 2, 1991, in 56 FR 30399–30400 and Correction Notice published August 7, 1991, in 56 FR 37607 are hereby withdrawn from settlement, sale, location, or entry under the general land laws, including the United States mining laws (30 U.S.C. ch. 2 (1988)), but not from leasing under the mineral leasing laws, to protect waterfowl production areas.

2. The withdrawal made by this order does not alter the applicability of those public land laws governing the use of the lands under lease, license, or permit, or governing the disposal of their mineral or vegetative resources other than under the mining laws.

3. This withdrawal will expire 40 years from the effective date of this order unless, as a result of a review conducted before the expiration date pursuant to section 204(f) of the Federal Land Policy and Management Act of 1976, 43 U.S.C. 1714(f) (1988), the Secretary determines that the withdrawal shall be extended.

Dated: May 25, 1993.

Bob Armstrong,

Assistant Secretary of the Interior.

[FR Doc. 93–13187 Filed 6–3–93; 8:45 am]

BILLING CODE 4310–DN–M

FEDERAL COMMUNICATIONS COMMISSION

47 CFR Part 73

[MM Docket No. 92-300; RM-8138]

Radio Broadcasting Services; Ketchum, ID

AGENCY: Federal Communications Commission.

ACTION: Final rule.

SUMMARY: This document substitutes Channel 284C for Channel 284A at Ketchum, Idaho, and modifies the construction permit for Station KYAA (FM) to specify operation on the higher class channel, at the request of Idaho Broadcasting Consortium, Inc. *See* 58 FR 04392, January 4, 1993. Channel 284C can be allotted to Ketchum in compliance with the Commission's minimum distance separation requirements at its construction permit site. The coordinates for Channel 284C at Ketchum are North Latitude 43–38–36 and West Longitude 114–23–49. With this action, this proceeding is terminated.

EFFECTIVE DATE: July 12, 1993.

FOR FURTHER INFORMATION CONTACT: Nancy J. Walls, Mass Media Bureau, (202) 634–6530.

SUPPLEMENTARY INFORMATION: This is a synopsis of the Commission's Report and Order, MM Docket No. 92–300, adopted May 7, 1993, and released May 27, 1993. The full text of this Commission decision is available for inspection and copying during normal business hours in the FCC's Reference Center (Room 239), 1919 M Street NW, Washington, DC. The complete text of this decision may also be purchased from the Commission's copy contractors, International Transcription Service, Inc., (202) 857–3800, 1919 M Street NW., room 246, or 2100 M Street NW., suite 140, Washington, DC. 20037.

List of Subjects in 47 CFR Part 73

Radio broadcasting.

Part 73—[AMENDED]

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

Authority: 47 U.S.C. 154, 303.

§ 73.202 [Amended]

2. Section 73.202(b), the Table of FM Allotments under Idaho, is amended by removing Channel 284A and adding Channel 284C at Ketchum.

Federal Communications Commission.

Michael C. Ruger,

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

[FR Doc. 93–13108 Filed 6–3–93; 8:45 am]

BILLING CODE 6712–01–M

47 CFR Part 73

[MM Docket No. 93–15; RM–8167]

Radio Broadcasting Services; Rupert, ID

AGENCY: Federal Communications Commission.

ACTION: Final rule.

SUMMARY: This document substitutes Channel 223C for Channel 223A at Rupert, Idaho, and modifies the construction permit for Station KNAQ(FM) to specify operation on the higher class channel, at the request of Inland Broadcast Company. *See* 58 FR 08248, February 12, 1993. Channel 223C can be allotted to Rupert in compliance with the Commission's minimum distance separation requirements with a site restriction of 31.8 kilometers (19.7 miles) southeast of the community. The coordinates for Channel 223C at Rupert are North Latitude 42–20–06 and West Longitude 113–36–16. With this action, this proceeding is terminated.

EFFECTIVE DATE: July 12, 1993.

FOR FURTHER INFORMATION CONTACT: Nancy J. Walls, Mass Media Bureau, (202) 634–6530.

SUPPLEMENTARY INFORMATION: This is a synopsis of the Commission's Report and Order, MM Docket No. 93–15, adopted May 7, 1993, and released May 27, 1993. The full text of this Commission decision is available for inspection and copying during normal business hours in the FCC Reference Center (Room 239), 1919 M Street NW., Washington, DC. The complete text of this decision may also be purchased from the Commission's copy contractors, International Transcription Service, Inc., (202) 857–3800, 1919 M Street NW., room 246, or 2100 M Street NW., suite 140, Washington, DC. 20037.

List of Subjects in 47 CFR Part 73

Radio broadcasting.

PART 73—[AMENDED]

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

Authority: 47 U.S.C. 154, 303.

§ 73.202 [Amended]

2. Section 73.202(b), the Table of FM Allotments under Idaho, is amended by removing Channel 223A and adding Channel 223C at Rupert.

Federal Communications Commission.

Michael C. Ruger,

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

[FR Doc. 93–13110 Filed 6–3–93; 8:45 am]

BILLING CODE 6712–01–M

47 CFR Part 73

[MM Docket No. 93–32; RM–8174]

Radio Broadcasting Services; Tracy, MN

AGENCY: Federal Communications Commission.

ACTION: Final rule.

SUMMARY: This document substitutes Channel 286C3 for Channel 286A at Tracy, Minnesota, and modifies the construction permit for Station KARL to specify operation on Channel 286C3 in response to a petition filed by Plum Creek Broadcasting Company. *See* 58 FR 12916, March 8, 1993. The coordinates for Channel 286C3 at Tracy are 44–13–46 and 95–44–36. With this action, this proceeding is terminated.

EFFECTIVE DATE: July 12, 1993.

FOR FURTHER INFORMATION CONTACT: Kathleen Scheuerle, Mass Media Bureau, (202) 634–6530.

SUPPLEMENTARY INFORMATION: This is a summary of the Commission's Report and Order, MM Docket No. 93–32, adopted May 10, 1993, and released May 28, 1993. The full text of this Commission decision is available for inspection and copying during normal business hours in the Commission's Reference Center (Room 239), 1919 M Street, NW, Washington, DC. The complete text of this decision may also be purchased from the Commission's copy contractors, International Transcription Services, Inc., 2100 M Street NW., Suite 140, Washington, DC 20037, (202) 857–3800.

List of Subjects in 47 CFR Part 73

Radio broadcasting.

PART 73—[AMENDED]

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

Authority: 47 U.S.C. 154, 303.

§ 73.202 [Amended]

2. Section 73.202(b), the Table of FM Allotments under Minnesota, is amended by removing Channel 286A and adding Channel 286C3 at Tracy.

Federal Communications Commission.

Michael C. Ruger,

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

[FR Doc. 93–13103 Filed 6–3–93; 8:45 am]

BILLING CODE 6712–01–M

47 CFR Part 73

[MM Docket No. 92–312; RM–8137]

Radio Broadcasting Services; Walhalla, ND

AGENCY: Federal Communications Commission.

ACTION: Final rule.

SUMMARY: The Commission, at the request of Roger A. and Kathryn Ann Anderson, allots Channel 294C2 to Walhalla, North Dakota, as the community's first local FM service. *See* 58 Fed Reg. 5823, January 21, 1993. Channel 294C2 can be allotted to Walhalla in compliance with the Commission's minimum distance separation requirements with a site restriction of 10.1 kilometers (16.3 miles) west to avoid short-spacings to unoccupied and unapplied-for Channels 292C and 296C, Winnipeg, Manitoba, and Channel 294C, Kenora, Ontario, Canada, at coordinates North Latitude 48–55–23 and West Longitude 98–03–11. Canadian concurrence has been received since Walhalla is located within 320 kilometers (200 miles) of the U.S.-Canadian border. With this action, this proceeding is terminated.

DATES: Effective July 12, 1993. The window period for filing applications will open on July 13, 1993, and close on August 12, 1993.

FOR FURTHER INFORMATION CONTACT:

Leslie K. Shapiro, Mass Media Bureau, (202) 634–6530.

SUPPLEMENTARY INFORMATION: This is a synopsis of the Commission's Report and Order, MM Docket No. 92–312, adopted May 18, 1993, and released May 28, 1993. The full text of this Commission decision is available for inspection and copying during normal business hours in the FCC Reference Center (Room 239), 1919 M Street, NW, Washington, DC. The complete text of this decision may also be purchased from the Commission's copy contractor, International Transcription Service, Inc., (202) 857–3800, 2100 M Street NW., suite 140, Washington, DC 20037.

List of Subjects in 47 CFR Part 73

Radio broadcasting.

PART 73—[AMENDED]

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

Authority: 47 U.S.C. 154, 303.

§ 73.202 [Amended]

2. Section 73.202(b), the Table of FM Allotments under North Dakota, is amended by adding Walhalla, Channel 294C2.

Federal Communications Commission.

Michael C. Ruger,

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

[FR Doc. 93–13102 Filed 6–3–93; 8:45 am]

BILLING CODE 6712–01–M

47 CFR Part 73

[MM Docket No. 92–280; RM–8120]

Radio Broadcasting Services; McAlester, OK

AGENCY: Federal Communications Commission.

ACTION: Final rule.

SUMMARY: The Commission, at the request of Trayne Communications, Inc., substitutes Channel 286A for Channel 285A at McAlester, Oklahoma, and modifies the license of Station KTMC–FM to specify operation on the alternate Class A channel. *See* 57 Fed. Reg. 57411, December 4, 1992. Channel 285A can be allotted to McAlester in compliance with the Commission's minimum distance separation requirements at Station KTMC–FM's presently licensed transmitter site, at coordinates North Latitude 34–58–08 and West Longitude 95–46–21. With this action, this proceeding is terminated.

EFFECTIVE DATE: July 12, 1993.

FOR FURTHER INFORMATION CONTACT:

Leslie K. Shapiro, Mass Media Bureau, (202) 634–6530.

SUPPLEMENTARY INFORMATION: This is a synopsis of the Commission's Report and Order, MM Docket No. 92–280, adopted May 14, 1993, and released May 28, 1993. The full text of this Commission decision is available for inspection and copying during normal business hours in the FCC Reference Center (Room 239), 1919 M Street, NW., Washington, DC. The complete text of this decision may also be purchased from the Commission's copy contractor, International Transcription Service, Inc., (202) 857–3800, 2100 M Street, NW., suite 140, Washington, DC 20037.

List of Subjects in 47 CFR Part 73

Radio broadcasting.

PART 73—[AMENDED]

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

Authority: 47 U.S.C. 154, 303.

§ 73.202 [Amended]

2. Section 73.202(b), the Table of FM Allotments under Oklahoma, is amended by removing Channel 285A and adding Channel 286A at McAlester.

Federal Communications Commission.

Michael C. Ruger,

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

[FR Doc. 93–13106 Filed 6–3–93; 8:45 am]

BILLING CODE 6712–01–M

DEPARTMENT OF TRANSPORTATION

National Highway Traffic Safety Administration

49 CFR Part 571

[Docket No. 74–09; Notice 31]

Federal Motor Vehicle Safety Standards; Child Restraint Systems

AGENCY: National Highway Traffic Safety Administration (NHTSA), Department of Transportation.

ACTION: Denial of petition for reconsideration; denial of petition for rulemaking.

SUMMARY: This notice denies a petition for reconsideration from Evenflo on the agency's final rule that established an owner registration program for child restraint systems. The agency is denying the petition as moot because no amendment is needed to permit Evenflo to use "blocked squares" in its registration form.

This notice also denies a petition for rulemaking from National Demographics and Lifestyles to remove the requirements that registration forms be postage-paid and free of marketing information. The petition is denied because the agency concludes these requirements increase return rates for the registration forms.

FOR FURTHER INFORMATION CONTACT: Dr. George Mouchahoir, Office of Vehicle Safety Standards, National Highway Traffic Safety Administration, 400 Seventh St., SW., Washington, DC 20590. Telephone: (202) 366–4919.

SUPPLEMENTARY INFORMATION:

Background

On September 10, 1992, NHTSA published a final rule on Federal Motor Vehicle Safety Standard No. 213, "Child Restraint Systems," to establish an

owner registration program for child restraint systems. NHTSA issued the rule to improve the effectiveness of manufacturer campaigns to recall child restraints that contain a safety-related defect or fail to conform to Standard 213. By increasing the number of identified child restraint purchasers, the program increases the manufacturers' ability to inform owners of restraints about defects or noncompliances in those restraints.

Under the rule, child restraint manufacturers are required to provide, *inter alia* a postage paid registration form with each child restraint. Each form must provide a space for the consumer to record his or her name and address, and must be preprinted with the restraint's model name or number and its date of manufacture, and conform in size, content and format to forms depicted in the standard (figures 9a and 9b). (S5.8, 49 CFR 571.213.) Except for information that a manufacturer may include on the form to distinguish a particular restraint from other systems, no other information is permitted to appear on the form. (S5.8(c)).

Petition for Reconsideration

On October 12, 1992, Evenflo petitioned for reconsideration of the format requirement of the rule. Evenflo requested NHTSA to permit the registration form to have "blocked squares" for the consumer's name and address. The blocked squares denote to consumers that the information should be printed one character per block. Evenflo said that the blocked squares enable the manufacturer to use "optical scanners to input the consumer information into computer data banks." According to Evenflo, using optical scanners will increase the efficiency of the registration process because the information provided by consumers could be more easily converted to the data file.

Standard 213 already permits Evenflo to use blocked squares without an amendment to the format requirement of the standard. The agency does not consider the subdivision of the space for recording the consumer's name and address into boxes to be a variation in the format of the registration form. Format refers to the general appearance of the form and to aspects such as type size, size and placement of margins, size and placement of the spaces for the consumer's name and address, and overall organization of the printed material. Since no change is needed to permit Evenflo to use blocked squares, the petition is denied on the basis that it is moot.

NHTSA also wishes to note two problems with the sample form that Evenflo submitted with its petition. The sample form had two features (in addition to the blocked squares) that differed from the form depicted in figures 9a and 9b of Standard 213. These features were (1) the inclusion of a space for the consumer to fill in a "date," i.e., the date the consumer fills in the form, and (2) the absence of the child restraint model name and number and date of manufacturer each manufacturer is required to preprint on the form. As explained below, both of these features are impermissible.

Standard 213 does not permit the form to include a space for the consumer to fill in the date on which he or she completes the form. In developing the form, the agency believed that consumers should have to provide as little information as possible on the form, so that consumers would not regard filling out the form as burdensome and as something to be avoided. With this in mind, the agency designed the form so that the consumers need provide only name and address. In a study of consumers' attitudes about the registration program conducted for the final rule, National Analysts found that child seat owners praised the fact that they only had to fill in their name and address on the registration form. "Child Safety Seat Registration: The Consumer View," National Analysts, February 1991.

Standard 213 requires that the model name and number and date of manufacture of each child restraint system be preprinted on its registration form. The agency adopted this requirement based, in large part, on the finding by the National Analysts that consumers in the focus group study nearly all wanted the information on the card. These consumers believed the information "saves them the trouble of looking [for it]—and that *any* marginal addition of time and effort serves as a potential barrier to completion and return."

Id. at 14, emphasis in text.

Petition for Rulemaking

On January 11, 1993, National Demographics & Lifestyles Inc. (NDL) submitted a petition for reconsideration of the rule. The petition was received by NHTSA too late to be considered a petition for reconsideration. However, a late petition is considered a petition to initiate rulemaking under NHTSA's rulemaking procedures (49 CFR 553.35).

NDL, a business involved in designing and processing registration cards, petitioned to remove the requirement in the rule that manufacturers provide the return postage for consumers' registration forms. NDL said that it conducted a study which showed that prepaid return postage "does not significantly increase consumer response rates," and that "the incremental benefit is outweighed by the substantial additional costs." NDL estimates that prepaid return postage increases the return rate for most NDL questionnaires about six percentage points.

The petitioner also requested that S5.8(c) of the rule be amended to remove the prohibition that information that does not pertain to identifying a restraint must not appear on the registration form. NDL would like manufacturers to be able to include questions eliciting information that can be useful in marketing manufacturers' products. NDL submitted information on a study that NDL believed showed that response rates "are virtually unchanged when a longer form of card is used." The study compared responses to a "short" (short form) and a "standard length" (longer form) questionnaire. The longer form asked for the respondent's name and address and information about the product and purchase and the respondent's household and lifestyle. The short form asked for the respondent's name and address and "minimal purchase information." NDL stated that benefits from including those questions should help to defray the costs of the registration rule.

The agency disagrees with NDL about the potential benefits of providing consumers with prepaid return postage. The rule discussed the reasons for NHTSA's decision to require postage, such as the finding in the National Analysts study that "a prestamped, preaddressed return portion is considered essential" (p. 12), and information from the Consumer Product Safety Commission that show higher return rates with postage paid forms. NDL's own information shows return rates increased with postage paid forms. The petitioner did not provide information showing sufficient reason to remove the requirement to provide return postage for the registration forms.

NHTSA also concludes that the Standard should continue to prohibit marketing information and additional questions from being placed on the child restraint registration form. As discussed above, NHTSA wants to limit to a minimum the amount of information that a consumer must provide on the card. The agency also seeks to ensure that the "clutter" on the card is minimized, so that it does not appear to the consumer that filling out

the card will be time consuming and burdensome. In addition, as discussed in the final rule, the National Analysts study found that "many owners need to be reassured [that the card is not a warranty card], given their negative feelings toward, and perceptions of, warranty registrations * * *" (p. 14). Inclusion of marketing information and questions may cause consumers to confuse the registration form with a warranty card and therefore might not return the form to register themselves for safety recall purposes.

The agency also notes that the product forms assessed in NDL's study were not representative of NHTSA's registration form. NDL's short form included questions about "purchase information" (which NJTSA believes refers to information about the item that was purchased). Questions of this or any other type are not permitted on NHTSA's registration form.

The petitioner stated that it is possible that its suggested changes would affect the return rate for registration forms, and said that NDL would conduct testing to measure this effect if NHTSA is willing to consider NDL's suggested changes. The agency has considered the suggestions and has determined that there is not reasonable possibility that a rule along the lines requested by NDL would be issued at the conclusion of the requested rulemaking proceeding. NDL's petition for rulemaking is, therefore, denied.

Authority: 15 U.S.C. 1392, 1401, 1407; delegation of authority at 49 CFR 1.50.

Issued on May 26, 1993.

Stanley R. Scheiner,

Acting Associate Administrator for Rulemaking.

[FR Doc. 93–13095 Filed 6–3–93; 8:45 am]

BILLING CODE 4910–59–M

DEPARTMENT OF THE INTERIOR

Fish and Wildlife Service

50 CFR Part 17

RIN 1018–AB99

Endangered and Threatened Wildlife and Plants; Emergency Rule Establishing Manatee Protection Areas in Lake Woodruff National Wildlife Refuge, FL

AGENCY: Fish and Wildlife Service, Interior.

ACTION: Emergency rule.

SUMMARY: This emergency rule, in conjunction with other required actions, establishes manatee protection areas on certain waterways within the perimeter of Lake Woodruff National Wildlife Refuge (NWR), Volusia County, Florida. This action will prevent the loss of manatees from boat collisions by imposing speed restrictions on boats in rivers, creeks, and lakes of known high manatee use within the perimeter of the refuge. The effect of these regulatory measures will be comparable to the protection afforded by the State rule adopted by the Florida Governor and Cabinet on June 25, 1991, for this portion of Volusia County. The emergency action is effective for 120 days and is taken under the authority of the Endangered Species Act of 1973, as amended, and the Marine Mammal Protection Act of 1972.

EFFECTIVE DATE: May 17, 1993, through September 14, 1993 unless terminated sooner by publication in the **Federal Register**. In accordance with 50 CFR 17.106, the effective date for beginning emergency protection was established through a legal notice published in the Daytona Beach News Journal, Daytona Beach, Florida on May 16, 1993.

ADDRESSES: The complete file for this rule is available for inspection, by appointment, during normal business hours at the Jacksonville Field Office, 3100 University Blvd. South, suite 120, Jacksonville, FL 32216.

FOR FURTHER INFORMATION CONTACT: Robert O. Turner, at above address (904/232–2580) 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:

Background

Many Florida manatees (*Trichechus manatus*) are known to utilize waters associated with Lake Woodruff NWR for feeding, resting, and as travel routes. A distinct group spends the winter months in or near Blue Spring State Park on the St. Johns River where their movements and habits have been studied intensively over a period of more than 20 years. In that time, this Blue Spring population has grown from 11 animals in 1970 to over 70 in 1992. The increase is believed to be partly the result of recruitment from other areas and partly due to reproduction by the original animals.

Because refuge waters are darkly colored, turbid, and contain abundant vegetation, tending to conceal manatees, manatee use of the refuge can only be reliably determined by aerial surveys and radio-tracking. Studies conducted by John Bengtson in 1979 and 1980 (Bengtson 1981) and the Service's Sirenia Research Project in Gainesville, Florida in 1981 and 1983 (FWS unpublished data) have documented waterways within Lake Woodruff NWR as important manatee habitat, particularly for the Blue Spring population. Specifically, they demonstrate that: (1) The Blue Spring population spends a great deal of time in refuge waterways, particularly during the spring, summer, and fall, and on warmer winter days, and (2) the tributaries of Lake Woodruff NWR, including the area from the Norris Dead River through the Ziegler Dead River, are very high-use areas.

Both Florida Department of Natural Resources (DNR) and Service experts agree that the greatest threat at this time to the survival of manatees statewide is high-speed boat traffic. Reducing boat-related mortality is a Priority 1 action in the revised Florida Manatee Recovery Plan. In Volusia County, where Blue Spring and Lake Woodruff NWR are located, the increasing number of registered boats has paralleled an increase in manatee mortality rates. Of the 72 manatee deaths in Volusia County from known causes from 1974 through 1992, 36 percent were watercraft-related. Eighty-one percent of the watercraft-caused deaths have occurred since 1982, with 54 percent of these deaths occurring from 1987 through 1991. Because the waterbottoms, and therefore the waters, of Lake Woodruff NWR are under the jurisdiction of the State of Florida, the Service's position has been that the Florida Department of Natural Resources was the most appropriate agency to develop measures to reduce boat-related manatee mortality.

In 1989, Florida's Governor and Cabinet directed DNR to work with Volusia and 12 other key counties to implement measures to reduce boat-related manatee injuries and deaths. Counties were required to submit their initial recommendations for speed zones to DNR by the end of December 1989.

Volusia County first submitted proposed speed zones to DNR for review in December 1989. In March 1991, however, a Blue Spring manatee—known winter resident for a number of years—was killed by a boat within Lake Woodruff NWR. Within a three-week period, two additional Blue Spring manatees were killed by boats near the refuge. Because these deaths represent a significant percentage of the Blue Spring population, the Governor and Cabinet responded by imposing emergency speed limits on portions of the St. Johns River and its tributaries near Blue Spring (including the waters of Lake Woodruff NWR) to take effect on March

26, 1991 and to last for 90 days during which time a permanent protection plan would be prepared by Volusia County. The tributaries within Lake Woodruff NWR became Slow Speed zones (approximately 5–9 mph), and the maximum speed in the center of Lakes Woodruff and Dexter was limited to 30 mph daytime, 25 mph nighttime. The locations of the Slow Speed zones were determined by DNR on the basis of an evaluation of all available sighting and mortality data, as well as Volusia County recommendations, public input, and recommendations made by the Service's Sirenia Research Project, the facility that has conducted most of the research on the Blue Spring manatees. These Slow Speed zones are also consistent with the revised Florida Manatee Recovery Plan (FWS 1989) and the Marine Mammal Commission's Preliminary Assessment of Habitat Protection Needs for the West Indian Manatees on the East Coast of Florida and Georgia (Marine Mammal Commission 1988).

As the period of emergency speed limits neared its end, DNR finalized its permanent proposal for consideration by the governor and Cabinet. Areas of disagreement with the county regarding the nature of speed zones in several critical protection areas remained unresolved. One area of disagreement was the county's request for relatively high speeds (30 mph) in portions of the tributaries of Lake Woodruff NWR. Both DNR and the Service felt this speed limit would afford inadequate protection in a high-use manatee area.

Subsequently, on June 25, 1991, one day after the emergency measures expired and over the objections of Volusia County's task force, the Governor and Cabinet adopted as a rule DNR's more restrictive recommendations. The State protection plan limits speeds in Lake Woodruff's tributaries, as in the emergency measures, to Slow Speed, which is defined as a boat that is not on a plane and is in the water and producing no wake or a minimum wake. For most boats using the refuge, this definition limits speeds to between 5 and 9 mph. Slow speed zones were also established within 1500 feet of the shorelines of Lakes Woodruff and Dexter; planning speeds of 30 mph daytime, 25 mph nighttime were allowed in the lakes' centers.

During 1991, an organized group of Volusia County citizens protested the speed zones and threatened to file injunctions suspending the rule. The Service responded by publishing a notice in the **Federal Register** of February 7, 1992 (57 FR 4745) to notify State and local parties that the Service was prepared to protect manatees within the boundaries of the refuge through Federal regulation if the State rule were suspended for any reason.

Recently, local individuals have protested the State rule by intentionally exceeding the speed zones, taking their citations to court, and using the court as a forum for challenging the legality of the rule. Before going to trial on one citation, a local businessman filed a Motion to Dismiss with the Volusia County Court seeking to have the statutes authorizing the manatee rules declared unconstitutional. County Judge Freddie J. Worthen questioned whether the State rule might be "unconstitutionally vague" in its definition of "undue" restrictions on boaters, water-skiers, and fishermen and requested a higher court review the rule.

Although the Fifth District Court has not yet ruled, on January 29, 1993, Volusia County Judge H. Pope Hamrick, Jr.—ruling on a Motion to Dismiss in a case involving a similar citation—declared that the rule was "unconstitutionally void for vagueness" in that it fails to provide guidelines to carry out the Legislature's intent not to "unduly interfere" with the rights of fishermen, boaters, and water-skiers, as provided in Florida Statutes. Unlike the decision of Judge Worthen, this ruling was not limited to the individual or to one particular area of contention, but voided the entire Volusia County rule.

Judge Hamrick's decision left Volusia County, and Lake Woodruff NWR in particular, without manatee protection for the first time since emergency measures were implemented in March 1991. The Governor and Cabinet responded quickly and within a week implemented a new Emergency Rule to reinstate the speed zones until May 11, 1993 (90 days). During this time, the Governor directed DNR and the county to attempt to resolve their differences.

DNR staff met with County officials and concerned individuals, groups and agencies on several occasions in an attempt to work out a compromise that would provide boaters some of the relief they are seeking while still protecting manatees. On March 26, 1993, DNR published a revised draft speed zone rule that substantially reduced speed restrictions in certain areas including portions of Lake Woodruff NWR, contingent upon Volusia County's commitment to strong enforcement and education initiatives.

During the 21-day public comment period for the proposed revised speed zone rule, Save the Manatee Club petitioned DNR under provisions of Section 120.54 of the Florida Statutes. Because the rule promulgating process would be delayed during litigation, on April 27, 1993, the Florida governor and Cabinet extended the emergency rule indefinitely.

Reasons for Emergency Determination

The Service believes strongly that unless high speed boating is eliminated in the narrow backwaters of Lake Woodruff NWR, there will be additional, avoidable, boat-related manatee injuries and mortalities. While the number of manatees killed on the refuge is not extremely high now, most of the manatees in the Blue Spring population already bear the scars of sub-lethal collisions with boats. As the number of boats and manatees using the area increases, so does the likelihood of additional injuries and fatal collisions. Given the increased number of manatee deaths in recent years and the uncertainty of protection under State rule, the Service chooses not to wait until there are more deaths before taking action to protect manatees within the perimeter of the refuge.

This emergency rule establishes manatee protection areas for the purpose of maximizing the protection of manatees in the waters associated with Lake Woodruff NWR. The designated areas are to be regulated as a "manatee refuge." A manatee refuge is defined in 50 CFR 17.102 as "an area in which the Director has determined that certain waterborne activity would result in the taking of one or more manatees, or that certain waterborne activity must be restricted to prevent the taking of one or more manatees, including but not limited to a taking by harassment." Under this authority, waters of Volusia County south of SR 40, west of the CSX railway line, north of SR 44, and east of the eastern shoreline of the St. Johns River, are included in the emergency rule. The purpose of using roads and other landmarks is to simplify the regulation for both boaters and law enforcement officials.

References Cited

Bengtson, J.L. 1981. Ecology of manatees (*Trichechus manatus*) in the St. Johns River, Florida. Ph.D. Thesis, Univ. Minnesota, Minneapolis. 126 pp.

Florida Administrative Code, Section 16N–22.012, Volusia and Associated County (parts of Putnam Lake, Seminole and Flagler) Zones as formerly adopted July 25, 1991.

Marine Mammal Commission. 1988. Preliminary assessment of habitat protection needs for West Indian manatees on the east coast of Florida and Georgia. Report of the Marine Mammal Commission in Consultation with its Committee of Scientific Advisors on Marine Mammals. Washington, DC.

U.S. Fish and Wildlife Service. Unpublished data. National Ecology Research Center, Gainesville, FL.

U.S. Fish and Wildlife Service. 1989. Florida Manatee (*Trichechus manatus latirostris*) Recovery Plan. Prepared by the Florida Manatee Recovery Team for the U.S. Fish and Wildlife Service, Atlanta, GA. 98 pp.

Author

The primary author of this emergency rule is Robert O. Turner, Jacksonville Field Office, U.S. Fish and Wildlife Service, 3100 University Boulevard South, suite 120, Jacksonville, Florida 32216.

Authority

The authority to establish manatee protection areas is provided by the Endangered Species Act of 1973, as amended (16 U.S.C. 1533 *et seq.*, and the Marine Mammal Protection Act (16 U.S.C. 1361–1407).

List of Subjects in 50 CFR Part 17

Endangered and threatened species, Marine mammals, Exports, Imports, Reporting and recordkeeping requirements, 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 17.102 is amended by adding the following paragraph in alphabetical order:

§ 17.102 Definitions.

* * * * *

Slow speed is defined as the speed a boat is traveling in a manatee area if it (1) is not on a plane, (2) is producing no wake or minimum wake, (3) and is level in the water.

3. Section 17.108 is amended by adding paragraph (c), followed by a map, to read as follows:

§ 17.108 List of designated manatee protection areas.

* * * * *

(c) *Manatee refuges.* The following areas are designated as manatee refuges. Waterborne activities within these areas are restricted or prohibited as noted.

(1) Lake Woodruff National Wildlife Refuge, Volusia County, Florida. Boat speeds will be restricted year-round in accordance with paragraphs (c)(1)(i) and (c)(1)(ii) of this section.

(i) Slow speed zone. The following zones shall include all associated and navigable tributaries, lakes, creeks, coves, bends, backwaters, canals, and boat basins within the perimeter of Lake Woodruff NWR, unless otherwise designated or excluded:

(A) Lake Dexter: All waters within 1500 feet of the general contour of the shoreline of Lake Dexter easterly of a line that bears North 00°00′00″, East (True) running from the shoreline of Dexter Point through the general contour of the shoreline of the northernmost point of the west end of Dexter Island (approximate latitude 29°06′06″ North, approximate longitude 81°29′56″ West), and westerly of a line that bears North 00°00′00″ East (True) running through the westernmost tip of the shoreline of Audubon Island at the eastern end of the lake (approximate latitude 29°06′40″ North, approximate longitude 81°27′43″ West);

(B) Lake Dexter/Tick Island Creek Area: All waters within the general contour of the shoreline of those portions of Lake Dexter and Tick Island Creek easterly of a line that bears North 00°00′00″ East (True) running through the westernmost tip of the shoreline of Audubon Island at the eastern end of Lake Dexter (approximate latitude 10°06′40″ North, approximate longitude 81°27′43″ West) and westerly of a line that bears North 55°00′00″ East (True) running from the shoreline of Tick Island to the shoreline of the westernmost point of the south bank of Cypress Branch (approximate latitude 29°06′54″ North, approximate longitude 81°25′54″ West), except as described under paragraph (c)(1)(ii)(A) of this section;

(C) Eph Creek, Harry's Creek Area: All waters of Eph Creek, Cross Creek, Taylor Creek, Harry's Creek and Honey Creek southerly of the confluence of Lake Dexter with Eph Creek, easterly of the confluence of the St. Johns River with Cross Creek, westerly of the confluence of Lake Woodruff with Harry's Creek, and northeasterly of the confluence of Honey Creek with the St. Johns River;

(D) Lake Woodruff Area: All waters within 1500 feet of the general contour of the shoreline of Lake Woodruff southerly of a line that bears North 55°00′00″ East (True) running from the general contour of the shoreline of Tick Island to the general contour of the shoreline of the westernmost point of the south bank of Cypress Branch (approximate latitude 29°06′54″ North, approximate longitude 81°25′54″ West), excepting Spring Garden Creek not covered by subparagraph (c)(1)(i)(G) of this section;

(E) Scoggin Creek Area: All waters of Scoggin Creek southerly of the confluence of Lake Woodruff with Scoggin Creek; including the canal southwesterly of the southwesterly shore of Lake Woodruff, easterly of Harry's Creek, and westerly of Norris Dead River;

(F) Norris Dead River, Ziegler Dead River, Highland Park Canal Area: All waters of Norris Dead River and Scoggin Lake southerly of Lake Woodruff, all waters of Ziegler Dead River, all waters of Highland Park Canal, all waters of Blue Peter Lake, and Daisy Lake, and all other associated waters south of Lake Woodruff and east of the St. Johns River;

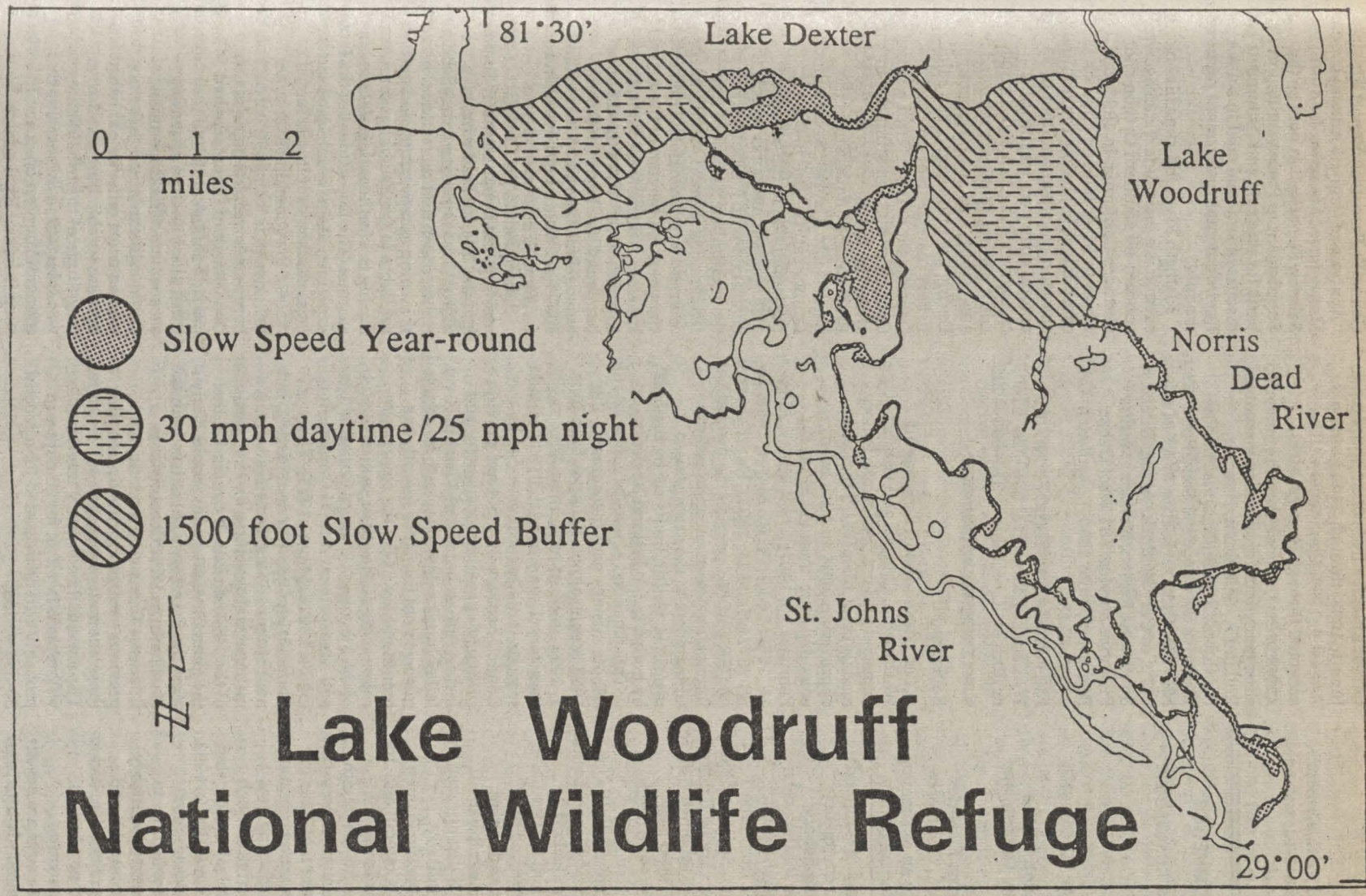
(G) Spring Garden Creek Area: All waters within Spring Garden Creek northeasterly of a line that bears North 55°00′00″ West (True) running through the shoreline from the tip of a point of land on the southerly bank of Spring Garden Creek (approximate latitude 29°06′47″ North, approximate longitude 81°24′10″ West) and southerly of a line that bears North 50°00′00″ East (True), running through the northerly tip of an unnamed island (approximate latitude 29°07′03″ North, approximate longitude 81°24′10″ West);

(ii) Maximum 30 mph/25 mph nighttime zone. All waters within the perimeter of Lake Woodruff NWR as follows:

(A) Lake Dexter: All waters of Lake Dexter, except as otherwise designated under paragraphs (c)(1)(i)(A) and (c)(1)(i)(B) of this section.

(B) Lake Woodruff: All waters of Lake Woodruff and Tick Island Mud Lake, except as otherwise designated under paragraphs (c)(1)(i)(C) and (c)(1)(i)(D) of this section.

BILLING CODE 4310-55-M



BILLING CODE 4310-55-C

Dated: May 19, 1993.
Richard N. Smith,
Acting Director, Fish and Wildlife Service.
[FR Doc. 93–13158 Filed 6–3–93; 8:45 am]
BILLING CODE 4310–55–M

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

50 CFR Part 661

[Docket No. 930402–3134; I.D. 052193D]

Ocean Salmon Fisheries Off the Coasts of Washington, Oregon, and California

AGENCY: National Marine Fisheries Service (NMFS), NOAA, Commerce.

ACTION: Amendment to an emergency interim rule; request for comments.

SUMMARY: The Secretary of Commerce (Secretary) amends an emergency interim rule to establish fishery management measures for the ocean salmon fisheries off Washington, Oregon, and California from June 1 through August 4, 1993. Specific fishery management measures vary by fishery and area. Together they establish fishing areas, seasons, quotas, legal gear, recreational fishing days and catch limits, possession and landing restrictions, and minimum lengths for salmon taken in the exclusive economic zone (3–200 nautical miles) off Washington, Oregon, and California. Based on concerns regarding the spawning escapement and Indian inriver harvest of Klamath River fall chinook salmon, NMFS disapproved the 1993 salmon seasons initially recommended by the Pacific Fishery Management Council (Council) and, by emergency rule, implemented management measures for the month of May only. This amendment is necessary to establish management measures for the remainder of the season (assuming a 90-day extension) beginning June 1, 1993. This rule is effective through August 4, but the Secretary anticipates extending it through November 2, 1993. These management measures are intended to prevent overfishing, to apportion the ocean harvest equitably among non-Indian commercial and recreational and Indian fisheries, and to provide for Indian and non-Indian inside fisheries and spawning escapement. These measures are based on the Council's recommendations, and vary from those only as necessary to meet the Secretary's goals regarding Klamath fall-run chinook salmon.

DATES: Effective from 0001 hours p.d.t., June 1, 1993, through 2400 hours p.d.t., August 4, 1993. Comments will be accepted through June 14, 1993.

ADDRESSES: Comments on the amended emergency interim rule may be sent to Rolland A. Schmitten, Director, Northwest Region, National Marine Fisheries Service, 7600 Sand Point Way NE., BIN C15700, Seattle, WA 98115–0070; or Gary Matlock, Acting Director, Southwest Region, National Marine Fisheries Service, 501 West Ocean Boulevard, suite 4200, Long Beach, CA 90802–4213.

FOR FURTHER INFORMATION CONTACT: William L. Robinson at 206–526–6140, or Rodney R. McInnis at 310–980–4030.

SUPPLEMENTARY INFORMATION:

Background

The ocean salmon fisheries off Washington, Oregon, and California are managed under a framework fishery management plan (FMP) that was approved in 1984 and has been amended four times (52 FR 4146, February 10, 1987; 53 FR 30285, August 11, 1988; 54 FR 19185, May 4, 1989; 56 FR 26774, June 11, 1991). Regulations at 50 CFR part 661 provide the mechanism for making preseason and inseason adjustments to the management measures, within limits set by the FMP, by notice in the **Federal Register**.

This amended emergency interim rule adopts management measures for the 1993 ocean salmon fisheries from June 1, 1993, until its expiration. The Secretary disapproved the 1993 salmon seasons initially recommended by the Council because they did not provide sufficient spawning escapement and Indian inriver harvest of Klamath River fall chinook salmon. Instead, he adopted management measures for only the month of May under the emergency rulemaking authority of section 305(c) of the Magnuson Fishery Conservation and Management Act (Magnuson Act) (58 FR 26922, May 6, 1993). The Council responded by considering, but not recommending, certain alternative management measures for the remainder of the 1993 seasons. It concluded that the alternative measures would likely meet the Secretary's objectives with the least harm to West Coast fishery interests. This action amends the previous emergency rule by adopting these alternative management measures. The amended emergency interim rule will remain in effect for 90 days and probably will be extended for a second 90-day period.

The initial Council recommendations upon which this rule is based are discussed and fully analyzed in the Council's Preseason Report III, "Analysis of Council-Adopted Management Measures for 1993 Ocean Salmon Fisheries" as well as the Supplement to Preseason Report III. The basis for this rule and its impacts are discussed and analyzed in NOAA's Environmental Assessment prepared for the rule.

Klamath River fall-run chinook salmon are the primary management concern off southern Oregon and northern California. In 1992, the Klamath River fall-run chinook salmon escapement fell below the minimum spawning escapement floor of 35,000 natural spawners for the third consecutive year; 15,500, 11,500, 11,100 adult natural spawners returned in 1990, 1991, and 1992, respectively. During the preseason ocean salmon fishery management process, the Department of the Interior advised the Council of that Department's intent to allow the Indian tribes on the Klamath River to take 50 percent of the harvestable Klamath River salmon. The Council, at its April 6–9 meeting, recommended to the Secretary management measures which, if combined with a tribal harvest equal to the non-Indian harvest of Klamath River fall chinook salmon, would have returned approximately 21,000 natural spawners, 61 percent of the natural spawning escapement floor, to the Klamath River. Were this to have happened, the Klamath River escapement floor of 35,000 natural spawners would not have been achieved for a fourth consecutive year.

Subsequent to the Council's April meeting, the Departments of Commerce and the Interior held extensive discussions regarding tribal fishing rights, ocean and recreational harvests, spawning escapements, and options available to the Federal government during the forthcoming 1993 fishing seasons. The Department of the Interior explained that it would face serious legal challenges if it was forced to restrict the Klamath River tribal fisheries to less than 50 percent of the harvestable surplus because the Department of Commerce had failed to provide sufficient fish to meet both the tribal share and the spawning escapement. The Department of Commerce explained that since there was no court order or published legal opinion establishing conclusively the magnitude of the tribal fishing rights, it was reluctant to impose a severe economic burden on ocean fisheries on such informal legal advice. Both Departments agreed, however, that failure to meet minimum spawning escapement goals in the past 3 years was

a serious conservation problem that required attention. Both Departments also noted that the end of the drought in northern California afforded an opportunity to compensate for the failure to meet spawning escapement goals in prior years. Finally, both Departments agreed to resolve the underlying legal issues concerning the nature and magnitude of the tribal on-reservation fishing rights in an orderly fashion.

At the conclusion of these discussions, the Secretary of Commerce and the Secretary of the Interior announced an agreement on how both Departments would discharge their respective responsibilities during the 1993 season. The joint decision favors neither side in the allocation dispute pending resolution of the legal issues. The Secretary of the Interior agreed to restrict tribal fisheries to a total of 18,500 chinook salmon during 1993, less than the tribes would have taken under a 50–50 allocation, on the understanding that the spawning escapement target would be raised. The Secretary of Commerce agreed to restrict the ocean fisheries as necessary to allow both the tribal harvest goal and an increased spawning escapement goal of 38,000 natural spawners for 1993 to be met.

In reaching this decision, the Secretaries recognized that the Federal Government would be increasing spawning escapement beyond the spawning escapement floor specified in the current fishery management plan. An emergency rule, for the time it is effective, operates as an amendment to the fishery management plan. In this case, the legal dispute concerning tribal fishing rights could have threatened achievement of the spawning escapement floor. Increasing the goal for the 1993 season allowed the two Departments time to seek an orderly resolution of the legal dispute. Furthermore, a temporary increase in the goal is scientifically supportable—the Council's own salmon technical team had recommended a minimum spawning escapement floor of 43,000 fish and the end of the drought offered the best opportunity for rebuilding the resource as soon as possible. A temporary increase in spawning escapement partially compensates for the failure of the fishery management program to achieve its spawning escapement goal in 1990, 1991, and 1992. Finally, all fishermen will benefit from improved conservation because there will be more fish to allocate after the legal issues concerning tribal fishing rights are resolved.

Following a May 10, 19923, telephone conference, the Council responded to the request of the Secretaries of Commerce and the Interior by:

(1) Opposing the Secretaries' revised objectives and resubmitting its original salmon season proposal; and

(2) Commenting that should the Secretary of Commerce choose to overrule the Council a second time, the alternative management measures, developed by the States of California and Oregon and the Council's Salmon Technical Team for consideration at the Council's May 10 meeting, would likely achieve two Secretaries' objectives with the least harm to West Coast salmon fishery interests.

The Secretary has again disapproved the Council's recommendation of its original management measures for the 1993 salmon seasons because they would not achieve the FMP's spawning escapement floor or the Secretaries revised spawning escapement objective and provide for the expected harvest by the Indian tribes on the Klamath River. The alternative measures considered by the Council do meet the Secretaries' spawning escapement objective of 38,000 natural spawners and the expected level of tribal inriver harvest of 18,500 fall chinook. The are adopted by this amended emergency rule, which amends the FMP to modify temporarily the spawning escapement goal for Kamath River fall chinook salmon to 38,000 natural spawners.

The alternative seasons reduce the ocean commercial and recreational harvest of chinook salmon in the ocean south of Cape Falcon, Oregon, by about 89,000 fish from the level of harvest recommended by the Council. Except for reductions to the ocean seasons to increase ocean escapement of Kamath River fall chinook salmon, the remaining seasons in this rule are identical to those recommended by the Council, including all of the seasons off Washington.

The changes to the Council's recommendations were designed to minimize adverse social and economic impacts of the reduced ocean harvest in order to increase Klamath River fall chinook salmon ocean escapement. These measures are intended to distribute the conservation burden fairly and equitably without discriminating between residents of different states.

This emergency rule also reduces the harvest rate for Oregon coastal natural (OCN) coho salmon by amending the FMP to modify temporarily the spawning escapement goal for these fish. The method of determining the OCN coho salmon spawning escapement goal and harvest rate was adopted by the Council in 1986 and implemented by Amendment 7 to the FMP (52 FR 4146, February 10, 1987). Amendment 7 established an OCN coho salmon spawning escapement floor of 135,000 fish for estimated ocean abundances of 270,000 fish or less. The spawning escapement goal changes to 50 percent of the ocean abundance (50-percent harvest rate) for ocean abundances between 270,000 and 400,000 fish, and is capped at 200,000 fish for ocean abundances greater than 400,000 fish. The current ocean abundance predictor was adopted for use by the Council beginning with the 1988 fishing season, following a detailed Council review in late 1987.

The methodology for predicting OCN coho salmon abundance has had mixed results since 1984. Despite a rigorous technical review of the OCN coho salmon predictor by the Council in 1987, the predictor has consistently overestimated abundance since its adoption in 1988, for an average overprediction of about 43 percent in 1988–91. This has contributed to the spawning escapement goal for OCN coho salmon not being met for the past 6 years.

The problem is more serious in 1993 because the 1990 parent brood for the 1993 return of OCN coho salmon is one of the weakest on record, and is the continuation of the weakest of the three cycles for OCN coho salmon. The Council, the State of Oregon, NMFS, and some environmental groups are concerned about the low numbers of OCN coho salmon observed in surveys of spawning habitat, uneven distribution of spawners along the Oregon coast with exceptionally weak escapement occurring in northern Oregon coastal rivers, and poor ocean conditions for 1990 brood smolt survival as demonstrated by the second lowest Oregon Production Index (OPI) area hatchery smolt-to-jack survival since 1970.

For 1993, the predicted ocean abundance for OCN river and lake systems is 283,300 coho salmon. In accordance with Amendment 7, the spawning escapement goal would be 50 percent of the ocean abundance, or 141,650 fish, and the total harvest rate (ocean and inside fisheries) would be 50 percent. In the absence of an emergency amendment, the total harvest rate of 50 percent would be applied to the original abundance estimate. If the predicted abundance estimate is too high, as suspected, the 50-percent harvest rate again would drive the spawning escapement below the desired level.

While the current problem is being addressed through the FMP amendment

process, the Council is not able to implement a more conservative harvest rate during 1993 without an emergency rule. The Council concluded that the harvest rate must be reduced from 50 percent to 26 percent to compensate for the overestimation bias, reverse the trend of failing to meet spawning escapement goals, and better ensure protection of OCN coho salmon stocks given the extremely poor brood year escapement in 1990. The Council believes that the additional conservatism regarding the harvest rate is warranted and is necessary to respond to an extremely poor brood year escapement and to guard against the recent trend of overestimating the ocean abundance and underachieving spawning escapement goals.

Management Measures for 1993

The Secretary establishes the following allowable ocean harvest levels and management measures for 1993 that are designed to apportion the burden of protecting the weak stocks discussed above equitably among ocean fisheries and to allow maximum harvest of natural and hatchery runs surplus to inside fishery and spawning needs. For completeness, the following management measures include those implemented previously for the month of May.

A. South of Cape Falcon

In the area south of Cape Falcon, the management measures in this rule are based primarily on concerns for Klamath River fall-run chinook salmon and Sacramento River winter-run chinook salmon. The greatest constraint on the ocean management measures was the low abundance of Klamath River fall-run chinook salmon as described above.

Winter-run chinook salmon from the Sacramento River are listed under the Federal Endangered Species Act as a threatened species. In 1991, NMFS concluded a formal consultation with the Council regarding the impacts of the ocean salmon fishing regulations on the winter run. The biological opinion issued from that consultation determined that the 1990 level of impacts from the ocean fisheries would not be likely to jeopardize the continued existence of the winter run. NMFS also recommended shortening the recreational fishing season off central California and closure of the recreational fishery in an area at the mouth of San Francisco Bay during the time when the winter-run fish are entering the Bay. These recommended conservation measures were implemented in 1991 and remain a part of the salmon management measures for 1993. The overall impact of the 1993 salmon management program on the winter run is expected to be significantly less than in 1990, the base year for the biological opinion. This expectation is based on the harvest rate model for the Central Valley Index stocks of fall chinook, which will experience a harvest rate of 71 percent in 1993 as compared to 79 percent in 1990. These rates are only indicators of the relative impact on the winter run because these fish are less vulnerable to the ocean fisheries than fall-run chinook due to the timing of the seasons as well as their growth and migration patterns.

Commercial Troll Fisheries

Chinook salmon quotas are again being implemented in some areas to insure that the ocean impacts on threatened Sacramento River winter-run chinook salmon, threatened Snake River fall-run chinook salmon, and Sacramento and Klamath river fall-run chinook salmon do not exceed those that have been modeled. Specifically, the commercial troll fishery will be limited to catch quotas of 38,000 chinook salmon prior to September 1 in the area between Florence South Jetty and Humbug Mountain, Oregon, and 10,000 chinook salmon beginning September 1, in the area between Cape Arago and Humbug Mountain Oregon.

Due to the need to limit harvest impacts on OCN coho salmon, there will be no retention of coho by the commercial troll fisheries south of cape Falcon.

From Point Arena, California, to the U.S.-Mexico border, the commercial fishery for all salmon except coho opened May 1 and remains open through August 31, except that the area between Point Arena and Point San Pedro will be closed June 1 through July 25.

From Horse Mountain to Point Arena, California, the commercial fishery for all salmon except coho will open September 1 through September 30.

The area between Humbug Mountain, Oregon, and House Mountain, California, is closed to commercial salmon fishing.

From Cape Arago to Humbug Mountain, Oregon, an all-salmon-except-coho season opened May 1 through May 31, and will reopen September 1 through October 31. Both seasons are subject to closure upon attainment of the respective quotas described above, and a gear restriction of no more than four spreads per line.

From Florence South Jetty to Cape Arago, Oregon, an all-salmon-except-coho season opened May 1 and remains open through June 30 subject to closure upon attainment of the overall catch quota of 38,000 chinook for the area between Florence South Jetty and Humbug Mountain. The fishery will reopen for all salmon except coho September 1 through October 31. Gear is restricted to no more than four spreads per line during both seasons.

From Cape Falcon to Florence South Jetty, Oregon, the all-salmon-except-coho season opened May 1 and remains open through October 31, with gear restricted to no more than four spreads per line.

Recreational Fisheries

The recreational fisheries south of Cape Falcon are limited by an overall catch quota of 68,000 coho salmon. Upon attainment of the overall coho salmon quota, recreational fisheries between Cape Falcon and Humbug Mountain will close; recreational fisheries south of Humbug Mountain will remain open. The recreational fishery between Humbug Mountain and Horse Mountain is limited to a harvest quota of 12,500 chinook salmon prior to September 1, of which no more than 8,000 chinook salmon may be taken prior to June 20.

The recreational fishery for all salmon between Point Arena and the U.S.-Mexico border opened on the nearest Saturday to March 1 and remains open through the nearest Sunday to November 1, except that a control zone at the entrance to the Golden Gate for the conservation of Sacramento River winter-run chinook (Control Zone 3) was closed from February 27 through April 2, 1993. The daily bag limit is two fish, except beginning September 1 only one fish may be equal to or greater than 26 inches (66 cm) in length.

From Horse Mountain to Point Arena, the recreational fishery for all salmon opened on the nearest Saturday to February 15 and remains open through the expiration of this rule with a two-fish daily bag limit.

The recreational fishery between Humbug Mountain and Horse Mountain opened for all salmon May 5 and remains open through June 19, subject to closure upon attainment of the harvest quota of 8,000 chinook salmon. The fishery will reopen July 14 through the earlier of August 28 or attainment of the overall quota of 12,500 chinook salmon, except that the control zone at the Klamath River mouth (Control Zone 2) is closed August 1 through August 31. Both seasons are open Wednesday through Saturday only, with a one-fish daily bag limit. After the first weekly open period in July, the Salmon Technical Team will review the catches

with the intent of keeping coho salmon impacts below an 18,400 fish guideline prior to reaching the chinook salmon quota or the end of the season. The fishery will reopen September 1 through September 6, 7 days per week with a one-fish daily bag limit and no chinook salmon quota.

From Cape Falcon to Humbug Mountain, the recreational fishery for all salmon opened May 1 and remains open through June 6, 7 days a week, shoreward of a line generally representing the 27-fathom (49-m) curve. The fishery will reopen July 13 through the earlier of September 7 or attainment of the coho salmon quota, open Sunday through Tuesday only. Both seasons have a two-fish daily bag limit, with no more than two fish in 7 consecutive days, and no more than 10 fish per year.

B. North of Cape Falcon

From the U.S.-Canada border to Cape Falcon, ocean fisheries are managed to protect depressed upper Columbia River spring and summer chinook salmon, lower Columbia River hatchery fall chinook salmon, and natural coho salmon stocks of the Quillayute, Hoh, Queets, and Skagit Rivers. Ocean treaty and non-treaty harvests and management measures were based in part on negotiations between Washington State fishery managers, user groups, and the Washington coastal, Puget Sound, and Columbia River treaty Indian tribes as authorized by the U.S. District Court in *U.S.* v. *Washington*, *U.S.* v. *Oregon*, and *Hoh Indian Tribe et al.* v. *Baldrige*.

Preseason coho salmon abundance forecasts were for depressed runs to the Quillayute, Hoh, Queets, and Skagit Rivers stocks. Ocean escapement of the Skagit River coho salmon run is expected to be below the spawning escapement goal of 30,000 fish in 1993. State and tribal negotiations of ocean and inside fisheries and acceptable spawning escapements for 1993 were successfully completed.

The total allowable chinook salmon catch in the ocean north of Cape Falcon was established to ensure that the impacts on Snake River spring/summer and fall chinook salmon stocks, which are listed as threatened species under the Endangered Species Act, will be less than recent years' level of impacts. The available information indicates that it is highly unlikely that Council area fisheries will impact Snake River wild spring chinook salmon. For Snake River wild summer chinook salmon, these fish comprise only a very small proportion of total chinook salmon abundance in the Council management area, and it is unlikely these fish are significantly impacted in Council area fisheries. For Snake River wild fall chinook salmon that are caught in Council area fisheries, the Council estimated a reduction of 10 percent in the ocean exploitation rate under the Council's recommended 1993 ocean measures compared to the 1986–1990 average by using the Lyons Ferry Hatchery stock to represent Snake River wild fall chinook salmon. NMFS estimates a reduction of 12 percent in the ocean exploitation rate under the measures implemented by this rule, compared to the 1986–1990 average by using the Lyons Ferry Hatchery stock to represent Snake River wild fall chinook salmon.

All non-treaty commercial troll and recreational ocean fisheries will be limited by either an overall 60,000 chinook salmon quota, or impacts on critical Washington coastal and Puget Sound natural coho salmon stocks equivalent to the preseason coho salmon quota of 250,000 (including coho salmon hooking mortality associated with May/June chinook salmon fisheries). Based on the recommendation of the Salmon Advisory Subpanel representatives for the area north of Cape Falcon, the commercial fishery, following guidelines in the framework FMP for modifying the initial allocation (section II.B.2(a)(iii)(A) of the appendix to part 663), exchanged 15,000 coho salmon for 5,000 chinook salmon from the recreational fishery. Therefore, the commercial fishery will be limited by overall quotas of 35,000 chinook salmon and 47,500 coho salmon, and the recreational fishery will be limited by overall quotas of 25,000 chinook salmon and 202,500 coho salmon.

Commercial Troll Fisheries

The commercial fishery between the U.S.-Canada border and Cape Falcon will be separated into four distinct seasons as follows: Control Zone 1, at the mouth of the Columbia River, will be closed during all seasons.

(1) The commercial fishery for all salmon except coho from the U.S.-Canada border to Cape Falcon opened May 1 and remains open through the earlier of June 15 or attainment of the 30,400-chinook salmon guideline.

(2) The fishery for all salmon between the U.S.-Canada border and Cape Falcon will open July 14 through the earliest of August 6 or attainment of the guidelines of 3,100 chinook salmon or 26,400 coho salmon. This fishery will follow a cycle of 4 days open and 3 days closed, with a possession and landing limit of 50 coho salmon per opening and gear restricted to 6-inch (15.2-cm) plugs or larger and/or whole bait 6 inches (15.2 cm) or larger only (green label) and no more than four spreads per line.

(3) The pink salmon directed fishery will open between the U.S.-Canada border and Carroll Island, Washington, August 8 through the earlier of August 25 or attainment of the 120,000-pink salmon quota. No retention of chinook or coho salmon will be allowed, and gear will be restricted to flashers with barbless, bare, blued hooks only.

(4) The commercial fishery for all salmon between the Queets River and Cape Falcon will open August 27 through the earliest of October 31 or attainment of the overall chinook or coho salmon quotas. This fishery will follow a cycle of 2 days open and 3 days closed, with a possession and landing limit of 35 coho salmon per opening.

Recreational Fisheries

In 1993, a recreational all-salmon-except-coho fishery opened in Washington State waters east of the Bonilla-Tatoosh Line only on May 1 and remains open through the earlier of May 31 or 1,000-chinook salmon quota with a 2-fish daily bag limit.

Recreational all-salmon fisheries are divided into four subareas. Opening dates, subarea quotas, bag limits, and area restrictions are described below. The fisheries in all subareas will be open Sunday through Thursday only and will close the earliest of September 30 or subarea coho salmon quota or overall chinook salmon quota. Chinook salmon harvest guidelines for each subarea will provide a basis for inseason management measures to restrain the chinook salmon harvest but will not serve as quotas.

Between Leadbetter Point and Cape Falcon, the fishery will open July 5 through September 9 with a 96,300-coho salmon subarea quota, a 2-fish daily bag limit, and no more than 4 fish in 7 consecutive days. On September 12, the fishery in this area will reopen with a separate 5,000 coho salmon subarea quota, a 2-fish daily bag limit, and no more than 4 fish in 7 consecutive days. The control zone at the Columbia River mouth (Control Zone 1) is closed during all seasons.

Between the Queets River and Leadbetter Point, the fishery will open July 5 with a 77,100 coho salmon subarea quota, a 2-fish daily bag limit, no more than 4 fish in 7 consecutive days, and shoreward of the 25-fathom (46-m) curve only. An inseason transfer of 400 coho salmon from this subarea to the subarea between Cape Alava and the Queets River may be made to help achieve that subarea's season duration goals.

Between Cape Alava and the Queets River, the fishery will open July 5 with a 4,000 coho salmon subarea quota, a 2-fish daily bag limit, and no more than 6 fish in 7 consecutive days. The establishment of an Area 4B fishery under Washington State management in 1993 resulted in the reduction of the subarea coho salmon quotas for the two subareas between the U.S.-Canada border and the Queets River; the subarea between Cape Alava and the Queets River does not benefit from the Area 4B fishery. To adjust for this inequity, an inseason transfer of 400 coho salmon may be made to this subarea as described above.

Between the U.S.-Canada border and Cape Alava, the fishery will open July 12 with a 19,700 coho salmon subarea quota, a 2-fish daily bag limit, and no more than 6 fish in 7 consecutive days.

Treaty Indian Fisheries

Treaty Indian troll fisheries north of Cape Falcon are governed by quotas of 33,000 chinook and 90,000 coho salmon. Treaty troll seasons, minimum length restrictions, and gear restrictions were developed by the tribes and agreed to by the Council. The all-except-coho seasons opened May 1 and will extend through June 30, if the chinook salmon quota is not reached. The all-salmon seasons will open no earlier than July 1 and extend through the earliest of September 30 or chinook or coho salmon quota. The minimum length restrictions for all treaty ocean fisheries, excluding ceremonial and subsistence harvest, is 24 inches (61.0 cm) for chinook and 16 inches (40.6 cm) for coho salmon.

The Secretary finds these management measures responsive to the goals of the FMP, the requirements of the resource, and the socio-economic factors affecting resource users. They are consistent with requirements of the Magnuson Act and other applicable law including U.S. obligations to Indian tribes. The following tables set forth comprehensive salmon management measures for 1993 that are consistent with 50 CFR part 661 as amended below by this rule. These comprehensive measures include restrictions previously imposed by **Federal Register** notice in 1992 and by emergency interim rule (58 FR 26922, May 6, 1993), as well as the alternative measures hereby adopted by this amendment to last month's emergency rule. These measures are being published together to avoid confusion and for the convenience of the public.

BILLING CODE 3510-22-M

Table 1. Commercial management measures for 1993 ocean salmon fisheries.

(Note: This table contains important restrictions in Parts A, B, C, D, and E which must be followed for lawful participation in the fishery.)

A. SEASONS, SUBAREA QUOTAS, AND SPECIES
(Shaded areas represent closures.)

APR	MAY	JUNE	JULY	AUGUST	SEP/OCT
U.S.-CANADA BORDER					U.S.-CANADA BORDER
	5/1 thru earlier of 6/15 or chinook guideline of 30,400. All salmon except coho. Control Zone 1 (C.3.), Columbia River mouth, is closed. See D.1.		7/14 thru earliest of 8/6 or guidelines of 3,100 chinook or 26,400 coho. All salmon. Cycle of 4 days on/3 days off. Possession and landing limit of 50 coho per opening. Gear restricted to 6-inch plugs or larger and/or whole bait 6 inches or larger only (green label) and no more than 4 spreads per line. Control Zone 1 (C.3.), Columbia River mouth, is closed. See D.2.	8/8 thru earlier of 8/25 or quota of 120,000 pinks. All salmon except chinook and coho. Flashers with barbless, bare, blued hooks only. See D.3.	
				CARROLL ISLAND	
					QUEETS RIVER
					8/27 thru earliest of 10/31 or quotas of 900 chinook or 13,300 coho. All salmon. Cycle of 2 days on/3 days off. Possession and landing limit of 35 coho per opening. No special gear restrictions. Control Zone 1, Columbia River mouth, is closed. See D.4.
CAPE FALCON					CAPE FALCON
	5/1 thru 10/31. All salmon except coho. No more than 4 spreads per line.				
FLORENCE SOUTH JETTY					FLORENCE SOUTH JETTY
	5/1 thru earlier of 6/30 or chinook quota (E.2.) All salmon except coho. No more than 4 spreads per line.				9/1 thru 10/31. All salmon except coho. No more than 4 spreads per line.
CAPE ARAGO					CAPE ARAGO
	5/1 thru earlier of 5/31 or chinook quota (E.2.). All salmon except coho. No more than 4 spreads per line.				9/1 thru earlier of 10/31 or 10,000 chinook quota. All salmon except coho. No more than 4 spreads per line.
HUMBUG MOUNTAIN					HUMBUG MOUNTAIN

Table 1. Commercial management measures for 1993 ocean salmon fisheries (continued).

APR	MAY	JUNE	JULY	AUGUST	SEP/OCT
HUMBUG MOUNTAIN					HUMBUG MOUNTAIN
HORSE MOUNTAIN					HORSE MOUNTAIN
				9/1 thru 9/30. All salmon except coho.	
POINT ARENA					POINT ARENA
		POINT SAN PEDRO			
	5/1 thru 8/31. All salmon except coho. **Except closed between Point Arena and Point San Pedro, June 1 thru July 25.**				
U.S.-MEXICO BORDER					U.S.-MEXICO BORDER

Table 1. **Commercial management measures for 1993 ocean salmon fisheries (continued).**

B. MINIMUM SIZE LIMITS (Inches)

	Chinook		Coho		
	Total Length	Head-off	Total Length	Head-off	Pink
North of Cape Falcon	28.0	21.5	16.0	12.0	None
Cape Falcon to Humbug Mountain	26.0	19.5	16.0	12.0	None
South of Humbug Mountain	26.0	19.5	22.0	16.5	None

Chinook not less than 26 inches (19.5 inches head-off) taken in open seasons south of Cape Falcon may be landed north of Cape Falcon only when the season is closed north of Cape Falcon.

C. GENERAL REQUIREMENTS, RESTRICTIONS, AND EXCEPTIONS

C.1. Hooks - Single point, single shank barbless hooks are required.

C.2. Line Restriction - Off California, no more than 6 lines per boat are allowed.

C.3. Control Zone 1 - The ocean area surrounding the Columbia River mouth bounded by a line extending for 6 nautical miles due west from North Head along 46°18'00" N. latitude to 124°13'18" W. longitude, then southerly along a line of 167° True to 46°11'06" N. latitude and 124°11'00" W. longitude (Columbia River Buoy), then northeast along Red Buoy Line (continuing to Buoy #2, then to Buoy #4, then to Buoy #2SJ, then continuing on) to the tip of the south jetty, is closed.

C.4. Transit Through Closed Areas with Salmon on Board - It is unlawful for a vessel, which has been issued an ocean salmon permit by any state, to have troll gear in the water while transiting any area closed to salmon fishing while possessing salmon.

C.5. Landing Salmon in Closed Areas - Legally caught salmon may be landed in closed areas unless otherwise prohibited by these regulations.

C.6. Meeting Landing Restrictions - It is illegal to meet species ratio landing restrictions by including any salmon which have been previously landed.

C.7. Consistent with Council management objectives, the State of Oregon may establish some additional late-season, all-salmon-except-coho fisheries in state waters.

D. POSSESSION, LANDING, AND SPECIAL RESTRICTIONS BY MANAGEMENT AREA

If prevented by unsafe weather conditions or mechanical problems from meeting special management area landing restrictions, vessels must notify the U.S. Coast Guard and receive acknowledgement of such notification prior to leaving the area. This notification shall include the name of the vessel, port where delivery will be made, approximate amount of salmon (by species) on board, and the estimated time of arrival.

D.1. U.S.-Canada Border to Cape Falcon, May/June All-Salmon-Except-Coho Season - The State of Oregon may require vessels landing fish from this fishery to the area south of Cape Falcon to notify the Newport office of the Oregon Department of Fish and Wildlife between 8 a.m. and 5 p.m. on the day of landing or the following weekday if such landing occurs on a weekend or outside office hours. The notification shall include the name of the vessel, port where delivery will be made, and the number of chinook landed. Following any closure of this fishery, vessels must land and deliver the fish within 48 hours of the closure.

D.2. U.S.-Canada Border to Cape Falcon, All-Salmon Season Beginning in July - The fishery will follow a cycle of 4 days open and 3 days closed, continuing the cycle until the earliest of 8/6 or attainment of the coho or chinook guideline. Each vessel may possess, land and deliver not more than 50 coho per open period. All salmon caught in the area must be landed and delivered in the area or in adjacent closed areas within 24 hours of each closure. The possession and landing limit, gear restriction, and number of days open each week may be modified prior to or during the fishery to best utilize the available harvest.

D.3. U.S.-Canada Border to Carroll Island, Pink Salmon Season Beginning in August - No retention of chinook or coho will be allowed. The fishery will continue until reaching the earlier of 8/25 or attainment of the pink quota. The Fraser River Panel of the Pacific Salmon Commission intends to maintain jurisdiction over the level of ocean commercial harvest of pink salmon north of Carroll Island in 1993, and is expected to set a quota of 120,000 pink salmon for this fishery. All salmon caught in the area must be landed and delivered in the area or in adjacent closed areas within 24 hours of the season closure.

D.4. Queets River to Cape Falcon, All-Salmon Season Beginning in August - The fishery will follow a cycle of 2 days open and 3 days closed, continuing the cycle until the earliest of 10/31 or attainment of the chinook or coho guideline. Each vessel may possess, land and deliver not more than 35 coho per open period. All salmon caught in the area must be landed and delivered in the area or in adjacent closed areas within 24 hours of each closure. The possession and landing limit and number of days open each week may be modified prior to or during the fishery to best utilize the available harvest.

E. QUOTAS

E.1. Chinook and Coho Quotas North of Cape Falcon - All non-Indian troll and recreational ocean fisheries will be limited by either (a) an overall 60,000 chinook quota or (b) impacts on critical Washington coastal and Puget Sound natural coho stocks equivalent to the preseason coho quota of 250,000 (including hooking mortality associated with May/June chinook fisheries). The initial troll allocation provides for a harvest of no more than 30,000 chinook and 62,500 coho. However, a preseason species trade with the recreational fishery of 15,000 coho for 5,000 chinook results in the troll fishery being limited by overall quotas of 35,000 chinook and 47,500 coho. Any transfers between subarea quotas of 5,000 fish or less shall be done on a fish-for-fish basis.

E.2. Chinook Quota Between Florence South Jetty and Humbug Mountain Prior to September - The troll fishery prior to September 1 will be limited by a catch quota of 38,000 chinook.

E.3. Chinook Quota Between Cape Arago and Humbug Mountain Beginning September 1 - The troll fishery beginning September 1 will be limited by a catch quota of 10,000 chinook.

Table 2. Recreational management measures for 1993 ocean salmon fisheries.

(Note: This table contains important restrictions in Parts A, B, C, and D which must be followed for lawful participation in the fishery.)

A. SEASONS, SUBAREA QUOTAS, SPECIES AND BAG LIMITS
(Shaded areas represent closures.)

FEB/MAR/APR	MAY	JUNE	JULY	AUGUST	SEP/OCT/NOV
U.S.-CANADA BORDER					U.S.-CANADA BORDER
	Open east of Bonilla-Tatoosh Line only. 5/1 thru earlier of 5/31 or quota of 1,000 chinook. Open 7 days per week. All salmon except coho. 2 fish per day.		7/12 thru earliest of 9/30 or overall chinook quota (D.1.) or coho subarea quota of 19,700. Open Sun. thru Thurs. only. All salmon. 2 fish per day. No more than 6 fish in 7 consecutive days. Inseason management may be used to maintain season length and keep chinook catch within a guideline of 800.		
CAPE ALAVA					CAPE ALAVA
			7/5 thru earliest of 9/30 or overall chinook quota (D.1.) or coho subarea quota of 4,000 (up to 4,400 if inseason transfer of 400 coho from Westport subarea is needed). Open Sun. thru Thurs. only. All salmon. 2 fish per day. No more than 6 fish in 7 consecutive days. Inseason management may be used to maintain season length and keep chinook catch within a guideline of 200.		
QUEETS RIVER					QUEETS RIVER
			7/5 thru earliest of 9/30 or overall chinook quota (D.1.) or coho subarea quota of 77,100 (76,700 if inseason transfer of 400 coho to La Push subarea is needed). Open Sun. thru Thurs. only. All salmon. 2 fish per day. No more than 4 fish in 7 consecutive days. Open only inside the 25 fathom curve. Inseason management may be used to maintain season length and keep chinook catch within a guideline of 15,900.		
LEADBETTER POINT					LEADBETTER POINT
			7/5 thru earliest of 9/9 or overall chinook quota (D.1.) or coho subarea quota of 96,300. Open Sun. thru Thurs. only. All salmon. 2 fish per day. No more than 4 fish in 7 consecutive days. Inseason management may be used to maintain season length and keep chinook catch within a guideline of 7,100 (including the late fishery in this area). Any remaining coho will be transferred to late fishery. Control Zone 1 (C.2.), Columbia River mouth, is closed.	9/12 thru earliest of 9/30 or overall chinook quota (D.1.) or coho subarea quota of 5,000. Open Sun. thru Thurs. only. All salmon. 2 fish per day. No more than 4 fish in 7 consecutive days. Control Zone 1 (C.2.) is closed.	
CAPE FALCON					CAPE FALCON

Table 2. Recreational management measures for 1993 ocean salmon fisheries (continued).

FEB/MAR/APR	MAY	JUNE	JULY	AUGUST	SEP/OCT/NOV
CAPE FALCON					CAPE FALCON
	5/1 thru 6/6. Open 7 days per week. All salmon. 2 fish per day. No more than 2 fish in 7 consecutive days and no more than 10 fish per year (C.7.). Open only within the 27 fathom curve (C.5.).		7/13 thru earlier of 9/7 or coho quota (D.2.). Open Sun. thru Tues. only. All salmon. 2 fish per day. No more than 2 fish in 7 consecutive days and no more than 10 fish per year (C.7.).		
HUMBUG MOUNTAIN					HUMBUG MOUNTAIN
	5/5 thru earlier of 6/19 or 8,000 chinook quota (D.3.). Open Wed. thru Sat. only. All salmon. 1 fish per day.		7/14 thru earlier of 8/28 or 4,500 chinook quota (plus any remainder from earlier season, see D.3.). Open Wed. thru Sat. only. All salmon. 1 fish per day. Control Zone 2 (C.3.), Klamath River mouth, closed 8/1 thru 8/31. See C.6. for inseason coho consideration. Fishery reopens 9/1 thru 9/6, 7 days per week with no chinook quota. All salmon. 1 fish per day.		
HORSE MOUNTAIN					HORSE MOUNTAIN
	Nearest Sat. to 2/15 thru expiration of emergency rule. All salmon. 2 fish per day.				
POINT ARENA					POINT ARENA
	Nearest Sat. to 3/1 thru nearest Sun. to 11/1. All salmon. 2 fish per day; except beginning 9/1 only 1 fish may be equal to or greater than 26 inches in length. Control Zone 3 (C.4.), near mouth of San Francisco Bay, closed 2/27 thru 4/2.				
U.S.-MEXICO BORDER					U.S.-MEXICO BORDER

Table 2. **Recreational management measures for 1993 ocean salmon fisheries (continued).**

B. MINIMUM SIZE LIMITS (Total length in inches)

	Chinook	Coho	Pink
North of Cape Falcon	24.0	16.0	None
Cape Falcon to Humbug Mountain	20.0	16.0	None
South of Humbug Mountain	20.0	20.0	None, except 20.0 off California

C. SPECIAL REQUIREMENTS, RESTRICTIONS AND EXCEPTIONS

C.1. Hooks - Single point, single shank barbless hooks are required north of Point Conception, California.

C.2. Control Zone 1 - The ocean area surrounding the Columbia River mouth bounded by a line extending for 6 nautical miles due west from North Head along 46°18'00" N. latitude to 124°13'18" W. longitude, then southerly along a line of 167° True to 46°11'06" N. latitude and 124°11'00" W. longitude (Columbia River Buoy), then northeast along Red Buoy Line (continuing to Buoy #2, then to Buoy #4, then to Buoy #2SJ, then continuing on) to the tip of the south jetty, is closed.

C.3. Control Zone 2 - The ocean area surrounding the Klamath River mouth bounded on the north by 41°38'48" N. latitude (approximately 6 nautical miles north of the Klamath River mouth), on the west by 124°23'00" W. longitude (approximately 12 nautical miles off shore), and on the south by 41°26'48" N. latitude (approximately 6 nautical miles south of the Klamath River mouth), is closed 8/1 through 8/31.

C.4. Control Zone 3 (Sacramento River Winter-Run Chinook Conservation Closure) - The ocean area bounded by a line commencing at Bolinas Point (Marin County, 37°54'17" N. latitude, 122°43'35" W. longitude) southerly to Duxbury Buoy to Channel Buoy 1 to Channel Buoy 2 to Point San Pedro (San Mateo County, 37°35'40" N. latitude, 122°31'10" W. longitude) is closed the nearest Sat. to 3/1 through the nearest Fri. to 3/31 (2/27 through 4/2 in 1993).

C.5. Area Within the 27 Fathom Curve - The ocean area that is bounded by a line from Cape Falcon to 45°46'00" N., 124°01'20" W. (approximately 1.6 nautical miles west of Cape Falcon) to 45°04'15" N., 124°04'00" W. (approximately 2.2 nautical miles northwest of Cascade Head) to 44°40'40" N., 124°09'15" W. (approximately 3 nautical miles west of Yaquina Head) to 44°08'30" N., 124°12'00" W. (approximately 3 nautical miles west of Heceta Head) to 43°40'15" N., 124°14'30" W. (approximately 0.5 nautical miles west of the Umpqua Whistle Buoy) to 43°31'30" N., 124°17'00" W. (approximately 1.7 nautical miles west of the beach) to 43°15'15" N., 124°28'00" W. (approximately 3 nautical miles west of the beach) to 43°01'30" N., 124°29'05" W. (approximately 2 nautical miles west of Four Mile Creek) to 42°56'00" N., 124°33'10" W. (approximately 2.4 nautical miles west of the mouth of Floras Creek) to 42°50'20" N., 124°38'30" W. (approximately 3.4 nautical miles west of Cape Blanco) to 42°40'30" N., 124°28'45" W. (approximately 1.1 nautical mile west of Humbug Mountain) to Humbug Mountain.

C.6. Inseason Management - To meet preseason management objectives, certain inseason regulatory modifications may be necessary, such as action to extend the duration of fisheries to the end of scheduled seasons or to keep within chinook or coho harvest guidelines for management subareas. This may involve extensions or reductions in areas open to fishing or changes in species which may be landed.

The procedure for inseason transfer of coho among recreational subareas north of Cape Falcon will be as follows:

After conferring with representatives of the affected ports and the Salmon Advisory Subpanel recreational representatives north of Cape Falcon, NMFS may transfer coho inseason among recreational subareas to help meet the recreational season duration objectives (for each subarea). Any transfers between subarea quotas of 5,000 fish or less shall be done on a fish-for-fish basis.

In years in which there is an Area 4B add-on fishery, part of the Westport subarea coho quota is based on a proportion of that fishery. This reduces the coho quotas for both Neah Bay and also for La Push which does not benefit from the Area 4B add-on. To adjust for this inequity, an inseason transfer of coho from the Westport subarea to the La Push subarea may be made to help achieve season duration goals for La Push. In this option, the Council proposes 400 coho be provided for this use.

Between Humbug Mountain and Horse Mountain, inseason measures may be taken to slow the coho harvest rate as follows:

After the first weekly open period in July (July 14-17), the Salmon Technical Team will review the catches. If it is projected that more than 18,400 coho will be caught prior to reaching the chinook quota or end of the season, an inseason conference may be called to consider and recommend measures to keep coho impacts below the 18,400 fish guideline.

C.7. Annual Possession Restriction Between Cape Falcon and Humbug Mountain - No more than 10 salmon of any species may be retained per year from the ocean area between Cape Falcon, Oregon, and Humbug Mountain, Oregon.

C.8. Consistent with Council management objectives, the State of Oregon may establish some additional late season, all-salmon-except-coho fisheries in state waters.

D. QUOTAS

D.1. Chinook and Coho Quotas North of Cape Falcon - All non-Indian troll and recreational ocean fisheries will be limited by either (a) an overall 60,000 chinook quota or (b) impacts on critical Washington coastal and Puget Sound natural coho stocks equivalent to the preseason coho quota of 250,000. Preseason trade with troll fishery of 5,000 chinook for 15,000 coho results in recreational overall catch quotas of 25,000 chinook and 202,500 coho.

D.2. Coho Quotas South of Cape Falcon - Overall recreational catch is limited to a catch quota of 68,000 coho from Cape Falcon to the U.S.-Mexico border. When this coho quota is reached, all recreational fisheries between Cape Falcon and Humbug Mountain will close. An inseason reallocation to the troll fishery of any portion of the south of Cape Falcon recreational quota projected to be in excess of sport fishery needs will be made no later than August 15.

D.3. Chinook Quota Between Humbug Mountain and Horse Mountain - The recreational fishery will be limited prior to September 1 by a harvest quota of 12,500 chinook. Within this quota, no more than 8,000 chinook may be taken prior to June 20.

Table 3. Treaty Indian management measures for 1993 ocean salmon fisheries.

(Note: This table contains important restrictions in Parts A, B, and C which must be followed for lawful participation in the fishery.)

A. SEASONS, SPECIES, MINIMUM SIZE LIMITS, AND GEAR RESTRICTIONS

Tribe and Area Boundaries	Open Seasons	Salmon Species	Minimum Size Limit (inches) Chinook	Coho	Special Restrictions by Area
Makah — That portion of the Fishery Management Area (FMA) north of 48°02'15" N. latitude (Norwegian Memorial) and east of 125°44'00" W. longitude	May 1 thru earlier of June 30 or chinook quota	All except coho	24	–	Barbless hooks. No more than 8 fixed lines per boat, or no more than 4 hand-held lines per person.
	No earlier than July 1 thru earliest of September 30 or chinook or coho quota	All	24	16	
Quileute — That portion of the FMA between 48°07'36" N. latitude (Sand Point) and 47°31'42" N. latitude (Queets River) east of 125°44'00" W. longitude	May 1 thru earlier of June 30 or chinook quota	All except coho	24	–	Barbless hooks. No more than 8 fixed lines per boat.
	No earlier than July 1 thru earliest of September 30 or chinook or coho quota	All	24	16	
Hoh — That portion of the FMA between 47°54'18" N. latitude (Quillayute River) and 47°21'00" N. latitude (Quinault River) east of 125°44'00" W. longitude	May 1 thru earlier of June 30 or chinook quota	All except coho	24	–	Barbless hooks. No more than 8 fixed lines per boat.
	No earlier than July 1 thru earliest of September 30 or chinook or coho quota	All	24	16	
Quinault — That portion of the FMA between 47°40'06" N. latitude (Destruction Island) and 46°53'18" N. latitude (Point Chehalis) east of 125°44'00" W. longitude	May 1 thru earlier of June 30 or chinook quota	All except coho	24	–	Barbless hooks. No more than 8 fixed lines per boat.
	No earlier than July 1 thru earliest of September 30 or chinook or coho quota	All	24	16	

B. SPECIAL REQUIREMENTS, RESTRICTIONS, AND EXCEPTIONS

B.1. All boundaries may be changed to include such other areas as may hereafter be authorized by a federal court for that tribe's treaty fishery.

B.2. Applicable lengths, in inches, for dressed, head-off salmon, are 18 inches for chinook and 12 inches for coho. Minimum size and retention limits for ceremonial and subsistence harvest are as follows:
Makah Tribe — None.
Quileute, Hoh, and Quinault tribes — Not more than 2 chinook longer than 24 inches in total length may be retained per day. Chinook less than 24 inches total length may be retained.

B.3. The areas within a 6-mile radius of the mouths of the Queets River (47°31'42" N. latitude) and the Hoh River (47°45'12" N. latitude) will be closed to commercial fishing. A closure within 2 miles of the mouth of the Quinault River (47°21'00" N. latitude) may be enacted by the Quinault Nation and/or the State of Washington and will not adversely affect the Secretary of Commerce's management regime.

C. QUOTAS

C.1. The overall treaty troll ocean quotas are 33,000 chinook and 90,000 coho salmon. These quotas include troll catches by the Klallam and Makah tribes in Washington State Statistical Area 4B from May 1 through September 30.

BILLING CODE 3510-22-C

Gear Definitions and Restrictions

In addition to gear restrictions shown in Tables 1, 2, and 3 of this preamble, the following gear definitions and restrictions will be in effect.

Troll Fishing Gear. Troll fishing gear for the Fishery Management Area (FMA) is defined as one or more lines that drag hooks behind a moving fishing vessel

In that portion of the FMA off Oregon and Washington, the line or lines must be affixed to the vessel and must not be intentionally disengaged from the vessel at any time during the fishing operation.

Recreational Fishing Gear. Recreational fishing gear for the FMA is defined as angling tackle consisting of a line with not more than one artificial lure or natural bait attached.

In that portion of the FMA off Oregon and Washington, the line must be attached to a rod and reel held by hand or closely attended; the rod and reel must be held by hand while playing a hooked fish. No person may use more than one rod and line while fishing off Oregon or Washington.

In that portion of the FMA off California, the line must be attached to a rod and reel held by hand or closely attended. Weights directly attached to a line may not exceed 4 pounds (1.8 kg).

Fishing includes any activity that can reasonably be expected to result in the catching, taking, or harvesting of fish.

Geographical Landmarks

Wherever the words "nautical miles of shore" are used in this rule, the distance is measured from the baseline from which the territorial sea is measured.

Geographical landmarks referenced in this notice are at the following locations:

Bonilla-Tatoosh Line	A straight line drawn from Bonilla Point on Vancouver Island, British Columbia, to the light on Tatoosh Island, Washington, then to the most westerly point on Cape Flattery.
Cape Alava	48°10'00" N. lat.
Carroll Island	48°00'18" N. lat.
Queets River	47°31'42" N. lat.
Leadbetter Point	46°38'10" N. lat.
North Head	46°18'00" N. lat.
Red Buoy Line	Seaward along the south jetty of the Columbia River to the visible tip of the jetty and then to Buoy #2SJ, then southwesterly to Buoy #4, continuing southwesterly to Buoy #2, and then to the Columbia River Buoy, then due west along 46°11'06" N. latitude.
Cape Falcon	45°46'00" N. lat.
Florence South Jetty	44°01'00" N. lat.
Cape Arago	43°18'20" N. lat.
Humbug Mountain	42°40'30" N. lat.
Sisters Rocks	42°35'45" N. lat.
Mack Arch	42°13'40" N. lat.
Horse Mountain	40°05'00" N. lat.
Point Arena	38°57'30" N. lat.
Point Reyes	37°59'44" N. lat.
Point San Pedro	37°35'40" N. lat.
Point Conception	34°27'00" N. lat.

Inseason Notice Procedures

Actual notice of inseason management actions will be provided by a telephone hotline administered by the Northwest Region, NMFS, 206–526–6667 or 800–662–9825, and by U.S. Coast Guard Notice to Mariners broadcasts. These broadcasters are announced on Channel 16 VHF–FM and 2182 kHz at frequent intervals. The announcements designate the channel or frequency over which the Notice to Mariners will be immediately broadcast. Inseason actions will also be filed with the **Federal Register** as soon as practicable. Since provisions of these management measures may be altered by inseason actions, fishermen should monitor either the telephone hotline or Coast Guard broadcasts for current information for the area in which they are fishing.

Classification. The 1993 management measures described above are based on the most recent data available. The aggregate data upon which the measures are based are available for public inspection at the offices of the Regional Directors (see **ADDRESSES**) during business hours until the end of the comment period.

The Assistant Administrator has determined that this emergency rule is necessary to avoid severe economic dislocation, which would occur if this emergency rule is not issued. As described above, to carry out his obligations to manage the ocean salmon fishery in a manner consistent with the Magnuson Act national standards, the Secretary disapproved the Council's recommendation for the 1993 ocean salmon fishery because it allowed excessive ocean harvest of Klamath River fall-run chinook salmon. There was inadequate time to resolve the differences between the Department of Commerce and the Council over this harvest so that a final rule could be issued under the FMP process before the salmon seasons were scheduled to open on May 1. During May, the effective period of the initial emergency rule, the Secretary and the Council were still unable to agree upon management measures to be implemented under the FMP process. Unless ocean management measures were promulgated under the Secretary's emergency rulemaking authority, the ocean salmon fishery would remain closed pending Secretarial approval of a Council recommendation. To avoid closure of the ocean salmon fisheries, the Secretary issues this emergency rule pursuant to 16 U.S.C. 1855(c). Implementation of this emergency rule comports with the goals and objectives of the FMP.

The Assistant Administrator finds that the reasons justifying the promulgation of this rule on an emergency basis also make it impracticable and contrary to the public interest to provide notice and opportunity for comment upon, or to delay for 30 days the effective date of these emergency regulations, under the provisions of sections 553(b) and (d) of the Administrative Procedure Act. Any delay in implementing this rule would cause unnecessary economic harm to users of the resource. The public had opportunities to comment on the management measures being implemented during meetings of the Council and its advisory committees in March, April, and May 1993. The public will also have an opportunity to comment on the emergency measures during the comment period provided by this rule.

The Assistant Administrator has determined that this rule will be implemented in a manner that is consistent to the maximum extent practicable with the approved coastal zone management programs of Washington, Oregon, and California, and the San Francisco Bay Conservation and Development Commission. This determination has been submitted for review by the responsible agencies under section 307 of the Coastal Zone Management Act.

This emergency rule is exempt from the normal review procedures of Executive Order 12291 as provided in section 8(a)(1) of that order. This rule is being reported to the director of the Office of Management and Budget, with an explanation of why it is not possible

to follow the regular procedures of that order.

NMFS prepared an environmental assessment (EA) for this action and the Assistant Administrator concluded that there will be no significant impact on the human environment. The Council prepared an EA regarding the reduction of the OCN coho harvest rate, which is incorporated in its Preseason Report III. Copies of the environmental assessments are available from the Regional Directors (see **ADDRESSES**).

This emergency rule does not contain a collection of information for purposes of the Paperwork Reduction Act.

The Regulatory Flexibility Act does not apply to this rule because, as an emergency rule, it was not required to be promulgated as a proposed rule and the rule is issued without opportunity for prior public comment. Since notice and opportunity for comment are not required to be given under section 553 of the Administrative Procedure Act, and since no other law requires that notice and opportunity for comment be given for this rule, under sections 603(a) and 604(a) of the Regulatory Flexibility Act, no initial or final regulatory flexibility analysis needs to be prepared.

This emergency rule does not contain policies with known federalism implications sufficient to warrant preparation of the federalism assessment under Executive Order 12612. Washington, Oregon, and California are expected to implement State regulations compatible with the Federal rule.

On March 31, 1991, NMFS issued a biological opinion that considered the effects of the FMP on Sacramento River winter-run chinook salmon. The opinion concluded that implementation of the plan is not likely to jeopardize the continued existence of the species. The 1993 season falls within the scope of the 1991 opinion, and the seasons and management measures comply with the recommendations and incidental take conditions contained in the biological opinion. Therefore, it was not necessary to reinitiate consultation on Sacramento River winter-run chinook salmon.

NMFS has prepared a biological opinion that considered the effects of the 1993 salmon management measures on wild sockeye salmon, wild spring/summer chinook salmon, and wild fall chinook salmon from the Snake River, that concluded that fishing in accordance with this emergency rule is not likely to jeopardize the continued existence of the listed stocks.

List of Subjects in 50 CFR Part 661

Fisheries, Fishing, Indians, Reporting and recordkeeping requirements.

Dated: May 28, 1993.

Nancy Foster,

Acting Assistant Administrator, National Marine Fisheries Service.

For the reasons set forth in the preamble, 50 CFR part 661 is amended as follows:

PART 661—OCEAN SALMON FISHERIES OFF THE COASTS OF WASHINGTON, OREGON, AND CALIFORNIA

1. The authority citation for part 661 continues to read as follows:

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

2. Effective June 1, 1993, through August 4, 1993, the appendix to part 661 is amended in the table in IV.A., by suspending the existing entry for Klamath Fall Chinook, and its footnote number 3, suspending the existing entry for Columbia River and Oregon Coastal Coho, and its footnote number 4, and adding new entries for Klamath Fall Chinook and for Columbia River and Oregon Coastal Coho to read as follows:

Appendix

* * * * *

IV. * * *

A. * * *

SUMMARY OF SPECIFIC MANAGEMENT GOALS FOR STOCKS IN THE SALMON MANAGEMENT UNIT

System	Spawning [1] escapement goal
* *	* * *
Klamath Fall Chinook (temporary).	No fewer than 38,000 naturally spawning adults in 1993.
* *	* * *
Columbia River and Oregon Coastal Coho (temporary).	Oregon coastal natural (OCN) coho spawning escapement goal is based on a total harvest rate on OCN coho of 26 percent in 1993.
* *	* * *

[1] Represents adult natural spawning escapement goal for viable natural stocks or adult hatchery return goal for stocks managed for artificial production.

* * * * *

[FR Doc. 93–13123 Filed 5–28–93; 4:15 pm]

BILLING CODE 3510–22–M

50 CFR Part 672

[Docket No. 921107–3068; I.D. 052893A]

Groundfish of the Gulf of Alaska

AGENCY: National Marine Fisheries Service (NMFS), NOAA, Commerce.

ACTION: Closure.

SUMMARY: NMFS is closing the directed fishery for sablefish by persons using hook-and-line gear in the West Yakutat district, Statistical Area 64, in the Gulf of Alaska (GOA). This action is necessary to prevent exceeding the share of the sablefish total allowable catch (TAC) assigned to hook-and-line gear in this district.

EFFECTIVE DATES: Effective 12 noon, Alaska local time (A.l.t.), May 30, 1993, through 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 GOA exclusive economic zone is managed by the Secretary of Commerce according to the Fishery Management Plan for Groundfish of the GOA (FMP) prepared by the North Pacific Fishery Management Council under authority of the Magnuson Fishery Conservation and Management Act. Fishing by U.S. vessels is governed by regulations implementing the FMP at 50 CFR parts 620 and 672.

In accordance with § 672.20(c) and § 672.24(c)(1), the share of the sablefish TAC assigned to hook-and-line gear in the West Yakutat district was established by interim final specifications (58 FR 16787, March 31, 1993) as 3,638 metric tons.

The Director of the Alaska Region, NMFS, has determined in accordance with § 672.24(c)(3)(i), that the share of the sablefish TAC assigned to hook-and-line gear in the West Yakutat district will be taken before the end of the year. Therefore, to provide adequate bycatch amounts of sablefish to ensure continued groundfish fishing activity by hook-and-line gear, NMFS is prohibiting directed fishing for sablefish by persons using hook-and-line gear in the West Yakutat district effective from 12 noon, A.l.t., May 30, 1993, through 12 midnight, A.l.t., December 31, 1993.

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

Classification

This action is taken under 50 CFR 672.24 and is in compliance with E.O. 12291.

List of Subjects in 50 CFR Part 672

Fisheries, Reporting and recordkeeping requirements.

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

Dated: May 28, 1993.

David S. Crestin,

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

[FR Doc. 93–13125 Filed 5–28–93; 4:40 pm]

BILLING CODE 3510–22–M

---

50 CFR Part 672

[Docket No. 921107–3068; I.D. 060193A]

Groundfish of the Gulf of Alaska

AGENCY: National Marine Fisheries Service (NMFS), NOAA, Commerce.

ACTION: Closure.

SUMMARY: NMFS is closing the directed fishery for sablefish by persons using hook-and-line gear in the Central Regulatory Area, Statistical Areas 62 and 63, in the Gulf of Alaska (GOA). This action is necessary to prevent exceeding the share of the sablefish total allowable catch (TAC) assigned to hook-and-line gear in this area.

EFFECTIVE DATES: 12 noon, Alaska local time (A.l.t.), June 3, 1993, through 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 GOA exclusive economic zone is managed by the Secretary of Commerce according to the Fishery Management Plan for Groundfish of the Gulf of Alaska (FMP) prepared by the North Pacific Fishery Management Council under authority of the Magnuson Fishery Conservation and Management Act. Fishing by U.S. vessels is governed by regulations implementing the FMP at 50 CFR parts 620 and 672.

In accordance with § 672.24(c)(2), the share of the sablefish TAC assigned to hook-and-line gear in the Central Regulatory area was established by interim final specifications (58 FR 16787, March 31, 1993) as 7,688 metric tons.

The Director of the Alaska Region, NMFS, has determined, in accordance with § 672.24(c)(3)(i), that the share of the sablefish TAC assigned to hook-and-line gear in the Central Regulatory Area will be taken before the end of the year. Therefore, to provide adequate bycatch amounts of sablefish to ensure continued groundfish fishing activity by hook-and-line gear, NMFS is prohibiting directed fishing for sablefish by persons using hook-and-line gear in the Central Regulatory Area effective from 12 noon, A.l.t., June 3, 1993, through 12 midnight, A.l.t., December 31, 1993.

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

Classification

This action is taken under 50 CFR 672.24, and is in compliance with E.O. 12291.

List of Subjects in 50 CFR Part 672

Fisheries, Reporting and recordkeeping requirements.

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

Dated: June 1, 1993.

David S. Crestin,

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

[FR Doc. 93–13234 Filed 6–1–93; 4:26 p.m.]

BILLING CODE 3510–22–P

Proposed Rules

Federal Register
Vol. 58, No. 106
Friday, June 4, 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.

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. 93–NM–77–AD]

Airworthiness Directives; Fokker Model F–28 Mark 1000, MK 2000, MK 3000, and MK 4000 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 Fokker Model F–28 series airplanes. This proposal would require the implementation of a corrosion prevention and control program either by accomplishing specific tasks or by revising the maintenance inspection program to include such a program. This proposal is prompted by reports of incidents involving corrosion and fatigue cracking in transport category airplanes that are approaching or have exceeded their economic design goal; these incidents have jeopardized the airworthiness of the affected airplanes. The actions specified by the proposed AD are intended to prevent degradation of the structural capabilities of the airplane due to the problems associated with corrosion.

DATES: Comments must be received by August 2, 1993.

ADDRESSES: Submit comments in triplicate to the Federal Aviation Administration (FAA), Transport Airplane Directorate, ANM–103, Attention: Rules Docket No. 93–NM–77–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 Fokker Aircraft USA, Inc., 1199 North Fairfax Street, Alexandria, Virginia 22314. This information may be examined at the FAA, Transport Airplane Directorate, 1601 Lind Avenue, SW., Renton, Washington.

FOR FURTHER INFORMATION CONTACT: Mr. Mark Quam, Aerospace Engineer, Standardization Branch, ANM–113, FAA, Transport Airplane Directorate, 1601 Lind Avenue, SW., Renton, Washington 98055–4056; telephone (206) 227–2145; fax (206) 227–1320.

SUPPLEMENTARY INFORMATION:

Comments Invited

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

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

Commenters wishing the FAA to acknowledge receipt of their comments submitted in response to this notice must submit a self-addressed, stamped postcard on which the following statement is made: "Comments to Docket Number 93–NM–77–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. 93–NM–77–AD, 1601 Lind Avenue, SW., Renton, Washington 98055–4056.

Discussion

In April 1988, a high-cycle transport category airplane (specifically, a Boeing Model 737) was involved in an accident in which the airplane suffered major structural damage during flight. Investigation of this accident revealed that the airplane had numerous fatigue cracks and a great deal of corrosion. Subsequent inspections conducted by the operator on other high-cycle transport category airplanes in its fleet revealed that other airplanes had extensive fatigue cracking and corrosion.

Prompted by the data gained from this accident, the FAA sponsored a conference on aging airplanes in June 1988, which was attended by representatives from the aviation industry and airworthiness authorities from around the world. It became obvious that, because of the tremendous increase in air travel, the relatively slow pace of new airplane production, and the apparent economic feasibility of operating older technology airplanes rather than retiring them, increased attention needed to be focused on the aging airplane fleet and maintaining its continued operational safety.

The Air Transport Association (ATA) of America and the Aerospace Industries Association (AIA) of America agreed to undertake the task of identifying and implementing procedures to ensure the continued structural airworthiness of aging transport category airplanes. An Airworthiness Assurance Task Force (AATF) was established in August 1988, with members representing aircraft manufacturers, operators, regulatory authorities, and other aviation industry representatives worldwide. The objective of the AATF was to sponsor "Working Groups" to:

1. Select service bulletins, applicable to each airplane model in the transport fleet, to be recommended for mandatory modification of aging airplanes;
2. Develop corrosion-directed inspections and prevention programs;
3. Review the adequacy of each operator's structural maintenance program;
4. Review and update the Supplemental Inspection Documents (SID); and
5. Assess repair quality.

The working group assigned to review the Fokker Model F–28 series airplanes has completed its work on Item (2) and has developed a baseline program for controlling corrosion problems that may

jeopardize the continued airworthiness of the Model F–28 fleet. The program is contained in Fokker Document SE–253, "F–28 Corrosion Control Program," with revisions through September 15, 1992. (Hereafter, this publication is referred to as "the Document.") The Rijksluchtvaartdienst (RLD), which is the airworthiness authority for The Netherlands, classified this Document as mandatory and issued Netherlands Airworthiness Directive (BLA) 91–051, Issue 3, dated June 25, 1992, in order to assure the continued airworthiness of these airplanes in The Netherlands.

Section 2.1 of the Document defines three levels of corrosion: Level 1 corrosion is that which does not exceed certain limits; Level 2 corrosion is that which exceeds those limits; and Level 3 corrosion is significant corrosion which is potentially an urgent airworthiness concern.

Sections 2.2 and 2.3 of the Document provide general guidelines to develop a corrosion prevention and control program. These guidelines address such things as a baseline program, implementation ages, access for inspection, repetitive inspection intervals, operating environment, newly-acquired airplanes, general cleanliness of the airplane, and the fact that sampling is unreliable in effectively controlling corrosion.

Section 2.4 of the Document sets forth the general implementation schedule for the corrosion inspection/control program. As described in that section, each "aircraft zone" is assigned an "Initial Inspection Time" and a "Repeat Inspection Time." The program is applicable to each aircraft zone on all Model F–28 series airplanes whose age has reached or exceeded the Initial Inspection Time for that zone. For airplanes that have not reached or exceeded the Initial Inspection Time of the specific aircraft zone, a particular inspection task has to be performed before the airplane has reached the Initial Inspection Time for the specific aircraft zone, or before the Repeat Inspection Time of the task is exceeded (a maximum of 6 years), whichever occurs later. For airplanes that have already reached or exceeded the Initial Inspection Time of the specific aircraft zone, a particular inspection has to be performed before the Repeat Inspection Time of the task is exceeded or within 6 years, whichever occurs first.

Section 2.4 of the Document also identifies the specific aircraft zones that are subject to the program, and describes the "basic task" to be accomplished in each defined aircraft zone as part of the baseline program, along with the initial inspection time and repeat inspection time for each area, and other information necessary to carry out the program for each area. The Document defines a "basic task" as including not only the pertinent visual inspections of all primary and secondary structures, but any necessary repairs, application of sealants or corrosion inhibitors, and other follow-on procedures, as well. A basic task may also include detailed visual and non-destructive inspections (NDI); where NDI's are employed, adequate standards and procedures must be developed and properly recorded for the area inspected.

Section 2.5 establishes the procedures for reporting the results of the inspections conducted under the corrosion prevention and control program.

Section 2.6 provides for periodic review and update of the data contained in the Document.

This airplane model is manufactured in The Netherlands and is type certificated for operation in the United States under the provisions of Section 21.29 of the Federal Aviation Regulations and the applicable bilateral airworthiness agreement. Pursuant to this bilateral airworthiness agreement, the RLD has kept the FAA informed of the situation described above. The FAA has examined the findings of the RLD, 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 corrosion is likely to exist or develop on airplanes of this type design, an AD is proposed which would require adoption of a corrosion prevention and control program that is equivalent to or better than the program specified in the Document previously described. Operators would be permitted to accomplish this either by performing the specific basic tasks described in the Document (the "task-by-task" method), or by revising their FAA-approved maintenance program to include such a program.

Paragraph (a) of the proposal sets forth the proposed compliance times for the initial basic task of each affected aircraft zone. These compliance times are measured from a date one year after the effective date of the final rule. (The proposed compliance times are consistent with those of other similar AD's that the FAA has issued on this subject.) Generally, operators would be required to complete the initial basic task before reaching the "Initial Inspection Time" plus one "Repeat Inspection Time" interval for the aircraft zone, as detailed in the Document. The basic task would be required to be repeated at a time interval not to exceed the "Repeat Inspection Time" interval for that area, as detailed in the Document.

Paragraph (a) includes paragraph (a)(1)(iv), which states that performance of the initial basic tasks by each operator must occur at a minimum rate equivalent to one airplane per year (beginning one year after the effective date of the AD). The FAA recognizes that this may cause an undue hardship on some small operators; in those circumstances, the FAA anticipates evaluating requests for adjustment to the implementation rate on a case-by-case basis under the provisions of paragraph (h) of the proposed rule. (A note to this effect is included in the proposal.)

Operators should note that the proposal does not contain a paragraph specifically to address repair actions. The FAA considers that any repairs would be carried out necessarily as a part of each basic task, as it is defined in the Document. As discussed previously, a "basic task" is defined in the Document as including not only the pertinent inspection, but any necessary repairs, application of corrosion inhibitors, and other follow-on procedures, as well. Paragraph (a) contains a note to reference the portion of the Document that defines a basic task, and to emphasize the importance of these corrective actions.

Paragraph (b) of the proposal provides for an optional method of complying with the rule. In lieu of performing the task-by-task requirements proposed in paragraph (a), operators may revise their FAA-approved maintenance/inspection programs to include the corrosion prevention and control program defined in the Document or an equivalent program approved by the FAA.

Paragraph (b) also would require that, subsequent to the accomplishment of the initial basic task, any extensions of Repeat Inspection Time intervals specified in the Document must be approved by the FAA.

Any operator electing to comply with proposed paragraph (b) would be permitted to use an alternative recordkeeping method to that otherwise required by Federal Aviation Regulations (FAR) Section 91.417 or Section 121.380, provided it is approved by the FAA and is included in a revision to the FAA-approved maintenance/inspection program. In response to questions raised previously concerning recordkeeping and record retention requirements as they relate to the programmatic approach proposed in this AD action and other similar proposals that have been issued

applicable to other airplane models, the FAA offers the following:

Sections 91.417(a)(2)(v) and 121.380(a)(2)(v) of the FAR require that a record be made of the current status of applicable AD's. With regard to proposed paragraph (b), such a record would be required to be made when the maintenance/inspection program is revised to incorporate the program specified in the Document; at that time, paragraph (b) of the AD would be fully complied with. Regarding paragraphs (d) through (g) of this proposal, those paragraphs would impose separate requirements; therefore, except as discussed below, separate entries would have to be made to reflect compliance with each of those paragraphs.

Section 121.380(a)(2)(iv) of the FAR concerns recording "the identification of the current inspection status of the aircraft." Section 91.417(a)(2)(iv) contains a similar requirement. Because proposed paragraph (b) would require operators to revise their maintenance/inspection program to include the program specified in the Document, each operator's program would be required to identify each inspection (e.g., "C" check) at which each basic task specified in the Document will be performed on each airplane. By recording the current inspection status of each airplane, and by maintaining a cross-reference system between these records and the maintenance/inspection program revision, it will be possible to determine the current status of each basic task on each airplane. Once this cross-reference system has been established, this recording provision of Sections 91 and 121 requires no additional recording beyond what would otherwise be required normally.

Section 121.380(a)(1) concerns "records necessary to show that all requirements for the issuance of an airworthiness release under Section 121.709 have been met." Section 91.417(a)(1) contains a similar requirement. These are also referred to as "dirty fingerprint records." This provision of Sections 91 and 121 requires most of the recording that would result from this proposed AD. Each time a basic task is performed, the operator would be required to make a "dirty fingerprint" record of the task, identifying what actions were accomplished. It should be noted, however, that these records are not different from the records made for any other actions taken under the operator's maintenance/inspection program.

In addition to the record making requirements, discussed above, Sections 91 and 121 of the FAR impose requirements for record retention:

Section 121.380(b)(1) and Section 91.417(b)(1) require that the "dirty fingerprint" records be retained until the work is repeated or superseded by other work, or for one year after the work is performed. Therefore, most of the records resulting from this proposed AD would not have to be retained indefinitely. However, such retention might facilitate subsequent transfers, or substantiate requests for repetitive interval escalations, and therefore, may be in the operator's interest.

Section 121.380(b)(2) requires that the records specified in paragraph 121.380(a)(2) [current status of AD's and current inspection status] be retained and transferred with the airplane at the time it is sold. Section 91.417(b)(2) contains a similar requirement.

These recording requirements are not considered to be unduly burdensome and are considered the minimum necessary to enable the cognizant FAA Maintenance Inspector to perform proper surveillance and to ensure that the objectives of the proposed rule are being fulfilled.

However, because of the numerous concerns expressed previously by operators regarding the recordkeeping obligations imposed by Section 121.380 with regard to similar rulemaking on corrosion prevention and control programs, the FAA has included in this proposal certain provisions for alternative recordkeeping methods. Proposed paragraph (b)(1) would provide for the development and implementation of such alternative methods, which must be approved by the FAA. For example, operators may choose to submit proposals to record compliance with paragraphs (d) through (g) of the AD by a means other than they normally use to record AD status. [The FAA currently is developing guidance material that will contain information to be considered by FAA Principal Maintenance Inspectors (PMI) when reviewing proposals for alternative recordkeeping methods.]

Paragraph (c) of the proposal provides for increasing a "Repeat Inspection Time" interval by up to 10% in order to accommodate unanticipated scheduling requirements. Operators would be required to inform the FAA within 30 days of such increases.

Paragraph (d)(1) of the proposal sets forth the reporting actions that are necessary to be accomplished when Level 3 corrosion is determined to exist. Within 7 days after such a determination is made, an operator would be required to accomplish one of the following actions:

1. Submit a report of the determination to the FAA and complete the basic task in the affected area on the remainder of the Model F–28 series airplanes in the operator's fleet; or

2. Submit a proposed schedule, for approval by the FAA, for performing the basic tasks in the affected area on the remainder of the operator's Model F–28 series fleet; or

3. Submit data substantiating that the Level 3 corrosion was an isolated occurrence.

Once the FAA has received such a report, it may, in conjunction with normal surveillance activities, request additional information regarding the results of the basic tasks performed on the remainder of the operator's Model F–28 series fleet.

Paragraph (d)(2) of the proposal specifies that the FAA may impose schedules different from what an operator has proposed under paragraph (d)(1), if it is found that changes are necessary to ensure that any other Level 3 corrosion in the operator's Model F–28 series fleet is detected in a timely manner.

Paragraph (d)(3) of the proposal would require that, within the time schedule approved by the FAA, the operator must accomplish the basic tasks in the affected areas on the remaining airplanes in its Model F–28 series fleet to ensure that any other Level 3 corrosion is detected.

Paragraph (e) would require that, upon finding corrosion exceeding Level 1 during a repetitive inspection, an operator must adjust its program to ensure that future corrosion findings are limited to Level 1 or better. Where corrective action is necessary to reduce corrosion to Level 1 or better, an operator must submit a proposal for a means of corrective action for the FAA's approval within 60 days after the determination of corrosion is made. That means, approved by the FAA, must then be implemented to reduce future findings of corrosion in that area to Level 1 or better.

With regard to paragraph (e), it should be noted that if corrosion is found and it is not considered representative of the operator's fleet, no further corrective action may be necessary, since a means to reduce any corrosion to Level 1 or better will have already been implemented in the operator's program in accordance with proposed paragraph (a) or (b). For example, if a finding of corrosion is attributable to a particular spill of mercury or other unique event, or if corrosion is found on an airplane recently acquired from another operator, the means specified in the existing program may be adequate for controlling corrosion in the remainder of the operator's fleet. Similarly, if an operator

has already implemented means to reduce corrosion in an airplane area based on previous findings, no additional corrective action may be necessary. In reviewing the reports submitted in accordance with the AD, the FAA will monitor the effectiveness of the operator's means to reduce corrosion. If the FAA determines that an operator has failed to implement adequate means to reduce corrosion to Level 1 or better, appropriate action will be taken to ensure compliance with this paragraph.

Paragraph (f) of the proposal concerns adding airplanes to an operator's fleet, and the procedures that must be followed with regard to corrosion prevention and control. This paragraph differentiates between procedures applicable to added airplanes that previously were maintained in accordance with this AD and those that were not so maintained. For airplanes that previously have been maintained in accordance with the proposed requirements of this AD action, the first basic task in each aircraft zone to be performed by the new operator would be required to be performed in accordance with either the previous operator's or the new operator's inspection schedule, whichever would result in the earlier accomplishment date for that task. For airplanes that have not been maintained in accordance with the proposed requirements of this AD action, the first basic task in each aircraft zone to be performed by the new operator would be required to be performed before the airplane is placed in service, or in accordance with a schedule approved by the FAA.

With regard to the requirements of paragraph (f), the FAA considers it essential that operators ensure that transferred airplanes are inspected in accordance with the baseline corrosion prevention and control program on the same basis as if there were continuity in ownership. Scheduling of the inspections for each airplane must not be delayed or postponed due to a transfer of ownership; in some cases, such postponement could continue indefinitely if an airplane is transferred frequently from one owner to another. The proposed rule would require that the specified procedures be accomplished before any operator places into service any airplane subject to the requirements of the proposed AD.

Paragraph (g) of the proposal would require that reports of Level 2 and Level 3 corrosion be submitted at least quarterly to Fokker. A note has been included in this paragraph indicating that the reporting of Level 2 and Level 3 corrosion found as a result of any opportunity inspections is highly desirable. Operators are not relieved, however, from reporting corrosion findings as required by FAR Section 121.703.

The FAA estimates that 45 airplanes of U.S. registry would be affected by this proposed AD. It would take an average of approximately 7 work hours per basic task to accomplish the 77 basic tasks called out in the Document; this represents a total average of 539 work hours (this figure includes not only inspection time, but access and closure time as well). The average labor rate is $55 per work hour. Based on these figures, the total cost impact of the proposed AD on U.S. operators for the 4-year average inspection cycle is estimated to be $1,334,025 or $29,645 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:

Fokker: Docket 93–NM–77–AD.

Applicability: Model F–28 Mark 1000, MK 2000, MK 3000, and MK 4000 series airplanes (does not include Model MK 0100 series airplanes), certificated in any category.

Compliance: Required as indicated, unless accomplished previously.

Note 1: This AD references Fokker Document SE–253, "F–28 Corrosion Control Program," including all revisions through September 15, 1992, (hereafter referred to as "the Document"), for basic tasks, definitions of corrosion levels, compliance times, and reporting requirements. In addition, this AD specifies inspection and reporting requirements beyond those included in the Document. Where there are differences between the AD and the Document, the AD prevails.

Note 2: As used throughout this AD, the term "the FAA" is defined differently for different operators, as follows: For those operators complying with paragraph (a) of this AD, "the FAA" is defined as "the Manager of the Atlanta Aircraft Certification Office (ACO)." For those operators operating under Federal Aviation Regulation (FAR) Part 121 or 129, and complying with paragraph (b) of this AD, "the FAA" is defined as "the cognizant Principal Maintenance Inspector (PMI)." For those operators operating under FAR Part 91 or 125, and complying with paragraph (b) of this AD, "the FAA" is defined as "the cognizant Maintenance Inspector at the appropriate FAA Flight Standards office."

To preclude degradation of the structural capabilities of the airplane due to the problems associated with corrosion, accomplish the following:

(a) Except as provided in paragraph (b) of this AD, complete each of the basic tasks specified in Section 2.4 of the Document in accordance with the procedures of the Document and the schedule specified in paragraphs (a)(1) and (a)(2) of this AD.

Note 3: A "basic task," as defined in Section 2.4 of the Document, includes inspections; procedures for a corrective action, including repairs, under identified circumstances; application of sealants or corrosion inhibitors; and other follow-on actions.

Note 4: Basic tasks completed in accordance with the Document before the effective date of this AD may be credited for compliance with the initial basic task requirements of paragraph (a)(1) of this AD.

Note 5: Where non-destructive inspection (NDI) methods are employed, in accordance

with Section 2.4 of the Document, the standards and procedures used must be acceptable to the Administrator in accordance with FAR Section 43.13.

(1) Complete the initial basic task of each aircraft zone specified in Section 2.4 of the Document as follows:

(i) For airplane areas that have not yet exceeded the "Initial Inspection Time (IIT)" for a basic task as of one year after the effective date of this AD: Initial compliance must occur no later than the IIT plus the Repeat Inspection time (RIT) interval.

(ii) For airplane areas that have exceeded the IIT for a particular basic task, as of one year after the effective date of this AD: Initial compliance must occur within one RIT interval for that task, measured from a date one year after the effective date of this AD.

(iii) For airplanes that are 20 years old or older as of one year after the effective date of this AD: Initial compliance must occur for all aircraft zones within one RIT interval or within 6 years, measured from a date one year after the effective date of this AD, whichever occurs first.

(iv) Notwithstanding paragraphs (a)(1)(i), (a)(1)(ii), and (a)(1)(iii) of this AD, accomplish the initial basic task, for each area that exceeds the IIT for that area, at a minimum rate of one such area per year, beginning one year after the effective date of this AD.

Note 6: This paragraph does not require inspection of any area that has not exceeded the IIT for that area.

Note 7: This minimum rate requirement may cause an undue hardship on some small operators. In those circumstances, requests for adjustments to the implementation rate will be evaluated on a case-by-case basis under the provisions of paragraph (h) of this AD.

(2) Repeat each basic task at a time interval not to exceed the RIT interval specified in the Document for that task.

(b) As an alternative to the requirements of paragraph (a) of this AD: Prior to one year after the effective date of this AD, revise the FAA-approved maintenance/inspection program to include the corrosion control program specified in the Document; or to include an equivalent program that is approved by the FAA. In all cases, the initial basic task for each airplane area must be completed in accordance with the compliance schedule specified in paragraph (a)(1) of this AD.

(1) Any operator complying with paragraph (b) of this AD may use an alternative recordkeeping method to that otherwise required by FAR Section 91.417 or Section 121.380 for the actions required by this AD, provided it is approved by the FAA and is included in a revision to the FAA-approved maintenance/inspection program.

(2) Subsequent to the accomplishment of the initial basic task, extensions of RIT intervals specified in the Document must be approved by the FAA.

(c) To accommodate unanticipated scheduling requirements, it is acceptable for an RIT interval to be increased by up to 10%, but not to exceed 6 months. The FAA must be informed, in writing, of any such extension within 30 days after such adjustment of the schedule.

(d)(1) If, as a result of any inspection conducted in accordance with paragraphs (a) or (b) of this AD, Level 3 corrosion is determined to exist in any airplane area, accomplish either paragraph (d)(1)(i) or (d)(1)(ii) within 7 days after such determination:

(i) Submit a report of that determination to the FAA and complete the basic task in the affected aircraft zones on all Model F–28 series airplanes in the operator's fleet; or

(ii) Submit to the FAA for approval one of the following:

(A) A proposed schedule for performing the basic tasks in the affected aircraft zones on the remaining Model F–28 series airplanes in the operator's fleet, which is adequate to ensure that any other Level 3 corrosion is detected in a timely manner, along with substantiating data for that schedule; or

(B) Data substantiating that the Level 3 corrosion found is an isolated occurrence.

Note 8: Notwithstanding the provisions of Section 2.1 of the Document, which would permit corrosion that otherwise meets the definition of Level 3 corrosion (i.e., which is determined to be a potentially urgent airworthiness concern requiring expeditious action) to be treated as Level 1 if the operator finds that it "can be attributed to an event not typical of the operator's usage of other airplanes in the same fleet," this paragraph requires that data substantiating any such finding be submitted to the FAA for approval.

(2) The FAA may impose schedules other than those proposed, upon finding that such changes are necessary to ensure that any other Level 3 corrosion is detected in a timely manner.

(3) Within the time schedule approved under paragraph (d)(1) or (d)(2) of this AD, accomplish the basic tasks in the affected aircraft zones of the remaining Model F–28 series airplanes in the operator's fleet.

(e) If, as a result of any inspection after the initial inspection conducted in accordance with paragraphs (a) or (b) of this AD, it is determined that corrosion findings exceed Level 1 in any area, within 60 days after such determination, implement a means, approved by the FAA, to reduce future findings of corrosion in that area to Level 1 or better.

(f) Before any operator places into service any airplane subject to the requirements of this AD, a schedule for the accomplishment of basic tasks required by this AD must be established in accordance with paragraph (f)(1) or (f)(2) of this AD, as applicable:

(1) For airplanes previously maintained in accordance with this AD, the first basic task in each aircraft zone to be performed by the new operator must be accomplished in accordance with the previous operator's schedule or with the new operator's schedule, whichever would result in the earlier accomplishment date for that task. After each basic task has been performed once, each subsequent task must be performed in accordance with the new operator's schedule.

(2) For airplanes that have not been previously maintained in accordance with this AD, the first basic task for each aircraft zone to be performed by the new operator must be accomplished prior to further flight or in accordance with a schedule approved by the FAA.

(g) Reports of Level 2 and Level 3 corrosion must be submitted at least quarterly to Fokker in accordance with Section 2.5 of the Document.

Note 9: Reporting of Level 2 and Level 3 corrosion found as a result of any opportunity inspections is highly desirable.

(h) An alternative method of compliance or adjustment of the compliance time, which provides an acceptable level of safety, may be used when approved by the Manager, Standardization Branch, ANM–113, FAA, Transport Airplane Directorate. Operators shall submit their requests through the cognizant Maintenance Inspector at the appropriate FAA Flight Standards office, who may concur or comment and then send it to the Manager, Standardization Branch, ANM–113.

Note 10: Information concerning the existence of approved alternative methods of compliance with this AD, if any, may be obtained from the Standardization Branch, ANM–113.

(i) Special flight permits may be issued in accordance with FAR 21.197 and 21.199 to operate airplanes to a base in order to comply with the requirements of this AD.

(j) Reports of inspection results required by this AD 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.

Issued in Renton, Washington, on May 28, 1993.

Bill R. Boxwell,

Acting Manager, Transport Airplane Directorate, Aircraft Certification Service.

[FR Doc. 93–13162 Filed 6–3–93; 8:45 am]

BILLING CODE 4910–13–P

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Chapter I

[FRL–4662–7]

Public Meeting on the Rulemaking for the Pulp, Paper, and Paperboard Industry

AGENCY: Environmental Protection Agency.

ACTION: Notice of public meeting date change.

SUMMARY: The U.S. Environmental Protection Agency (EPA) is announcing the postponement of a public meeting (58 FR 26946, May 6, 1993) regarding regulations that will apply to the pulp, paper, and paperboard industry. The regulations are scheduled to be proposed in October 1993. EPA is sponsoring this meeting to report on the status of regulatory development and to

gather information and ideas from interested parties.

DATES: The date for the public meeting is Wednesday, June 30, 1993, 9 a.m. to 5 p.m., rescheduled from the previously announced June 9, 1993.

ADDRESSES: The June 30, 1993 meeting will be held at the Omni Durham Hotel, 210 Foster St., Durham, North Carolina 27701. A block of rooms is being held for meeting participants. Please call the hotel directly at 919–683–OMNI for reservations.

FOR FURTHER INFORMATION CONTACT: Wendy Smith at U. S. Environmental Protection Agency—by mail at WH–552, Office of Science and Technology, 401 M Street SW., Washington, DC 20460; by telephone at (202) 260–7184.

SUPPLEMENTARY INFORMATION: EPA is developing effluent limitations, guidelines, and standards under authority of the Clean Water Act and maximum achievable control technology standards under authority of the Clean Air Act. The Agency is scheduled to propose these water and air regulations in October 1993. At the June 30th meeting, compliance and implementation issues will be discussed.

INSPECTION OF DOCUMENTS: The agenda and meeting materials will be mailed prior to the meeting, if available, or distributed at the meeting. The mailing list has been compiled from previous public meeting attendees and by requests. Anyone wishing to be added to the mailing list for meeting materials may contact Wendy Smith at the address or phone number above.

Dated: May 27, 1993.

James Hanlon,

Acting Director, Office of Science and Technology.

[FR Doc. 93–13059 Filed 6–3–93; 8:45 am]

BILLING CODE 6560–50–P

---

40 CFR Ch. I

[OPPTS–00139; FRL–4627–7]

Notice of Public Meetings on Identification of Dangerous Levels of Lead

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice of meeting.

SUMMARY: EPA's Office of Pollution Prevention and Toxics will conduct two one–half day meetings to discuss the proposed Identification of Dangerous Levels of Lead rule. Section 403 of the Residential Lead-Based Paint Hazard Reduction Act of 1992 directed the Agency to ". . .promulgate regulation which shall identify. . .lead-based paint hazards, lead-contaminated dust, and lead-contaminated soil." The first meeting will focus on the impact of the regulation on the regulated community and the second meeting will focus on technical issues addressed by the rule.

DATES: The meetings will take place on June 10, 1993. The first meeting (regulatory impact) will begin at 9 a.m. and end at 12 noon. The second meeting (technical issues) will begin at 1 p.m. and end at 4 p.m.

ADDRESSES: The meetings will be held at: Department of Housing and Urban Development, Office of Lead-Based Paint Abatement and Poisoning Prevention, Suite 3202, 490 L'Enfant Plaza, SW., Washington, DC.

FOR FURTHER INFORMATION CONTACT: For information on substantive matters, please contact Dave Topping, of the Program Development Branch (PDB), at (202) 260–7737. For information on administrative matters, or to advise of your intent to attend, please contact Brion Cook or Karen Maher of PDB at (202) 260–1878 and (202) 260–3894, respectively.

Dated: May 28, 1993.

Joseph A. Carra,

Acting Director, Office of Pollution Prevention and Toxics.

[FR Doc. 93–13371 Filed 6–3–93; 8:45 am]

BILLING CODE 6560–50–F

FEDERAL COMMUNICATIONS COMMISSION

47 CFR Chapter I

[ET Docket No. 92–9; DA 93–603]

Redevelopment of Spectrum to Encourage Innovation in the Use of New Telecommunications Technologies

AGENCY: Federal Communications Commission.

ACTION: Supplemental comments.

SUMMARY: This Public Notice seeks comment on supplemental comments filed by Alcatel Network Systems, Inc. to the Further Notice of Proposed Rule Making (Further Notice) in this proceeding. The intended effect of this action is to develop a more complete record on channelization plans for five bands above 3 GHz proposed in the Further Notice to be reallocated to private and common carrier fixed microwave services.

DATES: Comments are due by June 14, 1993.

ADDRESSES: Federal Communications Commission, Washington, DC 20554.

FOR FURTHER INFORMATION CONTACT: Rodney Small, Office of Engineering and Technology, (202) 653–8116.

SUPPLEMENTARY INFORMATION: In the Further Notice of Proposed Rule Making in ET Docket No. 92–9, the Commission proposed channelizing five microwave bands above 3 GHz to accommodate licensees currently using 2 GHz frequencies under consideration for use by Personal Communications Services and other emerging technologies.[1] On May 20, 1993, Alcatel Network Systems, Inc. (Alcatel) filed supplemental comments amending its previous channelization proposal for these five bands. Alcatel had recommended a 1.6 MHz-based plan; but now is proposing a 1.25 MHz-based plan that has elements in common with the 1.25 MHz-based plan recommended by the Telecommunications Industry Association (TIA) and three equipment manufacturers (Harris Corporation-Farinon Division, Digital Microwave Corporation, and Telesciences, Inc.; collectively, Joint Commenters). Alcatel states that its revised plan synthesizes its original plan and that proposed by TIA and the Joint Commenters.

The Commission will accept comments on Alcatel's supplemental comments through June 14, 1993. Alcatel's supplemental comments are available for inspection in the ET Docket No. 92–9 file at the FCC Reference Center (Room 239), 1919 M Street NW., Washington, DC 20554. Copies may also be obtained from International Transcription Service, Inc., (202) 857–3800. For further information, contact Rodney Small, (202) 653–8116.

Federal Communications Commission.

William F. Caton,

Acting Secretary.

[FR Doc. 93–13172 Filed 6–3–93; 8:45 am]

BILLING CODE 6712–01–M

---

47 CFR Part 73

[MM Docket No. 93–142; RM–8208]

Television Broadcasting Services; Willits, CA

AGENCY: Federal Communications Commission.

[1] See Further Notice of Proposed Rule Making, ET Docket No. 92–9, 7 FCC Rcd 6100; 57 FR 42916, September 17, 1992 First Report and Order and Third Notice of Proposed Rule Making, ET Docket No. 92–9, 7 FCC Rcd 6886, 57 FR 49020, October 29, 1992; Notice of Proposed Rule Making, GEN Docket No. 90–314 and ET Docket No. 92–100, 7 FCC Rcd 5676 (1992) 57 40672, September 4, 1992.

ACTION: Proposed rule.

SUMMARY: The Commission seeks comments on a petition for rule making filed on behalf of Granite Broadcasting Corporation and KNTV, Inc., owner and licensee, respectively of Station KNTV (TV), Channel 11, San Jose, California, seeking the deletion of vacant VHF television channel 11 at Willits, California, to accommodate a desire to relocate the facilities of Station KNTV(TV) to a more seismically stable transmitter site.

DATES: Comments must be filed on or before July 19, 1993, and reply comments on or before August 3, 1993.

ADDRESSES: Federal Communications Commission, Washington, DC 20554. In addition to filing comments with the FCC, interested parties should serve the petitioner's counsel, as follows: Tom W. Davidson and Paul S. Pien, Esqs., Akin, Gump, Strauss, Hauer & Feld, L.L.P., 1333 New Hampshire Avenue NW., suite 400, Washington, DC 20036.

FOR FURTHER INFORMATION CONTACT: Nancy V. Joyner, Mass Media Bureau, (202) 634–6530.

SUPPLEMENTARY INFORMATION: This is a synopsis of the Commission's Notice of Proposed Rule Making, MM Docket No. 93–142, adopted May 7, 1993, and released May 27, 1993. The full text of this Commission decision is available for inspection and copying during normal business hours in the FCC's Reference Center, (room 239), 1919 M Street NW., Washington, DC. The complete text of this decision may also be purchased from the Commission's copy contractors, International Transcription Service, Inc., (202) 857–3800, 2100 M Street NW., suite 140, Washington, DC 20037.

Provisions of the Regulatory Flexibility Act of 1980 do not apply to this proceeding.

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

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

List of Subjects in 47 CFR Part 73

Television broadcasting.

Federal Communications Commission.

Michael C. Ruger,

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

[FR Doc. 93–13111 Filed 6–3–93; 8:45 am]

BILLING CODE 6712–01–M

---

47 CFR Part 73

[MM Docket No. 93–145, RM–8235]

Radio Broadcasting Services; Limon, CO

AGENCY: Federal Communications Commission.

ACTION: Proposed rule.

SUMMARY: This document requests comments on a petition for rule making filed by Anastasis Broadcasting Co., seeking the allotment of Channel 276C2 to Limon, Colorado, as that community's first local FM service. Coordinates used for this proposal are 39–15–50 and 103–41–30.

DATES: Comments must be filed on or before July 19, 1993, and reply comments on or before August 3, 1993.

ADDRESSES: Secretary, Federal Communications Commission, Washington, DC 20554. In addition to filing comments with the FCC, interested parties should serve the petitioner, as follows: Anastasis Broadcasting Co., Attn.: Mike Rey, President, 4001 Jefferson Dr., Loveland, CO 80537.

FOR FURTHER INFORMATION CONTACT: Nancy Joyner, Mass Media Bureau, (202) 634–6530.

SUPPLEMENTARY INFORMATION: This is a synopsis of the Commission's Notice of Proposed Rule Making, MM Docket No. 93–145, adopted May 13, 1993, and released May 28, 1993. The full text of this Commission decision is available for inspection and copying during normal business hours in the FCC's Reference Center (room 239), 1919 M Street NW., Washington, DC. The complete text of this decision may also be purchased from the Commission's copy contractors, International Transcription Service, Inc., (202) 857–3800, 2100 M Street NW., suite 140, Washington, DC 20037.

Provisions of the Regulatory Flexibility Act of 1980 do not apply to this proceeding.

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

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

List of Subjects in 47 CFR Part 73

Radio broadcasting.

Federal Communications Commission.

Michael C. Ruger,

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

[FR Doc. 93–13104 Filed 6–3–93; 8:45 am]

BILLING CODE 6712–01–M

---

47 CFR Part 73

[MM Docket No. 93–141, RM–8222]

Radio Broadcasting Services: Lebanon, KY

AGENCY: Federal Communications Commission.

ACTION: Proposed rule.

SUMMARY: This document requests comments on a petition by Lebanon-Springfield Broadcasting Company, Inc., requesting the substitution of Channel 265C3 for Channel 265A at Lebanon, Kentucky, as that community's first wide coverage area FM service. The proposed coordinates are North Latitude 37–26–02 and West Longitude 85–08–43.

DATES: Comments must be filed on or before July 19, 1993, and reply comments on or before August 3, 1993.

ADDRESSES: Federal Communications Commission, Washington, DC 20554. In addition to filing comments with the FCC, interested parties should serve the petitioner, or its counsel or consultant, as follows: Leonard S. Joyce, Blair, Joyce & Silva, 1825 K Street NW., suite 510, Washington, DC 20006 (Attorney for Petitioner).

FOR FURTHER INFORMATION CONTACT: Nancy J. Walls, Mass Media Bureau, (202) 634–6530.

SUPPLEMENTARY INFORMATION: This is a synopsis of the Commission's Notice of Proposed Rule Making, MM Docket No. 93–141, adopted May 7, 1993, and released May 27, 1993. The full text of this Commission decision is available for inspection and copying during normal business hours in the FCC Reference Center (room 239), 1919 M Street NW., Washington, DC. The complete text of this decision may also be purchased from the Commission's copy contractors, International Transcription Service, Inc., (202) 857–3800, 1919 M Street, NW., room 246, or 2100 M Street, NW., suite 140, Washington, DC 20037.

Provisions of the Regulatory Flexibility Act of 1980 do not apply to this proceeding.

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

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

List of Subjects in 47 CFR Part 73

Radio broadcasting.

Federal Communications Commission.

Michael C. Ruger,

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

[FR Doc. 93–13107 Filed 6–3–93; 8:45 am]

BILLING CODE 6712–01–M

---

47 CFR Part 73

[MM Docket No. 93–146, RM–8231]

Radio Broadcasting Services; Potts Camp, MS

AGENCY: Federal Communications Commission.

ACTION: Proposed rule.

SUMMARY: This document requests comments on a petition filed by Potts Camp Broadcasting proposing the allotment of Channel 240A to Potts Camp, Mississippi, as that community's first local transmission service. The coordinates for Channel 240A are 34–35–39 and 89–19–33. There is a site restriction 6.1 kilometers (3.8 miles) south of the community.

DATES: Comments must be filed on or before July 19, 1993, and reply comments on or before August 3, 1993.

ADDRESSES: Federal Communications Commission, Washington, DC 20554. In addition to filing comments with the FCC, interested parties should serve the petitioner's counsel, as follows: Riley M. Murphy, 1100 Poydras Street, suite 2590, New Orleans, Louisiana 70163–2590.

FOR FURTHER INFORMATION CONTACT: Kathleen Scheuerle, Mass Media Bureau, (202) 634–6530.

SUPPLEMENTARY INFORMATION: This is a summary of the Commission's Notice of Proposed Rule Making, MM Docket No. 93–146 adopted May 14, 1993, and released May 28, 1993. The full text of this Commission decision is available for inspection and copying during normal business hours in the Commission's Reference Center (room 239), 1919 M Street NW., Washington, DC. The complete text of this decision may also be purchased from the Commission's copy contractors, International Transcription Services, Inc., 2100 M Street NW., suite 140, Washington, DC 20036, (202) 857–3800.

Provisions of the Regulatory Flexibility Act of 1980 do not apply to this proceeding.

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

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

List of Subjects in 47 CFR Part 73

Radio broadcasting.

Federal Communications Commission.

Michael C. Ruger,

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

[FR Doc. 93–13105 Filed 6–3–93; 8:45 am]

BILLING CODE 6712–01–M

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

50 CFR Parts 222 and 227

[Docket No. 920545–2145]

Endangered and Threatened Species; Endangered Status for Winter-Run Chinook Salmon

AGENCY: National Marine Fisheries Service (NMFS), NOAA, Commerce.

ACTION: Delay in issuance of final determination.

SUMMARY: NMFS intends to delay for up to 6 months its final determination on whether to reclassify the winter-run chinook salmon in the Sacramento River from threatened to endangered under the provisions of the Endangered Species Act.

FOR FURTHER INFORMATION CONTACT: Margaret Lorenz, Office of Protected Resources, NMFS, (301) 713–2322 or Jim Lecky, Southwest Region, NMFS, (310) 980–4015.

SUPPLEMENTARY INFORMATION: On June 19, 1992, NMFS issued a proposed rule (57 FR 27416) to reclassify this species. To make this finding, NMFS conducted a status review of the species and concluded that an endangered classification more accurately reflects the current status of its population. Since the proposed reclassification, additional information on run-size became available. In 1992, an estimated 1,180 adults returned to spawn which represents a considerable improvement over the 1991 run-size of 191 adults.

Section 4 (b) (6) (B) provides up to a 6-month extension to the 1-year statutory requirement to issue a final determination if there is substantial disagreement regarding the sufficiency or accuracy of the available data relevant to the determination or revision concerned.

Therefore, to obtain and evaluate additional data, NMFS is delaying its final determination for up to 6 months. The comment period will be reopened when new information on the 1993 run size becomes available.

List of Subjects

50 CFR Part 222

Administrative practice and procedure, Endangered and threatened species, Exports, Imports, Reporting and recordkeeping requirements, Transportation.

50 CFR Part 227

Endangered and threatened species, Exports, Imports, Marine mammals, Transportation.

Authority: 16 U.S.C. 1531–1543.

Dated: May 28, 1993.

Samuel W. McKeen,

Program Management Officer.

[FR Doc. 93–13155 Filed 6–3–93; 8:45 am]

BILLING CODE 3510–22–M

Notices

Federal Register
Vol. 58, No. 106
Friday, June 4, 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

Forms Under Review by Office of Management and Budget

May 28, 1993.

The Department of Agriculture has submitted to OMB for review the following proposal for the collection of information under the provisions of the Paperwork Reduction Act (44 U.S.C. chapter 35) since the last list was published. This list is grouped into new proposals, revisions, extension, or reinstatements. Each entry contains the following information: (1) Agency proposing the information collection; (2) Title of the information collection; (3) Form number(s), if applicable; (4) How often the information is requested; (5) Who will be required or asked to report; (6) An estimate of the number of responses; (7) An estimate of the total number of hours needed to provide the information; (8) Name and telephone number of the agency contact person.

Questions about the items in the listing should be directed to the agency person named at the end of each entry. Copies of the proposed forms and supporting documents may be obtained from: Department Clearance Officer, USDA, OIRM, room 404–W Admin. Bldg., Washington, DC 20250, (202) 690–2118.

Revision

• Agricultural Marketing Service
Vidalia Onions In Georgia—M.O. 955
Recordkeeping; Weekly; Biennially
Farms; Businesses or other for-profit; Small businesses or organizations; 1,903 responses; 203 hours
Kathleen M. Finn (202) 720–1509
• Federal Crop Insurance Corporation
Federal Crop Insurance Policies with Options and Optional Forms Addendum
FCI–535 and FCI–514
On occasion
Individuals or households; Farms; 10,000 responses; 6,500 hours
Mari L. Dunleavy (202) 254–8450

Extension

• Forest Service
Certified Bidders Statement of the Relationship to Other Bidders or Operators (Certification of Nonaffiliation)
On Occasion
Businesses or other for-profit; 200 responses; 3 hours
John A. Combes (202) 205–0862

New Collection

• Forest Service
The Mt. Baker-Snoqualmie Forest Visitor Study
On occasion
Individuals or households; 5,120 responses; 1,280 hours
Michael Yuan (406) 243–5406

Larry K. Roberson,
Deputy Department Clearance Officer.

[FR Doc. 93–13146 Filed 6–3–93; 8:45 am]
BILLING CODE 3410–01–M

Animal and Plant Health Inspection Service

[Docket No. 93–056–1]

Availability of Environmental Assessment and Finding of No Significant Impact

AGENCY: Animal and Plant Health Inspection Service, USDA.

ACTION: Notice.

SUMMARY: We are advising the public that an environmental assessment and finding of no significant impact have been prepared by the Animal and Plant Health Inspection Service relative to the issuance of a permit to allow the interstate movement and field testing of biological control agents. The environmental assessment provides a basis for our conclusion that the interstate movement and field testing of the biological control agents will not present a risk of introducing or disseminating a plant pest and will not have a significant impact on the quality of the human environment. Based on its finding of no significant impact, the Animal and Plant Health Inspection Service has determined that an environmental impact statement need not be prepared.

ADDRESSES: Copies of the environmental assessment and finding of no significant impact are available for public inspection at USDA, room 1141, South Building, 14th Street and Independence Avenue SW., Washington, DC, between 8 a.m. and 4:30 p.m., Monday through Friday, except holidays. Persons wishing to inspect those documents are encouraged to call ahead on (202) 690–2817 to facilitate entry into the reading room.

FOR FURTHER INFORMATION CONTACT: Dr. Matthew H. Royer, Chief Operations Officer, Biological Assessment and Taxonomic Support, Operational Support, PPQ, APHIS, USDA, room 626, Federal Building, 6505 Belcrest Road, Hyattsville, MD 20782, (301) 436–8896. For copies of the environmental assessment and finding of no significant impact, write to Ms. Deborah Knott at the same address. Please refer to the permit number listed below when ordering documents.

SUPPLEMENTARY INFORMATION: Under the Federal Plant Pest Act as amended (7 U.S.C. 150aa *et seq.*) and the Plant Quarantine Act of 1912 as amended (7 U.S.C. 151 *et seq.*) (the Acts), the U.S. Department of Agriculture (USDA) has broad authority to regulate the importation, interstate movement, and release into the environment of organisms in order to prevent the dissemination of plant pests into the United States or interstate. The Animal and Plant Health Inspection Service (APHIS) regulates biological control agents that are plant pests under regulations promulgated pursuant to the Acts and contained in 7 CFR part 330 (referred to below as the regulations). The regulations require, among other things, that a permit be obtained for the movement of a plant pest into or through the United States or Interstate. The regulations and Acts also allow the Department to include in the permit conditions to prevent the dissemination of plant pests. Under the National Environmental Policy Act of 1969 (NEPA) (42 U.S.C. 4321 *et seq.*), APHIS is required to prepare an environmental assessment before issuing a permit for the movement of a plant pest into or through the United States or interstate.

In accordance with applicable regulations, APHIS has received an application for a permit to move and field test biological control agents. In the course of reviewing the permit application, APHIS assessed the impact on the environment of field testing the

organisms under the conditions described in the permit application. APHIS has issued a permit for the interstate movement and field testing of the organisms listed below after concluding that the organisms will not present a risk of plant pest introduction or dissemination and will not have a significant impact on the quality of the human environment. The environmental assessment and finding of no significant impact, which are based on data submitted by the applicant and on a review of other relevant literature, provide the public with documentation of APHIS' review and analysis of the environmental impact associated with conducting the field tests.

The environmental assessment and finding of no significant impact have been prepared by APHIS relative to the issuance of a permit for the interstate movement and field testing of the following biological control agent:

Permit No.	Permittee	Date issued	Organisms	Field test location
93–1841	Dr. Eduardo E. Trujillo	04–21–93	*Pythium rostratum*, a fungus for the control of knapweed.	Washington.

The environmental assessment and finding of no significant impact have been prepared in accordance with: (1) NEPA, (2) Regulations of the Council on Environmental Quality for Implementing the Procedural Provisions of NEPA (40 CFR parts 1500–1508), (3) USDA Regulations Implementing NEPA (7 CFR part 1b), and (4) APHIS Guidelines Implementing NEPA (44 FR 50381–50384, August 28, 1979, and 44 FR 51272–51274, August 31, 1979).

Done in Washington, DC, this 28th day of May 1993.

Terry L. Medley,

Acting Administrator, Animal and Plant Health Inspection Service.

[FR Doc. 93–13232 Filed 6–3–93; 8:45 am]

BILLING CODE 3410–34–P

Forest Service

Cleveland Fire Area Recovery Project, Eldorado National Forest; Exemption

AGENCY: Forest Service, USDA.

ACTION: Notice of exemption from appeal, Cleveland Fire Area Recovery Project Decision, Eldorado National Forest.

SUMMARY: The Forest Service is exempting from appeal the decision to sell trees killed by the Cleveland Fire, which burned 22,500 acres (10,400 acres of national forest system lands) in September 1992. The project objectives are to recover the value of the dead timber, reforest the area, initiate restoration of the watershed and damaged wildlife habitat, and reduce the potential for future catastrophic fires by reducing fuels and creating shaded fuelbreaks. The Eldorado National Forest is currently preparing a final environmental impact statement (EIS) for this project. The Cleveland Fire analysis area is located on portions of the Placerville and Pacific Ranger Districts in El Dorado County, California, along U.S. Highway 50, about 9 miles east of the community of Pollock Pines, and 30 miles west of Lake Tahoe

The high intensity fire killed all trees on about 80 percent of the fire area and killed scattered trees on the remaining 20 percent. The proposed project will salvage approximately 169 million board feet of fire-killed timber on 6,860 acres, using tractor, cable, and helicopter yarding systems. The project will also harvest biomass from 30-year old, fire killed plantations; reforest about 8,140 acres of capable, available, and suitable timber land; and restore damaged watersheds and wildlife habitat within the burned area. The project will include a maximum of eight miles of new road construction and 22 miles of road reconstruction. Important features of the analysis include: snag and down log retention levels for soil productivity and wildlife habitat, cumulative watershed effects from the fire and management activities, fuels management, and ecosystem recovery.

The Cleveland Fire burned approximately six miles along the South Fork of the American River within nine watersheds that drain into the South Fork. The South Fork has been determined to be eligible for inclusion in the Wild and Scenic Rivers system. A suitability study has not been conducted. Most of the riparian vegetation along the river was burned with light intensity and remains substantially intact. Outside the riparian zone, much of the vegetation within the Wild and Scenic Corridor (one quarter mile on either side of the river) burned with high intensity. The high intensity fire caused substantial impacts to visual quality. The analysis documented in the draft EIS indicates that treatments proposed in some alternatives, including salvage of fire-killed timber within the corridor, would accelerate re-establishment of a mature appearing forest, though some short-term visual effects would be apparent. All green trees and riparian vegetation within the river corridor will be retained under all proposed alternatives. The harvesting proposed will not reduce the classification (recreation) or the free-flowing characteristics of the river. Salvage logging and management activities within this corridor have been designed to minimize or mitigate visual impacts and to enhance recovery of visual quality objectives.

Two Spotted Owl Habitat Areas (SOHAs), ED–98 and ED–50, were burned by the fire. ED–98 was essentially destroyed and will not be retained as a SOHA. This area is subject to salvage harvest in some alternatives. An estimated 850 acres of ED–50 were burned with low intensity and are still suitable owl habitat. This area will be retained as a SOHA and will not be entered for salvage harvest. The portion of ED–50 that is no longer suitable habitat has been dropped from the SOHA and is subject to salvage harvesting in some alternatives. Information on the SOHA's is contained in a Biological Evaluation, on file at the Eldorado National Forest Supervisor's Office, 100 Forni Road, Placerville, CA 95667. Removing the SOHA from the network complies with the provisions of the California Spotted Owl Sierran Province Interim Guidelines Environmental Assessment, approved by the R5 Regional Forester on January 13, 1993.

The alternatives considered in the EIS propose retaining various levels of snags and down logs to meet the future needs of the California Spotted Owl. The Interim Guidelines identify the Cleveland Fire as a specific example of a special circumstance where standing snag levels may need to be adjusted based on a site-specific basis to best meet the intent of the guidelines for long-term management of the California Spotted Owl. A Biological Evaluation that will document alternative evaluations is being prepared.

A Biological Assessment has been prepared documenting potential effects

on threatened and endangered species. Mitigation measures have been prescribed to eliminate adverse effects on these species.

It is extremely important to remove the fire-killed timber prior to deterioration and subsequent value losses. Much of the volume killed by the fire is small diameter (less than 24 inches at 4.5 feet above ground level) or is white fir. Experience, documented in USDA Circular No. 962: Rates of Deterioration of Fire Killed Timber in California, indicates that small diameter trees and white fir are particularly susceptible to rapid deterioration from weather and decay. Volume and value recovery for the various alternatives considered in the EIS assume completion of harvest in 1993. If harvesting is substantially delayed, values generated from salvage harvesting would be decreased and costs of fuels treatment and site preparation of planting would be increased. Decay and weathering would reduce the amount of wood that could be removed as sawlogs or biomass and would increase the amount of slash. Public response to the draft EIS indicates a high level of concern regarding timely salvage of dead trees, concurrent with protection of other resources in the short and long term.

Trimber sales provide the most economical means of accomplishing fuel treatments, whether through actual work accomplishment by the timber sale purchaser or collection of deposits that would be used to fund the necessary work. Anticipated funding levels would not be sufficient to accomplish necessary fuel treatments in the project area absent the proposed salvage timber sales. It is also important to harvest the dead trees while the opportunity exists to get the highest return to the government and collect Knutsen-Vandenburg (K–V) funds to restore forest values affected by the fire. K–V funds can be used for reforestation, watershed improvement, wildlife habitat enhancement, and other resource improvement projects on the burned area.

The environmental analysis, as documented in the draft EIS, indicates that salvage harvesting, reforestation, watershed enhancement, and other proposed activities can be conducted while protecting or enhancing other resource values, such as soil productivity, watersheds, air quality, recreation, wildlife habitat and public safety. No wetlands, wilderness or roadless areas are within the analysis area.

The decision for the proposed project is scheduled to be issued in July, 1993. Implementation of the project will occur immediately thereafter, with the offering of the salvage timber for sale. Timber harvest will occur during the summer of 1993.

The total estimated value of the fire killed trees is approximately $86,000,000, of which $21,500,000 (25 percent of the receipts) will be returned to local counties. Failure to salvage in the fire area would greatly reduce the ability (or, at best, greatly increase costs) to reduce fuel loading, contributing to risk of future catastrophic fire. Watershed and wildlife habitat restoration projects and reforestation would also be delayed, due to lack of K–V funding.

Pursuant to 36 CFR 217.4(a)(11), it is my decision to exempt from appeal the decision relating to the salvage harvest and restoration of the lands affected by the Cleveland Fire on the Eldorado National Forest. The Final EIS, which is scheduled to be completed in June, will address the effects of the proposed action on the environment, document public involvement, and address the issues raised by the public.

EFFECTIVE DATE: This decision is effective June 4, 1993.

FOR FURTHER INFORMATION CONTACT: Questions about this document should be addressed to Ed Whitmore, Forest Management Staff Director, Pacific Southwest Region, Forest Service, USDA, 630 Sansome Street, San Francisco, CA 94111, (415) 705–2648, or to John Phipps, Forest Supervisor, Eldorado National Forest, 100 Forni Road, Placerville, CA, 95667, (916) 622–5061.

SUPPLEMENTARY INFORMATION: The environmental analysis for this proposal will be documented in the Cleveland Fire Area Recovery Project Final EIS. Extensive public scoping and public involvement were completed for the draft EIS. The Notice of Availability for the draft EIS appeared in the **Federal Register** on February 5, 1993. The public comment period ended on April 1, 1993. Fifty-eight comments were received by the end of the closing date. These comments will be addressed in the final EIS. Public involvement has been ongoing, consisting of newsletters, focus group meetings, news releases, volunteer projects, and personal communications with interested persons or groups. The project files and related maps are available for public review at the Cleveland Area Ecosystem Recovery office at 3490 Carson Court, Placerville, CA 95667, until June 15. After that date, the records will be available at the Eldorado National Forest, Supervisor's Office, 100 Forni Road, Placerville, CA 95667.

Dated: May 27, 1993.

Dale N. Bosworth,

Deputy Regional Forester.

[FR Doc. 93–13160 Filed 6–3–93; 8:45 am]

BILLING CODE 3410–11–M

Deadlift Heli Salvage Timber Sale, Klamath National Forest; Exemption

AGENCY: Forest Service, USDA.

ACTION: Notice of Exemption from Appeal, Deadlift Heli Salvage Timber Sale Decision, Happy Camp Ranger District, Klamath National Forest.

SUMMARY: The Forest Service is exempting from appeal the Deadlift Heli Salvage Timber Sale Decision on the Happy Camp Ranger District. This environmental document is being prepared in response to the severe timber mortality caused by drought and related insect infestation. The Deadlift Heli Salvage analysis area is located 5 miles southwest of Happy Camp.

The Happy Camp Ranger District is proposing a helicopter harvest of 1.5 million board feet (MMBF) on approximately 300 acres in the Deadlift Heli Salvage. The Deadlift Heli Salvage involves no new road construction however, 2 miles of road reconstruction will be necessary.

The drought has caused a high degree of stress within the trees, which reduces their natural defense mechanisms and weakens them to the extent that they are now predisposed to attack by bark beetles. Trees killed by insect attack deteriorate rapidly. This is particularly true of fir and pine trees in the lower elevations of the analysis areas. Although the winter of 1992–93 provided ample precipitation to end the drought, much higher than normal levels of tree mortality are present throughout the Klamath National Forest as a result of six consecutive years of below normal precipitation.

Prompt removal of the dead and dying timber minimizes value and volume loss. Reduction in value of the timber could result in the project not being implemented at all due to the relatively high costs associated with helicopter logging and the relatively low value of the dead trees. Excessive numbers of dead trees produce heavy fuel concentrations, which makes wildfire control extremely difficult.

The decision for the proposed project is scheduled to be issued in June 1993. Implementation of the project will occur in August, 1993, when the timber sale

will be offered for sale. Harvest is expected to begin immediately after award of the sale.

Pursuant to 36 CFR 217.4(a)(11), it is my decision to exempt from appeal the decision relating to the harvest and restoration of lands covered by the Deadlift Heli Salvage Timber Sale Environmental Analysis on the Happy Camp Ranger District, Klamath National Forest. The environmental document being prepared will address the effects of the proposed actions on the environment, will document public involvement, and will address the issues raised by the public.

EFFECTIVE DATE: This decision is effective June 4, 1993.

FOR FURTHER INFORMATION CONTACT: Questions about this decision should be addressed to Ed Whitmore, Forest Management Staff Director, Pacific Southwest Region, USDA Forest Service, 630 Sansome Street, San Francisco, CA 94111, (415) 705–2684, or to Barbara Holder, Forest Supervisor, Klamath National Forest, 1312 Fairlane Road, Yreka, CA 96097, (916) 842–6131.

SUPPLEMENTARY INFORMATION: The Klamath National Forest has an ongoing public involvement program for all proposed timber sales. The public is encouraged to participate in identifying the issues and concerns. Scoping letters have been sent to individuals and groups to get comments and share information on all salvage sale proposals. Field trips will be conducted on the Happy Camp Salvage projects. The project files and related maps are available for public review at the Happy Camp Ranger District, P.O. Box 377, Happy Camp, CA 96039–0377.

The Deadlift Salvage involves approximately 2000 acres, within which approximately 300 acres would be directly affected by harvest operations. The value to the government of the 1.5 MMBF of salvage timber is estimated at $450,000. This value does not include the many jobs and benefits that are realized in related service, supply, and construction industries. Siskiyou County still receive 25 percent of the selling value for any timber that is salvaged in a commercial timber sale. Rehabilitation and restoration measures necessary for watershed protection, erosion prevention, and fuels reduction will be implemented.

This proposal is not expected to adversely affect any furbearer habitat or any of the known pairs of northern spotted owls. Biological evaluations along with assessments are being prepared for vertebrate, and plant species, and appropriate mitigation measures will be followed in the implementation of the proposed project. No Wild and Scenic Rivers, wetlands, wilderness areas, roadless areas, or threatened or endangered species are within the proposed project area.

Dated: May 26, 1993.

Dale N. Bosworth,

Deputy Regional Forester.

[FR Doc. 93–13159 Filed 6–3–93; 8:45 am]

BILLING CODE 3410–11–M

Soil Conservation Service

Oven Run Project Area, Pennsylvania

AGENCY: Soil Conservation Service, USDA.

ACTION: Notice of a Finding of No Significant Impact.

SUMMARY: Pursuant to section 102(2)(C) of the National Environmental Policy Act of 1969; the Council on Environmental Quality Guidelines (40 CFR part 1500); and the Soil Conservation Service Guidelines (7 CFR part 650); the Soil Conservation Service, U.S. Department of Agriculture, gives notice that an environmental impact statement is not being prepared for the Oven Run Project Area, Somerset County, Pennsylvania.

FOR FURTHER INFORMATION CONTACT: Mr. Richard N. Duncan, State Conservationist, Soil Conservation Service, One Credit Union Place, suite 340, Harrisburg, Pennsylvania 17110–2993, telephone (717) 782–2202.

SUPPLEMENTARY INFORMATION: The environmental assessment of this federally assisted action indicates that the project will not cause significant local, regional, or national impacts on the environment. As a result of these findings, Richard N. Duncan, State Conservationist, has determined that the preparation and review of an environmental impact statement are not needed for this project.

The project concerns a plan for water quality improvement. The planned works of improvement involve six treatment sites that are the source of ground and surface water pollution. Treatment of these sites will involve the installation of waterways, diversions, anoxic limestone drains and constructed wetlands. Mine openings will be closed and abandoned mine land will be graded and vegetated.

The Notice of a Finding of No Significant Impact (FONSI) has been forwarded to the Environmental Protection Agency. A limited number of copies of the FONSI are available to fill single copy requests at the above address. The environmental assessment and basic data may be reviewed by contacting Richard N. Duncan.

"(This activity is listed in the Catalog of Federal Domestic Assistance Program No. 10.904—Watershed Protection and Flood Prevention and is subject to the provisions of Executive Order 12372 which requires intergovernmental consultation with State and local officials.)"

No administrative action on implementation of the proposal will be taken until thirty (30) days after the date of this publication in the **Federal Register.**

Dated: May 20, 1993.

Richard N. Duncan,

State Conservationist.

[FR Doc. 93–13113 Filed 6–3–93; 8:45 am]

BILLING CODE 3410–16–M

Upper Buffalo Creek Watershed, WV; Intent To Prepare an Environmental Impact Statement

AGENCY: Soil Conservation Service, USDA.

ACTION: Notice of intent to prepare an environmental impact statement.

SUMMARY: Pursuant to section 102(2)(C) of the National Environmental Policy Act of 1969; the Council on Environmental Quality Guidelines (40 CFR part 1500); and the Soil Conservation Service Guidelines (7 CFR part 650); the Soil Conservation Service, U.S. Department of Agriculture, gives notice that an environmental impact statement is being prepared for the Upper Buffalo Creek Watershed, Marion County, West Virginia.

FOR FURTHER INFORMATION CONTACT: Rollin N. Swank, State Conservationist, Soil Conservation Service, 75 High Street, room 301, Morgantown, West Virginia 26505, telephone (304) 291–4151.

SUPPLEMENTARY INFORMATION: The environmental assessment of this federally assisted action indicates that the project may cause significant local, regional, or national impacts on the environment. As a result of these findings, Rollin N. Swank, State Conservationist, has determined that the preparation and review of an environmental impact statement are needed for this project.

The project concerns a plan for flood prevention and water supply. Alternatives under consideration to reach these objectives include nonstructural measures, earth dams, and channel work.

A draft environmental impact statement will be prepared and circulated for review by agencies and

the public. The Soil Conservation Service invites participation and consultation of agencies and individuals that have special expertise, legal jurisdiction, or interest in the preparation of the draft environmental impact statement. Meetings have been held with various resource agency personnel to determine the scope of the evaluation of the proposed action. Further information on the proposed action, or planned meetings may be obtained from Rollin N. Swank, State Conservationist, at the above address or telephone (304) 291–4151.

(This activity is listed in the Catalog of Federal Domestic Assistance under No. 10.904—Watershed Protection and Flood Prevention—and is subject to the provisions of Executive Order 12372 which requires intergovernmental consultation with State and local officials)

Dated: May 27, 1993.

Rollin N. Swank,

State Conservationist.

[FR Doc. 93–13178 Filed 6–3–93; 8:45 am]

BILLING CODE 3410–16–M

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

Marine Mammals

AGENCY: National Marine Fisheries Service, (NMFS), NOAA, Commerce.

ACTION: Receipt of Application for Scientific Research Permits (P129L), (P539), (P540).

SUMMARY: Notice is hereby given that the following Applicants have applied in due form for Permits to take marine mammals as authorized by the Marine Mammal Protection Act of 1972 (16 U.S.C. 1361 *et seq.*), the Regulations Governing the Taking and Importing of Marine Mammals (50 CFR part 216), and the Endangered Species Act of 1973, as amended (16 U.S.C. 1531–1543).

(P129L) Dr. Bruce R. Mate, Hatfield Marine Science Center, Oregon State University, Newport, OR 97365–5296, has requested a five-year permit to place satellite-linked radio tags on a total of 150 bottlenose dolphins (*Tursiops truncatus*). In nearshore waters, dolphins will be caught by encircling a group with a net, while a hoop net or tail grab will be used to capture dolphins in offshore waters. Up to 50,000 additional bottlenose dolphins may be harassed during the capture operations. Activities during 1993 will occur principally in Matagorda Bay, TX; in the Gulf of Mexico; and off the eastern coast of Texas. Subsequent years activities will occur in Sarasota Bay, FL; in the North Atlantic; off California; and around Hawaii. No more than 30 animals will be tagged per year.

(P539) Mr. Norihisa Baba, Fur Seal Section, National Research Institution of Far Seas Fisheries, Fisheries Agency of Japan, 5–7–1 Orido, Shimizu, Shizuoka, 424 Japan, has requested a permit to take fur seals (*Callorhinus ursinus*) during 1993–1995 as follows: (1) A maximum of 30 females and 20 males per year during 1993 and 1994 will be captured, flipper tagged with cattle tags and/or marked with hair bleach, and tissue or skin samples from hind flipper digits will be collected; (2) a maximum of 30 pups per year during 1994 and 1995 will be captured, marked with bleach or hair shearing, and tissue samples will be collected from their placenta, naval or skin of the hind flipper; (3) an annual maximum of 150 adult females, 450 males, and 750 pups may be taken by disturbance during the above activities; and (4) one accidental mortality per year of any age or sex may result from extreme disturbance during capture, tagging and tissue sampling procedures. The applicant considers incidental mortality to be an extremely low probability. Tissue samples will be exported to Japan for DNA analyses.

(P540) Dr. Frank Cipriano, Kewalo Marine Laboratory, 13 Ahui Street, Honolulu, HI 96813, has requested a five-year permit to obtain tissue samples for the following *Lagenorhynchus* species: (1) 100 samples each of dusky, *L. obscurus*, and Pacific white-sided dolphins, *L. obliquidens*; and (2) 40 samples each of white-beaked, *L. albirostris*, Atlantic white-sided, *L. acutus*, and Peale's, *L. australis*, dolphins. Tissue samples may include very small (50–500 microliters or 50–500 milligrams) samples of blood, and/or muscle, liver, gonadal, skin or blubber tissue for phylogenetic analyses. Tissues will be obtained opportunistically, including samples from existing collections and museums, captive dolphins, and from researchers with appropriate permits. Potential foreign sources of tissue include dolphins from Peru, Chile, Argentina, New Zealand, and South Africa.

ADDRESSES: Written data or views, or requests for a public hearing on these applications should be submitted to the Assistant Administrator for Fisheries, NMFS, U.S. Department of Commerce, 1335 East-West Hwy., room 7234, Silver Spring, MD 20910, within 30 days of the publication of this notice.

Documents submitted in connection with the above applications are available for review by writing to, or by appointment, in the Permits Division, Office of Protected Resources, NMFS, 1335 East-West Hwy., Suite 7324, Silver Spring, MD 20910 (301/713–2289);

(P129L): Director, Northeast Region, NMFS, NOAA, One Blackburn Drive, Gloucester, MA 01930 (508/281–9200);

(P129L): Director, Southeast Region, NMFS, NOAA, 9450 Koger Blvd., St. Petersburg, FL 33702 (813/893–3141);

(P129L, P540): Director, Northwest Region, NMFS, NOAA, 7600 Sand Point Way, NE, BIN C15700, Seattle, WA 98115 (206/526–4200);

(P129L, P540): Director, Southwest Region, NMFS, NOAA, 501 West Ocean Blvd., Suite 4200, Long Beach, CA 90802–4213 (310/980–4016); and

(P539): Director, Alaska Region, NMFS, 9109 Mendenhall Mall Road, Suite 6, Juneau, AK 99802 (907/586–7221).

Dated: May 28, 1993.

William W. Fox, Jr.,

Director, Office of Protected Resources, National Marine Fisheries Service.

[FR Doc. 93–13153 Filed 6–3–93; 8:45 am]

BILLING CODE 3510–22–M

Marine Mammals; Permits

AGENCY: National Marine Fisheries Service (NMFS), NOAA, Commerce.

ACTION: Issuance of scientific research permit No. 839.

SUMMARY: On April 7, 1993, notice was published in the **Federal Register** (58 FR 18081) that a request for a scientific research permit to take marine mammals (P775#1) had been submitted by Dr. Paul Becker, Office of Protected Resources, NMFS, NOAA, 1335 East-West Highway, Silver Spring, MD 20910, to collect and maintain samples of marine mammals taken in Alaska Native subsistence hunts or from dead beached/stranded animals in Alaska, to be archived for purposes of monitoring long-term trends in contaminant levels.

Notice is hereby given that on May 28, 1993, as authorized by the Marine Mammal Protection Act of 1972 (16 U.S.C. 1361 et seq.), §§ 216.33 (d) and (e) of the Regulations Governing the Taking and Importing of Marine Mammals (50 CFR part 216), the Endangered Species Act (16 U.S.C. 1531–1543), the regulations governing endangered fish and wildlife (50 CFR parts 217–222), and the Fur Seal Act of 1966 (16 U.S.C. 1151–1175), the NMFS issued the requested Permit for the above activities subject to the Special Conditions set forth therein.

Issuance of this Permit as required by the Endangered Species Act of 1973 was based on a finding that such Permit: (1) was applied for in good faith; (2) will not operate to the disadvantage of the

endangered species which is the subject of this Permit; (3) is consistent with the purposes and policies set forth in section 2 of the Endangered Species Act of 1973. This Permit was also issued in accordance with and is subject to parts 220–222 of title 50 CFR, the National Marine Fisheries Service regulations governing endangered species permits.

The Permit and other related documentation are available for review by interested persons in the following offices by appointment:

Office of Protected Resources, NMFS, 1335 East-West Highway, room 7324, Silver Spring, MD 20910 (301/713–2289); and

Director, Alaska Region, NMFS, Federal Annex, 9109 Mendenhall Mall Road, Suite 6, Juneau, AK 99802 (907/586–7221).

Dated: May 28, 1993.

William W. Fox, Jr.,

Director, Office of Protected Resources, National Marine Fisheries Service.

[FR Doc. 93–13154 Filed 6–3–93; 8:45 am]

BILLING CODE 3510–22–M

COMMITTEE FOR PURCHASE FROM PEOPLE WHO ARE BLIND OR SEVERELY DISABLED

Procurement List Proposed Additions

AGENCY: Committee for Purchase From People Who Are Blind or Severely Disabled.

ACTION: Proposed Additions to Procurement List.

SUMMARY: The Committee has received a proposal to add to the Procurement List a commodity and a service to be furnished by nonprofit agencies employing persons who are blind or have other severe disabilities.

COMMENTS MUST BE RECEIVED ON OR BEFORE: July 5, 1993.

ADDRESSES: Committee for Purchase From People Who Are Blind or Severely Disabled, Crystal Square 3, Suite 403, 1735 Jefferson Davis Highway, Arlington, Virginia 22202–3461.

FOR FURTHER INFORMATION CONTACT: Beverly Milkman (703) 603–7740.

SUPPLEMENTARY INFORMATION: This notice is published pursuant to 41 U.S.C. 47(a)(2) and 41 CFR 51–2.3. Its purpose is to provide interested persons an opportunity to submit comments on the possible impact of the proposed actions.

If the Committee approves the proposed additions, all entities of the Federal Government (except as otherwise indicated) will be required to procure the commodity and service listed below from nonprofit agency employing persons who are blind or have other severe disabilities.

I certify that the following actions will not have a significant impact on a substantial number of small entities. The major factors considered for this certification were:

1. The action will not result in any additional reporting, recordkeeping or other compliance requirements for small entities other than the small organizations that will furnish the commodity and service to the Government.

2. The action does not appear to have a severe adverse impact on the current contractors for the commodity and service.

3. The action will result in authorizing small entities to furnish the commodity and service to the Government.

4. There are no known regulatory alternatives which would accomplish the objectives of the Javits-Wagner-O'Day Act (41 U.S.C. 46–48c) in connection with the commodity and service proposed for addition to the Procurement List.

Comments on this certification are invited. Commenters should identify the statement(s) underlying the certification on which they are providing additional information.

The following commodity and service has been proposed for addition to the Procurement List for production by the nonprofit agency listed:

Commodity

Easel, White Board, Dry Erase
7520–00–NIB–0020
Nonprofit Agency: The Lighthouse for the Blind, Inc., Seattle, Washington

Service

Bursting and Packaging of Stamps
U.S. Department of the Interior, Washington, DC
Nonprofit Agency: Greater Enfield ARC, Inc., Enfield, Connecticut

Beverly L. Milkman,

Executive Director.

[FR Doc. 93–13237 Filed 6–3–93; 8:45 am]

BILLING CODE 6353–01–P

Procurement List Additions

AGENCY: Committee for Purchase From People Who Are Blind or Severely Disabled.

ACTION: Additions to Procurement List.

SUMMARY: This action adds to the Procurement List plastic desk trays to be furnished by a nonprofit agency employing persons who are blind or have other severe disabilities.

EFFECTIVE DATE: July 5, 1993.

ADDRESSES: Committee for Purchase From People Who Are Blind or Severely Disabled, Crystal Square 3, Suite 403, 1735 Jefferson Davis Highway, Arlington, Virginia 22202–3461.

FOR FURTHER INFORMATION CONTACT: Beverly Milkman, (703) 603–7740.

SUPPLEMENTARY INFORMATION: On April 2, 1993, the Committee for Purchase From People Who Are Blind or Severely Disabled published a notice (58 FR 17385) of the proposed addition of these trays to the Procurement List.

Comments were received from the current contractor for the trays, which objected to the proposal to add them to the Procurement List. The contractor claimed that recent additions of office supplies to the Procurement List had left very little for small office supply companies hard hit by the recession, Federal budget cuts, and competition from large office supply chains. The contractor also claimed that the Committee's action would have a severe adverse impact on the firm, and that people with severe disabilities would be unable to safely operate the injection molding machinery used to make the trays, allowing them only to perform packaging operations which would add little or no value to the product.

The Committee does not agree with the contractor's claim that the Committee's program has monopolized the office supply market. Many office supply products, such as roller ball pens and envelopes, remain open to commercial firms to supply to the Government. Even if the Committee's program had monopolized the Government office supply market, the much larger commercial office supply market would remain available to the contractor, as would the market to supply State and local governments.

The contractor's sales to the Government of these trays represent only a very small percentage of its Government sales, and an even smaller percentage of its total sales. The Committee does not consider a sales loss of this size to constitute severe adverse impact, even when the other economic factors mentioned by the contractor are taken into account.

The nonprofit agency which will produce the trays has considerable experience in producing items using injection molding machinery operated by blind people, such as the plastic flatwear used by American forces in Operation Desert Shield/Storm. Both National Industries for the Blind and the General Services Administration, which purchases the trays for the Government, have inspected the nonprofit agency and

reported to the Committee that they consider the nonprofit agency capable of making the trays, which will be done with blind people operating the machinery. The Committee's determination that the nonprofit agency is capable of producing the trays is based on the two reports and the nonprofit agency's record of successfully producing other molded items.

After consideration of the material presented to it concerning the capability of a qualified nonprofit agency to produce the commodities, fair market price, and the impact of the addition on the current or most recent contractor, the Committee has determined that the commodities listed below are suitable for procurement by the Federal Government under 41 U.S.C. 46–48c and 41 CFR 51–2.6.

I certify that the following action will not have a significant impact on a substantial number of small entities. The major factors considered for this certification were:

1. The action will not result in any additional reporting, recordkeeping or other compliance requirements for small entities other than the small organizations that will furnish the commodities to the Government.

2. The action will not have a severe economic impact on current contractors for the commodities.

3. The action will result in authorizing small entities to furnish the commodities to the Government.

4. There are no known regulatory alternatives which would accomplish the objectives of the Javits-Wagner-O'Day Act (41 U.S.C. 46–48c) in connection with the commodities proposed for addition to the Procurement List.

Accordingly, the following commodities are hereby added to the Procurement List:

Tray, Desk, Plastic
7520–01–094–4307
7520–01–094–4308
7520–01–094–4309
7520–01–094–4310
7520–01–094–4311
7520–01–094–4312

This action does not affect contracts awarded prior to the effective date of this addition or options exercised under those contracts.

Beverly L. Milkman,

Executive Director.

[FR Doc. 93–13238 Filed 6–3–93; 8:45 am]

BILLING CODE 6353–01–P

Procurement List; Additions

AGENCY: Committee for Purchase From People Who Are Blind or Severely Disabled.

ACTION: Additions to procurement list.

SUMMARY: This action adds to the Procurement List wet weather parkas to be furnished by a nonprofit agency employing persons who are blind or have other severe disabilities.

EFFECTIVE DATE: July 5, 1993.

ADDRESSES: Committee for Purchase From People Who Are Blind or Severely Disabled, Crystal Square 3, Suite 403, 1735 Jefferson Davis Highway, Arlington, Virginia 22202–3461.

FOR FURTHER INFORMATION CONTACT: Beverly Milkman (703) 603–7740.

SUPPLEMENTARY INFORMATION: On February 26, 1993, the Committee for Purchase From People Who Are Blind or Severely Disabled published a notice (58 F.R. 11591) of the proposed addition of 50% of the Government requirement for these parkas to the Procurement List. Twenty-five percent of the Government requirement had earlier been added to the Procurement List.

Comments were received from the current contractor indicating that addition of 50% of the Government's requirements for the parkas to the Procurement List could be devastating to it. According to the contractor, it would lose a substantial part of its sales and would have to lay off the majority of its work force.

The percentage of the contractor's sales which it would lose to the Committee's program because of this addition to the Procurement List does not constitute severe adverse impact in the Committee's view.

The contractor's number of anticipated job losses does not appear reasonable to the Committee in view of the number of jobs for people with severe disabilities which the Committee's action would create. The contractor's employees are in an area, according to the contractor, where the unemployment rate is near 20%. However, the unemployment rate for people with severe disabilities exceeds 65%. Consequently, the Committee believes that any possible job loss for the contractor's employees is outweighed by the jobs that will be created for people with severe disabilities, who would have more difficulty finding other employment that the contractor's employees.

After consideration of the material presented to it concerning the capability of a qualified nonprofit agency to produce the commodities, fair market price, and the impact of the addition on the current or most recent contractor, the Committee has determined that the commodities listed below are suitable for procurement by the Federal Government under 41 U.S.C 46–48c and 41 CFR 51–2.6.

I certify that the following action will not have a significant impact on a substantial number of small entities. The major factors considered for this certification were:

1. The action will not result in any additional reporting, recordkeeping or other compliance requirements for small entities other than the small organizations that will furnish the commodities to the Government.

2. The action will not have a severe economic impact on current contractors for the commodities.

3. The action will result in authorizing small entities to furnish the commodities to the Government.

4. There are no known regulatory alternatives which would accomplish the objectives of the Javits-Wagner-O'Day Act (41 U.S.C. 46–48c) in connection with the commodities proposed for addition to the Procurement List.

Accordingly, the following commodities are hereby added to the Procurement List:

Parka, Wet Weather
8405–01–053–9202
8405–00–001–1547
8405–00–001–1548
8405–00–001–1549
8405–00–001–1550
8405–00–001–1551
(50% of the Government's requirement)

This action does not affect contracts awarded prior to the effective date of this addition or options exercised under those contracts.

Beverly L. Milkman,

Executive Director.

[FR Doc. 93–13240 Filed 6–3–93; 8:45 am]

BILLING CODE 6353–01–P

Procurement List Additions

AGENCY: Committee for Purchase from People who are Blind or Severely Disabled.

ACTION: Additions to procurement list.

SUMMARY: This action adds to the Procurement List services to be furnished by nonprofit agencies employing persons who are blind or have other severe disabilities.

EFFECTIVE DATE: July 5, 1993.

ADDRESSES: Committee for Purchase from People who are Blind or Severely Disabled, Crystal Square 3, Suite 403,

1735 Jefferson Davis Highway, Arlington, Virginia 22202–3461.

FOR FURTHER INFORMATION CONTACT: Beverly Milkman (703) 603–7740.

SUPPLEMENTARY INFORMATION: On April 2 and 16, 1993, the Committee for Purchase from People who are Blind or Severely Disabled published notices (58 FR 17385 and 19805) of proposed additions to the Procurement List. After consideration of the material presented to it concerning the capability of qualified nonprofit agencies to provide the services, fair market price, and the impact of the addition on the current or most recent contractor, the Committee has determined that the services listed below are suitable for procurement by the Federal Government under 41 U.S.C. 46–48c and 41 CFR 51–2.6.

I certify that the following action will not have a significant impact on a substantial number of small entities. The major factors considered for this certification were:

1. The action will not result in any additional reporting, recordkeeping or other compliance requirements for small entities other than the small organizations that will furnish the services to the Government.

2. The action will not have a severe economic impact on current contractors for the services.

3. The action will result in authorizing small entities to furnish the services to the Government.

4. There are no known regulatory alternatives which would accomplish the objectives of the Javits-Wagner-O'Day Act (41 U.S.C. 46–48c) in connection with the services proposed for addition to the Procurement List.

Accordingly, the following services are hereby added to the Procurement List:

Food Service Attendant, Naval Undersea Warfare Center, Building 35, Keyport, Washington.

Janitorial/Custodial, Salmon National Forest Supervisors Office, Highway 93 South, Salmon, Idaho.

This action does not affect contracts awarded prior to the effective date of this addition or options exercised under those contracts.

Beverly L. Milkman,

Executive Director.

[FR Doc. 93–13239 Filed 6–3–93; 8:45 am]

BILLING CODE 6820–33–P

DEPARTMENT OF DEFENSE

Office of the Secretary

Defense Science Board Task Force on Readiness

ACTION: Notice of Advisory Committee Meetings.

SUMMARY: The Defense Science Board Task Force on Readiness will meet in closed session on June 17, 1993 at the Pentagon, Arlington, Virginia.

The mission of the Defense Science Board is to advise the Secretary of Defense through the Under Secretary of Defense (Acquisition) on scientific and technical matters as they affect the perceived needs of the Department of Defense. At this meeting the Task Force will provide advice, recommendations, and supporting rationale on the components of a Readiness Early Warning System to insure that our forces do not become "hollow," and, where deficiencies may begin to emerge, to suggest corrective actions.

In accordance with section 10(d) of the Federal Advisory Committee Act, Public Law 92–463, as amended (5 U.S.C. App. II (1988)), it has been determined that this DSB Task Force meeting, concerns matters listed in 5 U.S.C. 552b(c)(1) (1988), and that accordingly this meeting will be closed to the public.

Dated: June 1, 1993.

L.M. Bynum,

Alternate OSD Federal Register Liaison Officer, Department of Defense.

[FR Doc. 93–13163 Filed 6–3–93; 8:45 am]

BILLING CODE 5000–04–M

Department of the Air Force

USAF Scientific Advisory Board; Meeting

The USAF Scientific Advisory Board of the C–141 Service Lifetime Extension Program will meet on 24–25 June 1993 from 8 a.m. to 5 p.m. at the ANSER Corp., Arlington, VA, instead of the previously scheduled meeting on 26–27 May at the ANSER Corp., Arlington, VA.

The purpose of this meeting is to receive briefings, hold discussions and begin report writing on projects related to C–141 Service Lifetime Extension Program. 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. 93–13121 Filed 6–3–93; 8:45 am]

BILLING CODE 3910–01–M

USAF Scientific Advisory Board; Meeting

The USAF Scientific Advisory Board (SAB) Ad Hoc Committee on Science and Technology will meet from 8 a.m. to 5 p.m. on 2 July 1993 at Air Force Materiel Command, Wright-Patterson AFB, OH.

The purpose of this meeting is to meet with the Director of Science and Technology, and discuss S&T evaluation process for the fall meetings. The meeting will be closed to the public in accordance with section 552b(c) of title 5, United States Code, specifically subparagraphs (1) and (4).

For further information, contact the SAB Secretariat at (703) 697–8404

Patsy J. Conner,

Air Force Federal Register Liaison Officer.

[FR Doc. 93–13180 Filed 6–3–93; 8:45 am]

BILLING CODE 3910–01–M

USAF Scientific Advisory Board; Meeting

The USAF Scientific Advisory Board (SAB) Ad Hoc Committees on Options for Theater Air Defense and Information Architectures will meet from 8 a.m. to 5 p.m. on 12–22 July 1993 at the Beckman Center, CA.

The purpose of this meeting is to brief and develop a report for the SAB 1993 Summer Study. The meeting will be closed to the public in accordance with section 552b(c) of title 5, United States Code, specifically subparagraphs (1) and (4).

For further information, contact the SAB Secretariat at (703) 697–8404.

Patsy J. Conner,

Air Force Federal Register Liaison Officer.

[FR Doc. 93–13181 Filed 6–3–93; 8:45 am]

BILLING CODE 3910–01–M

Department of the Army

Record of Decision (ROD) for Army Realignments at Redstone Arsenal, AL

AGENCY: United States Army, Department of Defense.

ACTION: Notice of availability.

SUMMARY: In accordance with Public Law 101–510, the Defense Base Closure

and Realignment Act of 1990, the Defense Base Closure and Realignment Commission recommended the realignment of the Materiel Readiness Support Activity from Lexington-Bluegrass Army Depot, Kentucky; the Logistics Control Activity from the Presidio of San Francisco, California, and the Armament and Chemical elements of the Armament, Munitions and Chemical Command from Rock Island Arsenal, Illinois, to Redstone Arsenal, Alabama. These recommendations became law on October 2, 1991. An environmental impact statement was prepared that focuses on the environmental and socioeconomic impacts and mitigations associated with the construction and site decisions for the facilities to accommodate the new activities at Redstone Arsenal.

No long-term adverse ecological or environmental health effects are expected due to construction of the required facilities. The increase in population, caused by the realignment of the above mentioned logistics functions is expected to have a net positive impact on the local economy. The preferred alternative sites for the proposed construction projects are not expected to significantly impact environmental resources.

A scoping meeting was held in Huntsville, Alabama, on December 12, 1991. Public notices requesting input and comments from the public were issued in the regional area surrounding Redstone Arsenal. The Draft Environmental Impact Statement (DEIS) was published in October 1992. Comments received from the public in response to the DEIS were addressed in the Final Environmental Impact Statement which was published in March 1993.

ADDRESSES: Copies of the Record of Decision resulting from the Final Environmental Impact Statement can be obtained by writing to the United States Army Corps of Engineers, Mobile District, ATTN: CESAM-PD-E, 109 Saint Joseph Street, P.O. Box 2288, Mobile, Alabama 36628-0001.

FOR FURTHER INFORMATION CONTACT: Mr. Glen Coffee at (205) 690-2729

Dated: June 1, 1993.

Lewis D. Walker,

Deputy Assistant Secretary of the Army (Environment, Safety and Occupational Health), OASA (IL&E).

[FR Doc. 93-13148 Filed 6-3-93; 8:45 am]

BILLING CODE 3710-08-M

Availability of Patent

AGENCY: U.S. Army Armament Research, Development and Engineering Center, DoD.

ACTION: Notice of availability.

SUMMARY: Department of the Army, U.S. Army Armament Research, Development and Engineering Center; announces the availability of non-exclusive, exclusive, or partially exclusive licensing of a patent application filed by the U.S. Army. Subject matter of the patent application relates to an aerodynamic apparatus which can effect the spin of a projectile in flight (or portion of the projectile), after the projectile is fired from a smooth bore cannon.

Patent application Serial Number 08/000,032, filed January 4, 1993, Docket DAR-49-91, entitled "Stabilizer For A Cannon Projectile", by Stewart Gilman and Anthony Farina. Licenses shall comply with 35 U.S.C. 209 and 27 CFR part 404.

FOR FURTHER INFORMATION CONTACT: For further information contact Mr. Edward Goldberg, Chief Patent Counsel, SMCAR-GLC, U.S. Army ARDEC, Picatinny Arsenal, NJ 07806-5000, telephone: Commercial (201) 724-6590, DSN 880-6590.

DATE: Written objections must be filed with the above address on or before July 6, 1993.

Kenneth L. Denton,

Army Federal Register Liaison Officer.

[FR Doc. 93-13120 Filed 6-3-93; 8:45 am]

BILLING CODE 3710-08-M

Defense Logistics Agency

Privacy Act of 1974; Amend a Record System

AGENCY: Defense Logistics Agency, DoD.

ACTION: Amend a record system.

SUMMARY: The Defense Logistics Agency proposes to amend an existing system of records notice subject to the Privacy Act of 1974 (5 U.S.C. 552a), as amended.

DATES: The amendment will be effective without further notice on July 6, 1993, unless comments are received that would result in a contrary determination.

ADDRESSES: Send comments to the Privacy Act Officer, Administrative Management Division, Office of Planning and Resource Management, Defense Logistics Agency Administrative Support Center, Room 5A120, Cameron Station, Alexandria, VA 22304-6100.

FOR FURTHER INFORMATION CONTACT: Ms. Susan Salus at (703) 617-7583.

SUPPLEMENTARY INFORMATION: The complete inventory of Defense Logistics Agency record system notices subject to the Privacy Act of 1974, as amended, may be obtained from the address listed above.

The amendments are not within the purview of subsection (r) of the Privacy Act (5 U.S.C. 552a), as amended, which requires the submission of an altered system report. The specific changes to the record system being amended are set forth below followed by the system notice as amended, in its entirety.

Dated: June 1, 1993.

L. M. Bynum,

Alternate OSD Federal Register Liaison Officer, Department of Defense.

S111.14 DLA-XA

SYSTEM NAME:

Personnel Roster/Locator Files, *(February 22, 1993, 58 FR 10855).*

CHANGES:

SYSTEM IDENTIFIER:

Delete entry and replace with 'S900.10 CA.'

* * * * *

CATEGORIES OF RECORDS IN THE SYSTEM:

Delete entry and replace with 'Records include name, Social Security Number, organizational assignment, home address and telephone number, grade/rank, position title and job series, and spouse or next-of-kin name and telephone numbers.

Security offices and police force records may also contain emergency medical and disability data, including information on special equipment or devices the individual requires, name and telephone number of medical practitioner, and medical alert data.'

* * * * *

AUTHORITY FOR MAINTENANCE OF THE SYSTEM:

Delete and replace with '5 U.S.C. 301, (Powers); 10 U.S.C. 136 (Assistant Secretaries of Defense); 10 U.S.C. Chapter 31 (Personnel); and E.O. 9397.'

* * * * *

PURPOSE(S):

Add at end 'Medical and disability data is used by security and police officers to identify and locate individuals during medical emergencies, facility evacuations, and similar threat situations.'

* * * * *

ROUTINE USES OF RECORDS MAINTAINED IN THE SYSTEM, INCLUDING CATEGORIES OF USERS AND THE PURPOSES OF SUCH USES:

Add at end "Security and police officers may relay medical and disability data to emergency medical treatment personnel, local fire fighters, and similar groups responding to calls for emergency assistance."

* * * * *

S900.10 CA

SYSTEM NAME:

Personnel Roster/Locator Files.

SYSTEM LOCATION:

Headquarters, Defense Logistics Agency, Cameron Station, Alexandria, VA 22304–6100, and the DLA Primary Level Field Activities (PLFAs). Official mailing addresses are published as an appendix to DLA's compilation of systems of records notices.

CATEGORIES OF INDIVIDUALS COVERED BY THE SYSTEM:

Civilian employees and military personnel of the DLA activity where records are maintained.

CATEGORIES OF RECORDS IN THE SYSTEM:

Records include name, Social Security Number, organizational assignment, home address and telephone number, grade/rank, position title and job series, and spouse or next-of-kin name and telephone numbers. Security offices and police force records may also contain emergency medical and disability data, including information on special equipment or devices the individual requires, name and telephone number of medical practitioner, and medical alert data.

AUTHORITY FOR MAINTENANCE OF THE SYSTEM:

5 U.S.C. 301, (Powers); 10 U.S.C. 136 (Assistant Secretaries of Defense); 10 U.S.C. Chapter 31 (Personnel); and E.O. 9397.

PURPOSE(S):

To notify DLA personnel of the arrival of visitors, to plan social functions, recall personnel to duty station when required, for use in emergency notification, and to perform relevant functions/requirements/actions consistent with managerial functions.

Medical and disability data is used by security and police officers to identify and locate individuals during medical emergencies, facility evacuations, and similar threat situations.

ROUTINE USES OF RECORDS MAINTAINED IN THE SYSTEM, INCLUDING CATEGORIES OF USERS AND THE PURPOSES OF SUCH USES:

Security and police officers may relay medical and disability data to emergency medical treatment personnel, local fire fighters, and similar groups responding to calls for emergency assistance.

The 'Blanket Routine Uses' set forth at the beginning of DLA's compilation of systems of records notices apply to this system.

POLICIES AND PRACTICES FOR STORING, RETRIEVING, ACCESSING, RETAINING, AND DISPOSING OF RECORDS IN THE SYSTEM:

STORAGE:

Paper records in file folders, card files, and some on magnetic tape or disk.

RETRIEVABILITY:

Alphabetically by name, by organization, or grade/rank.

SAFEGUARDS:

Records are accessible only to authorized DLA personnel.

RETENTION AND DISPOSAL:

Records are destroyed upon termination/departure of DLA personnel or upon preparation of new locator cards/rosters.

SYSTEM MANAGER(S) AND ADDRESS:

Heads of HQ DLA principal staff elements and Heads of DLA field activities which maintain locator/roster files. Official mailing addresses are published as an appendix to DLA's compilation of systems of records notices.

NOTIFICATION PROCEDURE:

Individuals seeking to determine whether information about themselves is contained in this system should address written inquiries to the Heads of HQ DLA principal staff elements and heads of DLA field activities which maintain locator files. Official mailing addresses are published as an appendix to DLA's compilation of systems of records notices.

Individuals must provide full name, name of DLA activity and specific office at which employed.

RECORD ACCESS PROCEDURES:

Individuals seeking access to information about themselves contained in this system should address written inquiries to the Heads of HQ DLA principal staff elements and heads of DLA field activities which maintain locator/roster files. Official mailing addresses are published as an appendix to DLA's compilation of systems of records notices.

Request should contain full name, current address and telephone number of the individual. For personal visits, the individual should be able to provide some acceptable identification; that is, driver's license or DLA identification card.

CONTESTING RECORD PROCEDURES:

The DLA rules for accessing records and for contesting contents and appealing initial agency determinations are published in DLA Regulation 5400.21; 32 CFR part 323; or may be obtained from the system manager.

RECORD SOURCE CATEGORIES:

Individuals, upon assignment to DLA, and when changes occur.

EXEMPTIONS CLAIMED FOR THE SYSTEM:

None.

[FR Doc. 93–13164 Filed 6–4–93; 8:45 am]
BILLING CODE 5000–04–F

DEPARTMENT OF EDUCATION

Proposed Information Collection Requests

AGENCY: Department of Education.

ACTION: Notice of proposed information collection requests.

SUMMARY: The Director, Information Resources Management Service, invites comments on the proposed information collection requests as required by the Paperwork Reduction Act of 1980.

DATES: Interested persons are invited to submit comments on or before July 6, 1993.

ADDRESSES: Written comments should be addressed to the Office of Information and Regulatory Affairs, Attention: Dan Chenok: Desk Officer, Department of Education, Office of Management and Budget, 726 Jackson Place, NW., room 3208, New Executive Office Building, Washington, DC 20503. Requests for copies of the proposed information collection requests should be addressed to Cary Green, Department of Education, 400 Maryland Avenue, SW., Room 4682, Regional Office Building 3, Washington, DC 20202–4651.

FOR FURTHER INFORMATION CONTACT: Cary Green (202) 401–3200. Individuals who use a telecommunications device for the deaf (TDD) may call the Federal Information Relay Service (FIRS) at 1–800–877–8339 between 8 a.m. and 8 p.m., Eastern time, Monday through Friday.

SUPPLEMENTARY INFORMATION: Section 3517 of the Paperwork Reduction Act of 1980 (44 U.S.C. chapter 35) requires that the Office of Management and Budget (OMB) provide interested Federal agencies and the public an early opportunity to comment on information

collection requests. OMB may amend or waive the requirement for public consultation to the extent that public participation in the approval process would defeat the purpose of the information collection, violate State or Federal law, or substantially interfere with any agency's ability to perform its statutory obligations. The Director of the Information Resources Management Service, publishes this notice containing proposed information collection requests prior to submission of these requests to OMB. Each proposed information collection, grouped by office, contains the following: (1) Type of review requested, e.g., new, revision, extension, existing or reinstatement; (2) Title; (3) Frequency of collection; (4) The affected public; (5) Reporting burden; and/or (6) Recordkeeping burden; and (7) Abstract. OMB invites public comment at the address specified above. Copies of the requests are available from Cary Green at the address specified above.

Dated: May 28, 1993.

Cary Green,

Director, Information Resources Management Service.

Office of Postsecondary Education

Type of Review: Revision.
Title: Institutional Payment Summary (IPS) and Pre-Award IPS.
Frequency: Quarterly.
Affected Public: Businesses or other for-profit; non-profit institutions; small businesses or organizations.
Reporting Burden:
Responses: 6,500.
Burden Hours: 60,450.
Recordkeeping Burden:
Recordkeepers: 6,500.
Burden Hours: 2,925.
Abstract: This form is used by higher education institutions to report cumulative payment data for students eligible to receive a Pell Grant. The Department uses this information to determine adjustments to an institution's Pell Grant funding level and to monitor the disbursement of Federal dollars to eligible student applicants.

[FR Doc. 93–13117 Filed 6–3–93; 8:45 am]

BILLING CODE 4000–01–M

DEPARTMENT OF ENERGY

Financial Assistance Award; Intent To Award a Grant to Society of Petroleum Engineering

AGENCY: Department of Energy (DOE).

ACTION: Notice of noncompetitive financial assistance award.

SUMMARY: The Department of Energy (DOE) announces that pursuant to 10 CFR 600.6(a)(5), it is making a financial assistance award based on the criteria of 10 CFR 600.7(b)(2)(i)(B). This award will be made under Grant Number DE–FG01–93FE62861 to Society of Petroleum Engineers.

SCOPE: The Department of Energy has determined in accordance with 10 CFR 600.7(b)(2)(i)(B) that Society of Petroleum Engineering would conduct the conference using third party funding; however, DOE's support of that activity would enhance the public benefits to be derived and DOE knows of no other entity which is planning or conducting such a project.

FOR FURTHER INFORMATION CONTACT:

U.S. Department of Energy, Office of Placement & Administration, ATTN: Norma Alexander, 1000 Independence Avenue, SW., Washington, DC 20585.

SUPPLEMENTARY INFORMATION: The financial assistance will provide support of SPE/EPA Exploration and Production Environmental Conference. The conference will benefit the public by bringing together production engineers, environmental managers, and other industrial leaders involved in oil and gas operations. Knowledge gathered in the conference will provide valuable information in waste management, pollution prevention, spill containment, reclamation, water treatment and disposal, soil and groundwater monitoring and remediation, environmental training for engineers, air emissions, emergency response planning & training, responsibility systems, emerging and innovative technologies, and environmental management. DOE's support will enhance the public benefits by increasing the cooperative information exchange among key DOE and other participants. The total estimated cost of the conference is $25,000. The balance of the funds will come from the Society of Petroleum Engineers, the American Petroleum Institute EPA, and other firms. The period of performance is twelve months from the date of award.

Scott Sheffield,

Acting Director, Division "B", Office of Placement & Administration.

[FR Doc. 93–13223 Filed 6–3–93; 8:45 am]

BILLING CODE 6450–01–M

Transmittal of Mined Geologic Disposal System (MGDS) Annotated Outline for the Preparation of a License Application, Revision 2, to U.S. Nuclear Regulatory Commission (NRC)

AGENCY: Department of Energy.

ACTION: Notice.

SUMMARY: The Department of Energy (DOE) transmitted the Mined Geologic Disposal System (MGDS) Annotated Outline for the Preparation of a License Application, Revision 2, dated May 28, 1993, to the NRC for information and guidance. The annotated outline process is the basis for developing a license application, if any, for the MGDS program. The annotated outline process is iterative, with revisions to be developed in consultation with the NRC.

FOR FURTHER INFORMATION CONTACT: For further information and to obtain a copy of the annotated outline, contact Corinne Macaluso, RW–331, Office of the Civilian Radioactive Waste Management, U.S. Department of Energy, 1000 Independence Avenue, SW., Washington, DC 20585, (202) 586–2837.

Issued in Washington, DC, on May 28, 1993.

Lake H. Barrett,

Acting Director, Office of Civilian Radioactive Waste Management.

[FR Doc. 93–13226 Filed 6–3–93; 8:45 am]

BILLING CODE 6450–01–M

DOE Response to Recommendation 93–2 of the Defense Nuclear Facilities Safety Board Concerning the Need for Critical Experiment Capability

AGENCY: Department of Energy.

ACTION: Notice and request for public comment.

SUMMARY: Pursuant to section 315(b) of the Atomic Energy Act of 1954, as amended, 42 U.S.C. 2286d(b), the Department of Energy (DOE) hereby publishes notice of a response of the Secretary of Energy (Secretary) to Recommendation 93–2 of the Defense Nuclear Facilities Board, published in the **Federal Register** on March 30, 1993, (58 FR 16654) concerning the need for critical experiment capability.

DATES: Comments, data, views, or arguments concerning the Secretary's response are due on or before July 6, 1993.

ADDRESSES: Send comments, data, views, or arguments concerning the Secretary's response to: Defense Nuclear Facilities Safety Board, 625 Indiana Avenue NW., suite 700, Washington, DC 20004.

FOR FURTHER INFORMATION CONTACT: Mr. Donald F. Knuth, Deputy Assistant Secretary for Operations, Defense Programs, Department of Energy, 1000 Independence Avenue SW., Washington, DC 20585.

Issued in Washington, DC, on May 28, 1993.

Mark B. Whitaker,

Acting Departmental Representative to the Defense Nuclear Facilities Safety Board.

May 12, 1993.

The Honorable John T. Conway, Chairman, *Defense Nuclear Facilities Safety Board, 625 Indiana Avenue, NW., Suite 700, Washington, DC 20004.*

Dear Mr. Conway: Your letter of March 23, 1993, forwarded the Defense Nuclear Facilities Safety Board's Recommendation 93–2 concerning the Department's nuclear criticality experiments program. We agree with the Board that it is important to improve and maintain a criticality control information base, especially to support future situations that may be encountered in handling, processing, and storing or disposing of fissionable material. We recognize that it is necessary to retain a cadre of individuals competent in practicing criticality control and safety. The Department also agrees that it is important to continue an experimental program of general purpose critical experiments and to continue an education program for criticality safety professionals.

As part of the Department's efforts to retain its program of general purpose criticality experiments, we recognize the need to coordinate the criticality program among the various users. The Department will perform a criticality needs assessment with respect to the defense nuclear facilities to determine the scope of current and future requirements for criticality experiments, predictability, and training. The assessment will be reviewed and used by our technical staff to develop an Implementation Plan that will define and implement needed improvements to the criticality experiments, predictability, and training program.

Based on the above, the Department accepts the Board's recommendation, with the recognition that mission requirements and program funding after fiscal year 1994 have not yet been identified. Recommendation 93–2 and future landlord issues will be revisited as part of our internal budget and planning processes for fiscal year 1995. We will keep you apprised of our activities in these areas.

The Office of Defense Programs, in consultation with the other applicable program offices, will develop the Department's Implementation Plan for Recommendation 93–2. We will submit this plan to the Board no later than August 10, 1993.

Sincerely,

Hazel R. O'Leary.

[FR Doc. 93–13225 Filed 6–3–93; 8:45 am]

BILLING CODE 6450–01–M

Office of Fossil Energy

[FE Docket No. 93–43–NG]

Sonat Marketing Co.; Application for Blanket Authorization To Export Natural Gas to Mexico

AGENCY: Office of Fossil Energy, DOE.

ACTION: Notice of application.

SUMMARY: The Office of Fossil Energy (FE) of the Department of Energy (DOE) gives notice of receipt on April 30, 1993, of an application filed by Sonat Marketing Company (Sonat) requesting blanket authorization to export up to 100 Bcf of natural gas to Mexico over a two-year period beginning with the date of first delivery of the exported volumes. Sonat states it would use existing pipeline facilities to transport the gas and would advise DOE of the date of first delivery and submit quarterly reports detailing each transaction.

The application is filed under section 3 of the Natural Gas Act (NGA) and DOE Delegation Order Nos. 0204–111 and 0204–127. Protests, motions to intervene, notices of intervention, and written comments are invited.

DATES: Protests, motions to intervene or notices of intervention, as applicable, requests for additional procedures, and written comments are to be filed at the address listed below no later than 4:30 p.m., eastern time, July 6, 1993.

ADDRESSES: Office of Fuels Programs, Fossil Energy, U.S. Department of Energy, Forrestal Building, room 3F–056, FE–50, 1000 Independence Avenue, SW., Washington, DC 20585, (202) 586–9478.

FOR FURTHER INFORMATION CONTACT:

Stanley C. Vass, Office of Fuels Programs, Fossil Energy, U.S. Department of Energy, Forrestal Building, room 3H–087, FE–53, 1000 Independence Avenue, SW. Washington, DC 20585, (202) 586–9482.

Lot Cooke, Office of Assistant General Counsel for Fossil Energy, U.S. Department of Energy, Forrestal Building, room 6E–042, GC–14, 1000 Independence Avenue, SW., Washington, DC 20585, (202) 586–6667.

SUPPLEMENTARY INFORMATION: Sonat is a Delaware corporation with its principal place of business in Birmingham, Alabama. Sonat is also a marketer of natural gas and a wholly owned, indirect subsidiary of Sonat, Inc. Sonat would export the gas purchased from U.S. suppliers under short-term and spot market transactions, either on its own behalf or as the agent for others. All sales would result from arms-length negotiations and the prices would be competitive. The requested authorization does not involve the construction of new pipeline facilities.

Sonat's export application will be reviewed under section 3 of the NGA and the authority contained in DOE Delegation Order Nos. 0204–111 and 0204–127. In deciding whether the proposed export is in the public interest, domestic need for the natural gas will be considered, and any other issue determined to be appropriate, including whether the arrangement is consistent with DOE policy of promoting competition in the natural gas marketplace by allowing commercial parties to freely negotiate their own trade arrangements. Parties, especially those that may oppose this application, should comment on these matters as they relate to the requested export authority. Sonat asserts there is no current need for the domestic gas that would be exported under the proposed arrangement. Parties opposing this application bear the burden of overcoming this assertion.

NEPA Compliance

The National Environmental Policy Act (NEPA), 42 U.S.C. 4321 *et seq.*, requires DOE to give appropriate consideration to the environmental effects of its proposed actions. No final decision will be issued in this proceeding until DOE has met its NEPA responsibilities.

Public Comment Procedures

In response to this notice, any person may file a protest, motion to intervene or notice of intervention, as applicable, and written comments. Anyone who wants to become a party to the proceeding and have their written comments considered as the basis for any decision on the application must, however, file a motion to intervene or notice of intervention, as applicable. The filing of a protest with respect to this application will not serve to make the protestant a party to the proceeding, although protests and comments received from persons who are not parties will be considered in determining the appropriate action to be taken on the application. All protests, motions to intervene, notices of intervention, and written comments must meet the requirements that are specified by the regulations in 10 CFR

part 590. Protests, motions to intervene, notices of intervention, requests for additional procedures, and written comments should be filed with the Office of Fuels Programs at the address listed above.

It is intended that a decisional record will be developed on the application through responses to this notice by parties, including the parties' written comments and replies thereto. Additional procedures will be used as necessary to achieve a complete understanding of the facts and issues. A party seeking intervention may request that additional procedures be provided, such as additional written comments, an oral presentation, a conference, or trial-type hearing. Any request to file additional written comments should explain why they are necessary. Any request for an oral presentation should identify the substantial question of fact, law, or policy at issue, show that it is material and relevant to a decision in the proceeding, and demonstrate why an oral presentation is needed. Any request for a conference should demonstrate why the conference would materially advance the proceeding. Any request for a trial-type hearing must show that there are factual issues genuinely in dispute that are relevant and material to a decision and that a trial-type hearing is necessary for full and true disclosure of the facts.

If an additional procedure is scheduled, notice will be provided to all parties. If no party requests additional procedures, a final opinion and order may be issued based on the official record, including the application and responses filed by parties pursuant to this notice, in accordance with 10 CFR 590.316

A copy of Sonat's application is available for inspection and copying in the Office of Fuels Programs Docket Room, 3F–056 at the above address. 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, May 27, 1993.

Clifford P. Tomaszewski,

Director, Office of Natural Gas, Office of Fuels Programs, Office of Fossil Energy.

[FR Doc. 93–13224 Filed 6–3–93; 8:45 am]

BILLING CODE 6450–01–M

Office of Hearings and Appeals

Change in Filing Deadline in Special Refund Proceeding No. HEF–0591 Involving Atlantic Richfield Co.

AGENCY: Office of Hearings and Appeals Department of Energy.

ACTION: Notice of extension of time for filing Applications for Refund in Special Refund Proceeding No. HEF–0591, Atlantic Richfield Company

SUMMARY: The Office of Hearings and Appeals of the Department of Energy (DOE) has extended the deadline for filing Applications for Refund from the escrow account established pursuant to a consent order entered into between the DOE and the Atlantic Richfield Company (ARCO). The procedures for filing claims from this escrow account were established in Special Refund Proceeding No. HEF–0591. The previous deadline was July 31, 1991. The new final deadline is Friday, December 3, 1993.

FOR FURTHER INFORMATION CONTACT: William Max Yano, Department of Energy, Office of Hearings and Appeals, 1000 Independence Avenue, SW., Washington, DC. 20585 (202) 586–6602.

SUPPLEMENTARY INFORMATION: On January 28, 1988, the Office of Hearings and Appeals of the Department of Energy issued a Decision and Order setting forth final refund procedures to distribute the monies in the oil overcharge escrow account established in accordance with the terms of a consent order entered into by the Department of Energy and the Atlantic Richfield Company (ARCO). See Atlantic Richfield Co., 17 DOE ¶ 85,069, 53 FR 3254 (Feb. 4, 1988). August 31, 1988 was the original deadline for filing refund applications by any purchasers of ARCO's refined petroleum products. 17 DOE at 88,155, 53 FR at 3261. That deadline was subsequently extended in various stages to Wednesday, July 31, 1991. See 53 FR 34830 (Sept. 8, 1988); 55 FR 10284 (Mar. 20, 1990); 56 Fed. Reg. 28402 (May 31, 1991).

We have received approximately 14,000 applications since this proceeding began. Of these, more than ten percent, over 1,500 applications, have been received since the expiration of the July 31, 1991 deadline. We have carefully considered the situation. We believe that, in the interest of fulfilling our Congressional mandate of completing the refund process and of administrative efficiency, a final deadline should be set for all new filings in this proceeding. Accordingly, the final deadline for applications in the ARCO Subpart V Special Refund Proceeding will be a postmark date of Friday, December 3, 1993. Any Applications in the ARCO Subpart V Special Refund Proceeding postmarked after the final deadline date of Friday, December 3, 1993 are subject to summary dismissal without further notice or opportunity for supplemental submissions.

Dated: May 27, 1993.

George B. Breznay

Director, Office of Hearings and Appeals.

[FR Doc. 93–13079 Filed 6–3–93; 8:45 am]

BILLING CODE 6450–01–M

Federal Energy Regulatory Commission

[Docket No. CP88–105–000]

Yukon Pacific Co. L.P.; Meetings on Environmental Issues

May 28, 1993.

The Office of Pipeline and Producer Regulation staff will conduct meetings with the U.S. Army Corps of Engineers, the Joint Pipeline Office, other Federal and Alaska state agencies, Alyeska Pipeline Service Company, Yukon Pacific Company L.P. and others. The purpose of the meetings will be to discuss environmental issues identified in the draft environmental impact statement for the Yukon Pacific LNG Project.

The meetings will be conducted at various times throughout June 8–11, 1993 in Anchorage and Valdez, Alaska. These are in addition to the June 8 and June 10 public meetings identified in the May 19, 1993 Notice.

Lois D. Cashell,

Secretary.

[FR Doc. 93–13131 Filed 6–3–93; 8:45 am]

BILLING CODE 6717–01–M

[Project Nos. 8221–038, et al.]

Hydroelectric Applications [Alaska Energy Authority, et al.]; Applications

Take notice that the following hydroelectric applications have been filed with the Commission and are available for public inspection:

1a. Type of Application: Proposed Permit to Use Rock Quarry.

b. Project No: 8221–038.

c. Date Filed: April 15, 1993.

d. Applicant: Alaska Energy Authority.

e. Name of Project: Bradley Lake Project.

f. Location: Kenai Peninsula Borough, Alaska.

g. Filed Pursuant to: Federal Power Act, 16 U.S.C. Sec. 791(a)–825(r).

h. Applicant Contact: Mr. Tom Arminski, Alaska Energy Authority, P.O. Box 190869, Anchorage, AK 99519–0869, (907) 561–7877.

i. FERC Contact: Dan Hayes, (202) 219–2660.

j. Comment Date: July 5, 1993.

k. Description of Project: Alaska Energy Authority proposes to permit a private contractor to use an existing quarry site at its Bradley Lake hydroelectric project for a quarry operation. The quarry operation would involve blasting activities. The quarry site is located 25 miles northwest of Homer, and lies along the east edge of the main Dam Access Road between the project powerhouse and damsite.

l. This notice also consists of the following standard paragraphs: B, C1, and D2.

2a. Type of Application: Preliminary Permit.

b. Project No: 11415–000.

c. Date filed: May 7, 1993.

d. Applicant: Rock Creek Hydroelectric Company.

e. Name of Project: Rock Creek Hydroelectric Project.

f. Location: On Rock Creek, near the town of Woodland, in Cowlitz County. Washington. Sections 16, 17, and 20 in R3E, T6N.

g. Filed Pursuant to: Federal Power Act, 16 U.S.C. 791(a)–825(r).

h. Applicant Contact: Mr. Bret A. Barrish, Rock Creek Hydroelectric Company, 1004 S.E. 97th Avenue, Vancouver, Washington, 98664.

i. FERC Contact: Mr. Michael Strzelecki, (202) 219–2827.

j. Comment Date: July 22, 1993.

k. Description of Project: The proposed project would consist of: (1) a primary intake structure on Rock Creek; (2) a 42-inch-diameter, 11,025-foot-long main penstock; (3) a secondary intake structure on an unnamed tributary of Rock Creek; (4) and 18-inch-diameter, 400-foot-long penstock connecting the secondary intake structure with the main penstock; (5) a powerhouse containing one generating unit with an installed capacity of 2,400 kW; (6) a 1,580-foot-long transmission line interconnecting with an existing Pacific Power & Light transmission line; and (7) appurtenant facilities.

No new access roads will be needed to conduct the studies. The approximate cost of the studies would be $10,000.

l. This notice also consists of the following standard paragraphs: A5, A7, A9, A10, B, C, and D2.

3a. Type of Application: Amendment to an Exemption.

b. Project No.: 7809–007.

c. Date Filed: 11/18/91.

d. Applicant: Emerson Falls Hydro, Inc.

e. Name of Project: Emerson Falls Hydro Project.

f. Location: On Sleepers River, near the City of St. Johnsbury, Caledonia County, Vermont.

g. Filed Pursuant to: Federal Power Act, 16 U.S.C. 791(a)–825(r).

h. Applicant Contact: Robert F. Desrochers, President, Emerson Falls Hydro, Inc., RD 2, Box 66, St. Johnsbury, VT 05819, Telephone: (802) 748–8094.

i. FERC Contact: Mohamad Fayyad, (202) 219–2665.

j. Comment Date: July 7, 1993.

k. Description of Amendment: The exemptee proposes to amend the authorized normal water surface elevation at the diversion dam by increasing it from 639.5 feet msl to 640.5 feet msl. The exemptee proposes to maintain 1-foot-high timbers along the crest of the diversion dam. The exemptee says the historical water surface elevation at the site was higher than 640.5 feet msl.

l. This notice also consists of the following standard paragraphs: B, C1, and D2.

4a. Type of Application: Revised Exhibits A and G.

b. Project No.: 10359–005.

c. Date Filed: March 24, 1993.

d. Applicant: Snoqualmie River Hydro.

e. Name of Project: Youngs Creek.

f. Location: The project is located about 4 miles south of the Town of Sultan, Snohomish County, Washington, on the Youngs Creek.

g. Filed pursuant to: Federal Power Act, 16 U.S.C. § 791(a)–825(r).

h. Applicant Contact: Lon G. Covin, Vice President, Hydro West Group, Inc., 1422 130th Avenue N.E., Bellevue, Washington 98005, (206) 455–0234.

i. FERC Contact: Buu T. Nguyen, (202) 219–2913.

j. Comment Date: July 5, 1993.

k. Description of Application: The applicant proposed to revise the transmission line route to follow existing county roads and cross the Skykomish River by attaching the line to the existing bridge on J. Mann Road. The applicant also proposed to bury the transmission line, rather than attach it to the wood poles, and upgrade the line from 12.5 kV to 34.5 kV.

l. This notice also consists of the following standard paragraphs: B, C1, and D2.

5a. Type of Application: Surrender of Exemption (5MW or Less).

b. Project No.: 10690–003.

c. Date Filed: May 10, 1993.

d. Applicant: PacifiCorp.

e. Name of Project: Fountain Green Hydroelectric Project.

f. Location: On Big Springs in Sanpete County, Utah.

g. Filed Pursuant to: Federal Power Act 16 U.S.C. 791(a)–825(r).

h. Applicant Contact: Mr. S.A. DeSousa, PacifiCorp, 920 S.W. Sixth Avenue, Portland, Oregon 97204, (503) 464–5000.

i. FERC Contact: Etta Foster, (202) 219–2679.

j. Comment Date: July 7, 1993.

k. Description of Proposed Action: The project for which the exemption is being surrendered consists of: (1) an existing earthfill 25-foot-high, 160-foot-long dam; (2) an existing reservoir with a surface area of 0.5 acre and a storage capacity of 3 acre-feet; (3) an existing 20 to 22 inch, 6,064-foot-long conduit and an existing 12 to 20 inch, 70-foot-long conduit; (4) an existing powerhouse containing two generating units rated at 160 kW each; (5) an existing 230-foot-long, 46-kV transmission line; and (6) appurtenant facilities.

The exemptee is requesting surrender of its exemption because the refurbishment of the inoperable Unit No. 2 is not economically feasible.

l. This notice also consists of the following standard paragraphs: B, C1, and D2.

6a. Type of Application: Amendment of License.

b. Project No: 2266–039.

c. Date Submitted: November 17, 1992.

d. Applicant: Nevada Irrigation District.

e. Name of Project: Yuba Bear Project.

f. Location: Milton Reservoir on the Middle Yuba River in Nevada County, California.

g. Filed Pursuant to: Section 23(b) of the Federal Power Act, 16 U.S.C. 817(b).

h. Applicant Contact: Richard Eckenburg, Nevada Irrigation District, 28311 Secret Town Road, Colfax, CA 95713, (916) 273–8571.

i. FERC Contact: Steve Hocking (202) 219–2656.

j. Comment Date: July 12, 1993.

k. Description of Project: The licensee wishes to temporarily drain Milton Reservoir in order to perform repairs to Milton Dam. Minimum flows below the dam would be reduced from 5 cubic feet per second (cfs) to 3 cfs during the reservoir's low water period. The approximate dates for the drawdown are from July 30 to September 1, 1993. The U.S. Forest Service and the California Department of Fish and Game are using this opportunity to dredge the eastern end of the reservoir to improve fish habitat. Dredged materials will be transported to the Jackson Meadows Reservoir borrow pit, dumped, graded, and seeded to provide a day-use picnic area.

l. This notice also consists of the following standard paragraphs: B, C2, and D2.

7 a. Type of Application: New Major License.

b. Project No.: Project No. 2466–002.
c. Date Filed: December 13, 1991.
d. Applicant: Appalachian Power Company.
e. Name of Project: Niagara.
f. Location: The Niagara Project is located on the Roanoke River in Roanoke County, Virginia.
g. Filed Pursuant to: Federal Power Act, 16 U.S.C. 791(a)–825(r).
h. Applicant Contact: B.H. Bennett, Assistant Vice President, American Electric Power, Service Corporation, 1 Riverside Plaza, Columbus, OH 43215, (614) 223–2930.
i. FERC Contact: Hector M. Perez (202) 219–2843.
j. Comment Date: Sixty days from the date of this notice. (July 19, 1993)
k. Status of Environmental Analysis: This application is ready for environmental analysis at this time—see attached paragraph D10.
l. The project consists of: (1) A 52-foot-high, 452-foot-long concrete dam; (2) a reservoir of about 85 acres; (3) a powerhouse with an installed capacity of 2,400 kW; (4) a transmission line connection; and (5) other appurtenances.
m. Purpose of the Project: Power generated at the project is distributed to the customers of Appalachian Power Company.
n. This notice also consists of standard paragraphs D10.
o. Available copies of the 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, N.E., Room 3104, Washington, D.C. 20426 or by calling (202) 208–1371. A copy is also available for inspection and reproduction at the address specified in item h above.

8a. Type of Application: Minor License.
b. Project No.: 11300–000.
c. Date filed: June 3, 1992.
d. Applicant: Commonwealth Power Company.
e. Name of Project: LaBarge Project.
f. Location: On the Thornapple River, near Caledonia, Kent County, Michigan.
g. Filed Pursuant to: Federal Power Act 16 U.S.C. 791(a)–825(r).
h. Applicant Contact: Mr. Gerald T. Evans, P.O. Box 6788, Grand Rapids, MI 49516–6788, (616) 949–7325.
i. FERC Contact: Mary C. Golato (202) 219–2804.
j. Deadline Date: July 19, 1993.
k. Status of Environmental Analysis: This application has been accepted for filing but is not ready for environmental analysis at this time—see attached paragraph D8.
l. Description of Project: The existing operating project consists of an existing dam 30 feet high; an uncontrolled ogee spillway with a crest length of 116 feet; two taintor gates each 20 feet wide by 10 feet high; an existing powerhouse containing two existing turbine-generating units with a total installed capacity of 800 kilowatts; an existing 25-foot, 2,400-kilovolt transmission line; and appurtenant facilities. The owner of the dam is the Commonwealth Power Company.
m. Purpose of the Project: All project energy generated would be utilized by the applicant for sale.
n. This notice also consists of the following standard paragraphs: A2, A9, B1, and D8.
o. 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) 219–1371. A copy is also available for inspection and reproduction at Mr. Gerald T. Evans, P.O. Box 6788, Grand Rapids, MI 49516–6788.

9a. Type of Application: Change in Land Rights and Revised Project Boundary.
a. Project No.: 739–005.
b. Project No.: 739–005.
c. Date Filed: April 27, 1992.
d. Applicant: Appalachian Power Company.
e. Name of Project: Claytor Project.
f. Location: On Claytor Lake in Pulaski County, Hiwassee, Virginia.
g. Filed Pursuant to: Federal Power Act, 16 U.S.C. 791(a)–825(r).
h. Applicant Contact: Robert W. Harmon, Senior Attorney, American Electric Power Service Corporation, 1 Riverside Plaza, Columbus, OH 43215, (614) 223–1638.
i. FERC Contact: John K. Hannula, (202) 219–1040.
j. Comment Date: July 12, 1993.
k. Description of Project: The Appalachian Power Company, licensee for the Claytor Project, filed an application to lease approximately 8.0 acres of project land to the Virginia Department of Conservation and Recreation (VDCR). The land leased to the VDCR will be used as a recreation area for the New River Trail State Park which is a part of the "Rails to Trails" (bike trail) program.

The licensee also requests authorization to remove about 1.5 acres of abutting land from the project boundary.
l. This notice also consists of the following standard paragraphs: B, C1, and D2.

10a. Type of Application: Minor License.
b. Project No.: 11264–000.
c. Date filed: March 6, 1992.
d. Applicant: Turbine Industries, Inc.
e. Name of Project: Coolemee Dam Hydro Project.
f. Location: On the South Fork of the Yadkin River, Davie County, North Carolina.
g. Filed Pursuant to: Federal Power Act 16 U.S.C. 791(a)–825(r).
h. Applicant Contact: Mr. George S. Cook, Turbine Industries, Inc., 5312 Groometown Road, Greensboro, North Carolina 27407, (919) 294–9995.
i. FERC Contact: Mary Golato (202) 219–2804.
j. Deadline Date: See Paragraph D10. (July 20, 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 facilities would consists of: (1) an existing dam 500 feet long and 12 feet high; (2) an existing reservoir with a surface area of 20 acres at a spillway crest elevation of 658 feet mean sea level and a gross storage capacity of 56 acre-feet; (3) two existing penstocks 8 feet in diameter and 84 and 150 feet long, respectively; (4) an existing powerhouse containing two turbine-generator units having a total capacity of 1,400 kilowatts; (5) a proposed 150-foot-long, 2.4-kilovolt transmission line; and (6) appurtenant facilities. The applicant estimates that the cost of the project is $250,000. The average annual generation will be approximately 6.2 gigawatthours. The dam is owned by Turbine Industries, Inc.
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 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. George S. Cook, 5312 Groometown Road, Greensboro, North Carolina 27407 (919) 294–9995.

11a. Type of Application: New Major License.

b. Project No.: 2357–003.
c. Date Filed: October 21, 1991.
d. Applicant: Wisconsin Electric Power Company.
e. Name of Project: White Rapids Project.
f. Location: On the Menominee River in Menominee County, Michigan and Marinette County, Wisconsin.
g. Filed Pursuant to: Federal Power Act, 16 U.S.C. 791(a)–825(r).
h. Applicant Contact: Mr. Richard G. Fuller, Wisconsin Electric Power Company, 1401 South Carpenter Avenue, Iron Mountain, MI 49802, (906) 779–2484.
i. FERC Contact: Ed Lee (202) 219–2809.
j. Deadline Date: See paragraph D9. (July 20, 1993)
k. Status of Environmental Analysis: This application has been accepted for filing and is ready for environmental analysis at this time—see attached paragraph D9.
l. Description of Project: The project as licensed consists of the following: (1) a 240 foot long earth dike, located at the left end of the dam when facing downstream, with a crest elevation of 722.8 feet NGVD and a minimum crest width of 16 feet, constructed of clay and gravel fill with a concrete core approximately 75 feet long; (2) a 480 foot long earth dike, located at the right end of the dam when facing downstream, with a crest 12 feet wide and an elevation of 723.4 feet NGVD, constructed of clay and gravel fill with a sheet pile cutoff wall driven to bedrock, a title drainage system, and a concrete corewall; (3) a reservoir with a surface area of 435 acres and a total volume of 5,155 acre-feet at the normal maximum elevation of 716.5 feet NGVD; (4) a reinforced concrete spillway on bedrock with a crest elevation of 701.4 feet NGVD containing (a) nine 15.5 foot high by 24 foot wide Tainter gates, operated by two mobile electric hoists, (b) a 6 foot wide fish sluice, located on the right end of the spillway, nonoperational since 1949, and (c) a stilling pool and flexible apron located downstream from the spillway; (5) a powerhouse with a reinforced concrete substructure on bedrock, 133 feet long by 72 feet wide, and a steel frame brick superstructure, 36 feet high, containing (a) 35-ton crane, running overhead on rails, (b) a restroom with holding tank for waste water, (c) three S. Morgan Smith, vertical-shaft, Francis type turbines rated at 4,385 hp, 4,385 hp and 3,100 hp and (d) three General Electric 2,300 V, three phase, 60 cycle generators rated at 3,000 kW, 3,000 kW and 2,000 kW; (6) a transmission system containing (a) one 3 phase, 10,500 kVA, 60 cycle, oil filled transformer (b) switch gears, along with associated metering and protection equipment (c) a 0.28 mile, 138 kV, transmission line consisting of one 3 phase circuit of 4/0 ACSR conductors. No changes are being proposed for this new license. The applicant estimates the average annual generation for this project would be 41,461 MWH. The dam and existing project facilities are owned by the applicant.
m. Purpose of Project: Project power would be utilized by the applicant for sale to its customers.
n. This notice also consists of the following standard paragraphs: A4 and D9.
o. Available Location of Application: A copy of the application, as amended and supplemented, is available for inspection and reproduction at the Commission's Public Reference and Files Maintenance Branch, located at 941 North Capitol Street, NE., Room 3104, Washington, DC., 20426, or by calling (202) 208–1371. A copy is also available for inspection and reproduction at Wisconsin Electric Power Company, 1401 South Carpenter Avenue, Iron Mountain, MI 49802 or by calling (906) 779–2484.

12a. Type of Application: Exemption for small conduit hydroelectric facility.
b. Project No.: 11412–000.
c. Date Filed: May 3, 1993.
d. Applicant: Massachusetts Water Resources Authority.
e. Name of Project: Deer Island Hydro Project.
f. Location: On Deer Island in the Boston Harbor, Suffolk County, near Boston, Massachusetts.
g. Filed Pursuant to: Federal Power Act 16 U.S.C. 791(a)–825(r).
h. Applicant Contact: Walter Armstrong, Massachusetts Water Resources Authority, Charleston Navy Yard, 100 First Avenue, Boston, MA 02129, (617) 242–6000.
i. FERC Contact: Ed Lee (202) 219–2809.
j. Comment Date: 60 days from the filing date in paragraph C. (July 2, 1993)
k. Description of Project: The proposed project would consist of: (1) an electrical building; (2) a substation; (3) a powerhouse containing two 1,000-kW generators for a total installed capacity of 2,000 kW; (4) an intake conduit which conveys the wastewater from the disinfection facilities to the hydropower chute; and (5) apputenant facilities. The applicant estimates that the total average annual generation would be 12,400 megawatthours.
l. With this notice, we are initiating consultation with the *MASSACHUSETTS 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.
m. Pursuant to Section 4.32(b)(7) of 18 CFR of the Commission's regulations, if any resource agency, Indian Tribe, or person believes that an additional scientific study should be conducted in order to form an adequate factual basis for a complete analysis of the application on its merit, the resource agency, Indian Tribe, or person must file a request for a study with the Commission not later than 60 days from the filing date and serve a copy of the request on the applicant.

13a. Type of Application: Declaration of Intention.
b. Docket No.: EL93–34–000.
c. Date Filed: April 20, 1993.
d. Applicant: Akutan Hydro Joint Venture.
e. Name of Project: Akutan Hydroelectric Project (AK).
f. Location: Unnamed Stream, Akutan, Alaska.
g. Filed Pursuant to: Section 23(b) of the Federal Power Act, 16 U.S.C. § 817(b).
h. Applicant Contact:
Erika Tritremmel, City Manager, City of Akutan, 721 Sesame Street, 2A, Anchorage, Alaska 99503.
Scott Thompson, Alaska Power Systems, Inc., 8300 King Street, Suite 101, Anchorage, Alaska 99518, (907) 344–2631.
i. FERC Contact: Hank Ecton, (202) 219–2678.
j. Comment Date: July 16, 1993.
k. Description of Project: The proposed Akutan Hydroelectric Project will consist of: (1) a 200-foot-long by 14-foot-high earth dam installed in a crater basin; (2) a 10-inch-diameter, 3300-foot-long penstock connected to a pelton wheel generator and a 170-horsepower turbine in the powerhouse (The powerhouse is also connected to the town's water purification and pumping building and existing water supply, which can be used as backup water source); (3) a 500-foot, 3-phrase underground distribution line; and (4) appurtenant facilities.

When a Declaration of Intention is filed with the Federal Energy Regulatory Commission, the Federal Power Act requires the Commission to investigate and determine if the interests of interstate or foreign commerce would be affected by the project. The Commission also determines whether the project: (1) would be located on a navigable waterway; (2) would occupy or affect

public lands or reservations of the United States; (3) would utilize surplus water or water power from a government dam; or (4) if applicable, has involved or would involve any construction subsequent to 1935 that may have increased or would increase the project's head or generating capacity, or have otherwise significantly modified the project's pre-1935 design or operation.

l. Purpose of Project: Applicant intends to sell all energy produced to the City of Akutan.

m. This notice also consists of the following standard paragraphs: B, C1, and D2.

Standard Paragraphs

A2. Development Application—Any qualified applicant desiring to file a competing application must submit to the Commission, on or before the specified deadline date for the particular application, a competing development application, or a notice of intent to file such an application. Submission of a timely notice of intent allows an interested person to file the competing development application no later than 120 days after the specified deadline date for the particular application. Applications for preliminary permits will not be accepted in response to this notice.

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.

A5. Preliminary Permit—Anyone desiring to file a competing application for preliminary permit for a proposed project must submit the competing application itself, or a notice of intent to file such an application to the Commission on or before the specified comment date for the particular application (see 18 CFR 4.36). Submission of a timely notice of intent allows an interested person to file the competing preliminary permit application no later than 30 days after the specified comment date for the particular application. A competing preliminary permit application must conform with 18 CFR 4.30(b) (1) and (9) and 4.36.

A7. Preliminary Permit—Any qualified development applicant desiring to file a competing development application must submit to the Commission, on or before a specified comment date for the particular application, either a competing development application or a notice of intent to file such an application. Submission of a timely notice of intent to file a development application allows an interested person to file the competing application no later than 120 days after the specified comment date for the particular application. A competing license application must conform with 18 CFR 4.30(b) (1) and (9) and 4.36.

A9. Notice of intent—A notice of intent must specify the exact name, business address, and telephone number of the prospective applicant, and must include an unequivocal statement of intent to submit, if such an application may be filed, either a preliminary permit application or a development application (specify which type of application). A notice of intent must be served on the applicant(s) named in this public notice.

A10. Proposed Scope of Studies under Permit—A preliminary permit, if issued, does not authorize construction. The term of the proposed preliminary permit will be 36 months. The work proposed under the preliminary permit would include economic analysis, preparation of preliminary engineering plans, and a study of environmental impacts. Based on the results of these studies, the Applicant would decide whether to proceed with the preparation of a development application to construct and operate the project.

B. Comments, Protests, or Motions to Intervene—Anyone may submit comments, a protest, or a motion to intervene in accordance with the requirements of the Rules of Practice and Procedure, 18 CFR 385.210, .211, .214. In determining the appropriate action to take, the Commission will consider all protests or other comments filed, but only those who file a motion to intervene in accordance with the Commission's Rules may become a party to the proceeding. Any comments, protests, or motions to intervene must be received on or before the specified comment date for the particular application.

B1. Protests or Motions to Intervene—Anyone may submit a protest or a motion to intervene in accordance with the requirements of Rules of Practice and Procedure, 18 CFR 385.210, 385.211, and 385.214. In determining the appropriate action to take, the Commission will consider all protests filed, but only those who file a motion to intervene in accordance with the Commission's Rules may become a party to the proceeding. Any protests or motions to intervene must be received on or before the specified deadline date for the particular application.

C. Filing and Service Responsive Documents—Any filings must bear in all capital letters the title "COMMENTS", "NOTICE OF INTENT TO FILE COMPETING APPLICATION", "COMPETING APPLICATION" "PROTEST", "MOTION TO INTERVENE", as applicable, and the Project Number of the particular application to which the filing refers. Any of the above-named documents must be filed by providing the original and the number of copies provided by the Commission's regulations to: The Secretary, Federal Energy Regulatory Commission, 825 North Capitol Street, NE., Washington, DC 20426. An additional copy must be sent to Director, Division of Project Review, Federal Energy Regulatory Commission, Room 1027, at the above-mentioned address. A copy of any notice of intent, competing application or motion to intervene must also be served upon each representative of the Applicant specified in the particular application.

C1. Filing and Service of Responsive Documents—Any filings must bear in all capital letters the title "COMMENTS", "RECOMMENDATIONS FOR TERMS AND CONDITIONS", "PROTEST", or "MOTION TO INTERVENE", as applicable, and the Project Number of the particular application to which the filing refers. Any of the above-named documents must be filed by providing the original and the number of copies provided by the Commission's regulations to: The Secretary, Federal Energy Regulatory Commission, 825 North Capitol Street, NE., Washington, DC 20426. A copy of any motion to intervene must also be served upon each representative of the Applicant specified in the particular application.

C2. Filing and Service of Responsive Documents—Any filings must bear in all capital letters the title "COMMENTS," "RECOMMENDATIONS OF TERMS AND CONDITIONS," "NOTICE OF INTENT TO FILE COMPETING APPLICATION," "COMPETING APPLICATION," "PROTEST," or "MOTION TO INTERVENE," as applicable, and the Project Number of the particular application to which the filing refers. Any of these documents must be filed by providing the original and the number of copies provided by the Commission's regulations to: The Secretary, Federal Energy Regulatory Commission, 825 North Capitol Street,

NE., Washington, DC 20426. A copy of a notice of intent, competing application, or motion to intervene must also be served upon each representative of the Applicant specified in the particular application.

D2. Agency Comments—Federal, state, and local agencies are invited to file comments on the described application. A copy of the application may be obtained by agencies directly from the Applicant. If an agency does not file comments within the time specified for filing comments, it will be presumed to have no comments. One copy of an agency's comments must also be sent to the Applicant's representatives.

D8. Filing and Service of Responsive Documents—The application is not ready for environmental analysis at this time; therefore, the Commission is not now requesting comments, recommendations, terms and conditions, or prescriptions.

When the application is ready for environmental analysis, the Commission will issue a public notice requesting comments, recommendations, terms and conditions, or prescriptions.

All filings must (1) bear in all capital letters the title "PROTEST" or "MOTION TO INTERVENE," "NOTICE OF INTENT TO FILE COMPETING APPLICATION," or "COMPETING APPLICATION;" (2) set forth in the heading the name of the applicant and the project number of the application to which the filing responds; (3) furnish the name, address, and telephone number of the person protesting or intervening; and (4) otherwise comply with the requirements of 18 CFR 385.2001 through 385.2005. Agencies may obtain copies of the application directly from the applicant. Any of these documents must be filed by providing the original and the number of copies required by the Commission's regulations to: The Secretary, Federal Energy Regulatory Commission, 825 North Capitol Street, N.E., Washington, D.C. 20426. An additional copy must be sent to Director, Division of Project Review, Office of Hydropower Licensing, Federal Energy Regulatory Commission, Room 1027, at the above address. A copy of any protest or motion to intervene must be served upon each representative of the applicant specified in the particular application.

D9. 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 section 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. (July 20, 1993 for Project No. 2357–003). All reply comments must be filed with the Commission within 105 days from the date of this notice. (September 3, 1993 for Project No. 2357–003).

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). 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, N.E., Washington, D.C. 20426. An additional copy must be sent to Director, Division of Project Review, Office of Hydropower Licensing, Federal Energy Regulatory Commission, Room 1027, at the above address. Each filing must be accompanied by proof of service on all persons listed on the service list prepared by the Commission in this proceeding, in accordance with 18 CFR 4.34(b), and 385.2010.

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 section 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. (July 19, 1993 for Project No. 2466–002 and July 20, 1993 for Project No. 11264–000.) All reply comments must be filed with the Commission within 105 days from the date of this notice. (September 2, 1993 for Project No,. 2466–002 and September 3, 1993 for Project No. 11264–000.)

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, N.E., Washington, D.C. 20426. An additional copy must be sent to Director, Division of Project Review, Office of Hydropower Licensing, Federal Energy Regulatory Commission, Room 1027, at the above address. Each filing must be accompanied by proof of service on all persons listed on the service list prepared by the Commission in this proceeding, in accordance with 18 CFR 4.34(b), and 385.2010.

Dated: May 28, 1993, Washington, DC.

Lois D. Cashell,

Secretary.

[FR Doc. 93–13167 Filed 6–3–93; 8:45 am]

BILLING CODE 6717–01–M

Docket No. JD93–09235T Kansas–7]

State of Kansas; NGPA Notice of Determination by Jurisdictional Agency Designating Tight Formation

May 28, 1993.

Take notice that on May 26, 1993, the State Corporation Commission of the

State of Kansas (Kansas) submitted the above-referenced notice of determination pursuant to § 271.703(c)(3) of the Commission's regulations, that the Niobrara Formation, Beecher Island Sand, underlying a portion of Sherman County, Kansas qualifies as a tight formation under section 107(b) of the Natural Gas Policy Act of 1978. Kansas originally submitted a determination for the Niobrara Formation covering 4-counties including all of Sherman County. The Commission remanded that determination to Kansas on May 22, 1985. The designated area covers approximately 52,416 acres described as follows:

Township 8 South, Range 39 West
Township 8 South, Range 40 West
Township 9 South, Range 39 West
Township 9 south, Range 40 West

The notice of determination also contains Kansas' findings that the referenced portion of the Niobrara Formation meets the requirements of the Commission's regulations set forth in 18 CFR Part 271.

The application for determination is available for inspection, except for material which is confidential under 18 CFR 275.206, at the Federal Energy Regulatory Commission, 825 North Capitol Street, NE., Washington, DC 20426. Persons objecting to the determination may file a protest, in accordance with 18 CFR 275.203 and 275.204, within 20 days after the date this notice is issued by the Commission.

Lois D. Cashell,

Secretary.

[FR Doc. 93–13129 Filed 6–3–93; 8:45 am]

BILLING CODE 6717–01–M

[Project No. 11248–001–Iowa]

Iowa Hydropower Development Corp.; Surrender of Preliminary Permit

May 28, 1993.

Take notice that the Iowa Hydropower Development Corporation, permittee for the Mississippi River Lock and Dam No. 12 Project No. 11248, located on the Mississippi River, Jackson County, Iowa, has requested that its preliminary permit be terminated. The preliminary permit was issued on May 20, 1992, and would have expired on April 30, 1995. The permittee states that analysis of the Mississippi River Lock & Dam No. 12 Project did not indicate feasibility for development.

The permittee filed the request on May 4, 1993, and the preliminary permit for Project No. 11248 shall remain in effect through the thirtieth day after issuance of this notice unless that day is a Saturday, Sunday or holiday as described in 18 CFR 385.2007, in which case the permit shall remain in effect through the first business day following that day. New applications involving this project site, to the extent provided for under 18 CFR part 4, may be filed on the next business day.

Lois D. Cashell,

Secretary.

[FR Doc. 93–13137 Filed 6–3–93; 8:45 am]

BILLING CODE 6717–01–M

[Project No. 11246–001—Iowa and Wisconsin]

Iowa Hydropower Development Corp.; Surrender of Preliminary Permit

May 28, 1993.

Take notice that the Iowa Hydropower Development Corporation, permittee for the Mississippi River Lock and Dam No. 10 Project No. 11246, located on the Mississippi River, Clayton County, Iowa, and Grant County, Wisconsin, has requested that its preliminary permit be terminated. The preliminary permit was issued on May 21, 1992, and would have expired on April 30, 1995. The permittee states that analysis of the Mississippi River Lock & Dam No. 10 Project did not indicate feasibility for development.

The permittee filed the request on May 4, 1993, and the preliminary permit for Project No. 11246 shall remain in effect through the thirtieth day after issuance of this notice unless that day is a Saturday, Sunday or holiday as described in 18 CFR 385.2007, in which case the permit shall remain in effect through the first business day following that day. New applications involving this project site, to the extent provided for under 18 CFR part 4, may be filed on the next business day.

Lois D. Cashell,

Secretary.

[FR Doc. 93–13136 Filed 6–3–93; 8:45 am]

BILLING CODE 6717–01–M

[Project No. 11245–001—Iowa and Wisconsin]

Iowa Hydropower Development Corp.; Surrender of Preliminary Permit

May 28, 1993.

Take notice that the Iowa Hydropower Development Corporation, permittee for the Mississippi River Lock and Dam No. 9 Project No. 11245, located on the Mississippi River, Allamakee County, Iowa, and Crawford County, Wisconsin, has requested that its preliminary permit be terminated. The preliminary permit was issued on May 20, 1992, and would have expired on April 30, 1995. The permittee states that analysis of the Mississippi River Lock & Dam No. 9 Project did not indicate feasibility for development.

The permittee filed the request on May 4, 1993, and the preliminary permit for Project No. 11245 shall remain in effect through the thirtieth day after issuance of this notice unless that day is a Saturday, Sunday or holiday as described in 18 CFR 385.2007, in which case the permit shall remain in effect through the first business day following that day. New applications involving this project site, to the extent provided for under 18 CFR part 4, may be filed on the next business day.

Lois D. Cashell,

Secretary.

[FR Doc. 93–13135 Filed 6–3–93; 8:45 am]

BILLING CODE 6717–01–M

[Project No. 11251–001–Iowa and Illinois]

Iowa Hydropower Development Corp.; Surrender of Preliminary Permit

May 28, 1993.

Take notice that the Iowa Hydropower Development Corporation, permittee for the Mississippi River Lock and Dam No. 18 Project No. 11251, located on the Mississippi River, Des Moines County, Iowa, and Henderson County, Illinois, has requested that its preliminary permit be terminated. The preliminary permit was issued on May 8, 1992, and would have expired on April 30, 1995. The permittee states that analysis of the Mississippi River Lock & Dam No. 18 Project did not indicate feasibility for development.

The permittee filed the request on May 4, 1993, and the preliminary permit for Project No. 11251 shall remain in effect through the thirtieth day after issuance of this notice unless that day is a Saturday, Sunday or holiday as described in 18 CFR 385.2007, in which case the permit shall remain in effect through the first business day following that day. New applications involving this project site, to the extent provided for under 18 CFR part 4, may be filed on the next business day.

Lois D. Cashell,

Secretary.

[FR Doc. 93–13134 Filed 6–3–93; 8:45 am]

BILLING CODE 6717–01–M

[Project No. 11250–001—Iowa and Illinois]

Iowa Hydropower Development Corp.; Surrender of Preliminary Permit

May 28, 1993.

Take notice that the Iowa Hydropower Development Corporation, permittee for the Mississippi River Lock and Dam No. 16 Project No. 11250, located on the Mississippi River, Muscatine County, Iowa, and Rock Island County, Illinois, has requested that its preliminary permit be terminated. The preliminary permit was issued on May 12, 1992, and would have expired on April 30, 1995. The permittee states that analysis of the Mississippi River Lock & Dam No. 16 Project did not indicate feasibility for development.

The permittee filed the request on May 4, 1993, and the preliminary permit for Project No. 11250 shall remain in effect through the thirtieth day after issuance of this notice unless that day is a Saturday, Sunday or holiday as described in 18 CFR 385.2007, in which case the permit shall remain in effect through the first business day following that day. New applications involving this project site, to the extent provided for under 18 CFR part 4, may be filed on the next business day.

Lois D. Cashell,

Secretary.

[FR Doc. 93–13133 Filed 6–3–93; 8:45 am]

BILLING CODE 6717–01–M

[Project No. 11249–001—Iowa and Illinois]

Iowa Hydropower Development Corp.; Surrender of Preliminary Permit

May 28, 1993.

Take notice that the Iowa Hydropower Development Corporation, permittee for the Mississippi River Lock and Dam No. 13 Project No. 11249, located on the Mississippi River, Clinton County, Iowa, and Whiteside County, Illinois, has requested that its preliminary permit be terminated. The preliminary permit was issued on May 21, 1992, and would have expired on April 30, 1995. The permittee states that analysis of the Mississippi River Lock & Dam No. 13 Project did not indicate feasibility for development.

The permittee filed the request on May 4, 1993, and the preliminary permit for Project No. 11249 shall remain in effect through the thirtieth day after issuance of this notice unless that day is a Saturday, Sunday or holiday as described in 18 CFR 385.2007, in which case the permit shall remain in effect through the first business day following that day. New applications involving this project site, to the extent provided for under 18 CFR part 4, may be filed on the next business day.

Lois D. Cashell,

Secretary.

[FR Doc. 93–13132 Filed 6–3–93; 8:45 am]

BILLING CODE 6717–01–M

[Docket No. RP93–123–000]

Natural Gas Pipeline Co. of America; Proposed Changes In FERC Gas Tariff and Filing of Corrected Reconciliation Report

May 28, 1993.

Take notice that on May 26, 1993, Natural Gas Pipeline Company of America (Natural) tendered for filing Substitute First Revised Sheet Nos. 170 through 172 to be part of its FERC Gas Tariff, Fourth Revised Volume No. 1, to be effective April 1, 1993.

Natural states that it filed on February 26, 1993 at Docket No. RP93–87–000 a Reconciliation Report of transition costs incurred in accordance with section 34 of the General Terms and Conditions of its tariff, and requested approval of a lump sum billing of outstanding balances to be effective April 1, 1993. The Commission accepted and suspended that filing to be effective April 1, 1993, subject to refund, by order issued March 31, 1993.

Natural states that the filing is being made to correct certain errors that have come to its attention in the allocation of interest to its sales customers, and therefore has filed a corrected Reconciliation Report and substitute tariff sheets reflecting the revised lump sum billing amounts to be effective April 1, 1993.

Natural states that it has requested any waivers of the Commission's Regulations and its tariff that may be necessary to permit approval of the corrected Reconciliation Report and the acceptance of the substitute tariff sheets to be effective April 1, 1993.

Natural states a copy of the filing is being mailed to Natural's jurisdictional sales customers, interested state regulatory agencies and all parties set out on the official service list at Docket Nos. RP91–22, RP91–31, CP89–1281, *et al.*, and RP93–87–000.

Any person desiring to protest said filing should file a protest with the Federal Energy Regulatory Commission, 825 North Capitol Street, NE., Washington, DC 20426, in accordance with Rule 211 of the Commission's Rules of Practice and Procedure 18 CFR 385.211. All such protests should be filed on or before June 7, 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. 93–13127 Filed 6–3–93; 8:45 am]

BILLING CODE 6717–01–M

[Docket No. RP93–120–000]

Northern Natural Gas Co.; Motion for Temporary Waiver of Tariff Provisions

May 28, 1993.

Take notice that on May 24, 1993, Northern Natural Gas Company (Northern), tendered for filing a motion requesting a temporary waiver of its FERC Gas Tariff, Fourth Revised Volume No. 1.

Northern states that on May 7, 1993 Northern filed a Stipulation and Agreement of Settlement resolving all outstanding issues in the above captioned dockets, except for certain processing issues which were reserved for resolution in Docket No. RP92–1–012, (Global Settlement). The Global Settlement is proposed to become effective on November 1, 1993.

Northern requests temporary waiver of that portion of First Revised Sheet No. 229 which requires that "Northern shall initiate processing of written requests for service on a first come, first serve basis."

Northern also requests temporary waiver of that portion of Original Sheet No. 230 which requires that the effective date of a service agreement "shall not be more than 140 days after receipt of such request by Northern".

In addition, Northern requests temporary waiver of that portion of Original Sheet No. 230 which requires Northern to "give a Shipper requesting firm service written confirmation within seven (7) work days after receipt of a request". Northern requests that the temporary waiver apply to requests received from June 14, 1993, through August 2, 1993. For requests received from June 1993, through July 14, 1993, Northern will provide written confirmation to customers no later than August 2, 1993. For requests received from July 15, 1993 through August 2, 1993, Northern will provide written confirmation to customers no later than August 11, 1993.

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 June 7, 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. 93–13130 Filed 6–3–93; 8:45 am]

BILLING CODE 6717–01–M

[Project Nos. 2582, 2583, 2584, 2596]

Rochester Gas and Electric Corp.; Restricted Service List for Comments on a Programmatic Agreement for Managing Properties Included in or Eligible for Inclusion in the National Register of Historic Places

May 28, 1993.

Rules 2010 of the Commission's Rules of Practice and Procedure provides that, to eliminate unnecessary expense or improve administrative efficiency, the Secretary may establish a restricted service list for a particular phase or issue in a proceeding.[1] The restricted service list should contain the names of persons on the service list who, in the judgment of the decisional authority establishing the list, are active participants with respect to the phase or issue in the proceeding for which the list is established.

The Commission is consulting with the New York State Office of Parks, Recreation and Historic Preservation (hereinafter, SHPO) and the Advisory Council on Historic Preservation (hereinafter, Council) pursuant to 36 CFR 800.13 of the Council's regulations implementing section 106 of the National Historic Preservation Act, as amended, (16 U.S.C. 470f), to prepare a programmatic agreement for managing properties in or eligible for inclusion in the National Register of Historic Places at Project Nos. 2582, 2583, 2584, and 2596.

The programmatic agreement, upon approval by the Commission, the SHPO, and the Council, would satisfy the Commission's Section 106 responsibilities for all individual undertakings carried out in accordance with the agreement until the agreement expires or is terminated (36 CFR 800.13[e]). Through the programmatic agreement, the Section 106 requirements for the above 4 projects would be fulfilled at one time rather than by several individual requests for comments under section 106.

Rochester Gas and Electric Corporation, as prospective licensee for the projects, the City of Rochester, as the owner of the Stations 2 and 5 Project dams, and the New York State Thruway Authority, as the owner of the Station 26 Project dam, are being asked to participate in the consultation and are being invited to sign as concurring parties to the programmatic agreement.

For purposes of commenting on the programmatic agreement we propose to restrict the service list for Project Nos. 2582, 2583, 2584, and 2986, as follows:

Julia S. Stokes, Deputy Commissioner for Historic Preservation, New York State Office of Parks, Recreation and Historic Preservation, Empire State Plaza, Agency Building 1, Albany, NY 12238

Advisory Council on Historic Preservation, Eastern Office of Project Review, The Old Post Office Building, Suite 809, 1100 Pennsylvania Avenue, NW., Washington, DC 20004

David K. Fingado, Rochester Gas and Electric Corporation, 89 East Avenue, Rochester, NY 14649–0001

Edward J. Doherty, Environmental Services, City of Rochester, 30 Church Street, Rochester, NY 14614

John R. Jermano, New York State Thruway Authority, Office of Canals, 200 Southern Blvd., Box 189 Albany, NY 12201–0189

Any person on the official service list for the above-captioned proceedings may request inclusion on the restricted service list, or may request that a restricted service list not be established, by filing a motion to that effect within 15 days of this notice date. An original and 8 copies of any such motion must be filed with the Secretary of the Commission (825 North Capitol Street, NE, Washington, DC 20426) and must be served on each person whose name appears on the official service list. If no such motions are filed, the restricted service list will be effective at the end of the 15-day period. Otherwise, a further notice will be issued ruling on the motion.

Lois D. Cashell,

Secretary.

[FR Doc. 93–13128 Filed 6–3–93; 8:45 am]

BILLING CODE 6717–01–M

[1] 18 CFR Section 385.2010.

[Docket No. RP93–40–004]

Western Gas Interstate Co.; Motion To Place Tariff Sheets Into Effect

May 28, 1993.

Take notice that on May 25, 1993, Western Gas Interstate Company (Western), tendered for filing pursuant to Section 4(e) of the Natural Gas Act and § 154.67(a) of the Federal Energy Regulatory Commission's (Commission) regulations, a motion to place into effect on June 1, 1993, certain tariff sheets to its FERC Gas Tariff, Second Revised Volume No. 1 and the rates and modifications.

Western states that on December 1, 1992 at Docket No. RP93–40–000, it filed with the Commission a notice of change in rates for natural gas service rendered to its transportation and sales customers to become effective January 1, 1993. Western states that by order issued December 31, 1992 at Docket No. RP93–40–000, the Commission conditionally accepted the tariff sheets, suspended their effectiveness for five months (5) to become effective June 1, 1993, subject to refund, ordered Western to refile its tariff sheets to include only currently effective services, and established hearing procedures.

Western states that on February 1, 1993, it filed in compliance with the Commission's December 31, 1992 order and on May 13, 1993, the Commission approved certain of those tariff sheets to become effective June 1, 1993.

Western states that it is also submitting revisions to three of its tariff sheets and asked the Commission to waive the thirty day notice requirement to allow those tariff sheets to be placed into effect on June 1, 1993.

Western states that copies of the filing were served upon all interstate pipeline system transportation and sales customers of Western and all interested state regulatory 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 June 7, 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. 93–13126 Filed 6–3–93; 8:45 am]

BILLING CODE 6717–01–M

ENVIRONMENTAL PROTECTION AGENCY

[ER–FRL–4621–2]

Environmental Impact Statements; Notice of Availability

RESPONSIBLE AGENCY: Office of Federal Activities, General Information (202) 260–5076 or (202) 260–5075. Weekly Receipts of Environmental Impact Statements Filed May 24, 1993 Through May 28, 1993 Pursuant to 40 CFR 1506.9.

EIS No. 930174, DRAFT EIS, AFS, OR, Ochoco National Forest and Crooked River National Grassland Revised Land and Resource Management Plan for Standards and Guidelines Regarding Oil and Gas Leasing, Implementation, Grant, Crook, Wheeler, Jefferson and Harney Counties, OR, Due: July 19, 1993, Contact: Deborah Tout (503) 447–9506.

EIS No. 930175, FINAL EIS, SCS, WY, Allison Draw Watershed Protection and Flood Control Plan, Implementation, Funding, Section 404 Permit and Right-of-Way, Laramie County, WY, Due: July 06, 1993, Contact: Frank S. Dickson (307) 261–5201.

EIS No. 930176, DRAFT EIS, FHW, RI, I–195 Transportation Improvements, between the west end of the Washington Bridge and Interstate Route I–95 through Providence, Funding, COE Section 404 and US Coast Guard Bridge Permits, Providence County, RI, Due: July 30, 1993, Contact: Gordon G. Hoxie (401) 277–2023.

EIS No. 930177, DRAFT EIS, BLM, CA, Fort Cady Minerals Solution Mining Project, Construction and Operation, Associated Right-of-Way Grants and Mineral Material Sales Permits, San Bernardino County, CA, Due: August 03, 1993, Contact: Ms. Edy Seehafer (619) 256–3591.

EIS No. 930178, DRAFT SUPPLEMENT, UAF, MA, Westover Air Force Base, Air Force Reserve Mission Change/ Aviation Operation, Updated Information on Military (C–5) and Civil Aircraft Operations, Hampden County, MA, Due: July 19, 1993, Contact: Ms. Toni Thorne (912) 327–1073.

Amended Notices

EIS No. 880430, DRAFT EIS, IBR, CA, American River Service Area Water Contracting Program, Water Supply Project for Agricultural Municipal and Industrial Uses, Long-Term Contracting, San Joaquin, Sacramento and Placer Counties, CA, Due: May 26, 1989, Contact: Doug Kleinsmith (916) 978–5121.

Published FR 01–06–89—Officially Canceled by Preparing Agency.

EIS No. 880431, DRAFT EIS, IBR, CA, Sacramento River Water Service Area Contracting Program, Water Supply Project for Municipal and Industrial, Wildlife Refuge and Agricultural Uses, Long-Term Contracting, Shasta, Tehama, 1 Yolo, Solano, Colusa and Solano Counties, CA, Due: May 26, 1989, Contact: Doug Kleinsmith (916) 978–5121.

Published FR 01–06–89—Officially Canceled by the Preparing Agency.

EIS No. 880432, DRAFT EIS, IBR, CA, Delta Export Service Area Water Contracting Program, Water Supply Project for Agricultural, Municipal and Industrial and Wildlife Refuge Uses, Long-Term Contracting, Fresno, Kern, Kings, Madera, Merced, San Joaquin, Tulare, Monterey, San Benito, Santa Clara and Santa Cruz Cos., CA, Due: May 26, 1989, Contact: Doug Kleinsmith (916) 978–5121.

Published FR 01–06–89—Officially Canceled by the Preparing Agency.

EIS No. 930046, DRAFT EIS, AFS, CA, National Forest Trails System Management Plan, Implementation, Off-Highway Vehicle Permit, Los Padres National Forest, Santa Lucia Ranger District, San Luis Obispo County, CA, Due: July 30, 1993, Contact: K. J. Silverman (805) 681–2775.

Published FR 02–18–93—Review period extended.

EIS No. 930154, DRAFT EIS, AFS, CO, Snowmass Ski Area Upgrading and Expansion Development Plan, Special Use Permit and COE Section 404 Permit, White River National Forest, Aspen Ranger District, Pitkin County, CO, Due: July 13, 1993, Contact: Carmine Lockwood (303) 925–3445.

Published FR 05–14–93 Review period extended.

EIS No. 930167, DRAFT EIS, NPS, DC, New Stadium Construction and Operation, Implementation, Anacostia Park, Washington, DC, Due: July 13, 1993, Contact: Robert Stanton (202) 619–7025. Published FR 05–21–93—Review period extended.

Dated: June 1, 1993.

William D. Dickerson,

Deputy Director, Office of Federal Activities.

[FR Doc. 93–13236 filed 6–3–93; 8:45 am]

BILLING CODE 6560–50–U

[ER–FRL–4621–3]

Environmental Impact Statements and Regulations; Availability of EPA Comments

Availability of EPA comments prepared May 17, 1993 through May 21, 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 9, 1993 (58 FR 18392).

Draft EISs

ERP No. D–AFS–L65191–OR Rating EC2, Santiam Pass Demo Project, Harvesting Timber and Road Construction, Willamette National Forest, McKenzie Ranger District, Linn County, OR.

Summary: EPA had environmental concerns regarding water quality, air quality, and the lack of emphasis and funding for monitoring. Additional information was requested to clarify compliance with state water quality standards; to disclose air quality impacts related to prescribed burning; and to expand the cumulative effects analysis.

ERP No. D–FHW–D40260–PA Rating EC2, Mon/Fayette Transportation Project, Improvements, I–70 in Fallowfield Township to PA–51 in Jefferson Borough, Funding, COE Section 404 Permit and NPDES Permit, Mon Valley, Washington and Allegheny Counties, PA.

Summary: EPA expressed concerns that the Green alternative did not include enough environmental impact information and that the other alternatives may impact wetlands, streams and residences.

ERP No. D–FHW–K40196–CA Rating EO2, CA–101 Transportation Improvement Project, between Milpas Street in the City of Santa Barbara and 1.1 miles North of the Ventura County Line in the City of Carpinteria, Funding, COE Section 404 Permit and NPDES Permit, Santa Barbara and Ventura Counties, CA.

Summary: EPA expressed environmental objections because

building the project will result in increases in nitrogen oxide levels, particulate matter levels and cause increases and violations of the National Ambient Air Quality Standards for carbon monoxide, without having shown that the project purpose would be met. EPA stated that the DEIS did not contain sufficient information to compare the relative merits of each alternative, nor their ability to achieve the project purpose of reducing congestion; nor was there sufficient information to determine whether air quality impacts were accurately assessed.

ERP No. D–FHW–K40197–CA Rating EC2, East Sonora Bypass Corridor Construction, CA–108 from Post Mile M1.8 to Post Mile R6.9 near Sonora, Funding and Right-of-Way, City of Sonora, Tuolumne County, CA.

Summary: EPA expressed environmental concerns because the mitigation measures identified for impacts to biological resources was not clearly developed, and the range of alternatives analyzed in the DEIS was very narrow. EPA requested that the FEIS explore a broader range of alternatives, more fully assess environmental impacts to air and water quality (including cumulative impacts), and provide more detailed information on the mitigation plan for the loss of oak woodlands and other natural resources.

ERP No. D–FRC–E03005–00 Rating EO2, Florida Gas Transmission Phase III Expansion Project, Construction and Operation, Special Use Permits, Section 10 and 404 Permits and NPDES Permit, extending through FL, AL, MS and LA.

Summary: EPA raised objections to the proposal because it had no restoration of forested wetlands that are proposed for conversion to herbaceous/shrub wetlands along the pipeline ROW. EPA recommended functional restoration of forested wetlands and that environmentally-sound FERC recommendations and requirements be made conditional to any potential FERC project licensing.

ERP No. D–GSA–E81035–GA Rating EC2, Atlanta Federal Center Consolidation for the housing of several Federal Agencies, Site Specific, Rich's Department Store, Martin Luther King, Jr. Drive, Atlanta, GA.

Summary: EPA expressed concerns regarding indoor air quality, disposal of hazardous wastes, and impacts to historic reserves. EPA recommended that the final EIS also provide more information about the pollution prevention measures to be used.

ERP No. DS–USN–L11006–WA Rating LO, Puget Sound Area Carrier Battle Group, Implementation, Updated Information on Element II Breakwater Pier, Everett Homeport Naval Station Project, Snohomish, King and Pierce Counties, WA.

Summary: EPA had no objections to the preferred alternative.

Dated: June 1, 1993.

William D. Dickerson,

Deputy Director, Office of Federal Activities.

[FR Doc. 93–13235 Filed 6–3–93; 8:45 am]

BILLING CODE: 6560–50–U

[FRL–4663–6]

Performance Evaluation Reports for Fiscal Year 1992 Section 105 Grants; Missouri, Kansas, Iowa, Nebraska

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice of availability of grantee performance evaluation reports.

SUMMARY: EPA's grant regulations (40 CFR 35.150) require the Agency to conduct yearly performance evaluations on the progress of the approved State/EPA Agreements. EPA's regulations (40 CFR 56.7) require that the Agency make available to the public the evaluation reports. EPA has conducted evaluations on the Missouri Department of Natural Resources, Nebraska Department of Environmental Quality, Iowa Department of Natural Resources (IDNR), and Kansas Department of Health and Environment. These evaluations were conducted to assess the agencies' performance under the grants made to them by EPA pursuant to section 105 of the Clean Air Act. All agencies had various resource problems which were reflected in degree of meeting commitments. The evaluation of IDNR's program documented the greatest incidence of nonperformance resulting in special grant conditions connecting funding to performance.

EFFECTIVE DATE: June 4, 1993.

ADDRESSES: Copies of the evaluation reports are available for public inspection at the EPA's Region VII Office, Air and Toxics Division, 726 Minnesota Avenue, Kansas City, Kansas 66101.

FOR FURTHER INFORMATION CONTACT: Carol D. LeValley at (913) 551–7610.

Dated: May 13, 1993.

William W. Rice,

Acting Regional Administrator.

[FR Doc. 93–13230 filed 6–3–93; 8:45 am]

BILLING CODE 6560–50–P

[OPPTS–00125A; FRL–4626–4]

Toxic Substances Control Act Confidential Business Information Claims Policies and Regulations; Open Meeting

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice of public meeting.

SUMMARY: Notice is hereby given that a public meeting is scheduled to elicit comments on Toxic Substances Control Act (TSCA) Confidential Business Information (CBI) policies and certain proposed actions by EPA which may change CBI requirements or TSCA implementation. Interested persons will be given the opportunity to comment on these policies, the procedures for asserting TSCA CBI claims, and the proposed actions.

DATES: The public meeting will occur on July 1, 1993, from 10:30 a.m. to 1:30 p.m. Persons wishing to attend the meeting should contact the TSCA Hotline listed under **FOR FURTHER INFORMATION CONTACT** before June 23, 1993.

ADDRESSES: The public meeting will be held at: Washington Vista Hotel, 1400 M St., NW., Washington, DC 20005, Telephone: (202) 429–1700.

Copies of prior comments and the transcript of a meeting held October 14, 1992, are available for inspection in the TSCA Nonconfidential Information Center (NCIC), also known as the TSCA Public Docket Office, from 8 a.m. to 12 p.m. and 1 p.m. to 4 p.m. NCIC is located in E–G102 of EPA Headquarters, 401 M St., SW., Washington, DC. Comments and the transcript of the July 1, 1993, meeting will be incorporated into the established public docket. The docket control number is "OPPTS–00125."

FOR FURTHER INFORMATION CONTACT: Scott M. Sherlock, Attorney-Advisor, Information Management Division (TS–793), Environmental Protection Agency, 401 M St., SW., Rm. E–118, Washington, DC 20460, Telephone: (202) 260–1536. To preregister contact: The TSCA Hotline at (202) 554–1404, TDD: (202) 554–0551.

SUPPLEMENTARY INFORMATION: In September 1992, EPA released a commissioned study titled *Influence of CBI Requirements on TSCA CBI* (study). This study was commissioned as part of an EPA initiative to improve TSCA's utilization as a toxics information dissemination statute. The study provided an in depth analysis of CBI claims, submitter procedures for making such claims, EPA review and challenges

of claims, and effects of CBI claims on information which is not eligible for confidential treatment by the standards established in TSCA and its implementing regulations, including 40 CFR part 2, on EPA's toxics information mission.

Since releasing the study, EPA has met with a variety of State, environmental, labor and industry groups. EPA has also received many written comments. EPA has carefully considered the recommendations provided in the study. EPA has also reviewed the comments it has received from the public including industry, environmental groups, labor, and States. Based in part on the recommendations and comments received, EPA has formulated the preliminary proposed actions identified below to address the issues raised earlier in the public dialogue process. Any rulemaking will be in compliance with applicable law.

Proposed Agenda Items for the Public Meeting:

Short-Term Action Items

1. *Education effort*:

a. *Education courses.* An industry education program which would clearly articulate what information may be claimed as business confidential is a fundamental and necessary component of the CBI reform program.

b. *Educational clarifications of TSCA CBI policies and procedures.* To support the education program, EPA should prepare instructional papers advising what may properly be claimed as confidential.

2. *Toxics information dissemination.* EPA should aggressively publicize and disseminate non-CBI information collected under the TSCA.

3. *State programs.* EPA will explore with industry, states and other interested persons how site specific toxics data, claimed as CBI, might be directed to States.

4. *Regulatory policy clarifications.* EPA will consider, to the extent necessary and appropriate, amendments to regulations to clarify EPA's position on CBI filings.

5. *CBI review and challenge.* EPA will continue the ongoing CBI review and challenge program to limit the number of inappropriate CBI claims directed to EPA.

6. *Voluntary information dissemination actions: review of old submissions by the regulated community.* EPA should encourage industry to voluntarily review its files of TSCA submissions and declassify information no longer business confidential.

Long-Term Action Items

1. *Confidentiality claim reassertion or resubstantiation provisions.* EPA believes that CBI claims should be reasserted or resubstantiated after some specific time period.

2. *High level official signing CBI substantiations.* EPA believes that having a "high level official" sign off on CBI claims will insure that the claims are carefully considered by submitters.

3. *Up front substantiation of CBI claims.* EPA is considering where it would be appropriate to expand up front substantiation requirements from only certain TSCA section 5 and section 8 filings to other TSCA submissions claimed as CBI.

Persons wishing to speak at the meeting must call the TSCA Hot Line at (202) 554–1404, TDD: (202) 554–0551, in order to preregister. Members of the public will be granted the opportunity to make oral comments at the meeting. Individual comments will be limited to 5 minutes. Written comments are invited and should be directed to the party named in **FOR FURTHER INFORMATION CONTACT.**

An EPA working paper titled *Proposed Actions to Reform Confidential Business Information* discussing the above proposals has been prepared by the Information Management Division. This working paper does not in any way implement new EPA policy. The working paper is available from the TSCA Hot Line, Environmental Protection Agency, 401 M St., SW., (TS–799), Washington, DC 20460, Telephone: (202) 554–1404, TDD: (202) 554–0551.

Dated: May 28, 1993.

George A. Bonina,

Acting Director, Information Management Division, Office of Pollution Prevention and Toxics.

[FR Doc. 93–13231 Filed 6–3–93; 8:45 am]

BILLING CODE 6560–50–F

[FRL–4663–4]

Mexam Trucking Removal Site; Proposed Administrative Settlement Pursuant to the Comprehensive Environmental Response, Compensation, and Liability Act

AGENCY: Environmental Protection Agency.

ACTION: Notice; request for public comment.

SUMMARY: In accordance with section 122(i) of the Comprehensive Environmental Response, Compensation, and Liability Act of 1980 (CERCLA), as amended by the Superfund Amendments and Reauthorization Act of 1986 (SARA), notice is hereby given that a proposed administrative cost recovery settlement under Section 107 of CERCLA, concerning the Mexam Trucking Removal Site ("The Site") located at 700 Pierce Avenue, Calexico, California, was entered into by EPA Region IX and Mr. Hector De La Vega and Mr. Ignacio Lopez ("the settling parties"). The proposed settlement requires the settling parties to pay $14,834.94, which is EPA's response costs for this site, plus interest over a one year period to the Hazardous Substances Superfund in past response costs. The response costs incurred by EPA for this site do not exceed $500,000. Therefore, EPA may settle this matter without the prior written approval of the Attorney General.

For thirty (30) days following the date of publication of this notice, the Agency will receive written comments relating to this settlement. The Agency's response to any comments received will be available for public inspection at EPA Region IX offices located at 75 Hawthorne Street, San Francisco, California, 94105.

DATES: Comments must be submitted on or before July 6, 1993.

ADDRESSES: The proposed settlement and additional background information relating to the settlement are available for public inspection at EPA Region IX offices located at 75 Hawthorne Street, San Francisco, California, 94105. A copy of the proposed settlement may be obtained at the same address from Brent Maier (H–8–4), telephone (415) 744–2299. Comments on the proposed settlement should reference the Mexam Trucking Removal Site located in Calexico, California, and EPA Docket No. 09–93–15 and should be addressed to John Rothman, Office of Regional Counsel, (RC–1), at 75 Hawthorne Street, San Francisco, California, 94105.

FOR FURTHER INFORMATION CONTACT: Brent Maier at (415) 744–2299 or John Rothman at (415) 744–1353.

Dated: May 14, 1993.

Keith Takata,

Acting Director, Hazardous Waste Management Division, EPA Region IX.

[FR Doc. 93–13227 Filed 6–3–93; 8:45 am]

BILLING CODE 6560–50–P–M

FEDERAL COMMUNICATIONS COMMISSION

Public Information Collection Requirement Submitted to Office of Management and Budget for Review

May 27, 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, International Transcription Service, Inc., 2100 M Street, NW., Suite 140, Washington, DC 20037, (202) 857–3800. For further information on this submission contact Judy Boley, Federal Communications Commission, (202) 632–0276. 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: 3060–0233.

Title: Part 36—Jurisdictional separations procedures.

Action: Extension of a currently approved collection.

Respondents: Businesses or other for-profit.

Frequency of Response: Annually and on occasion reporting.

Estimated Annual Burden: 3,090 responses; 20 hours average burden per response; 61,800 hours total annual burden.

Needs and Uses: Part 36 of the Commission's rules and regulations contains the following collections as defined by 5 CFR part 1320. Remaining part 36 rules consist primarily of the procedures for apportioning investment, expense and revenues of intrastate and interstate operations. Section 36.611 requires local telephone companies (LECs) to provide the National Exchange Carrier Association (NECA) with data to be used in the jurisdictional allocations underlying the cost support data for the access charge tariffs filed every April. Carriers may update their submissions one or more times annually on a rolling year basis pursuant to 36.612. Section 36.613 requires NECA to file information with the Commission on September 1 of each year. Section 36.721 requires states or local telephone companies who want to participate in the "Link-Up America" program to file data with the Commission demonstrating eligibility pursuant to the criteria contained in § 36.721(a)(1)–(4) of our Rules. Section 36.731 requires local telephone companies participating in the lifeline programs to file information with NECA for each of their study areas, on a yearly basis, on June 30th. Information filed with NECA pursuant to § 36.611 is used in the jurisdictional allocations underlying the cost support data for the access charge tariffs every April. Without this data, NECA would not be able to prepare and file the necessary tariffs. Information submitted to the FCC pursuant to § 36.721 is required to maintain the integrity of the Federal Lifeline Assistance Programs. Certification is necessary to ensure that the targetted group is the beneficiary of the program.

Federal Communications Commission.

William F. Caton,

Acting Secretary.

[FR Doc. 93–13109 Filed 6–3–93; 8:45 am]

BILLING CODE 6712–01–M

FEDERAL EMERGENCY MANAGEMENT AGENCY

[FEMA–991–DR]

Oklahoma; Amendment to Notice of a Major Disaster Declaration

AGENCY: Federal Emergency Management Agency (FEMA).

ACTION: Notice.

SUMMARY: This notice amends the notice of a major disaster for the State of Oklahoma (FEMA–991–DR), dated May 12, 1993, and related determinations.

EFFECTIVE DATE: May 26, 1993.

FOR FURTHER INFORMATION CONTACT: Pauline C. Campbell, Disaster Assistance Programs, Federal Emergency Management Agency, Washington, DC 20472, (202) 646–3606.

SUPPLEMENTARY INFORMATION: Notice is hereby given that the incident period for this disaster is amended to May 8, 1993, through and including May 26, 1993.

(Catalog of Federal Domestic Assistance No. 83.516, Disaster Assistance.)

Richard W. Krimm,

Deputy Associate Director, State and Local Programs and Support.

[FR Doc. 93–13208 Filed 6–3–93; 8:45 am]

BILLING CODE 6718–02–M

[FEMA–989–DR]

Missouri; Amendment to Notice of a Major Disaster Declaration

AGENCY: Federal Emergency Management Agency (FEMA).

ACTION: Notice.

SUMMARY: This notice amends the notice of a major disaster for the State of Missouri, (FEMA–989–DR), dated May 11, 1993, and related determinations.

EFFECTIVE DATE: May 20, 1993.

FOR FURTHER INFORMATION CONTACT: Pauline C. Campbell, Disaster Assistance Programs, Federal Emergency Management Agency, Washington, DC 20472, (202) 646–3606.

SUPPLEMENTARY INFORMATION: The notice of a major disaster for the State of Missouri dated May 11, 1993, is hereby amended to include the following areas among those areas determined to have been adversely affected by the catastrophe declared a major disaster by the President in his declaration of May 11, 1993:

Pike, Jefferson, and St. Louis Counties for Individual Assistance.

(Catalog of Federal Domestic Assistance No. 83.516, Disaster Assistance.)

Richard W. Krimm,

Deputy Associate Director, State and Local Programs and Support.

[FR Doc. 93–13207 Filed 6–3–93; 8:45 am]

BILLING CODE 6718–02–M

FEDERAL RESERVE SYSTEM

John A. Brunner, Jr.; Change in Bank Control Notices; Acquisitions of Shares of Banks or Bank Holding Companies; Correction

This notice corrects a previous notice (FR Doc. 93-12055) published at page 29584 of the issue for Friday, May 21, 1993.

Under the Federal Reserve Bank of St. Louis heading, the entry for John A. Brunner, Jr. is revised to read as follows:

A. Federal Reserve Bank of St. Louis (Randall C. Sumner, Vice President) 411 Locust Street, St. Louis, Missouri 63166:

1. John A. Brunner, Jr., Marked Tree, Arkansas; to acquire an additional 2.40 percent of the voting shares of Marked Tree Bancshares, Inc., Marked Tree, Arkansas, for a total of 26.71 percent, and thereby indirectly acquire Marked Tree Bank, Marked Tree, Arkansas.

Comments on this application must be received by June 9, 1993.

Board of Governors of the Federal Reserve System, May 28, 1993.

Jennifer J. Johnson,

Associate Secretary of the Board.

[FR Doc. 93–13173 Filed 6–3–93; 8:45 am]

BILLING CODE 6210–01–F

Bruce N. Canfield, et al.; Change in Bank Control Notices; Acquisitions of Shares of Banks or Bank Holding Companies

The notificants listed below have applied under the Change in Bank Control Act (12 U.S.C. 1817(j)) and § 225.41 of the Board's Regulation Y (12 CFR 225.41) to acquire a bank or bank holding company. The factors that are considered in acting on the notices are set forth in paragraph 7 of the Act (12 U.S.C. 1817(j)(7)).

The notices are available for immediate inspection at the Federal Reserve Bank indicated. Once the notices have been accepted for processing, they will also be available for inspection at the offices of the Board of Governors. Interested persons may express their views in writing to the Reserve Bank indicated for that notice or to the offices of the Board of Governors. Comments must be received not later than June 24, 1993.

A. Federal Reserve Bank of Dallas (W. Arthur Tribble, Vice President) 400 South Akard Street, Dallas, Texas 75222:

1. Bruce N. Canfield, Waskom, Texas; to acquire an additional 0.02 percent of the voting shares of Waskom Bancshares, Inc., Waskom, Texas, for a total of 25.0 percent, and thereby indirectly acquire First State Bank, Waskom, Texas.

2. Calvin Fryar, Brownwood, Texas, and Fred Perry, Brownwood, Texas; to each acquire an additional 0.4 percent of the voting shares of Brownwood Bancshares, Inc., Brownwood, Texas, for individual totals of 16 percent, and thereby indirectly acquire Citizens National Bank at Brownwood, Brownwood, Texas.

Board of Governors of the Federal Reserve System, May 28, 1993.

Jennifer J. Johnson,

Associate Secretary of the Board.

[FR Doc. 93–13174 Filed 6–3–93; 8:45 am]

BILLING CODE 6210–01–F

PNC Bank Corp., et al.; Formations of; Acquisitions by; and Mergers of Bank Holding Companies

The companies listed in this notice have applied for the Board's approval under section 3 of the Bank Holding Company Act (12 U.S.C. 1842) and § 225.14 of the Board's Regulation Y (12 CFR 225.14) to become a bank holding company or to acquire a bank or bank holding company. The factors that are considered in acting on the applications are set forth in section 3(c) of the Act (12 U.S.C. 1842(c)).

Each application is available for immediate inspection at the Federal Reserve Bank indicated. Once the application has been accepted for processing, it will also be available for inspection at the offices of the Board of Governors. Interested persons may express their views in writing to the Reserve Bank or to the offices of the Board of Governors. Any comment on an application that requests a hearing must include a statement of why a written presentation would not suffice in lieu of a hearing, identifying specifically any questions of fact that are in dispute and summarizing the evidence that would be presented at a hearing.

Unless otherwise noted, comments regarding each of these applications must be received not later than June 28, 1993.

A. Federal Reserve Bank of Cleveland (John J. Wixted, Jr., Vice President) 1455 East Sixth Street, Cleveland, Ohio 44101:

1. PNC Bank Corp., Pittsburgh, Pennsylvania; to acquire 100 percent of the voting shares of The Massachusetts Company, Boston, Massachusetts.

B. Federal Reserve Bank of Chicago (James A. Bluemle, Vice President) 230 South LaSalle Street, Chicago, Illinois 60690:

1. Talen, Inc., Traer, Iowa; to acquire 95 percent of the voting shares of Farmers and Merchants Bank, Greenwood, Wisconsin.

C. Federal Reserve Bank of St. Louis (Randall C. Sumner, Vice President) 411 Locust Street, St. Louis, Missouri 63166:

1. Mercantile Bancorporation, Inc., St. Louis, Missouri; to acquire 100 percent of the voting shares of Mt. Vernon Bancorp, Inc., Mt. Vernon, Illinois, and thereby indirectly acquire First Bank and Trust Company, Mt. Vernon, Illinois.

D. Federal Reserve Bank of Minneapolis (James M. Lyon, Vice President) 250 Marquette Avenue, Minneapolis, Minnesota 55480:

1. Rolla Holding Company, Inc., Rolla, North Dakota; to acquire 98 percent of the voting shares of First National Bank, Hettinger, North Dakota.

E. Federal Reserve Bank of Kansas City (John E. Yorke, Senior Vice President) 925 Grand Avenue, Kansas City, Missouri 64198:

1. Holcomb Bancshares, Inc., Holcomb, Kansas; to acquire 100 percent of the voting shares of First National Bank of Holcomb, Holcomb, Kansas.

F. Federal Reserve Bank of Dallas (W. Arthur Tribble, Vice President) 400 South Akard Street, Dallas, Texas 75222:

1. First Baird Bancshares, Inc., Baird, Texas; to acquire 100 percent of the voting shares of First Baird Bancshares of Delaware, Inc., Dover, Delaware; Parker County Bancshares, Inc., Weatherford, Texas; First Parker Bancshares, Inc., Weatherford, Texas; Weatherford Bancshares, Inc., Weatherford, Texas; First Weatherford Bancshares, Inc., Weatherford, Texas; and First National Bank of Weatherford, Weatherford, Texas.

Board of Governors of the Federal Reserve System, May 28, 1993.

Jennifer J. Johnson,

Associate Secretary of the Board.

[FR Doc. 93–13175 Filed 6–3–93; 8:45 am]

BILLING CODE 6210–01–F

GENERAL SERVICES ADMINISTRATION

Information Collection Activities Under Office of Management and Budget Review

AGENCY: Office of Acquisition Policy (VP), 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 3090–0121, Contractor's Report of Orders Received. This information is used by GSA to estimate requirements for the subsequent year, evaluate the effectiveness of the schedule, negotiate better prices on contracts based on volume, and for special reports.

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 Streets NW., Washington, DC 20405.

Annual Reporting Burden:
Respondents: 5,982;
Annual responses: 20;
Average hours per response: 0.26;
Burden hours: 31,585.

FOR FURTHER INFORMATION CONTACT: Edward J. McAndrew, (202) 501–1224.

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: May 26, 1993.

Emily C. Karam,

Director, Information Management Division.

[FR Doc. 93–13182 Filed 6–3–93; 8:45 am]

BILLING CODE 6820–61–M

Information Collection Activities Under Office of Management and Budget Review

AGENCY: Federal Supply Service (FCO), 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 3090–0035, Bidder's Mailing List Application Code Sheet. The Bidder's Mailing List Application Code Sheet is used by vendors who wish to be included in GSA's automated Bidder's Mailing List system.

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 Streets NW., Washington, DC 20405.

Annual Reporting Burden:
Respondents: 5,000;
Annual responses: 1;
Average hours per response: 0.50;
Burden hours: 2,500.

FOR FURTHER INFORMATION CONTACT: Rosa McCullough, (703) 305–6037.

Copy of Proposal: May be obtained from the Information Collection Management Branch (CAIR), 7102, GSA Building, 18th & F Streets NW., Washington, DC 20405, by telephoning (202) 501–2691, or by faxing your request to (202) 501–2727.

Dated: May 26, 1993.

Emily C. Karam,

Director, Information Management Division.

[FR Doc. 93–13183 Filed 6–3–93; 8:45 am]

BILLING CODE 6820–24–M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Administration for Children and Families

Privacy Act of 1974; Report of New System

AGENCY: Department of Health and Human Services (DHHS), Administration for Children and Families (ACF).

ACTION: Notice of new system of records.

SUMMARY: In accordance with the requirements of the Privacy Act of 1974, we are proposing to establish a new system of records, "Income and Eligibility Verification for Aid to Families with Dependent Children Quality Control (AFDC–QC) Reviews," HHS/ACF/OFA No. 09–80–0201. We have provided background information about the proposed system in the "Supplementary Information" section below. Although the Privacy Act requires only that the "routine uses" portion of the system be published for comment, ACF invites comments on all portions of this notice.

DATES: ACF filed a new system report with the Chairman of the Committee on Government Operations of the House of Representatives, the Chairman of the Committee on Governmental Affairs of the Senate, and the Administrator, Office of Information and Regulatory Affairs, Office of Management and Budget (OMB), on May 3, 1993. The new system of records, including routine uses will become effective July 2, 1993, unless ACF receives comments which require alteration to the system.

ADDRESSES: The public should address comments to Jaren Doherty, ACF Privacy Act Officer, Administrator for Children and Families, Office of Information Systems Management, State Systems Policy Staff, 370 L'Enfant Promenade, SW., Washington, DC 20447. Comments received will be available for inspection at this location.

FOR FURTHER INFORMATION CONTACT: Sean D. Hurley, Division of Quality Control, Office of Family Assistance, Administration for Children and Families, Aerospace Building—5th Floor, 370 L'Enfant Promenade, SW., Washington, DC 20447, telephone (202) 401–9296.

SUPPLEMENTARY INFORMATION: ACF proposes to initiate a new system of records collecting data under the authority of and to implement section 408 of the Social Security Act (the Act), (42 USC 608). AFDC–QC utilizes a statistically valid sample of cases authorized as AFDC eligible to make judgments about the accuracy of case eligibility and payment amount determinations and to gather information about the nature and cause of identified inaccurate payments. States are required to review a sample of cases authorized to receive AFDC to verify the accuracy of the eligibility and payment amount determinations, and to identify errors. Error rate information is used to disallow misspent funds and to assist States in developing corrective actions to prevent future errors.

Section 408 of the Act requires the Secretary to measure the amount of expenditure due to erroneous AFDC eligibility determinations and generally to disallow Federal financial participation for erroneous expenditures greater than the national average for each fiscal year. Implementing regulations are set forth at 45 CFR 205.40 through 205.43.

The purpose of this system of records is to permit ACF to match data from the AFDC–QC subsample against data maintained by other Federal and State agencies as necessary to identify and/or verify sources of income and resources of AFDC recipients. Information received from other Federal agencies (e.g., Internal Revenue Service (IRS)), will enable ACF to establish more accurately the amount of erroneous payments. This will decrease erroneous Federal expenditures by disallowing misspent Federal funds, and reduce erroneous expenditures by providing information for States to use in developing corrective actions.

In order to complete these objectives, ACF regional offices will provide to the ACF Central Office the appropriate identifying information on AFDC recipients included in the Federal AFDC–QC subsample. Since we are proposing to establish this system of records in accordance with the requirements and principles of the Privacy Act, we do not anticipate that it will have an unfavorable effect on the privacy or other personal rights of individuals.

The Privacy Act permits us to disclose information without the consent of individuals for "routine uses"—that is, disclosures that are compatible with the purpose for which we collected the information. The proposed routine uses in the new system meet the compatibility criteria since the information is collected for implementing the Quality Control process under the AFDC program. We anticipate that disclosures under the routing uses will not result in any unwarranted adverse effects on personal privacy.

Dated: May 3, 1993.

Laurence J. Love,

Acting Assistant Secretary for Children and Families.

09–80–0201

SYSTEM NAME:

Income and Eligibility Verification for Aid to Families with Dependent Children Quality Control (AFDC–QC) Reviews, HHS/ACF/OFA.

SECURITY CLASSIFICATION:

None.

SYSTEM LOCATION:

ACF Computer Facilities, National Computer Center, Social Security Administration, 6201 Security Boulevard, Room 2–k–11, Baltimore, Maryland 21235.

CATEGORIES OF INDIVIDUALS COVERED BY THE SYSTEM:

Approximately 48,000 AFDC recipients in the AFDC–QC subsample per year.

CATEGORIES OF RECORDS IN THE SYSTEM:

Recipient name, address, Social Security Number, name of State, State and Federal AFDC–QC case review number, and financial information concerning AFDC recipient income and resources.

AUTHORITY FOR MAINTENANCE OF THE SYSTEM:

Section 408 of the Social Security Act (42 U.S.C. 608). Regulations at 45 CFR 205.40–205.43.

PURPOSE(S):

To use other Federal and State agencies as necessary (e.g., Internal Revenue Service (IRS)) to identify sources of income and resources of AFDC recipients to establish the accuracy of AFDC eligibility determinations and payment amounts.

ROUTINE USES OF RECORDS MAINTAINED IN THE SYSTEM, INCLUDING CATEGORIES OF USERS AND THE PURPOSE OF SUCH USES:

Disclosures may be made:

1. To other Federal agencies (e.g., Internal Revenue Service) to obtain income/resource data for the purpose of determining correct AFDC eligibility and payment.

2. To a State agency administering the AFDC program which will use the information in its eligibility and payment decisions.

3. To a congressional office, from the record of an individual in response to an inquiry from the congressional office made at the request of that individual.

4. To a contractor for the purpose of collating, analyzing, aggregating or otherwise refining or processing records in this system or for developing, modifying and/or manipulating Automatic Data Processing (ADP) software. Data would also be disclosed to contractors incidental to consultation, programming, operation, user assistance, or maintenance of a ADP or telecommunications system containing or supporting records in the system.

5. To the Department of Justice, to a court or other tribunal, or to another party before such tribunal, when one of the following is a party to litigation or has an interest in such litigation, and HHS determines that the use of such records by the Department of Justice, the tribunal, or other party is relevant and necessary to the litigation and would help in the effective representation of the governmental party, provided, however, that in each case HHS determines that such disclosure is compatible with the purpose for which the records were collected:

a. HHS, or any component thereof; or

b. Any HHS employee in his or her official capacity; or

c. Any HHS employee in his or her individual capacity where the Department of Justice (or HHS, where it is authorized to do so) has agreed to represent the employee; or

d. The United States or any agency thereof, where HHS determines that the litigation is likely to affect HHS or any of its components.

6. To an agency of a State Government, or established by State law, for purposes of determining, evaluating and assessing cost, effectiveness, and the quality of the AFDC program in the State, if ACF:

a. Determines that the use or disclosure does not violate legal limitations under which the data were provided, collected, or obtained;

b. Establishes that the data are exempt from disclosure under the State and/or local Freedom of Information Act;

c. Determines that the purpose for which the disclosure is to be made:

(1) Cannot reasonably be accomplished unless the data are provided in an individually identifiable form;

(2) Is of sufficient importance to warrant the effect and risk to the privacy interests of the individual that additional exposure of the record might bring, and;

(3) There is reasonable probability that the objective for the use would be accomplished; and

d. Requires the receiver to:

(1) Establish reasonable administrative, technical, and physical safeguards to prevent unauthorized use or disclosure of the record;

(2) Remove or destroy the information that allows the individual to be identified at the earliest time at which removal or destruction can be accomplished consistent with the purpose of the request, unless the recipient presents an adequate justification for retaining such information;

(3) Make no further use or disclosure of the record except:

(a) In emergency circumstances affecting the health or safety of any individual;

(b) For use in another project under the same conditions, and with written authorization of ACF;

(c) For disclosure to a properly identified person for the purpose of an audit related to the project, if information that would enable project subjects to be identified is removed or destroyed at the earliest opportunity consistent with the purpose of the audit, or

(d) When required by law; and

(4) Secure a written statement attesting to the receiver's understanding of and willingness to abide by these provisions. The receiver must agree to the following:

(a) Not to use the data for purposes that are not related to the evaluation of cost, quality and effectiveness of the AFDC program;

(b) Not to publish or otherwise disclose the data in a form raising unacceptable possibilities that beneficiaries could be identified (i.e., the data must not be beneficiary-specific and must be aggregated to a level at which no data cells have ten or fewer beneficiaries); and

(c) To submit a copy of any aggregation of the data intended for publication to ACF for approval prior to publication.

POLICIES AND PRACTICES FOR STORING, RETRIEVING, ACCESSING, RETAINING, AND DISPOSING OF RECORDS IN THE SYSTEM:

STORAGE:

Storage will be on paper and magnetic media.

RETRIEVABILITY:

Information will be retrieved by beneficiary social security number which is the unique identifier used by ACF for this system of records, beneficiary name, and the State and Federal AFDC–QC case number.

SAFEGUARDS:

ACF will maintain all return information in accordance with Federal requirements as necessary (e.g., the provisions of the Internal Revenue Code section 6103(p)(4)). The records will be accessible only to authorized employees. ACF will notify all employees having access to records of criminal sanctions for unauthorized disclosure of information on individuals. All authorized staff will have computer system security clearance by use of an identification code and a password to access data. Access to the return data will be restricted (via security software packages on ACF computer facilities that are housed within the National Computer Center), to only those ACF employees who are associated with implementing and maintaining the system of records on a "need to know" basis. All computer records will be safeguarded in accordance with the provisions of the HHS *Information Resource Management Manual*, Part 6, ADP Systems Security, including use of passwords, and the National Bureau of

Standards Federal Information Processing Standards.

RETENTION AND DISPOSAL:

Hard copy records will be maintained indefinitely. Magnetic media will be disposed of after the AFDC–QC payment error rates are produced for the appropriate AFDC–QC review period involved.

SYSTEM MANAGER(S) AND ADDRESS:

Director, Division of Quality Control, Office of Family Assistance, Administration for Children and Families, Aerospace Building—5th Floor, 370 L'Enfant Promenade SW., Washington, DC 20447.

NOTIFICATION PROCEDURE:

To determine if a record concerning yourself exists, write to the System Manager at the address indicated above. The requester must also verify his or her identity by providing either a notarization of the request or a written certification that the requester is who he or she claims to be. The request must include: (a) Full name, (b) social security number, and (c) address. The requester must also understand that the knowing and willful request for acquisition of a record pertaining to an individual under false pretenses is a criminal offense under the Act, subject to a five thousand dollar fine.

RECORD ACCESS PROCEDURE:

Write to the System Manager specified above to gain access to records and provide the same information as is required under the Notification Procedures. Requesters should also reasonably specify the record contents being sought. Individuals may also request an accounting of disclosure of their records, if any.

CONTESTING RECORD PROCEDURES:

Contact the System Manager specified above and reasonably identify the record, specify the information to be contested, the corrective action sought, and your reasons for requesting the correction, along with supporting information to show how the record is inaccurate, incomplete, untimely or irrelevant. The right to contest records is limited to information which is incomplete, irrelevant, inaccurate, or untimely (obsolete).

RECORD SOURCE CATEGORIES:

Income/resource data requested from other Federal agencies (e.g., IRS) and/or State agencies as necessary.

SYSTEMS EXEMPTED FROM CERTAIN PROVISIONS OF THE PRIVACY ACT:

None.

[FR Doc. 93–13215 Filed 6–3–93; 8:45 am]

BILLING CODE 4130–01–M

Agency for Health Care Policy and Research

Notice of Meeting

In accordance with section 10(a) of the Federal Advisory Committee Act (5 U.S.C. appendix 2), announcement is made of the following advisory subcommittee scheduled to meet during the month of June 1993:

Name: Subcommittee on AHCPR Rural Health Centers, Requirements Contract.

Dates and Times: June 10–11, 1993, 9 a.m.

Place: Ramada Inn, 8500 Wisconsin Avenue, Ambassador II Room, Bethesda, Maryland 20814.

This meeting will be closed to the public.

Purpose: The Subcommittee's charge is to provide, on behalf of the Health Care Policy and Research Contracts Review Committee, advice and recommendations to the Secretary and to the Administrator, Agency for Health Care Policy and Research (AHCPR), regarding the scientific and technical merit of contract proposals submitted in response to a specific Request for Proposals. The purpose of this contract is to provide short-term studies to address issues and questions regarding the quality and effectiveness of rural health services. The research and policy analyses to be conducted under this contract will be used in the development of rural health policy and cover a full range of issues including the quality, practice patterns, appropriateness and effectiveness of rural health services.

Agenda: The session of this Subcommittee will be devoted entirely to the technical review and evaluation of contract proposals submitted in response to a specific Request for Proposals. The Administrator, AHCPR, has made a formal determination that this meeting will not be open to the public. This is necessary to protect the free exchange of views and avoid undue interference with Committee and Department operations, and safeguard confidential proprietary information and personal information concerning individuals associated with the proposals that may be revealed during the sessions. This is in accordance with section 10(d) of the Federal Advisory Committee Act, 5 U.S.C. appendix 2, Department regulations, 45 CFR 11.5(a)(6), and procurement regulations, 48 CFR 315.604(d).

Anyone wishing to obtain information regarding this meeting should contact Karen Harris, Office of Management, Contracts Management Branch, Agency for Health Care Policy and Research, Executive Office Center, 2101 E. Jefferson Street, suite 601, Rockville, Maryland 20852, (301) 227–8441.

Dated: May 26, 1993.

J. Jarrett Clinton, M.D.,

Administrator.

[FR Doc. 93–13093 Filed 6–3–93; 8:45 am]

BILLING CODE 4160–90–U

Notice of Meeting

In accordance with section 10(a) of the Federal Advisory Committee Act (5 U.S.C. Appendix 2), announcement is made of the following advisory subcommittee scheduled to meet during the month of June 1993:

Name: Subcommittee on Information Systems to Enhance the Year 2000 Objectives, Small Business Innovative Research, Phase II.

Dates and Times: June 7, 1993, 8:30 a.m.

Place: Marriott Residence Inn, 7335 Wisconsin Avenue, Kent Room, Bethesda. Maryland 20814.

This meeting will be closed to the public.

Purpose: The Subcommittee's charge is to provide, on behalf of the Health Care Policy and Research Contracts Review Committee, advice and recommendations to the Secretary and to the Administrator, Agency for Health Care Policy and Research (AHCPR), regarding the scientific and technical merit of contract proposals submitted in response to a specific Request for Proposals. The purpose of this contract during Phase I was to develop information systems which foster achievement of the health promotion and disease prevention objectives for the year 2000 which are contained in the "Healthy People 2000: National Health Promotion and Disease Prevention Objectives" (DHHS Publication No. (PHS) 91–50213). The contractor was to develop a prototype for one of the 22 major categories of objectives listed in the referenced DHHS publication. During Phase II, the contractor is to complete full development and beta testing of the prototype objective and complete the design and prototype development of all additional objectives.

Agenda: The session of this Subcommittee will be devoted entirely to the technical review and evaluation of contract proposals submitted in response to a specific Request for Proposals. The Administrator, AHCPR, has made a formal determination that this meeting will not be open to the public. This is necessary to protect the free exchange of views and avoid undue interference with Committee and Department operations, and safeguard confidential proprietary information and personal information concerning individuals associated with the proposals that may be revealed during the sessions. This is in accordance with section 10(d) of the Federal Advisory Committee Act, 5 U.S.C. Appendix 2, Department regulations, 45 CFR 11.5(a)(6), and procurement regulations, 48 CFR 315.604(d).

Anyone wishing to obtain information regarding this meeting should contact Karen Harris, Office of Management, Contracts Management Branch, Agency for Health Care Policy and Research,

Executive Office Center, 2101 E. Jefferson Street, suite 601, Rockville, Maryland 20852, (301) 227–8441.

Dated: May 28, 1993.

Risa J. Lavizzo-Mourey, M.D.,

Acting Administrator.

[FR Doc. 93–13094 Filed 6–3–93; 8:45 am]

BILLING CODE 4160–90–U

Centers for Disease Control and Prevention (CDC)

[Announcement Number 328]

Health Promotion and Disease Prevention Research Centers Cooperative Agreements; Notice of Availability of Funds for Fiscal Year 1993

INTRODUCTION: The Centers for Disease Control and Prevention (CDC) announces the availability of funds in fiscal year (FY) 1993 for Health Promotion and Disease Prevention Research Centers cooperative agreements.

The Public Health Service (PHS) is committed to achieving the health promotion and disease prevention objectives of Healthy People 2000, a PHS-led national activity to reduce morbidity and mortality and improve the quality of life. This announcement is related to health priorities in health promotion, health protection, and preventive services. (For ordering a copy of Healthy People 2000, see the section **WHERE TO OBTAIN ADDITIONAL INFORMATION.**)

AUTHORITY: This program is authorized under sections 1706 (42 U.S.C. 300u-5) and 317(k)(3) (42 U.S.C. 247b(k)(3)), of the Public Health Service Act, as amended.

ELIGIBLE APPLICANTS: Eligible applicants are academic health centers; defined as schools of public health, medicine, or osteopathy; that have:

A. Multidisciplinary faculty with expertise in disease prevention and health promotion and working relationships with relevant groups in such fields as public health, medicine, psychology, nursing, social work, education, and business.

B. Core faculty in epidemiology, biostatistics, social sciences, behavioral and environmental health sciences, and health administration.

C. Demonstrated curriculum in disease prevention.

D. Capability for graduate training in public health or residency training in preventive medicine.

Eligible applicants may enter into contracts, including consortia agreements (as described in the PHS Grants Policy Statement), as necessary to meet the essential requirements of this program and to strengthen the overall application.

AVAILABILITY OF FUNDS: Funds in the amount of approximately $6,000,000 are available in Fiscal Year 1993.

Approximately $5,000,000 is available to fund up to nine prevention center programs. The average award is expected to be $555,000, (including both direct and indirect costs) and range from $300,000 to $700,000. Included in this amount, approximately $400,000 may be available to fund a new prevention center in South Carolina as directed by Congress, through House Conference Report 102–974, October 1, 1992.

In addition, approximately $1,000,000 (including both direct and indirect costs) is available to fund up to eleven special interest research projects within the prevention centers. These funds will be distributed as follows: (1) Approximately $300,000 is available to fund one award for a special interest project related to health of persons with disabilities; (2) approximately $250,000 is available to fund one award for a special interest project related to developing the capacity to train state health department personnel and other advocates according to a standard curriculum based on a model tobacco control program; and (3) the remaining $450,000 is available to fund special interest projects related to Chronic Conditions, Risk Factors, and Special Populations.

It is expected that the awards will begin on or about September 15, 1993, and are made for a 12-month budget period within a project period of up to 5 years. Funding estimates may vary and are subject to change.

Continuation awards within the project period will be made on the basis of satisfactory progress and the availability of funds. At the request of the applicant, Federal personnel may be assigned to a project in lieu of a portion of the financial assistance.

PURPOSE: The purpose of this program is to support health promotion and disease prevention research focusing on the major causes of death and disability. Prevention Centers are to conduct research and demonstration projects to develop improved methods of appraising health hazards and risk factors, and to initiate research and demonstration projects to develop and test new and innovative public health practices to prevent disease and disability.

PROGRAM REQUIREMENTS: In conducting activities to achieve the purpose of this program, the recipient shall be responsible for the activities under A., below, and CDC shall be responsible for conducting activities under B., below:

A. Recipient Activities

1. Conduct and evaluate one or more demonstration projects in health promotion and disease prevention or preventive health services, or both, in defined communities or target populations.

2. Conduct a demonstration project in health promotion and disease prevention with a state or local health department.

3. Establish collaborative activities with appropriate organizations, individuals, and state health agencies.

4. Establish an advisory committee to provide input on major program activities. The committee should include scientists, health care providers, health officials, voluntary health organizations, and consumers.

5. Seek additional sources of funding.

6. Coordinate and collaborate with other PHS supported research programs to prevent duplication and enhance overall efforts.

B. CDC Activities

1. Collaborate as appropriate with recipient in all stages of the project.

2. Provide programmatic and technical assistance.

3. Participate in improving program performance through consultation based on information and activities of other projects.

4. Provide scientific collaboration.

5. At the request of the applicant, assign Federal personnel in lieu of a portion of the financial assistance to assist with developing the curriculum, training, or conducting other specific necessary activities.

EVALUATION CRITERIA: Applications may be evaluated through a dual review process. The first review will be a peer evaluation of the scientific and technical merit of the application conducted by the Prevention Centers Grant Review Committee. The second review will be conducted by senior Federal staff, who will consider the results of the first review together with program need and relevance. Awards will be made based on merit and priority score ranking by the peer review, program review by senior Federal staff, and the availability of funds.

A. The Prevention Center Grants Program Objective Review Committee may recommend approval or disapproval based on the intent of the application and the following criteria:

1. Prevention Center theme (5 points)

The extent to which the theme will result in innovative approaches or interventions to meet health priorities, emerging health needs, health needs of an identified demographic group, or combination thereof.

2. Overall program plan (15 points)

The extent to which the overall program plan has clear objectives that are specific, measurable, and realistic, and makes effective use of Center resources to advance the Center's theme.

3. Specific Project Plans (55 points)

The technical and scientific merits of the proposed projects, the potential to achieve the stated objectives and the extent to which the applicant's plans are consistent with the purpose of this program.

a. Core activities (10 points)
b. Demonstration projects (15 points)
c. Collaborative project with state/local health or education department (10 points)
d. Special Interest Projects (10 points)
e. Prevention Research Training (10 points)

4. Evaluation plan (5 points)

The extent to which the overall prevention center theme and objectives will be evaluated in regard to progress, efficacy, and cost benefit.

5. Management and staffing plan (15 points)

The extent to which the applicant demonstrates the ability and capacity to carry out the overall theme, objectives, and specific project plans.

6. Institutionalization plan (5 Points)

The Center's plan for institutionalization of the prevention center within the parent organization.

7. Budget (not scored).

The extent to which the budget and justification are consistent with the program objectives and purpose. Centers are strongly urged to include a plan for obtaining additional resources that lead to institutionalization of the Center.

B. Review by senior Federal staff

Further review will be conducted by Senior Federal staff. Factors to be considered will be:

1. Results of the peer review.
2. Program needs and relevance to national goals.
3. Budgetary considerations.

FUNDING PRIORITIES: Priority will be given to funding those applicants that will aid in maintaining an equitable geographic distribution of Centers.

EXECUTIVE ORDER 12372 REVIEW: Applications are not subject to the review requirements of Executive Order 12372, entitled Intergovernmental Review of Federal Programs.

PUBLIC HEALTH SYSTEM REPORTING REQUIREMENTS: This program is not subject to the Public Health System Reporting Requirements.

CATALOG OF FEDERAL DOMESTIC ASSISTANCE NUMBER: The Catalog of Federal Domestic Assistance number is 93.135.

OTHER REQUIREMENTS: Projects that involve the collection of information from 10 or more individuals and funded by cooperative agreement will be subject to review by the Office of Management and Budget (OMB) under the Paperwork Reduction Act.

APPLICATION SUBMISSION AND DEADLINES:

A. Applications

Applicants should submit an original and five copies of Form PHS–398 to Henry S. Cassell, III, Grants Management Officer, Grants Management Branch, Procurement and Grants Office, Centers for Disease Control and Prevention (CDC), 255 East Paces Ferry Road, NE., room 300, Mailstop E–13, Atlanta, Georgia 30305, on or before July 1, 1993.

B. Deadlines

Applications shall be considered as meeting the deadline above if they are either:

1. Received on or before the deadline date; or

2. Sent on or before the deadline date and received in time for submission to the peer review committee. (Applicants must request a legibly dated U.S. Postal Service postmark or obtain a legibly dated receipt from a commercial carrier or U.S. Postal Service. Private metered postmarks shall not be acceptable as proof of timely mailing.)

C. Late Applications

Applications which do not meet the criteria in B.1. and B.2. above are considered late applications. Late applications will not be considered in the current competition and will be returned to the applicant.

WHERE TO OBTAIN ADDITIONAL INFORMATION: To receive additional written information call (404) 332–4561. You will be asked to leave your name, address, and phone number and will need to refer to Announcement Number 328. You will receive a complete program description, information on application procedures, and application forms.

If you have questions after reviewing the contents of all the documents, business management technical assistance may be obtained from Georgia L. Jang, Grants Management Specialist, Grants Management Branch, Procurement and Grants Office, Centers for Disease Control and Prevention (CDC), 255 East Paces Ferry Road, NE., room 300, Mailstop E–13, Atlanta, Georgia 30305, (404) 842–6814. Programmatic technical assistance may be obtained from Diane H. Jones, Ph.D., Project Officer, National Center for Chronic Disease Prevention and Health Promotion, Centers for Disease Control and Prevention (CDC), 4770 Buford Highway, NE., Mailstop K–41, Atlanta, Georgia 30341–3724, (404) 488–5395 or via BITNET or INTERNET: DHJ1@CCDOD1.EM.CDC.GOV.

Please refer to Program Announcement Number 328 when requesting information and submitting an application.

Potential applicants may obtain a copy of Healthy People 2000 (Full Report; Stock number 017–001–00474–0) or Healthy People 2000 (Summary Report; Stock number 017–001–00473–1) through the Superintendent of Documents, Government Printing Office, Washington, DC 20402–9325 (Telephone: (202) 783–3238).

Dated: May 28, 1993.

Robert L. Foster,

Acting Associate Director for Management and Operations, Centers for Disease Control and Prevention (CDC).

[FR Doc. 93–13152 Filed 6–3–93; 8:45 am]

BILLING CODE 4160–18–P

National/Regional Minority Organizations, Human Immunodeficiency Virus (HIV) Prevention Projects (FY 1993–FY 1994 Cooperative Agreements)

AGENCY: Centers for Disease Control and Prevention (CDC), Public Health Service, HHS.

ACTION: Notice.

SUMMARY: The Centers for Disease Control and Prevention (CDC) provides notice that three related program announcements will be published in fiscal years (FY) 1993 and 1994 for cooperative agreements with national and regional minority organizations (NMOs) to support HIV-prevention projects. In responding to the HIV/AIDS epidemic, CDC seeks to develop and

promote more effective, culturally sensitive prevention strategies through partnerships with NMOs.

FOR FURTHER INFORMATION CONTACT: Dorothy Triplett, Office of the Associate Director for AIDS/HIV, Centers for Disease Control and Prevention (CDC), (404) 639–0906.

SUPPLEMENTARY INFORMATION: Racial/ethnic minority communities throughout the United States continue to be disproportionately affected by the HIV/AIDS epidemic. In 1991, for the first time, the number of reported AIDS cases among minorities exceeded those reported among whites. While AIDS cases among whites increased by 24% during the 1-year period between April 1991 and April 1992, AIDS cases among blacks increased by 31%; among Hispanics, by 29%; among Asian American/Pacific Islanders, by 29%; and among American Indian/Alaskan Natives, by 42%.

The CDC HIV mission is to prevent HIV infection and reduce associated morbidity and mortality, in collaboration with community, state, national, and international partners. To accomplish its mission, CDC has identified five Critical Success Factors within the HIV Strategic Plan:

A. Strengthen current systems and develop new systems to accurately monitor the HIV epidemic, as a basis for assessing and directing HIV prevention programs.

B. Increase public understanding of, involvement in, and support for HIV prevention.

C. Implement comprehensive school health education programs to prevent risk behaviors that lead to HIV infection and other health problems.

D. Prevent or reduce behaviors or practices that place persons at risk for HIV infection.

E. Increase individual knowledge of HIV serostatus and improve referral systems to appropriate prevention and treatment services.

It is anticipated that three program announcements will be published in FY 1993–94 to provide financial support for and technical assistance to programs, activities, and services within racial/ethnic minority populations relevant to Critical Success Factors B, C, D, and E above. Separate program announcements will be published in FY 1993–94 to provide financial support and technical assistance for monitoring the HIV epidemic, addressing Critical Success Factor A.

CDC, in responding to the HIV/AIDS epidemic, seeks to develop and promote more effective, culturally sensitive prevention strategies through partnerships with NMOs. These partnerships are intended to increase collaboration between CDC and these organizations to strengthen HIV prevention efforts directed to racial/ethnic minority populations. The goal of these partnerships is to prevent the transmission of HIV infection and associated morbidity and mortality in racial and ethnic minority populations by strengthening the capacity of HIV prevention programs directed toward these populations at the national, state, and community levels, and is supported by the following strategies:

- Increase collaboration among NMOs and other national and community-based organizations to enhance the effectiveness of their efforts to reduce risk for HIV infection.
- Increase collaboration among organizations to enhance the effectiveness of health care, education and communications systems to identify and improve access to early intervention services for persons who are HIV seropositive.
- Provide consultation to CDC on current and proposed relevant policies and programs.
- Increase collaboration between NMOs and state and local health and education departments, substance abuse agencies, local and national mass media networks, and other local, state, or national sectors of our society which address the HIV prevention needs of racial/ethnic minority populations.
- Evaluate existing approaches in providing culturally competent, linguistically specific, theoretically sound, and developmentally appropriate HIV prevention strategies.
- Provide technical assistance and guidance to community-based organizations and state and local health, education, and substance abuse organizations in the development and evaluation of innovative approaches in designing HIV prevention strategies and interventions.

These announcements will address the needs of racial/ethnic minority populations within the Special Population Objectives of Healthy People 2000, a PHS-led national activity to reduce morbidity and mortality and improve the quality of life. These objectives relate to the priority areas of Educational and Community-Based Programs, HIV Infection, Maternal and Infant Health, Alcohol and Other Drugs, and Sexually Transmitted Diseases (STDs). They will address the Healthy People 2000 objectives by providing support for activities that increase the availability and coordination of prevention services. A copy of Healthy People 2000 (Full Report, Stock No. 017–001–00474–0) or Healthy People 2000 (Summary Report, Stock No. 017–001–00473–1) may be obtained through the Superintendent of Documents, Government Printing Office, Washington, DC 20402–9325, (telephone: 202–783–3238).

Funding for NMOs is expected to be available through three cooperative agreement instruments provided by the following Centers within CDC:

1. National Center for Prevention Services (NCPS), Program Announcement Number 305 (FY 1993). Approximately $7,500,000 will be available to support Critical Success Factors D and E. A description of recipient requirements, a list of priority activities, and specific information about these cooperative agreements are further described in Program Announcement 305, published following this **Federal Register** notice.

2. National Center for Chronic Disease Prevention and Health Promotion (NCCDPHP), Program Announcement Number 403 (FY 1994), currently scheduled for announcement in June, 1993. Approximately $500,000 will be available for minority programs directed to school/college youth or youth in high-risk situations to support Critical Success Factors C and D. This announcement will be directed toward national organizations.

3. National AIDS Information and Education Program (NAIEP), Program Announcement Number 400, currently scheduled for announcement in the fall of 1993. Approximately $500,000 will be available for health communications and prevention marketing programs directed to racial/ethnic minority audiences to support Critical Success Factor B. This announcement will be directed toward national and regional minority organizations. It is estimated that two cooperative agreements will be awarded.

For purposes of funding, eligibility may vary from announcement to announcement. An eligible applicant organization will be one of the following types:

1. National Organization

An established nonprofit national minority organization which has the documented experience and organizational capacity necessary to successfully operate and centrally administer a coordinated HIV prevention program, including the priority activities described in this announcement, within a major portion of the United States. The specific eligibility requirements will be defined in the individual program announcements.

2. Regional Organization

An established nonprofit regional minority organization which has the documented experience and capacity necessary to successfully operate and centrally administer a coordinated minority HIV prevention program within a region of the United States. The number of states and territories that constitute a region will be defined in the individual program announcements.

In addition, to be eligible, a national or regional minority organization must meet all of the following criteria:

1. More than 50 percent of persons on the governing body or board must be members of racial or ethnic minority populations and reflect the populations they serve;

2. The organization must possess a documented history to demonstrate it has served and continues to serve defined racial/ethnic minority populations through its offices, affiliates, or participating minority organizations at the national or regional level for at least 12 months prior to the submission of the proposal to CDC.

3. The organization must be able to provide proof of nonprofit status under applicable Internal Revenue Service sections.

These programs are authorized under the Public Health Service Act, section 301(a) (42 U.S.C. 241(a)), as amended, and section 317 (42 U.S.C. 247b), as amended.

Dated: May 28, 1993.

Robert L. Foster,

Acting Associate Director for Management and Operations, Centers for Disease Control and Prevention (CDC).

[FR Doc. 93–13156 Filed 6–3–93; 8:45 am]

BILLING CODE 4160–18–P

[Announcement Number 305]

Program Announcement and Availability of Funds for Fiscal Year 1993 Cooperative Agreements for National/Regional Minority Organization HIV/STD Prevention, Immunization, and TB Projects

Introduction

The Centers for Disease Control and Prevention (CDC) announces the availability of fiscal year (FY) 1993 funds for cooperative agreements with national and regional minority organizations. These agreements will support national and regional racial and ethnic minority organizations assisting community-based organizations (CBOs), state and local health agencies, and other organizations and agencies serving racial or ethnic minority populations for (I) HIV/STD prevention, (II) preschool immunization, and (III) tuberculosis (TB) prevention and control. A cooperative agreement is a legal agreement between CDC and the recipient in which CDC provides financial assistance to and substantial Federal programmatic involvement with the recipient during the project.

The Public Health Service (PHS) is committed to achieving the health promotion and disease prevention objectives of Healthy People 2000, a PHS-led national activity to reduce morbidity and mortality and to improve the quality of life. This announcement is related to the priority areas of Educational and Community-Based Programs, HIV Infection, Sexually Transmitted Diseases (STDs), and Immunization and Infectious Diseases. (To order a copy of Healthy People 2000, see the section entitled Where to Obtain Additional Information).

Authority

This program is authorized under Sections 301(a) and 317 of the Public Health Service Act, [42 U.S.C. 241(a) and 247b], as amended.

Eligible Applicants

Eligible applicants include national (NMOs) or regional minority organizations (RMOs) that provide documentation proving they meet all of the following criteria. To be eligible, a national or regional organization must:

A. Be an established tax-exempt organization (a nongovernmental, tax-exempt corporation or association whose net earnings in no part lawfully accrue to the benefit of private shareholders or individuals). The following is acceptable evidence of tax-exempt status:

- A reference to the applicant's organization in the Internal Revenue Service's most recent list of tax-exempt organizations described in Section 501(c)(3) of the IRS code; or
- A copy of a currently valid IRS tax exemption certificate.

B. Have the specific charge from its Articles of Incorporation or Bylaws or a resolution from its governing body or board to operate nationally or regionally (multistate or multiterritory) within the United States and its Territories.

C. Have at least 12 months documented experience in operating and centrally administering a coordinated public health or related program serving racial or ethnic minority populations within a major portion or region (multistate or multiterritory) of the United States through its own offices, organizational affiliates, or the participation of other minority organizations.

D. Have a governing body or board that is composed of more than 50% racial or ethnic minority group members who are representative of the population to be served. Groups recognized as racial and ethnic minority populations are: African Americans, Alaskan Natives, American Indians, Asian Americans, Caribbean Americans, Latinos/Hispanics, and Pacific Islanders. At least 51 percent of persons on the governing board must be members of racial or ethnic minority populations.

E. Document that each of the affiliates, chapters, or other minority organizations that will be participating in the program have a governing body or board whose membership is composed of more than 50% racial or ethnic minority group members.

F. Document that its program and administrative staff and the program and administrative staff of affiliates and participating organizations involved in the project are representative of the communities and populations to be served.

G. Document experience in sharing financial or technical resources with CBOs, affiliates, and chapters that provide a variety of services directly to racial and ethnic minority populations.

Proof of tax-exempt, minority, and organizational status in accordance with other eligibility criteria must be submitted with the application for determination of eligibility. No application will be accepted without proof of tax-exempt status.

Availability of Funds

The total amount of funds expected to be available for these projects is $9,500,000.

I. HIV/STD Prevention (HIV/STD)

Approximately $8,500,000 is expected to be available to fund about 20 NMOs or RMOs to provide technical assistance, training, and other priority assistance in support of HIV/STD prevention services. Approximately 8 of these awards will be made to national organizations serving racial or ethnic minority populations in a major portion of the United States. Awards will range from $300,000 to $600,000 with an average award of $400,000. Some awards will be made before the end of FY 1993 and the remaining awards will be made in FY 1994.

Consideration will be given to supporting HIV/STD technical assistance and training projects in support of organizations and agencies

serving persons at high risk in each of the following racial and ethnic minority populations: African Americans, Alaskan Natives, American Indians, Asian Americans, Caribbean Americans, Latinos/Hispanics, and Pacific Islanders. Organizations serving subgroups which have significant portions of their members at increased risk, such as Caribbean Americans, will also have priority for funding. Consideration will also be given to supporting at least one national or regional HIV/STD technical assistance project for organizations and agencies serving each of the following populations at high risk: gay and bisexual men of color, substance abusers, women at risk, and youth in high risk situations.

II. Immunization

Approximately $500,000 is expected to be available to fund about 1 to 3 NMOs or RMOs to provide technical assistance and training in support of preschool immunization activities. Awards will range from $175,000 to $500,000.

III. TB Prevention and Control (TB)

Approximately $500,000 is expected to be available to fund about 1 to 3 NMOs or RMOs to provide technical assistance and training in support of TB screening, prevention and treatment activities. Awards will range from $175,000 to $500,000.

Applicants may apply for funds under one or any combination of the funding categories (i.e., HIV/STD, Immunization, or TB), but the proposal must clearly state under which category funds are being requested. Regional affiliates of national organizations may apply only if the parent national organization does not submit an application. Otherwise, regional affiliates must submit their proposal as part of the parent national organizations's application.

Awards will be made for a 12-month budget period within a 5-year project period. (Budget period is the interval of time into which the project period is divided for funding and reporting purposes. Project period is the total time for which a project has been programmatically approved.) Continuation awards for new budget periods within an approved project period are made on the basis of satisfactory performance and the availability of funds.

These funds may not supplant or duplicate existing funding from any other public or private source. Although contracts with other organizations are allowable under these cooperative agreement awards, applicants themselves must perform a substantive portion of the activities for which funds are requested. No funds will be provided for patient medical care or purchase of drugs or vaccines.

CDC National Program Goals

I. HIV/STD Prevention

A. Establish and maintain effective HIV/STD prevention programs implemented in collaboration with state and local health departments, other state and local agencies, CBOs, health care providers, and national organizations throughout the United States and its territories.

B. Effect and evaluate the initiation and maintenance of behavior change among persons whose behavior places them at risk of HIV infection and other STDs.

C. Increase access to prevention and early intervention services for HIV-infected persons in order to reduce risks of further transmission, as well as to maintain the health of asymptomatic clients.

D. Increase collaboration and support among agencies, organizations, groups, and constituencies providing HIV prevention services.

II. Immunization

A. Establish and maintain effective vaccine delivery services and immunization programs implemented in collaboration with state and local health departments, other state and local agencies, CBOs, health care providers, and national organizations throughout the United States and its territories.

B. Effect and evaluate the initiation and maintenance of behavior change among parents whose behavior places their children at risk for low immunization levels or high morbidity of vaccine-preventable diseases.

C. Increase access to vaccine delivery services and early intervention activities for persons at risk for low immunization levels and high morbidity of vaccine-preventable diseases in order to reduce risk of further transmission, as well as to maintain the health of preschool children.

D. Increase collaboration and support among agencies, organizations, groups, and constituencies providing vaccine delivery and immunization services.

III. TB Prevention and Treatment

A. Increase awareness among populations about risk factors for TB, TB symptoms, and the availability of TB screening, prevention, and treatment services in the community.

B. Increase participation of at-risk populations in tuberculin skin testing, preventive therapy and treatment programs.

C. Increase the skills of community leaders and health care professionals in carrying out TB awareness, tuberculin skin testing, and directly observed therapy (DOT) for persons with TB infection or disease.

D. Develop and maintain effective referral systems between CBOs and state, local, and county TB control programs for clients with symptoms of TB, with TB infection or disease, or with risk factors for TB.

E. Establish and maintain effective DOT services for individuals with TB infection or disease through collaboration among state and local health departments, other state and local health care providers, and national organizations throughout the United States and its territories.

F. Increase collaboration and support among agencies, organizations, groups, and constituencies providing TB screening and DOT services.

Purpose of NMO/RMO Cooperative Agreement Programs

This program announcement will assist the Nation's disease prevention efforts by broadening current partnerships between CDC and NMO and RMOs to include collaborative efforts for immunization of preschool children, and TB elimination in addition to HIV/STD prevention efforts directed to persons at high risk for HIV and other STD. Opportunities will be provided to strengthen capacities of national and regional minority organizations and, through the technical assistance and training provided, community-based organizations, affiliates and chapters, governmental agencies and other state/local organizations and agencies to address the importance of integrated solutions to multiple public health problems and needs of racial and ethnic minorities at high risk for HIV/STD, TB, and low levels of immunization. This program will provide a foundation for even broader partnerships in the future capable of addressing additional public health problems affecting racial and ethnic minority populations. Specifically this program will:

I. HIV/STD Prevention

A. Strengthen and increase the effectiveness of HIV/STD prevention for racial and ethnic minority populations at high risk, including gay-identified, bisexual, and other men who have sex with men, substance abusers, persons with repeated STD infections, women in high-risk situations, youth in high-risk situations, sex partners of persons at

high risk for HIV infection, and residents in areas of high HIV seroprevalence.

B. Work toward improving the organizational capacities, programmatic efforts including service integration, and coordination of the HIV/STD prevention efforts of governmental and nongovernmental agencies and organizations serving racial or ethnic minority populations. These might include CBOs, state/local health departments, affiliates of NMOs and RMOs, state offices of minority health, HIV prevention service agencies, youth service organizations, criminal justice systems, substance abuse agencies, primary health care providers, women's health care providers, coalitions of organizations/agencies, community and migrant health centers, and other organizations and agencies serving racial and ethnic minorities at high risk for HIV/STD infection.

II. Preschool Immunization

A. Strengthen and increase the effectiveness of immunization activities for racial and ethnic minority preschool (children younger than 5 years, especially those under 24 months of age) populations with low immunization levels and high morbidity of vaccine-preventable diseases.

B. Improve the organizational capacities, programmatic efforts, and coordination of preschool immunization efforts of governmental and nongovernmental organizations. These might include CBOs, state/local health departments, Head Start programs, affiliates of NMOs and RMOs, HIV prevention service agencies, youth service organizations, criminal justice systems, substance abuse agencies, primary health care providers, women's health care providers, other child care providers, and other social service agencies who contribute to the health and welfare of preschool racial and ethnic minority children.

C. Increase consumer demand for immunization and vaccine services.

III. TB Prevention and Control

A. Strengthen and increase the effectiveness of TB prevention and treatment efforts for racial and ethnic minority populations, especially the 25 to 44 year old age group.

B. Work toward improving the organizational capacities, programmatic efforts, and coordination of TB awareness and prevention efforts of governmental and nongovernmental organizations. These might include state and local health departments, primary health care providers, CBOs, substance abuse agencies, criminal justice systems, and other health and social service agencies.

C. Promote TB prevention and control, information dissemination, and training and education.

Program Requirements

In conducting the activities to achieve the goals of this program, the recipient shall be responsible for conducting the activities under A, B, and C, below, and CDC shall be responsible for conducting activities under D, below:

A. Recipient Requirements and Guidance

All applicants must develop realistic, specific, time-phased objectives for proposed activities and services under each of the funding categories for which support is requested: (I) HIV/STD prevention activities, (II) preschool immunization activities, or (III) TB awareness and prevention activities. All proposed projects must undertake priority activity 1 and may also propose undertaking optional priority activity 2. HIV applicants may also propose to undertake priority activity 3. Applicants may elect to defer requests for assistance for priority activities 2 or 3 until future budget years in the project period.

B. Priority Activities

1. National/Regional Technical Assistance and Training Programs (Required of all applicants). National and regional organizations must undertake activities a, b, and c. In planning programs and determining which technical assistance and training activities to undertake, national and regional organizations should, in collaboration with the organizations/agencies to be served and in coordination with other organizations/agencies providing technical assistance and training, first identify and interpret the findings of ongoing and completed needs assessments or, if unavailable or inadequate, conduct such assessments to identify and interpret unmet HIV/STD, immunization, or TB prevention-related technical assistance and training needs.

a. Provide capacity-building technical assistance and training to minority CBOs and other organizations and agencies serving racial and ethnic minorities at high risk for HIV/STD, low levels of immunization, or TB. Such assistance should include technical assistance and training on resource development; grant writing, fiscal management; board development and training; information dissemination; networking and collaboration with local health departments, other CBOs and other state/local agencies and organizations; staff and volunteer recruitment and retention; and program development, evaluation, and quality assurance. National and regional minority organizations that are unable to provide technical assistance and training in all of these selected areas may acquire this expertise through collaboration with other organizations or through the use of consultants subsequent to award. However, priority will be given to applicants who demonstrate current ability to provide the technical assistance and training described above.

b. Provide programmatic technical assistance and training to organizations and agencies serving racial and ethnic minority populations including CBOs, state and local health departments, state and local substance abuse agencies, criminal justice systems and institutions, professional organizations, and other national and regional organizations participating in the respective disease prevention activities (HIV, Immunization, or TB). Specifically, assistance should be provided to organizations and agencies serving racial and ethnic minority populations and communities in planning, integrating, implementing, and evaluating programs and providing services that are:

(1) Within a system which acknowledges and incorporates services that address the cultural needs of the communities being served.

(2) Developmentally appropriate (i.e., information and services provided at a level of comprehension that is consistent with the skills of the persons to be served);

(3) Linguistically specific and appropriate (i.e., information is presented in dialect and terminology consistent with the target population's language and style of communication and is educationally appropriate);

(4) Sensitive to issues of sexual identity and orientation, and

(5) Feasible, based on, or predicted by, organizational experience or social, organizational, behavioral, or psychological theory.

The following are examples of the types of technical assistance and training services that may be offered:

—Assistance in the development of scientifically sound and culturally competent assessments of unmet prevention needs.

—Assistance in increasing the collaboration and the coordination of services among organizations and agencies serving racial and ethnic minority populations.

—Assistance in recruiting qualified racial or ethnic minority staff.

—Staff training in issues related to cultural competency/relevancy, linguistically specific, and special needs of racial and ethnic minorities.
—Assistance in developing plans for integrating programmatic responses and services to multiple public health problems (e.g., HIV and other STDs, low immunization levels, TB) and improving the access to and the quality of (I) HIV/STD prevention services, (II) immunization services to preschool children, or (III) TB prevention and therapeutic services for racial or ethnic minority populations.
—Assistance in evaluating the cultural competency/relevancy and linguistically specifics of (I) HIV/STD prevention interventions and educational materials, (II) immunization educational materials, or (III) TB information and educational materials for racial and ethnic minority populations.
—Assistance in identifying and understanding issues related to sexual orientation, attitudes, and behaviors and incorporating these issues into program design, implementation, and evaluation.
—Production and dissemination of materials such as pamphlets, audiovisuals, guidelines, manuals, and funding alerts. Note: Before funds awarded through this cooperative agreement are used to develop HIV/AIDS-related materials, an inquiry must be made through the CDC National AIDS Clearinghouse to determine if suitable materials are already available.

c. With the assistance and collaboration of CDC, identify and disseminate information on prevention technologies and successful and unsuccessful (I) HIV/STD prevention programs, (II) immunization programs, or (III) TB prevention and treatment programs for racial and ethnic minorities through case studies, workshops, and other mechanisms.

2. Racial and Ethnic Minority Community Needs Assessment and Targeted Technical Assistance (Optional): Develop and implement a consensual, participatory, time-phased process that includes CBOs, state and local health departments and other local agencies, to identify and assess the unmet (I) HIV/STD prevention, (II) immunization, or (III) TB prevention and treatment needs of a racial and ethnic minority populations in a specific geographic community or region of the United States. Based on the results of the assessment, in coordination with CDC, provide tailored technical assistance, to nongovernmental and governmental organizations serving this population.

Although targeted technical assistance incorporates some elements of the previous program activity, it is distinctive in three important ways.

a. It is targeted to specific geographic communities (e.g., a region, state, or metropolitan area) or specific racial and ethnic minority populations within a geographic community (e.g., gay-identified or bisexual men of color, minority substance abusers, minority women or minority youth at risk).

b. It involves a planned and coordinated assessment of both HIV prevention and technical assistance training needs before developing a technical assistance plan.

c. It requires consumer research, the active participation of the local community (e.g., CBOs, health department, other governmental agencies, local universities and other researchers), to interpret the needs assessment and to develop a prioritized plan to address the identified technical assistance needs.

CDC will not consider supporting needs assessments that do not include use of the information collected to design and target technical assistance programs. Additionally, information and findings obtained from previous needs assessments of the target community or population conducted by health departments and other organizations and agencies should be reviewed and considered when designing and implementing these assessments and when interpreting findings.

In conducting this activity:

a. Using a scientifically sound methodology, including consumer research, identify and assess the unmet (I) HIV/STD, (II) immunization, or (III) TB prevention needs of racial and ethnic minority populations and the technical assistance and training needs of the prevention programs serving racial and ethnic minority communities or populations in: (1) Metropolitan areas, or regions heavily affected by HIV, STDs, TB or low levels of immunization or (2) in smaller cities and rural areas where racial or ethnic minority populations are underserved. The assessment should determine, describe, and document:

(1) Access to and the availability of prevention services for racial or ethnic minority populations at high risk (e.g., gay-identified, bisexual, and other men who have sex with men, IDU, women and youth in high-risk situations), barriers to obtaining services, and specific unmet prevention needs.

(2) Technical assistance and training needs of nongovernmental organizations and governmental agencies serving, or proposing to serve, racial and ethnic minorities. The types, the extent, and the use of current technical assistance from all identified sources should be thoroughly documented and evaluated as part of the assessment.

b. Use information from the needs assessment and other sources to:

(1) Develop with the CBOs, health departments, and other local agencies serving or proposing to serve racial and ethnic minorities: (i) A prioritized technical assistance and training program and (ii) prioritized program strategies and plans to provide services responsive to the needs and the issues identified through the assessment.

Program strategies and services may include:

(a) Community-specific workshops for the personnel of organizations and agencies serving racial and ethnic minority individuals at risk.

(b) Establishment or expansion of systems for providing long-term technical assistance to CBOs, health departments, health care providers, and other organizations and agencies serving racial and ethnic minority populations in the target community or area.

(2) Document, in a case study format, the procedures used to identify and assess prevention needs, the actual unmet prevention needs and their priorities, the actions taken to address the identified priority needs, and the lessons learned from the needs assessment and the technical assistance services, so that this information can be shared with other organizations and agencies.

3. Community Intervention Programs (Optional, HIV/STD Applicants Only): Applicants may propose to conduct community intervention programs on a national or regional basis. Community intervention programs are prevention programs directed at the community level, rather than individuals, to influence community norms in support of those behaviors known to reduce the risk of HIV/STD infection and transmission. The primary goals of these programs are to improve health status, to promote healthy behaviors, and to change factors that affect the health of community residents. Community intervention programs should target racial and ethnic populations whose behavior places them at high risk for infection with HIV and other STDs. CDC will not consider supporting proposed community intervention programs unless they undertake all of the activities described in a. through c. below:

a. Identifying, assessing, and prioritizing the significant structural, environmental, cultural, linguistic, behavioral, and psychosocial facilitators and barriers to risk reduction, including:

(1) Sources and patterns of communication and social influence surrounding the initiation and maintenance of risk-reduction behavior;

(2) Individual and community beliefs and attitudes about the acceptance of safer behaviors and primary and secondary HIV/STD prevention activities and services;

(3) The significance of condom and contraceptive use within sexual and family relationships;

(4) Cultural, linguistic, and religious influences;

(5) Incentives and disincentives to risk reduction; and

(6) Alcohol and drug use associated with HIV/STD transmission.

b. Developing and implementing culturally competent/relevant and linguistically specific/appropriate interventions to influence specific structural, environmental, behavioral, and psychosocial factors thought to promote risk reduction such as:

(1) Changing community norms to support abstinence from sex and drugs, mutual monogamy, condom and contraceptive use, and other risk-reduction strategies through communications such as role play and persuasion;

(2) Identifying and enlisting family, peer, and community networks (e.g., HIV family networks, parents of youth-at-high-risk, women's networks) to promote and reinforce risk reduction;

(3) Creating and mobilizing networks of communication in support of risk reduction;

(4) Providing opportunities for acquiring skills in risk reduction and reinforcing behavior change; and

(5) Involving community leaders as role models in locally developed media to present information and persuasive messages about risk reduction.

c. Persuading community members who are at risk of acquiring or transmitting HIV and other STDs to accept and use culturally competent HIV/STD prevention services such as: HIV prevention counseling, HIV-antibody testing and follow-up, STD detection and treatment, HIV early intervention, and psychosocial support. If through the assessment process, a need is identified to improve the cultural competence of HIV/STD prevention services, such training and technical assistance should be provided by the grantee.

C. General Requirements

All applicants must undertake the following:

1. Collaborate with and coordinate on programs, activities, services and technical assistance with other Federal, state, and local organizations and agencies serving racial and ethnic minority populations, especially state and local health departments, state offices of minority health, state/local substance abuse agencies, state/local Ryan White CARE consortia and Title I and Title III(b) recipients, maternal and child health programs, community and migrant health centers, and other organizations and agencies providing HIV/STD, Immunization, or TB-related services, especially those receiving Federal funds for such purposes, and criminal justice systems. Applicants should submit evidence of collaboration or document efforts made to initiate collaboration that were rejected or ignored. Such efforts might include jointly developed plans for providing technical assistance, or evidence of past partnerships or joint projects with other national and regional organizations, state and local health departments, or community-based organizations.

2. Conduct an on-going process evaluation of activities funded through this cooperative agreement. Process evaluation is a quantitative and qualitative description of the program activities, the services, and the recipients of services. Each applicant must develop and implement an on-going evaluation plan, using process evaluation. The evaluation plan should be detailed and clearly articulated. It should present an evaluation design appropriate to the project objectives and activities. Applicants proposing to undertake optional priority activity number 3 do not need to submit an evaluation plan for this activity in their initial application, but will be asked to submit a plan at a later date. CDC will collaborate with successful applicants to develop evaluation plans for this activity.

The required evaluation plan should be capable of answering the following questions related to priority activities numbers 1 and 2 and the answers should be included in quarterly reports:

a. A detailed description of each program activity and progress in achieving each objective.

b. Detailed answers to the following questions:

(1) To which organizations or agencies were the services provided and how many representatives participated?

(2) What was the service and who provided it?

(3) When, how often, how long was the service provided?

(4) Where was it provided?

(5) How were the services provided?

(6) Was the service useful to the recipient organizations and agencies as assessed by them?

(7) Was the service delivered in a timely manner?

(8) What was the impact of providing the service on the recipient organizations and agencies (e.g., what specific capacities were increased; what changes in programmatic strategies or services occurred; how has collaboration between organizations improved; and what new programs were implemented based on the findings of the needs assessment)?

Applicants should ensure that they will be able to answer all these questions before undertaking any of the priority activities. To answer questions 6, 7, and 8, organizations will need to conduct follow-up data collection efforts of recipients of technical assistance and training.

c. Describe internal problems that affect the planning or implementation of program activities (e.g., problems in recruiting, hiring, or retaining staff; training of staff; monitoring and ensuring staff performance). Also document and describe problems related to the administrative and financial management and accounting systems.

d. Describe program successes, barriers, and other external problems encountered in planning, implementing, or providing services. This may include difficulty in initiating or maintaining effective collaborative relationships or in coordinating services with other organizations and agencies serving the target population.

Because of the additional cost and need for scientific support beyond the scope of these cooperative agreements, NMOs and RMOs are not expected to conduct individual behavioral or health outcome evaluations with these funds (i.e., long-term effects of the program in terms of changes in behavior or health status, such as changes in HIV seroincidence after intervention).

D. Centers for Disease Control and Prevention (CDC) Activities

1. Provide consultation and technical assistance in planning, operating, and evaluating program activities under this announcement.

2. Provide up-to-date scientific information on: I. HIV/STD: (a) the risk factors for HIV/STD infection, (b) the increases in HIV/STD rates and AIDS cases for various behavioral populations of racial and ethnic minority men and

women, and (c) prevention and program strategies for preventing HIV infection. II. Immunization: the risks and benefits of immunization, recommended immunization schedules and practices, information on immunization levels in racial and ethnic minority populations, and the epidemiology of vaccine-preventable diseases in the U.S. III. TB: the risks and benefits of early diagnosis, treatment and preventive treatment, and appropriate follow-up for those with TB infection.

3. Assist in developing plans for evaluation of all program activities and services and interpreting evaluation findings. CDC will provide special assistance and collaborate with applicants awarded funding for community intervention activities to jointly develop an evaluation plan.

4. Assist successful applicants in collaborating with state and local health departments and other PHS grantees.

5. Facilitate the transfer of successful prevention interventions and program models to other areas.

6. Monitor the successful applicant's program activities, protection of client confidentiality, and compliance with other requirements.

7. Facilitate the exchange of program information and technical assistance among community organizations, health departments, and NMOs and RMOs.

Evaluation Criteria

Eligible applications submitted under this announcement will be evaluated through a competitive review process which will include review of an application describing and justifying the proposed program and may also include a predecisional site visit conducted by CDC staff to evaluate organizational capacities and technical assistance needs.

A. Application Review and Evaluation Criteria

Applicants may apply for funding to support national or regional technical assistance and training programs under any of the funding categories (HIV/STD, Immunization, and TB) and propose to undertake one or more of the optional priority activities.

The CDC-convened committees will evaluate each application on an individual basis according to the following criteria:

1. The extent to which the applicant documents experience in providing (I) HIV/STD, (II) immunization, or (III) TB technical assistance and training from a national or regional level to organizations and agencies serving racial and ethnic minority populations. (20 points)

2. The extent to which the applicant documents other relevant experience in providing technical assistance and training on public health or related social issues other than HIV/STD, Immunization or TB from a national or regional level to racial and ethnic minority populations. (10 points)

3. The extent to which the applicant demonstrates and documents its understanding of the types, magnitude, and priority of the unmet prevention needs of the target racial and ethnic minority communities, populations, organizations and agencies that will be addressed through the proposed program. (15 points)

4. The extent to which the proposed objectives are specific, measurable, time-phased, consistent with the program purpose and the proposed activities, and consistent with the applicant organization's overall mission. (10 points)

5. The quality of the applicant's plan for conducting program activities and the likelihood that the proposed methods will be successful in achieving proposed objectives. (25 points)

6. The extent to which the applicant demonstrates support and intended collaboration on the program plan and activities from CBOs, health departments, organizations and agencies serving racial and ethnic minority group populations. (10 points)

7. The extent to which the evaluation plan measures the achievement of program objectives and monitors the implementation of proposed activities. (10 points)

B. Predecisional Site Visits

Site visits may be conducted before final funding decisions are made by CDC. Only the organizations with high ranking applications will be visited. During the visit, CDC staff will meet with project staff, a representative of the board of directors, and other outside consultants to assess the applicant's ability to implement the proposed program, review the application and program plans for current or planned activities; and determine the special programmatic conditions and technical assistance requirements of the applicant. As part of these visits, CDC and its consultants may visit state/local health departments and CBOs serving the geographic area in which the program will be implemented. An applicant that identifies itself as an advocacy organization may be subject to additional review requirements.

Applicants may be required to participate in a fiscal Recipient Capability Audit prior to the award of funds.

Executive Order 12372 Review

Applications are subject to Intergovernmental Review of Federal Programs as governed by Executive Order 12372. E.O. 12372 sets up a system for state and local government review of proposed Federal assistance applications. Applicants should contact their state single point of contact (SPOCs) as early as possible to alert them to the prospective applications and to receive instructions on the state process. For proposed projects that serve more than one state, the applicant should contact the SPOC for each state served. A current list of SPOCs is included in the application kit. If SPOCs have any state process recommendations on applications submitted to CDC, they should forward them, no later than 60 days after the application deadline date, to Clara M. Jenkins, Grants Management Officer, Grants Management Branch, Procurement and Grants Office, Centers for Disease Control and Prevention (CDC), 255 East Paces Ferry Road NE., room 300, Mail Stop E–15, Atlanta, GA 30305. The CDC does not guarantee to accommodate or explain state process recommendations it receives after that date.

Public Health System Reporting Requirements

This program is not subject to the Public Health System Reporting Requirements.

Catalog of Federal Domestic Assistance

The Catalog of Federal Domestic Assistance numbers are 93.939, *HIV Prevention Activities—Non-governmental Organization Based;* 93.185, *Immunization Research, Demonstration, Public and Professional Education;* 93.947, *Tuberculosis Demonstration, Research, Public and Professional Education.*

Other Requirements

A. Review of Materials

HIV funding recipients must comply with the terms and conditions in the document entitled Content of AIDS-Related Written Materials, Pictorials, Audiovisuals, Questionnaires, Survey Instruments, and Educational Sessions in Centers for Disease Control (CDC) Assistance Programs (June 1992) and must establish program review panels. At least one member of each funded organization's panel must also be a designated representative of a state or local health department. The names of review panel members must be listed on the Assurance of Compliance Form CDC 0.1113. Cooperative agreement

recipients must provide to CDC, as attachments to quarterly progress reports, signed statements of the chairperson of the Program Review Panel specifying the vote for approval or disapproval for each proposed item that is subject to this guidance.

B. Requirement for a Certified Public Accountant

The services of a certified public accountant licensed by the State Board of Accountancy or equivalent must be retained throughout the budget period as a part of the recipient's staff or as a consultant to the recipient's accounting personnel. These services may include the design, the implementation, and the maintenance of an accounting system in which to record receipts and expenditures of Federal funds, in accordance with accounting principles, Federal regulations, and cooperative agreement terms.

The funds claimed by the recipient for reimbursement under this cooperative agreement must be audited by an independent certified public accountant (separate and independent of the consultant or recipient's staff certified public accountant). This audit must be performed within 60 days after the budget period, or at the close of an organization's fiscal year. The annual audit must be performed in accordance with generally accepted auditing standards (established by the American Institute of Certified Public Accountants), governmental auditing standards (established by the General Accounting Office), and the Office of Management and Budget Circular A–133.

C. Confidentiality of Records

All identifying information obtained in connection with the provision of services to any person in any program that is being carried out with a cooperative agreement made under this announcement shall not be disclosed unless required by a law of a state or political subdivision or unless written, voluntary informed consent is provided by persons who receive services.

D. Human Subjects

Recipients must comply with Department of Health and Human Services and Public Health Service regulations regarding the protection of human subjects, protection of privacy, and informed consent for participation in project activities. In addition, recipients must comply with prevailing state and local regulations and laws regarding the delivery of social and health services to the public and mandatory reporting of sexual or physical abuse. An Institutional Review Board (IRB) approval, as required by 45 CFR Part 46, may be required for some projects.

E. Paperwork Reduction Act

Projects that involve the collection of information from 10 or more individuals and funded by cooperative agreement will be subject to review by the Office of Management and Budget (OMB) under the Paperwork Reduction Act.

Application and Submission Deadline

The original and two copies of the application (Form PHS–5161–1) must be submitted to Clara M. Jenkins, Grants Management Officer, Grants Management Branch, Procurement and Grants Office, Centers for Disease Control and Prevention (CDC), 255 East Paces Ferry Road NE., room 300, Mail Stop E–15, Atlanta, GA 30305 on or before July 27, 1993.

A. Deadline

Applications meet the deadline if they are either received on or before the deadline date or sent on or before the deadline date and received in time for submission to the independent review committee. (Applicants must request a legibly dated U.S. Postal Service postmark or obtain a legibly dated receipt from a commercial carrier or the U.S. Postal Service. Private metered postmarks will not be acceptable as proof of timely mailing.)

B. Late Applications

Applications that do not meet these criteria are late. Late applications will not be considered in the current competition and will be returned to the applicant.

Where to Obtain Additional Information

To receive additional written information, call (404) 332–4561. You will be asked to leave your name, address, and phone number, and you must refer to Announcement Number 305. You will receive a complete program description, application procedures, and application forms.

If you have questions after reviewing the contents of the documents, business management technical assistance may be obtained from Sharron Orum or Van Malone, Grants Management Specialists, Grants Management Branch, Procurement and Grants Office, Centers for Disease Control and Prevention (CDC), 255 East Paces Ferry Road NE., room 300, Mail Stop E–15, Atlanta, GA 30305, (404) 842–6575.

Programmatic technical assistance may be obtained from:

I. HIV Prevention: Jack Kirby, Division of Sexually Transmitted Diseases/Human Immunodeficiency Virus Prevention (DSTD/HIVP), National Center for Prevention Services, Centers for Disease Control and Prevention (CDC), Atlanta, GA 30333, (404) 639–0500. (Technical assistance may also be obtained from your respective state/local health departments.)

II. Immunization: Karen White, Division of Immunization, National Center for Prevention Services, Centers for Disease Control and Prevention (CDC), Atlanta, GA 30333, (404) 639–1867.

III. TB Prevention and Treatment: Harry Stern, Division of Tuberculosis Elimination, National Center for Prevention Services, Centers for Disease Control and Prevention (CDC), Atlanta, GA 30333, (404) 639–2501.

Announcement Number *305*, "Cooperative Agreement for National/Regional Minority Organization HIV/STD Prevention, Immunization, and TB Projects" must be referenced in all requests for information pertaining to these projects.

A CDC Pre-Application Presentation Video is available from the National AIDS Clearinghouse by calling 1–800–458–5231. The video will cost approximately $12.00.

Potential applicants may obtain a copy of Healthy People 2000 (Full Report: Stock No. 017–001–00474–0) or Healthy People 2000 Summary Report: Stock No. 017–001–00473–1) through the Superintendent of Documents, Government Printing Office, Washington, DC 20402–9325, telephone (202) 783–3238. Information on standard immunization practices and the national plan to combat Tuberculosis may also be obtained by writing CDC. For your information, the HIV, Immunization, and TB-related objectives are included in the application kit.

To obtain reference and referral information about HIV-related materials, programs, and organizations that provide HIV services, you may wish to call the CDC National AIDS Clearinghouse at 1–800–458–5231.

Dated: May 28, 1993.

Robert L. Foster,

Acting Associate Director for Management and Operations, Centers for Disease Control and Prevention (CDC).

[FR Doc. 93–13157 Filed 6–3–93; 8:45 am]

BILLING CODE 4160–18–P

National Institutes of Health

Government-Owned Inventions; Availability for Licensing

AGENCY: National Institutes of Health, Public Health Service, DHHS.

ACTION: Notice.

SUMMARY: The invention listed below is owned by the Department of Health and Human Services and is available for licensing in the U.S. in accordance with 35 U.S.C. 207 to achieve expeditious commercialization of results of federally funded research and development.

U.S. Patent 4,405,712, issued on September 20, 1983 and entitled "LTR Vector"—This patent broadly claims processes of obtaining the expression of any gene via the use of retroviral expression vectors containing long terminal repeat (LTR) sequences. The processes claimed in this patent are of fundamental significance for the retroviral mediated expression of genes *in vitro* for research and biopharmaceutical production and *in vivo* for research, biopharmaceutical production and therapeutic applications, such as somatic cell gene therapy. The invention claimed in this patent is available for licensing on a nonexclusive basis at reasonable royalty rates, either on a fully paid up basis or for upfront and annual royalties.

ADDRESSES: Licensing information may be obtained by writing to: Arthur J. Cohn, J.D., Office of Technology Transfer, National Institutes of Health, Box OTT, Bethesda, MD 20892 (telephone 301/496–7735; FAX 301/402–0220).

Dated: May 24, 1993.

Reid G. Adler,

Director, Office of Technology Transfer.

[FR Doc. 93–13122 Filed 6–3–93; 8:45 am]

BILLING CODE 4140–01–M

Public Health Service

Agency Forms Submitted to the Office of Management and Budget for Clearance

Each Friday the Public Health Service (PHS) publishes a list of information collection requests it has submitted to the Office of Management and Budget (OMB) for clearance in compliance with the Paperwork Reduction Act (44 U.S.C. chapter 35). The following requests have been submitted to OMB since the list was last published on Friday, May 14, 1993.

(Copies of the information collection requests may be obtained by calling the PHS Reports Clearance Officer on (202) 690–7100.

1. Evaluation of NIH Implementation of Sec. 491 of the Public Health Service Act, Mandating a Program of Protection for Research Subjects—New—The evaluation of the performance of the system of protections for human subjects of research will update information on outcome, output, process and resources to develop comprehensive and systematic data on effectiveness of protection and possible recommendations for improvement by means of survey, interview and review of records and data of awardee institutions. Respondents: Individuals or households, State or local governments, Federal agencies or employees, Non-profit institutions; Number of Respondents: 1; Number of Responses per Respondent: 1; Average Burden per Response: 1 hour; Annual Reporting Burden: Since this is a concept clearance, definitive burden estimates are not yet available. These estimates will be provided when the study design and questionnaire are final and the final clearance request is submitted.

2. National Disease Surveillance Program—1. Case Reports—0920–0009—Case reports on notifiable diseases furnished by State and Territorial health departments provide information on epidemiological characteristics (age, sex, geographic location, etc.) that contribute toward resolving public health problems. Data are used to detect epidemiologic trends or locate cases requiring control efforts. Respondents: State or local governments; Number of Respondents: 55; Number of Responses per Respondent: 2,306; Average Burden per Response: .256 hours; Estimated Annual Burden: 32,409 hours.

3. Evaluation of a School-Based Intervention to Reduce Behaviors that Result in HIV/STD Infection (TX, CA)—New—The purpose of this study is to evaluate a school-based HIV/STD prevention program. Selected schools in Texas and California receiving a multiple component intervention will be compared to schools receiving a knowledge-based curriculum—Respondents: Individuals or households; Number of Respondents: 8000; Number of Responses per Respondent: 1; Average Burden Per Response: .902; Estimated Annual Burden: 7,219 hours.

Written comments and recommendations for the proposed information collections should be sent within 30 days of this notice directly to the OMB Desk Officer designated below at the following address: Shannah Koss, Human Resources and Housing Branch, New Executive Office Building, room 3002, Washington, DC 20503.

Dated: May 24, 1993.

James Scanlon,

Director, Division of Data Policy, Office of Health Planning Evaluation.

[FR Doc. 93–12777 Filed 6–3–93; 8:45 am]

BILLING CODE 4160–17–M

Agency Forms Submitted to the Office of Management and Budget for Clearance

Each Friday the Public Health Service (PHS) publishes a list of information collection requests it has submitted to the Office of Management and Budget (OMB) for clearance in compliance with the Paperwork Reduction Act (44 U.S.C. chapter 35). The following requests have been submitted to OMB since the list was last published on Friday, May 14, 1993.

Copies of the information collection requests may be obtained by calling the PHS Reports Clearance Officer on (202) 690–7100.

1. St. George, Utah, Cancer Screening and Detection Project—New—The data are required from households and physicians to carry out research mandated under Public Law 98–558 in the assessment of a cancer screening and research project on the "over-40" population in St. George, Utah. Data will be used to determine knowledge, attitudes and practices relating to a community screening project among households and health care providers. Respondents: Individuals or households; Businesses or other for-profit, Small businesses or organizations.

Title	Number of respondents	Number of responses per respondent	Average burden per response (hour)
Households	1,250	1	.35
Health care providers	60	1	.33

Estimated Total Annual Burden—458.

2. Substance Abuse, Prevention and Treatment Block Grant Application Format (FY 1994 and 1995)—0930–0080—Public Law 102–321 authorized block grants to States for the purpose of providing prevention and treatment services. Under provisions of the law, States may receive allotments only after an application is approved by the Secretary.

This submission provides the forms and instructions for applications for Federal fiscal years 1994 and 1995.

Respondent: State or local governments; Number of Respondents: 60; Number of Responses per Respondent: 1; Average Burden per Response: 530 hours; Estimated Annual Burden: 31,800 hours.

3. The Final Prevalence Survey and the Cotinine Assessment in the Endpoint Cohort for the Community Intervention Trial for Smoking Cessation (COMMIT)—0925–0309—The National Cancer Institute (NCI) has initiated the Community Intervention Trial for Smoking Cessation (COMMIT). This large-scale trial will test community-based strategies to produce cessation in smokers, particularly heavy smokers. Clearance is requested for the final prevalence survey and the continine validation study of reported quitters. Respondents: Individuals or households.

Title	Number of respondents	Number of responses per respondent	Average burden per response (hour)
Prevalence survey	164,729	1	0.07489
Continine validation	2,704	1	.38378

Estimated Total Annual Burden—13,375.

4. Cancer Risk in X-ray Technologists: Second Survey for Incidence—New—X-ray technologists who are registered with the American Registry of Radiological Technologists will be asked to respond to a mail questionnaire which assesses information about incident cancers and cancer risk factors, in order to evaluate cancer risk associated with occupational exposure to low-level radiation. Respondents: Individuals or households, State or local governments, Businesses or other for-profit, Non-profit institutions, Small businesses or organizations.

Title	Number of respondents	Number of responses per respondent	Average burden per response (hour)
Cancer incidence in X-ray technologists .	32,000	1	.33
Physician validation of reported cancers ...	320	1	.17

Estimated Total Annual Burden—10,614 hours.

5. Patient Follow-up Feasibility Study—0920–0304—The purpose of this project is to develop and field test methodologies for conducting longitudinal follow-up studies of patients (clients) of health care providers. Results will be used to implement future national longitudinal studies. Respondents: Individuals or households; Businesses or other for-profit; Non-profit institutions.

Title	Number of respondents	Number of responses per respondent	Average burden per response (hour)
Individuals	3,200	1	.35
Health care providers	80	1	14.7

Estimated Total Annual Burden—2,312 hours.

6. Health Outcomes in a Community Adjacent to a Hazardous Waste Site—The Southbend Subdivision, Harris County, Texas—0923–0009—This request is for extension, no change, of approval for a one-time symptom and illness prevalence study of residents living near a National Priority List hazardous waste site in the Southbend subdivision, Harris County, Texas, to permit completion of the data collection. A component will also examine reproductive outcomes of former and current women residents of the subdivision. Respondents: Individuals or households.

Title	Number of respondents	Number of responses per respondent	Average burden per response (hour).
Household individual	1,800	1	1.02
Medical providers	75	1	1

Estimated Total Annual Burden—1,917 hours.

7. Agricultural Health Study—A Prospective Cohort Study of Cancer and Other Diseases Among Men and Women in Agriculture—New—This Agricultural Health Study is a large prospective cohort study to evaluate the role of agricultural exposures in the development of cancer, neurological disease, birth defects and other chronic disease outcomes among farmers, commercial pesticide applicators and the spouses of farmers. Respondents: Individuals or households; Farms; and Small businesses or organizations; Number of Respondents: 37,334; Number of Responses Per Respondent: 1.0; Average Burden Per Response; 1.41 hr; Total Annual Burden Hours: 52,525.

8. Supplement to Routine HIV/AIDS Case Reporting Project—0920–0262—This study will complement data received from the current AIDS/HIV surveillance projects. The instrument is administered via personal interview. Respondents also receive counseling on practices to avoid HIV transmissions. Respondent: Individuals or households; Number of Respondents: 1,410; Number of Responses per Respondent: 1; Average Burden per Response: .667 hrs; Estimated Annual Burden: 940 hours.

9. HIV Seroprevalence Surveys in Tuberculosis Clinics—New—The data collected will be used to identify the HIV/AIDS risk factors associated with tuberculosis patients in order to more fully determine the extent of the tuberculosis and HIV/AIDS problem in this country. Respondent: Individuals or households; Number of Respondents: 8000; Number of Responses per Respondent: 1; Average Burden per Response: .25 hrs; Estimated Annual Burden: 2,000 hours.

Written comments and recommendations for the proposed information collections should be sent within 30 days of this notice directly to the OMB Desk Officer designated below at the following address: Shannah Koss, Human Resources and Housing Branch, New Executive Office Building, room 3002, Washington, DC 20503.

Dated: May 28, 1993.

James Scanlon,

Director, Division of Data Policy, Office of Planning and Evaluation.

[FR Doc. 93–13097 Filed 6–3–93; 8:45 am]

BILLING CODE 4160–17–M

Substance Abuse and Mental Health Services Administration

Current List of Laboratories Which Meet Minimum Standards To Engage in Urine Drug Testing for Federal Agencies and Laboratories That Have Withdrawn From the Program

AGENCY: Substance Abuse and Mental Health Services Administration, HHS (Formerly: National Institute on Drug Abuse, ADAMHA, HHS).

ACTION: Notice.

SUMMARY: The Department of Health and Human Services notifies Federal agencies of the laboratories currently certified to meet standards of Subpart C of Mandatory Guidelines for Federal Workplace Drug Testing Programs (53 FR 11979, 11986). A similar notice listing all currently certified laboratories

will be published during the first week of each month, and updated to include laboratories which subsequently apply for and complete the certification process. If any listed laboratory's certification is totally suspended or revoked, the laboratory will be omitted from updated lists until such time as it is restored to full certification under the Guidelines.

If any laboratory has withdrawn from the National Laboratory Certification Program during the past month, it will be identified as such at the end of the current list of certified laboratories, and will be omitted from the monthly listing thereafter.

FOR FURTHER INFORMATION CONTACT:
Denise L. Goss, Program Assistant, Division of Workplace Programs, room 9–A–54, 5600 Fishers Lane, Rockville, Maryland 20857; Tel.: (301) 443–6014.

SUPPLEMENTARY INFORMATION:
Mandatory Guidelines for Federal Workplace Drug Testing were developed in accordance with Executive Order 12564 and section 503 of Public Law 100–71. Subpart C of the Guidelines, "Certification of Laboratories Engaged in Urine Drug Testing for Federal Agencies," sets strict standards which laboratories must meet in order to conduct urine drug testing for Federal agencies. To become certified an applicant laboratory must undergo three rounds of performance testing plus an on-site inspection. To maintain that certification a laboratory must participate in an every-other-month performance testing program plus periodic, on-site inspections.

Laboratories which claim to be in the applicant stage of certification are *not* to be considered as meeting the minimum requirements expressed in the HHS Guidelines. A laboratory must have its letter of certification from SAMHSA, HHS (formerly: HHS/NIDA) which attests that it has met minimum standards.

In accordance with subpart C of the Guidelines, the following laboratories meet the minimum standards set forth in the Guidelines:

Aegis Analytical Laboratories, Inc., 624 Grassmere Park Road, Suite 21, Nashville, TN 37211, 615–331–5300.

Alabama Reference Laboratories, Inc., 543 South Hull Street, Montgomery, AL 36103, 800–541–4931/205–263–5745.

Allied Clinical Laboratories, 201 Plaza Boulevard, Hurst, TX 76053, 817–282–2257.

American Medical Laboratories, Inc., 14225 Newbrook Drive, Chantilly, VA 22021, 703–802–6900.

Associated Pathologists Laboratories, Inc., 4230 South Burnham Avenue, Suite 250, Las Vegas, NV 89119–5412, 702–733–7866.

Associated Regional and University Pathologists, Inc. (ARUP), 500 Chipeta Way, Salt Lake City, UT 84108, 801–583–2787.

Baptist Medical Center—Toxicology Laboratory, 9601 I–630, Exit 7, Little Rock, AR 72205–7299, 501–227–2783 (formerly: Forensic Toxicology Laboratory Baptist Medical Center).

Bayshore Clinical Laboratory, 4555 W. Schroeder Drive, Brown Deer, WI 53223, 414–355–4444/800–877–7016.

Bioran Medical Laboratory, 415 Massachusetts Avenue, Cambridge, MA 02139, 617–547–8900.

California Toxicology Services, 1925 East Dakota Avenue, Suite 206, Fresno, CA 93726, 209–221–5655/800–448–7600.

Cedars Medical Center, Department of Pathology, 1400 Northwest 12th Avenue, Miami, FL 33136, 305–325–5810.

Centinela Hospital Airport Toxicology Laboratory, 9601 S. Sepulveda Blvd., Los Angeles, CA 90045, 310–215–6020.

Clinical Pathology Facility, Inc., 711 Bingham Street, Pittsburgh, PA 15203, 412–488–7500.

Clinical Reference Lab, 11850 West 85th Street, Lenexa, KS 66214, 800–445–6917.

CompuChem Laboratories, Inc., A Subsidiary of Roche Biomedical Laboratory, 3308 Chapel Hill/Nelson Hwy., Research Triangle Park, NC 27709, 919–549–8263/800–833–3984.

CompuChem Laboratories, Special Division, 3308 Chapel Hill/Nelson Hwy., Research Triangle Park, NC 27709, 919–549–8263.

Cox Medical Centers, Department of Toxicology, 1423 North Jefferson Avenue, Springfield, MO 65802, 800–876–3652/417–836–3093.

CPF MetPath Laboratories, 21007 Southgate Park Boulevard, Cleveland, OH 44137–3054, 800–338–0166 (outside OH)/800–362–8913 (inside OH) (name changed: formerly Southgate Medical Laboratory; Southgate Medical Services, Inc.).

Damon Clinical Laboratories, 140 East Ryan Road, Oak Creek, WI 53154, 800–638–1100 (name changed: formerly Chem-Bio Corporation; CBC Clinilab).

Damon Clinical Laboratories, 8300 Esters Blvd., Suite 900, Irving, TX 75063, 214–929–0535.

Dept. of the Navy, Navy Drug Screening Laboratory, Great Lakes, IL, Building 38–H, Great Lakes, IL 60088–5223, 708–688–2045/708–688–4171.

Dept. of the Navy , Navy Drug Screening Laboratory, Norfolk, VA, 1321 Gilbert Street, Norfolk, VA 23511–2597, 804–444–8089 ext. 317.

Doctors & Physicians Laboratory, 801 East Dixie Avenue, Leesburg, FL 32748, 904–787–9006.

Drug Labs of Texas, 15201 I–10 East, Suite 125, Channelview, TX 77530, 713–457–3784.

DrugScan, Inc., P.O. Box 2969 , 1119 Mearns Road, Warminster, PA 18974, 215–674–9310.

ElSohly Laboratories, Inc., 1215-1/2 Jackson Ave., Oxford, MS 38655, 601–236–2609.

Employee Health Assurance Group, 405 Alderson Street, Schofield, WI 54476, 800–627–8200 (name change: formerly Alpha Medical Laboratory, Inc.).

General Medical Laboratories, 36 South Brooks Street, Madison, WI 53715, 608–267–6267.

Harrison & Associates Forensic Laboratories, 606 N. Weatherford, P.O. Box 2788, Midland, TX 79702, 800–725–3784/915–687–6877.

HealthCare/Preferred Laboratories, 24451 Telegraph Road, Southfield, MI 48034, 800–328–4142 (inside MI)/800–225–9414 (outside MI).

Hermann Hospital Toxicology Laboratory, Hermann Professional Building, 6410 Fannin, Suite 354, Houston, TX 77030, 713–793–6080.

IHC Laboratory Services Forensic Toxicology, 930 North 500 West, Suite E, Provo, UT 84604, 800–967–9766.

Jewish Hospital of Cincinnati, Inc., 3200 Burnet Avenue, Cincinnati, Ohio 45229, 513–569–2051.

Laboratory of Pathology of Seattle, Inc., 1229 Madison St., Suite 500, Nordstrom Medical Tower, Seattle, WA 98104, 206–386–2672.

Laboratory Specialists, Inc., 113 Jarrell Drive, Belle Chasse, LA 70037, 504–392–7961.

Marshfield Laboratories, 1000 North Oak Avenue, Marshfield, WI 54449, 715–389–3734/800–222–5835.

Mayo Medical Laboratories, 200 S.W. First Street, Rochester, MN 55905, 507–284–3631.

Med-Chek Laboratories, Inc., 4900 Perry Highway, Pittsburgh, PA 15229, 412–931–7200.

MedExpress/National Laboratory Center, 4022 Willow Lake Boulevard, Memphis, TN 38175, 901–795–1515.

Medical Science Laboratories, 11020 W. Plank Court, Wauwatosa, WI 53226, 414–476–3400.

MedTox Bio-Analytical, a Division of MedTox Laboratories, Inc., 6160 Variel Avenue, Woodland Hills, CA 91367, 818–226–4373 (name changed: formerly Laboratory Specialists, Inc.; Abused Drug Laboratories; moved 12/21/92).

MEDTOX Bio-Analytical, 8600 West Catalpa Avenue, Chicago, IL 60656, 800–872–5221/312–714–9191 (address, phone, and name changed on 5/17/93: formerly MedTox Bio-Analytical, a Division of MedTox Laboratories, Inc.; Bio-Analytical Technologies).

MedTox Laboratories, Inc., 402 W. County Road D, St. Paul, MN 55112, 800–832–3244/612–636–7466.

Methodist Hospital of Indiana, Inc., Department of Pathology and Laboratory Medicine, 1701 N. Senate Boulevard, Indianapolis, IN 46202, 317–929–3587.

Methodist Medical Center Toxicology Laboratory, 221 N.E. Glen Oak Avenue, Peoria, IL 61636, 800–752–1835/309–671–5199.

MetPath, Inc., 1355 Mittel Boulevard, Wood Dale, IL 60191, 708–595–3888.

MetPath, Inc., One Malcolm Avenue, Teterboro, NJ 07608, 201–393–5000.

MetWest-BPL Toxicology Laboratory, 18700 Oxnard Street, Tarzana, CA 91356, 800–492–0800/818–343–8191.

National Center for Forensic Science, 1901 Sulphur Spring Road, Baltimore, MD 21227, 410–536–1485 (name changed: formerly Maryland Medical Laboratory, Inc.).

National Drug Assessment Corporation, 5419 South Western, Oklahoma City, OK 73109, 800–749–3784 (name changed: formerly Med Arts Lab).
National Health Laboratories Incorporated, 2540 Empire Drive, Winston-Salem, NC 27103–6710, 919–760–4620/800–334–8627 (outside NC)/800–642–0894 (inside NC).
National Health Laboratories Incorporated, 75 Rod Smith Place, Cranford, NJ 07016–2843, 908–272–2511.
National Health Laboratories Incorporated, d.b.a. National Reference Laboratory, Substance Abuse Division, 1400 Donelson Pike, Suite A–15, Nashville, TN 37217, 615–360–3992/800–800–4522.
National Health Laboratories Incorporated, 13900 Park Center Road, Herndon, VA 22071, 703–742–3100.
National Psychopharmacology Laboratory, Inc., 9320 Park W. Boulevard, Knoxville, TN 37923, 800–251–9492.
National Toxicology Laboratories, Inc., 1100 California Avenue, Bakersfield, CA 93304, 805–322–4250.
Nichols Institute Substance Abuse Testing (NISAT), 7470–A Mission Valley Road, San Diego, CA 92108–4406, 800–446–4728/619–686–3200, (name changed: formerly Nichols Institute).
Northwest Toxicology, Inc., 1141 E. 3900 South, Salt Lake City, UT 84124, 800–322–3361.
Occupational Toxicology Laboratories, Inc., 2002 20th Street, Suite 204A, Kenner, LA 70062, 504–465–0751.
Oregon Medical Laboratories, P.O. Box 972, 722 East 11th Avenue, Eugene, OR 97440–0972, 503–687–2134.
Parke DeWatt Laboratories, Division of Comprehensive Medical Systems, Inc., 1810 Frontage Rd., Northbrook, IL 60062, 708–480–4680.
Pathology Associates Medical Laboratories, East 11604 Indiana, Spokane, WA 99206, 509–926–2400
PDLA, Inc. (Princeton), 100 Corporate Court, So. Plainfield, NJ 07080, 908–769–8500/800–237–7352.
PharmChem Laboratories, Inc., 1505–A O'Brien Drive, Menlo Park, CA 94025, 415–328–6200/800–446–5177.
PharmChem Laboratories, Inc., Texas Division, 7606 Pebble Drive, Fort Worth, TX 76118, 817–595–0294 (Formerly: Harris Medical Laboratory).
Physicians Reference Laboratory, 7800 West 110th Street, Overland Park, KS 66210, 913–338–4070/800–821–3627 (Formerly: Physicians Reference Laboratory Toxicology Laboratory).
Poisonlab, Inc., 7272 Clairemont Mesa Road, San Diego, CA 92111, 619–279–2600/800–882–7272.
Precision Analytical Laboratories, Inc., 13300 Blanco Road, Suite #150, San Antonio, TX 78216, 512–493–3211.
Puckett Laboratory, 4200 Mamie Street, Hattiesburgh, MS 39402, 601–264–3856/800–844–8378.
Regional Toxicology Services, 15305 N.E. 40th Street, Redmond, WA 98052, 206–882–3400.
Resource One, Inc., Seven Pointe Circle, Greenville, SC 29615, 803–233–5639.
Roche Biomedical Laboratories, 1801 First Avenue South, Birmingham, AL 35233, 205–581–4170.
Roche Biomedical Laboratories, 1957 Lakeside Parkway, Suite 542, Tucker, GA 30084, 404–939–4811.
Roche Biomedical Laboratories, Inc., 1120 Stateline Road, Southaven, MS 38671, 601–342–1286.
Roche Biomedical Laboratories, Inc., 69 First Avenue, Raritan, NJ 08869, 800–437–4986.
Scott & White Drug Testing Laboratory, 600 S. 25th Street, Temple, TX 76504, 800–749–3788.
S.E.D. Medical Laboratories, 500 Walter NE, Suite 500, Albuquerque, NM 87102, 505–848–8800.
Sierra Nevada Laboratories, Inc., 888 Willow Street, Reno, NV 89502, 800–648–5472.
SmithKline Beecham Clinical Laboratories, 7600 Tyrone Avenue, Van Nuys, CA 91045, 818–376–2520.
SmithKline Beecham Clinical Laboratories, 3175 Presidential Drive, Atlanta, GA 30340, 404–934–9205 (name changed: formerly SmithKline Bio-Science Laboratories).
SmithKline Beecham Clinical Laboratories, 506 E. State Parkway, Schaumburg, IL 60173, 708–885–2010 (name changed: formerly International Toxicology Laboratories).
SmithKline Beecham Clinical Laboratories, 11636 Administration Drive, St. Louis, MO 63146, 314–567–3905.
SmithKline Beecham Clinical Laboratories, 400 Egypt Road, Norristown, PA 19403, 800–523–5447 (name changed: formerly SmithKline Bio-Science Laboratories).
SmithKline Beecham Clinical Laboratories, 8000 Sovereign Row, Dallas, TX 75247, 214–638–1301 (name changed: formerly SmithKline Bio-Science Laboratories).
South Bend Medical Foundation, Inc., 530 N. Lafayette Boulevard, South Bend, IN 46601, 219–234–4176.
Southwest Laboratories, 2727 W. Baseline Road, Suite 6, Tempe, AZ 85283, 602–438–8507.
St. Anthony Hospital (Toxicology Laboratory), P.O. Box 205, 1000 N. Lee Street, Oklahoma City, OK 73102, 405–272–7052.
St. Louis University Forensic Toxicology Laboratory, 1205 Carr Lane, St. Louis, MO 63104, 314–577–8628.
Toxicology & Drug Monitoring Laboratory, University of Missouri Hospital & Clinics, 301 Business Loop 70 West, Suite 208, Columbia, MO 65203, 314–882–1273.
Toxicology Testing Service, Inc., 5426 N.W. 79th Avenue, Miami, FL 33166, 305–593–2260.

No laboratories withdrew from the National Laboratory Certification Program during May 1993.

Richard Kopanda,

Acting Executive Officer, Substance Abuse and Mental Health Services Administration.

[FR Doc. 93–12849 Filed 6–3–93; 8:45 am]

BILLING CODE 4160–20–U

DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT

Office of the Assistant Secretary for Community Planning and Development

[Docket No. N–93–1917; FR–3350–N–34]

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 a 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 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. Air Force:* John Carr, Realty Specialist, HQ–AFBDA/BDR, Pentagon, Washington, DC 20330–5130; (703) 696–5569; (This is not a toll-free number).

Dated: May 28, 1993.

Jacquie M. Lawing,

Deputy Assistant Secretary for Economic Development.

Title V, Federal Surplus Property Program Federal Register Report for 06/04/93

Arizona—Williams Air Force Base

Williams Air Force Base is located in Mesa, Arizona, 85240–5000. All the properties will be excess to the needs of the Air Force on or about September 30, 1993. Properties shown below as suitable/available will be available at that time. The Air Force has advised HUD that some properties may be available for interim lease for use to assist the homeless prior to that date.

The Base consists of approximately 4,072 acres, 179 Government-owned buildings and 700 residential buildings that have been reviewed by HUD for suitability for use to assist the homeless. The properties that HUD has determined suitable and which are available include various types of housing; office and administrative buildings; recreational, maintenance, and storage facilities; and other more specialized structures.

Suitable/Available Properties

Property Number: 199210096
Type Facility: Housing—700 units of military family housing; 1-story with 2 to 5 bedrooms.

Property Number: 199210097
Type Facility: Temporary Living Quarters—15 buildings; 1, 2, and 3-story structures including dorms and lodging.

Property Number: 199210098
Type Facility: Support and Service Facilities—5 buildings; one 3-story fire station, one 1-story brick chapel, a gate house, a post office and an education center.

Property Number: 199210099
Type Facility: Miscellaneous Facilities—24 buildings; 1 and 2-story structures including a library, bowling center, gym, child care, youth and recreation centers, theater, commissary and stores.

Property Numbers: 199210100–199210101
Type Facility: Recreation—20 facilities including golf club bldgs., bathhouses, swimming pools, baseball, softball and soccer fields, tennis courts, track, golf course, driving range and a camp.

Property Number: 199210102
Type Facility: Medical Facilities—6 buildings; 1-story block and concrete structures including a hospital, clinics and pharmacy.

Property Number: 199210103
Type Facility: Laboratories—9 buildings; eight 1-story and one 3-story metal and concrete/block structures.

Property Number: 199210104
Type Facility: Flight Training and Admin. Facilities—36 buildings; 1 to 3-story concrete block, wood and metal structures including law centers, offices, classrooms and flight training facilities.

Property Number: 199210105
Type Facility: Warehouse and Storage Facilities—12 buildings; 1-story concrete, wood and steel structures including warehouses and storage bldgs.

Property Number: 199210106
Type Facility: Base Support and Flight Maintenance Facilities—52 buildings; 1-story concrete/steel, concrete/block and steel structures including hangars, maintenance and jet engine shops.

Property Number: 199210107
Type Facility: Hazardous and Explosive Storage—14 buildings; 1-story concrete and concrete/metal structures.

Arkansas—Eaker Air Force Base

Eaker Air Force Base is located in Blytheville, Arkansas 72317–5000. All the properties will be excess to the needs of the Air Force on or about December 15, 1992. Properties shown below as suitable/available will be available at that time. The Air Force has advised HUD that some properties may be available for interim lease for use to assist the homeless prior to that date.

The base covers 2,700 acres and contains 928 housing units and 199 government-owned buildings. The properties that HUD has determined suitable and which are available include various types of housing; office and administration buildings; indoor and outdoor recreational facilities; warehouses and multi-use buildings; child care centers; maintenance, storage and other more specialized structures.

Suitable/Available Properties

Property Numbers: 199210046–199210047
Type Facility: Recreation—20 outdoor areas which includes athletic fields (track, softball, baseball), swimming pools, golf courses, volleyball court, basketball courts, tennis court. Eight indoor facilities which includes gym, theatre, library, bowling, youth and recreation centers, hobby shop; concrete block, masonry or metal/brick construction.

Property Numbers: 199210048–199210055
Type Facility: Temporary living quarters and dorms—8 buildings; 3,414 to 41,000 sq. ft.; one and two story; wood/brick veneer and brick masonry buildings.
Property Number: 199210073
Type Facility: Commissary—1 building; 38,575 sq. ft., one story concrete block/metal commissary.
Property Number: 199210075
Type Facility: Chapel—Building 525; 17,602 sq. ft.; one story frame with brick veneer.

Suitable/Unavailable

Property Numbers: 199210040–199210042
Type Facility: Housing—818 duplex units with two, three and four bedrooms; wood with brick veneer fronts; 10 single family houses with four and five bedrooms; and 25 four-units buildings with two story four bedroom units; four playgrounds.
Property Number: 199210044
Type Facility: Security Related Facilities—13 buildings; 30 to 2400 sq. ft., 1 story; metal, concrete block or wood frame; includes traffic check houses, kennels, guard towers, alert shelters.
Property Number: 199210045
Type Facility: Office/administration—26 buildings; 188 to 49,000 sq. ft.; one and two story; concrete block, metal, shingle or masonry construction.
Property Number: 199210056
Type Facility: Warehouses/multi-use buildings—36; metal, concrete block, shingle, wood or plywood frame; one and two story; 64 to 45,960 sq. ft.; includes cold storage facilities, maintenance shops, traffic management facility, storage shed, thrift shops and other specialty type facilities.
Property Numbers: 199210057–199210059
Type Facility: Hospitals—3 buildings; one story concrete block; 1,084 sq. ft. animal clinic; 5,249 sq. ft. dental clinic; and 54,089 sq. ft. composite medical bldg.
Property Numbers: 199210060–199210062
Type Facility: Child care centers—3 buildings; 2,098 to 8,365 sq. ft.; brick, concrete block and hadite block construction.
Property Numbers: 199210063–199210065
Type Facility: Stores and services—3 buildings; 4,299 sq. ft. exchange service station; 32,925 sq. ft., one story concrete block exchange sales store; 3,370 sq. ft., one story wood frame packaging store.
Property Number: 199210066
Type Facility: Airfield related buildings—9; 96 to 49,000 sq. ft.; shingle, metal or concrete block structures, e.g. hangars, aircraft general purpose bldgs., jet engine maintenance shops, control centers.
Property Number: 199210068
Type Facility: Vehicle maintenance facilities—3; 2,032 to 29,350 sq. ft.; one story metal frame buildings.
Property Number: 199210069
Type Facility: Fuels/related storage facilities—33 buildings; steel, fiberglass and porcelain type; e.g. service stations, diesel storage, pump stations, jet fuel storage.
Property Number: 199210070
Type Facility: Hazardous storage buildings—4; 96 to 3,000 sq. ft.; one story metal structures.
Property Number: 199210071
Type Facility: Munitions facilities—10 buildings; 412 to 4,864 sq. ft.; concrete block; storage igloos and magazines.
Property Numbers: 199210076–199210077
Type Facility: Laboratories—2 buildings; 4,200 sq. ft. precision measurement equipment lab; and 3,775 sq. ft. audio-visual photo lab.
Property Number: 199210078
Type Facility: Bank; 2,367 sq. ft.; one story concrete block; lease restrictions.
Property Number: 199210079
Type Facility: Land; 1,962 acres; restrictive agricultural lease.
Property Number: 199210074
Type Facility: Fire Station—Building 100; 15,717 sq. ft.; concrete masonry/asbestos cement shingles frame.
Property Number: 199210072
Type Facility: Cold Storage—Building 435; 3,195 sq. ft., 1 story concrete block frame.

Unsuitable Properties

Property Number: 199210067
Type Facility: Detached latrines—3; 264 sq. ft. concrete block structures.
Property Number: 199210043
Type Facility: Housing—23 buildings; cracked foundations, therefore, structural deficiencies.

California—George Air Force Base

George Air Force Base is located in San Bernardino, California, 92394–5000. All the properties are excess to the needs of the Air Force.

The Base covers 5,340 acres and contains 732 individual properties that have been reviewed by HUD for suitability for use to assist the homeless. The 668 properties that HUD has determined suitable which are no longer available include various types of housing; office and administrative buildings; recreational, maintenance, and storage facilities; and other more specialized structures.

Suitable/Unavailable Properties

Property Numbers: 199120001–199120420
Type Facility: Housing—400 buildings with a total of 1,525 dwelling units; buildings have 1, 2, 3, 4, 6, or 8 units each; wood/stucco frame construction; possible asbestos.
Property Numbers: 199120506–199120547
Type Facility: Temporary living quarters, dorms, lodges, and ancillary sheds—42 buildings; 1 and 2 story wood, concrete, and concrete block structures; 4,700 sq. ft. to 25,000 sq. ft. for living quarters; 380 sq. ft. to 2,400 sq. ft. for sheds; possible asbestos.
Property Numbers: 199120421–199120473
Type Facility: Office/administration—53 buildings ranging in size from 200 sq. ft. on 1 floor to 56,600 sq. ft. on 3 floors; wood or concrete block construction; several trailers; possible asbestos.
Property Numbers: 199120474–199120505
Type Facility: Recreation—22 buildings including theatre, recreation center, bowling center, gym, library, craft center, shop, youth center, golf course buildings, pools, bathhouses; 7 baseball, softball, and soccer fields; track; golf course; driving range; possible asbestos.
Property Numbers: 199120548–199120587
Type Facility: Aircraft and airport related facilities—40 structures including hangers, shops, tower, terminal, lab, docks, storage, control center, navigation station, runways; sizes up to 86,000 sq. ft.; possible asbestos.
Property Numbers: 199120588–199120608
Type Facility: Maintenance and engineering facilities—21 buildings; concrete and wood; 200 sq. ft. to 17,000 sq. ft.; possible asbestos.
Property Numbers: 199120609–199120618
Type Facility: Training facilities—10 buildings; education center and 9 classroom buildings; concrete and wood; 1200 sq. ft. to 16,800 sq. ft.; possible asbestos.

Property Numbers: 199120619–199120630
Type Facility: Stores and services—12 buildings; 10 stores and 2 gas stations; wood and concrete; 1800 sq. ft. to 30,700 sq. ft.; possible asbestos.
Property Numbers: 199120631–199120632
Type Facility: Chapels—2 buildings; 4800 sq. ft. wood; 24,100 sq. ft. concrete; possible asbestos.
Property Number: 199120633
Type Facility: Hospital—3 story, concrete block, 147,000 sq. ft.; possible asbestos.
Property Numbers: 199120634–199120635
Type Facility: Fire facilities—2 buildings; fire station and command center; possible asbestos.
Property Numbers: 199120636–199120638
Type Facility: Audio visual and photo lab—3 buildings; wood and concrete; 1800 sq. ft. to 2300 sq. ft.; possible asbestos.
Property Numbers: 199120639–199120645
Type Facility: Vehicle shops—7 buildings; concrete; 74 sq. ft. to 33,000 sq. ft.; possible asbestos.
Property Numbers: 199120646–199120655
Type Facility: Misc.—10 buildings; wood and concrete; 1 story; dining halls, mess halls, food service, child care centers; 1800 sq. ft. to 19,000 sq. ft.; possible asbestos.
Property Numbers: 199120656–199120666
Type Facility: Communications/electronic—11 buildings; concrete block and wood; 1 story shops and sheds; 108 sq. ft. to 10,200 sq. ft.; possible asbestos.
Property Numbers: 199120667–199120678
Type Facility: Warehouses—12 buildings; 1124 sq. ft. to 70,000 sq. ft.; wood, concrete, and concrete block; possible asbestos.

Unsuitable Properties

Property Number: 199120679
Type Facility: Small arms.
Reason: Within 2000 ft. of flammable or explosive materials.
Property Numbers: 199120680–199120687
Type Facility: Hazardous storage facilities—8 buildings.
Reason: Within 2000 ft. of flammable or explosive materials.
Property Numbers: 199120688–199120713
Type Facility: Explosives and munitions facilities—26 buildings.
Reason: Within 2000 ft. of flammable or explosive materials.
Property Numbers: 199120714–199120732
Type Facility: Fuel facilities—19 structures.
Reason: Within 2000 ft. of flammable or explosive materials.

California—Mather Air Force Base

Mather Air Force Base is located in Sacramento County, California, 95655–5000. All the properties will be excess to the needs of the Air Force on or about September 30, 1993.

The Base consists of approximately 5715 acres, 315 Government-owned buildings and 1271 housing units that have been reviewed by HUD for suitability for use to assist the homeless. The properties that HUD has determined suitable which are no longer available include various types of housing; office and administrative buildings; recreational, maintenance, and storage facilities; and other more specialized structures.

Suitable/Unavailable Properties

Property Number: 199210022
Type Facility: Office/Administration—60 buildings; one, two and three story structures; presence of asbestos.
Property Number: 199210024
Type Facility: Aircraft and Airport Related Facilities—33 buildings; one to two story structures including hangars, storage facilities and maintenance shops; presence of asbestos.
Property Number: 199210025
Type Facility: Maintenance and Engineering Facilities—36 buildings; one story structures including storage, shop and maintenance buildings; presence of asbestos.
Property Number: 199210027
Type Facility: Stores and Services—7 buildings; one story structures including stores, service station exchange and cold storage building; presence of asbestos.
Property Number: 199210028
Type Facility: Chapels—2 buildings; one story concrete block and masonry concrete structures; presence of asbestos.
Property Number: 199210029
Type Facility: Fire Facilities—2 fire facilities and 2 fire stations; presence of asbestos.
Property Number: 199210030
Type Facility: Audio Visual—3 buildings; one story photo lab and training aid shops; presence of asbestos.
Property Numbers: 199210017–199210020
Type Facility: Housing—207 buildings/414 units Wherry duplexes (two to three bedrooms); 857 family houses (one to four bedrooms); buildings have reinforced concrete block, wood and stucco frame construction; presence of asbestos.
Property Number: 199210021
Type Facility: Temporary Living Quarters—18 buildings; one, two, and three story wood, concrete block and stucco structures; presence of asbestos.
Property Number: 199210023
Type Facility: Recreation—32 facilities including theater, gymnasium, library, bowling alley, recreation center, arts and crafts center, youth center, pools, bath houses, museum buildings; presence of asbestos.
Property Number: 199210026
Type Facility: Training Facilities—15 buildings; one to two story concrete, wood and metal classroom/education buildings; presence of asbestos.
Property Number: 199210031
Type Facility: Miscellaneous—6 buildings; one story child care centers, correction facility, dining and mess halls; presence of asbestos.
Property Number: 199210032
Type Facility: Storage Facilities—61 buildings; one story metal, steel, wood or concrete storage buildings or sheds; presence of asbestos.
Property Number: 199210033
Type Facility: Warehouses—7 buildings; one to two story structures; presence of asbestos.
Property Number: 199210034
Type Facility: Vehicle Shops—6 buildings; one story concrete block, wood, steel frame and metal shops; presence of asbestos.
Property Number: 199210035
Type Facility: Traffic Check House—1 building; two story concrete block structure.
Property Number: 199210036
Type Facility: Fuel Facilities—8 buildings; one story structures.
Property Number: 199210037
Type Facility: Explosives and Munitions Facilities—5 buildings; one story concrete or concrete block storage structures.
Property Number: 199210038
Type Facility: Hazardous Storage Facilities—11 buildings; one story metal storage structures.
Property Number: 199210039
Type Facility: Land—Recreation Areas and Airfield Properties including softball/football/soccer fields, running track, riding stables, golf course, taxiway and runways, (approximately 5716 acres).

California—Norton Air Force Base

Norton Air Force Base is located in San Bernardino, California, 92409. All the properties will be excess to the needs of the Air Force on or about September 30, 1994. The Air Force has advised HUD that some properties may be available for interim lease for use to assist the homeless prior to that date.

The Base covers approximately 2,339 acres, 132 Government owned buildings, and 263 multi-family housing units that have been reviewed by HUD for suitability for use to assist the homeless. The properties that HUD has determined suitable include various types of housing; office and administrative buildings; recreational, maintenance, and storage facilities; and other more specialized structures.

Suitable/Available Properties

Property Number: 199320047
Type Facility: Housing—263 multi-family housing units; approx. 1600 sq. ft. each, 1-story concrete block, 3 to 4 bedrooms with carports.

Property Number: 199320048
Type Facility: Dormitories—23 buildings; ranging in size from 11,520 sq. ft. to 25,723 sq. ft., 1-story concrete block.

Property Number: 199320049
Type Facility: Administrative Bldgs.—17 buildings; ranging in size from 1750 sq. ft. to 261,700 sq. ft., 1-story concrete block including offices, admin. and Hq. maint. facilities.

Property Number: 199320050
Type Facility: Training Facilities—2 buildings; ranging in size from 17,780 sq. ft. to 29,380 sq. ft., 1-story concrete block classroom and flight training facilities.

Property Number: 199320051
Type Facility: Warehouses—44 buildings; ranging in size from 9000 sq. ft. to 293,574 sq. ft., 1-story concrete block warehouses.

Property Number: 199320052
Type Facility: Commercial Bldgs.—26 buildings; ranging in size from 400 sq. ft. to 100,581 sq. ft., 1-story concrete block including a commissary, stores, clinics, credit union, child care centers, dining facilities and fire station.

Property Number: 199320053
Type Facility: Maintenance Facilities—13 buildings; ranging in size from 2942 sq. ft. to 625,145 sq. ft., 1-story concrete block including maintenance, storage and headquarters facilities.

Property Number: 199320054
Type Facility: Recreation Bldgs.—7 buildings; ranging in size from 3000 sq. ft. to 25,358 sq. ft., 1-story concrete block including library, golf bldgs., gym, and recreation/bowling/youth centers.

Property Number: 199320055
Type Facility: Recreation Areas—land; 200 acres including golf course, ballfields, etc.

Colorado—Lowry Air Force Base

Lowry Air Force Base is located in Denver, Colorado 80230–5000. All the properties will be excess to the needs of the Air Force on or about September 30, 1994. Properties shown below as suitable/available will be available at that time. The Air Force has advised HUD that some properties may be available for interim lease for use to assist the homeless prior to that date.

The Base consists of approximately 2,006 acres, 181 government-owned buildings and 867 units of family housing. The properties that HUD has determined suitable and which are available include various types of housing; community and recreation facilities; administration and training buildings; storage/warehouses; and other more specialized structures.

Suitable/Available Properties

Property Number: 189010254
Type Facility: Land—NTMU—Partial Area; west of aspen terrace housing area; approx. 20 acres; sloping parts in the area.

Property Number: 199320001–199320009
Type Facility: Housing—867 units; 1, 2, 4 & 8 unit bldgs. and storage sheds & vehicle garages; 1 to 4 bedrooms; brick, wood w/metal siding frame; possible asbestos; some may need rehab; 192 to 14617 sq. ft.

Property Number: 199320010
Type Facility: Housing—26 dormitories; 4382 to 188923 sq. ft.; brick or wood frame; 1 to 3 story; possible asbestos; some may need rehab; includes officer's quarters, dorm housing, motels and hotel housing.

Property Number: 199320012
Type Facility: Community/Recreation—49 facilities; includes playgrounds; running track; soccer, baseball & softball fields; tennis and basketball courts.

Property Number: 199320013
Type Facility: Recreational—22 facilities; brick, wood or cinderblock frame; some may need rehab; includes gyms, theater, bowling alleys, youth centers, swimming pools, bath houses, museum.

Property Number: 199320014
Type Facility: Administration—26 buildings; 1143 to 337588 sq. ft.; wood, brick, metal or cinderblock frame; some may need rehab; possible asbestos; includes correctional facility, headquarters bldg., security operations, traffic management and admin services.

Property Number: 199320015
Type Facility: Training—32 facilities; 1026 to 97442 sq. ft., brick, metal or cinderblock frame; 1 to 4 story; includes technical training labs, TV studio, classrooms.

Property Number: 199320016
Type Facility: Commercial—24 buildings; 64 to 84860 sq. ft.; 1 & 2 story; some may need rehab; possible asbestos; brick, wood or metal frame; includes stores, child care centers, medical clinics, chapels & car garages.

Property Number: 199320017
Type Facility: Industrial—21 facilities; 757 to 37832 sq. ft.; metal, brick, wood or cinderblock frame; possible asbestos, some may need rehab; includes vehicle maintenance, training aid, BE maintenance, and industrial bldgs.

Property Number: 199320018—199320019
Type Facility: Storage/Warehouses—46 facilities; 169 to 50363 sq. ft.; wood, brick, metal or cinderblock frame; some may need rehab; possible asbestos; includes cold storage, housing support, warehouses, commissary, clothing stores, covered storage.

Unsuitable Properties

Property Number: 199320011
Type Facility: Dormitories (2)—Buildings 410 and 414; extensive deterioration.

Property Number: 199320020—199320021
Type Facility: Hazard Storage/Warehouses—6 facilities; extensive deterioration.

Illinois—Chanute Air Force Base

Chanute Air Force Base is located in Champaign, Illinois, 61868. All the properties will be excess to the needs of the Air Force on or about September 30, 1993.

The Base consists of approximately 2,174 acres, 164 Government-owned buildings and 585 residential buildings that have been reviewed by HUD for suitability for use to assist the homeless. The properties that HUD has determined suitable and which are no longer available include various types of housing; office and administrative buildings; recreational, maintenance, and storage facilities; and other more specialized structures.

Suitable/ Unavailable Properties

Property Number: 199210139
Type Facility: Housing—585 houses including off-base Chapman Courts with 1 to 8 units, brick and wood structure, possible asbestos.
Property Number: 199210140
Type Facility: Temporary Living Quarters—24 buildings; 1 to 4-story dormitories and temporary living facilities, possible asbestos.
Property Number: 199210141
Type Facility: Medical Facilities—2 buildings; 4-story concrete hospital and a 1-story concrete dental clinic, possible asbestos.
Property Number: 199210142
Type Facility: Storage/Warehouses—28 buildings; concrete block, brick, metal and wood structures including supply and training bldgs., need repairs.
Property Number: 199210143
Type Facility: Maintenance Bldgs.—15 buildings; 1-story maintenance facilities and shops, possible asbestos.
Property Number: 199210144
Type Facility: Engine Test Cells/ Warehouse—2 buildings; 1-story concrete storage/maintenance facilities, possible asbestos.
Property Number: 199210145
Type Facility: Gas Stations—2 buildings; 1-story gas stations.
Property Number: 199210146
Type Facility: Training Facilities—22 buildings; 1 to 4-story structures including training bldgs., classrooms, and labs, possible asbestos.
Property Number: 199210147
Type Facility: Retail Stores—5 buildings; 1-story brick and wood structures including 4 branch exchanges and 1 commissary, possible asbestos.
Property Number: 199210148
Type Facility: Chapel/Chapel Center—3 buildings; one 2-story brick chapel center and two 1-story wood chapels, possible asbestos.
Property Number: 199210149
Type Facility: Fire Station—1 building; 2-story brick fire station, possible asbestos.
Property Number: 199210150
Type Facility: Recreation—48 facilities; including gym, library, theater, golf bldgs., youth, child, bowling and recreation centers, track, softball fields, tennis courts, golf course and driving range.
Property Number: 199210152
Type Facility: Administration—26 facilities; wood, brick and concrete structures including a band center, and education center, admin. bldgs. and offices, needs rehab, possible asbestos.
Property Number: 199210153
Type Facility: Bldg. 386/Band Bldg.—31803 sq. ft., 2-story concrete block/ wood band center, needs rehab.
Property Number: 189010232, 189010255, 189010259–189010260
Type Facility: Miscellaneous Bldgs.—4 buildings including training facility, jail, pump house and bath house

Unsuitable Properties

Property Number: 189010227–189010231
Type Facility: Waste Treatment Facilities.

Louisiana—England Air Force Base

England Air Force Base is located in Alexandria, Louisiana 71311–5000. All the properties are excess to the needs of the Air Force.

The base covers 2,282 acres and contains 568 housing units and 193 government-owned buildings. The properties that HUD has determined suitable and which are available include one and two story family housing; office and administration buildings; and land. Other properties include recreational facilities and areas; educational, business and commercial buildings; maintenance, storage and other specialized structures.

Suitable/Available Properties

Property Number: 199210080–199210081
Type Facility: Housing—286 buildings with 568 dwelling units; one and two story; wood or masonry frame; 1,190 to 6,701 sq. ft.
Property Number: 199210082
Type Facility: Office and administration—28 buildings; 228 to 40,006 sq. ft.; one and two story; wood, brick, block or masonry frame; presence of asbestos in several structures.
Property Number: 199210094
Type Facility: Land, airfield, runways—25 parcels; 10 to 398,099 square yards; concrete or asphalt.

Suitable/Unavailable Properties

Property Number: 199210083–199210084
Type Facility: Recreation—18 facilities and 10 parcels of land; i.e. swimming pools, gym, theater, riding stables, bowling, library, golf course, arts and crafts center, baseball, soccer, and softball fields, track and tennis court; presence of asbestos in some structures.
Property Number: 199210085
Type Facility: Dorms and dining areas—14 buildings; 3,902 to 25,715 sq. ft.; brick or masonry frame; one, two, and three story; presence of asbestos in some structures; includes dorms, officers club, NCO club and dinning hall.
Property Number: 199210086
Type Facility: Educational/training—14 buildings; 740 to 45,716 sq. ft.; wood or masonry frame; one and two story; presence of asbestos in a few structures; includes classrooms, child care center, school, education office and field training facility.
Property Number: 199210087
Type Facility: Hospitals—3 related buildings—medical storage, hospital and bio environment; metal or masonry frame; presence of asbestos in hospital.
Property Number: 199210088
Type Facility: Business and Commercial—6 buildings; 1,925 to 34,326 sq. ft.; masonry frame and possible asbestos in the commissary; other structures include mini mall, photo lab, post office, service station and base package store.
Property Number: 199210089
Type Facility: Storage/Warehouses—38 buildings including igloos, supply and equipment warehouses, records storage, commissary warehouse, retail exchange warehouse, cold storage and open storage facilities; 225 to 60,960 sq. ft.; one story; wood, block, metal, brick or concrete construction; presence of asbestos in several structures.
Property Number: 199210090
Type Facility: Maintenance shops—20 buildings; 228 to 34,176 sq. ft.; one story; block, metal or steel construction; presence of asbestos in several structures.
Property Number: 199210091
Type Facility: Airfield related facilities—36 buildings including vehicle fuel station, petroleum operations building, aircraft general purpose, control center, shop avionics, air freight terminal, etc.; 240 to 79,537 sq. ft.; block, metal, wood, concrete or masonry frame; presence of asbestos in some structures.
Property Number: 199210092
Type Facility: Fire facility—Building 500; 13,658 sq. ft.; one story masonry frame; presence of asbestos.
Property Number: 199210093
Type Facility: Chapel—Building 1801; 11,484 sq. ft.; one story masonry frame.

Unsuitable Properties

Property Number: 199210095
Type Facility: Fuel storage containers—14 hazardous storage containers.

Maine—Loring Air Force Base

Loring Ar Force Base is located in Limestone, Maine 04736. All the properties will be excess to the needs of the Air Force on or about September 30, 1994. Properties shown below as suitable/available will be available at that time. The Air Force has advised HUD that some properties may be available for interim lease for use to assist the homeless prior to that date.

The Base consists of approximately 8,702 acres, 163 government-owned buildings, and 598 family housing units. The properties that HUD has determined suitable and which are available include various types of housing; admin/community support; vehicle maintenance/storage; weapons storage area; and other more specialized structures.

Suitable/Available Properties

Property Numbers: 189010590–189010605
Type Facility: Family Housing Annex—16 buildings; 1,116 sq. ft.; 1 story frame residences; fuel tanks removed; sewage line need repairs.
Property Numbers: 199320033–199320036
Type Facility: Housing—Wherry, Capehart, and Family Housing residences and officer's quarters; 1,420 to 38,058 sq. ft.; aluminum, wood and shingle frame; 1 to 3 story.
Property Number: 199320037
Type Facility: Housing Garages—117 buildings; wood or cedar frame, 1 story, various sq. ft.
Property Numbers: 199320038, 199320040
Type Facility: Vehicle Maintenance/Storage—30 buildings; wood, metal or concrete structures, includes storage and maintenance facilities; vehicle maintenance, dry cleaners, auto shop, and water supply.
Property Number: 199320039
Type Facility: Admin/Community Support—42 buildings; 900 to 145,877 sq. ft.; 1 to 3 story; brick, concrete or wood frame; includes chapel, post office, dining hall library, child care centers, theater, pool.
Property Number: 199320041
Type Facility: Nose Docks/Hangars—59 facilities; concrete, metal or brick structures; includes fuel bldgs., pump stations, vehicle parking, storage sheds and buildings, security operations.
Property Number: 199320042
Type Facility: Flightline Support—22 facilities; concrete, metal, wood, brick structures; includes fire stations, correctional facility, avionics shop, maintenance shop, vehicle parking, utility vault.
Property Number: 199320043
Type Facility: Weapons Storage Area—86 buildings; concrete, metal, or brick structures; includes inspection bldgs., igloos storage, munitions storage, warehouses, police bldg., and storage magazines.
Property Number: 199320045
Type Facility: Land—On Base; 5,233 acres of which 3,583 is unimproved; improved land includes aprons, roads, runways, parking, etc.
Property Number: 199320046
Type Facility: Land—Off Base; 4,517 acres of which 4,047 is unimproved; improved land includes roads, runways, parking, housing, etc.

Unsuitable Properties

Property Number: 199320044
Type Facility: 7 Water/Waste Facilities.

Michigan—Wurtsmith Air Force Base

Wurtsmith Air Force Base is located in Oscoda, Michigan 48753. All the properties will be excess to the needs of the Air Force on or about June 30, 1993. Properties shown below as suitable/available will be available at that time. The Air Force has advised HUD that some properties may be available for interim lease for use to assist the homeless prior to that date.

The base consists of approx. 5,221 acres with 62 government-owned buildings and 1,349 units of housing. The suitable/available properties include various types of housing; office buildings; recreational facilities; dining and child care facilities; stores; warehouses and other more specialized structures.

Suitable/Available Properties

Property Numbers: 199240001–199240005
Type Facility: Housing—1,349 units and 13 dormitories; 1, 2, 4, 6, 7 and 8 unit buildings; 1073 to 90501 sq. ft.
Property Numbers: 199240006–199240007, 199240015–199240018, 199240022–199240025
Type Facility: Recreational—18 facilities; includes swim bath house; recreation center; library; bowling alley; running track; softball, baseball, football, and soccer fields; theatre.
Property Number: 199240008
Type Facility: Dining—3 buildings; 13388 to 15062 sq. ft.; includes open mess.
Property Number: 199240009
Type Facility: Stores—4 buildings; 4208 to 40701 sq. ft.; includes sales store; service outlet exchange; exchange branch; and base package store.
Property Number: 199240010
Type Facility: Warehouses—4; 7856 to 104213 sq. ft.; includes commissary; supply and equipment base; and traffic facility.
Property Numbers: 199240011, 199240014, 199240021
Type Facility: Miscellaneous—11 buildings; includes storage facilities; vehicle maintenance shops; arts & crafts center; radar building.
Property Numbers: 199240012–199240013; 199240020
Type Facility: Offices—15 buildings; includes admin offices; child care centers; education facility; headquarters group; family housing management offices; environmental health.
Property Number: 199240019
Type Facility: Chapel—19977 sq. ft.; roof leaks.
Property Number: 199240026
Type Facility: Air Force Land—56 acres; portion located in airport runway area.

Missouri—Richards-Gebaur Air Reserve Station

Richards-Gebaur Air Reserve Station is located in Kansas City, Missouri, 64147. All the properties will be excess to the needs of the Air Force on or about September 30, 1994. Properties shown below as suitable/available will be available at that time. The Air Force has advised HUD that some properties may be available for interim lease for use to assist the homeless prior to that date.

The Base is approximately 906 acres with 69 government-owned buildings. The properties that HUD has determined suitable and which are available include office buildings, recreation facilities, dorm housing, medical clinics, community support buildings, storage and maintenance facilities.

Suitable/Available Properties

Property Number: 199320022
Type Facility: Facility 918; 68767 sq. ft., 1 story concrete block; most recent use—aircraft hangar.
Property Number: 199320023
Type Facility: Dormitories—3 buildings (#243, 250, & 252); 9722 to 9739 sq. ft.; 2 story wood frame.
Property Number: 199320024
Type Facility: Mess Hall—Facility 248; 25536 sq. ft., 2 story concrete block/wood frame.
Property Number: 199320025
Type Facility: Medical Clinics—2 buildings (#601 & 604); 4541 & 9099 sq. ft.; 1 story concrete block/wood frame.

Property Number: 199320026
Type Facility: Offices—18 buildings; 856 to 67816 sq. ft.; 1 & 2 story; wood, concrete block, prefab steel or corrugated metal; includes office clinics, base exchange, offices, office maintenance shop.
Property Number: 199320027
Type Facility: Recreation—2 facilities; 1083 & 1624 sq. ft.; 1 story wood/steel frame; includes pool bath house and base park shelter house.
Property Number: 199320028
Type Facility: Recreation—Facility 1049; 611 sq. ft.; 1 story concrete block most recent use—office/storage/small arms range.
Property Number: 199320029
Type Facility: Facility 924; 569 sq. ft.; 1 story wood frame; most recent use—grounds shop.
Property Number: 199320030
Type Facility: Community Support—3 facilities; 308 to 10417 sq. ft.; wood and concrete block; includes fire station; communications support, 7 story control tower.
Property Number: 199320031
Type Facility: Maintenance Shops/Hangars—10 facilities; 1812 to 23404 sq. ft., 1 story corrugated metal or concrete block.
Property Number: 199320032
Type Facility: Storage—28 facilities; 141 to 97400 sq. ft., wood, concrete block or steel beams; includes covered open storage, office/storage and sheds.

New Hampshire—Pease Air Force Base

Pease Air Force Base is located in Rockingham County, New Hampshire, 03803. The Base consists of approximately 4,257 acres, numerous Government-owned buildings and residential buildings that have been reviewed by HUD for suitability for use to assist the homeless. The New Hampshire Air National Guard is expected to continue operations on a portion of the Base.

Suitable/Unavailable Properties

Property Number: 189040321–189040323
Type Facility: 2 open mess and 1 dining hall.
Property Number: 189040326
Type Facility: 1 bachelor quarters buildings.
Property Number: 189040327
Type Facility: Hospital heat plant.
Property Number: 189040328
Type Facility: Hospital.
Property Number: 189040329
Type Facility: Trailer (hospital office space).
Property Number: 189040330–189040332
Type Facility: 3 training facilities.
Property Number: 189040333–189040334
Type Facility: 2 child care facilities.
Property Number: 189040335
Type Facility: Fire station.
Property Number: 189040059–189040148, 189040304–189040319
Type Facility: 106 4-unit residences.
Property Number: 189040352
Type Facility: 1 chapel.
Property Number: 189040387–189040394
Type Facility: 8 dormitories.
Property Number: 189040395–189040404
Type Facility: 10 residences with detached garage.
Property Number: 189040405–189040467
Type Facility: 63 2-unit residences with detached garage.
Property Number: 18904068–189040471
Type Facility: 4 6-unit residences with attached garage.
Property Number: 189040472–189040561
Type Facility: 90 detached housing storage sheds.
Property Number: 189040737–189040740
Type Facility: 4 recreational facilities.
Property Number: 189040748
Type Facility: 1 small concrete munitions storage building.
Property Number: 189040763–189040768, 189040770–189040771
Type Facility: 9 administrative facilities.
Property Number: 189040774–189040775, 189040777–189040778, 189040787, 189040790, 189040795–189040805
Type Facility: 17 Miscellaneous buildings used for office, administrative, educational, laboratory, traffic check, storage, maintenance, and other purposes.
Property Number: 189010535
Type Facility: Temp. lodging facility, Bldg. 94, Rockingham Drive.

Unsuitable Properties

Property Number: 189040360
Type Facility: Golf course.
Reason: Within airport runway clear zone.
Property Number: 189010536
Type Facility: Vehicle fuel station.
Reason: Within 2,000 ft. of flammable or explosive material.
Property Numbers: 189010537, 189010538
Type Facility: Jet fuel pumphouses.
Reason: Within 2000 ft. of flammable or explosive material.
Property Number: 189010539
Type Facility: Weapons storage area.
Reason: Within 2000 ft. of flammable or explosive material.
Property Numbers: 189040354–189040359
Type Facility: Bldgs. 399–401, 403, 405, 407.
Reason: Within airport runway clear zone.
Property Numbers: 189040361, 189040369, 189040373
Type Facility: Industrial facilities.
Reason: Within 2000 ft. of flammable or explosive material.
Property Number: 189040717
Type Facility: Utility plant.
Reason: Other.
Property Numbers: 189040772, 189040794
Type Facility: Bus shelters.
Reason: Other.
Property Numbers: 189040806, 189040825–189040829
Type Facility: Sewage pump stations.
Reason: Other.
Property Numbers: 189040820, 189040822–189040824
Type Facility: Pump stations.
Reason: Other.
Property Numbers: 189040830–189040851
Type Facility: Power stations.
Reason: Other.

South Carolina—Myrtle Beach Air Force Base

Myrtle Beach Air Force Base is located in Horry County, South Carolina 29579–5000. All the properties are excess to the needs of the Air Force. Properties shown below as suitable/available are available for interim lease for use to assist the homeless.

The base covers approximately 3,800 acres, 190 Government-owned buildings and 448 residential buildings with 800 units of housing that have been reviewed by HUD for suitability for use to assist the homeless. The properties that HUD has determined suitable and which are available include various types of housing; office and administrative buildings; recreational, maintenance, and storage facilities; and other more specialized structures.

Suitable/Available Properties

Property Number: 199210001
Type Facility: Housing—448 buildings with a total of 800 dwelling units; two, three, and four bedrooms single family dwellings and duplexes with attached carports.
Property Number: 199210002
Type Facility: Dormitories/Quarters—13 buildings; two to three story masonry and block structures.

Property Number: 199210003
Type Facility: Miscellaneous—12 buildings; one to two story structures including a chapel, theater, recreation center, child care centers, retail sales stores and dining hall.
Property Number: 199210005
Type Facility: Office/Administration—44 buildings; one to two story modular, block, wood and brick structures.
Property Numbers: 199210006–199210007
Type Facility: Recreation—12 buildings and land including bath houses, bowling center, gymnasium, golf course buildings, three soccer fields, six tennis courts, three softball fields, four youth ball fields, track, campground (golf course bldgs. are unavailable—leased to local community).
Property Number: 199210009
Type Facility: Utility Type Facilities—36 buildings; one story structures including warehouses, shops and sheds.
Property Number: 199210010
Type Facility: Security—3 police buildings; one story masonry structures including a jail.
Property Number: 199210011
Type Facility: Storage—15 buildings; one story metal, concrete and masonry ammunition storage structures.
Property Numbers: 199210014–199210015
Type Facility: Land—approximately 17 acres used as a mobile home park and 1678 acres of forest.

Suitable/Unavailable Properties

Property Number: 199210004
Type Facility: Six one-story medical support buildings.
Property Number: 199210008
Type Facility: Golf course and driving range.
Property Numbers: 199210012–199210013
Type Facility: Airfield and Related Properties—15 support buildings and land including hangars, maintenance shops, fire station, eight-story control tower, runways, taxiways and aprons.

Unsuitable Properties

Property Number: 199210016
Type Facility: Small Arms Building.
Reason: Extensive Deterioration.

Texas—Carswell Air Force Base

Carswell Air Force Base is located in Tarrant County, Texas, 76127. All the properties will be excess to the needs of the Air Force on or about September 30, 1993. Properties shown below as suitable/available will be available at that time. The Air Force has advised HUD that some properties may be available for interim lease for use to assist the homeless prior to that date.

The Base consists of approximately 2,308 acres, 214 Government-owned buildings and 352 residential buildings that have been reviewed by HUD for suitability for use to assist the homeless. The properties that HUD has determined suitable and which are available include various types of housing.

Suitable/Available Properties

Property Numbers: 1992100108–199210122
Type Facility: Housing—352 military family residences; 1 and 2-story wood frame, concrete and brick/wood buildings.

[FR Doc. 93–13098 Filed 6–3–93; 8:45 am]
BILLING CODE 4210–29–M

Office of Fair Housing and Equal Opportunity

[Docket No. N–93–3558; FR–3428–N–06]

Task Force on Occupancy Standards in Public and Assisted Housing

AGENCY: Office of the Assistant Secretary for Fair Housing and Equal Opportunity.

ACTION: Notice of open meeting.

SUMMARY: The Task Force on Occupancy Standards in Public and Assisted Housing was established on December 31, 1992, in accordance with the provisions of section 643 of the Housing and Community Development Act of 1992 (Pub. L. 102–550) and the Federal Advisory Committee Act (FACA). The Task Force's charter was published in the **Federal Register** on January 7, 1993 at 58 FR 3039. The Task Force was created to review all rules, policy statements, handbooks, and technical assistance memoranda issued by the Department on the standards and obligations governing residency in public and assisted housing and make recommendations to the Secretary for the establishment of reasonable criteria for occupancy. This is a notice announcing the third meeting of the full Task Force, following five sets of Subcommittee meetings.

FOR FURTHER INFORMATION CONTACT: Laurence D. Pearl, Office of Fair Housing and Equal Opportunity, room 5226, Department of Housing and Urban Development, 451 Seventh Street, SW., Washington, DC 20410. Telephone: (202) 708–3727. (TDD) (202) 708–0113. (These are not toll-free numbers.) If a sign language interpreter is needed for this meeting, please call either telephone number for assistance at least seven days prior to the meeting.

SUPPLEMENTARY INFORMATION: Time and Place—The Task Force will meet on Wednesday, July 21 from 1 p.m. to 5 p.m., Thursday, July 22 from 9 a.m. to 5 p.m. and on Friday, July 23, from 9 a.m. to 12 noon. The meeting will take place in the Hall of States, 444 North Capitol Street, NW., Washington, DC, room 283. This is an open meeting.

Agenda

The Task Force expects to consider and approve its draft report which will be disseminated to the public prior to public hearings which are scheduled for September and October 1993.

Public Participation

These are open meetings. The public is also invited to submit written comments on any aspect of the Task Force's mandate or activities to Ms. Bonnie Milstein, the Chair of the Task Force, at 1101 Fifteenth Street, NW., suite 1212, Washington, DC 20005–2765.

Dated: May 27, 1993.

Bonnie Milstein,
Chair, Task Force on Occupancy Standards in Public and Assisted Housing.

Roy Rodriguez,
Acting General Deputy Assistant Secretary for Fair Housing and Equal Opportunity.

[FR Doc. 93–13144 Filed 6–3–93; 8:45 am]
BILLING CODE 4210–28–M

[Docket No. N–93–3558; FR–3428–N–07]

Task Force on Occupancy Standards in Public and Assisted Housing

AGENCY: Office of the Assistant Secretary for Fair Housing and Equal Opportunity, HUD.

ACTION: Notice of open meetings.

SUMMARY: The Task Force on Occupancy Standards in Public and Assisted Housing was established on December 31, 1992 in accordance with the provisions of section 643 of the Housing and Community Development Act of 1992 (Pub. L. 102–550) and the Federal Advisory Committee Act (FACA) (5 U.S.C. app. 2). The Task Force's charter was published in the **Federal Register** on January 7, 1993 at 58 FR 3039. The Task Force was created to review all rules, policy statements, handbooks, and technical assistance memoranda issued by the Department on the standards and obligations governing

residency in public and assisted housing and to make recommendations to the Secretary for the establishment of reasonable criteria for occupancy. The Task Force has established an Executive Committee and three additional subcommittees—Admissions, Occupancy and Evictions. This is a notice announcing the next subcommittee meetings of the Task Force.

FOR FURTHER INFORMATION CONTACT: Laurence D. Pearl, Office of Fair Housing and Equal Opportunity, room 5226, Department of Housing and Urban Development, 451 Seventh Street, SW., Washington, DC 20410. Telephone: (202) 708–3727, (TDD) (202) 708–0113. (These are not toll-free numbers). If a sign language interpreter is needed for any of these meetings, please call either telephone number for assistance at least seven days prior to the meeting.

SUPPLEMENTARY INFORMATION:

SUBCOMMITTEE MEETING SCHEDULE

Date	Time	Subcommittee
Monday, June 21.	9:00 a.m.–5:00 p.m.	Admissions.
Tuesday, June 22.	9:00 a.m.–5:00 p.m.	Occupancy.
Wednesday, June 23.	9:00 a.m.–12:00 noon	Evictions.
Wednesday, June 23.	1:00 p.m.–5:00 p.m.	Executive.
Wednesday, July 21.	9:00 a.m.–12:00 noon	Executive.
Friday, July 23.	1:00 p.m.–5:00 p.m.	Executive.

Place: The meetings will be held at the Hall of States, 444 North Capitol St., NW., Washington, DC. All meetings will be held in room 283, except for the meetings on Wednesday, June 23, which will be in room 235.

Task Force Membership

Since the initial appointment of the Task Force, several members have resigned, and Secretary Cisneros has appointed new members to replace them. The current list of members is as follows:

Ms. Catherine Ann Anderson, Community Services Officer for Special Programs, Massachusetts Housing Finance Agency, Boston, MA
Ms. Lynn Aronson, Director of Housing, Connecticut Department of Mental Health, Hartford, CT
Mr. Conrad Egan, Chairman, Multifamily Housing Management Comm., National Association of Homebuilders, Reston, VA
Ms. Diane Engster, Northern Virginia Alliance for Mentally Ill, Alexandria, VA
Mr. Joseph M. Finnegan, Mass. Assn. for Mental Health, Walpole, MA
Ms. Kimi Gray, President, Kenilworth-Parkside Resident Management Corporation, Washington, DC
Mr. Jon Gutzmann, Executive Dir., Public Housing Agency of the City of Saint Paul/NAHRO, St. Paul, MN
Mr. Jim Graham, Executive Director, Whitman-Walker Clinic, Inc., Washington, DC
Ms. Loretta Hall, Manager, Carr Square Tenant Management Corp., St. Louis, MO
Mr. Fred Karnas, Jr., Executive Director, National Coalition for the Homeless, Washington, DC
Mr. Thomas L. Kenyon, Executive Director, Nat'l. Alliance to End Homelessness, Washington, DC
Ruth Lowenkron, Esq., NY Lawyers in the Public Interest, New York, NY
Ms. Kathy McGinley, The Association for Retarded Citizens, Washington, DC
Mr. Larry McNickle, Director of Housing Policy, American Association of Homes for the Aging (AAHA), Washington, DC
Bonnie Milstein, Esq., Bazelon Center for Mental Health Law, Washington, DC
Mr. Bill Mitchell, National Association of Protection and Advocacy Systems, Washington, DC
Ms. Denise Muha, Executive Director, National Leased Housing Association, Washington, DC
Mr. Ronald L. Oldham, Acting Executive Director, Seattle Housing Authority, Seattle, WA
Mr. Lee J. Phillips, Past President, Inst. of Real Estate Management (IREM), Reynoldsburg, OH
Debbie Piltch, Esq., Disability Law Center, Boston, MA
Mr. Don Redfoot, American Association of Retired Persons, Washington, DC
Mr. Greg Russ, Russ Associates, Odenton, MD
Ms. MaryAnn Russ, Council of Large PHAs (CLPHA), Washington, DC
Kim Savage, Esq., National Senior Citizens Law Center, Los Angeles, CA
Susan Silverstein, Esq., Monroe County Legal Assistance, Rochester, NY
Mr. James Tabron, Executive Director, The Housing Authority of the City of Durham, Durham, NC
Mr. Steve Townsend, National Council of Community Mental Health Centers, Rockville, MD
Ramsay Weit, Esq., Office of the Mayor, Portland, OR
Dorinda Wider, Esq., Legal Aid Society of Minneapolis, Minneapolis, MN
Mr. Charles S. Wilkins, Jr., National Corporation for Housing Partnerships, Reston, VA
Mr. Daniel Wuenschel, Executive Director, Cambridge Housing Authority, Cambridge, MA
Ms. Roberta Youmans, National Housing Law Project, Washington, DC
Ms. Mildred Zanditon, Vinfen Corporation, Allston, MA

Agenda

The Admissions, Occupancy and Evictions Subcommittee meetings will review all relevant information regarding the Department's occupancy standards in public and assisted housing and develop proposals to be considered by the full Task Force at its meeting on July 21–23, circulated to the public and considered at public hearings. The Executive Committee will recommend the time and place for public hearings and make such other recommendations to the full Task Force as may be appropriate.

Public Participation

These are open meetings. The public is also invited to submit written comments on any aspect of the Task Force's mandate or activities to Ms. Bonnie Milstein, the Chair of the Task Force, at 1101 Fifteenth Street, NW., suite 1212, Washington, DC 20005–2765.

Dated: May 27, 1993.

Bonnie Milstein,

Chair, Task Force on Occupancy Standards in Public and Assisted Housing.

Roy Rodriguez,

Acting General Deputy Assistant Secretary for Fair Housing and Equal Opportunity.

[FR Doc. 93–13145 Filed 6–3–93; 8:45 am]

BILLING CODE 4210–28–M

DEPARTMENT OF THE INTERIOR

Fish and Wildlife Service and National Park Service

Lead Fishing Sinker Use on Prohibition on National Wildlife Refuges

AGENCY: Fish and Wildlife Service and National Park Service, Interior.

ACTION: Request for comments.

SUMMARY: On October 20, 1992, the Department of the Interior (Department) received a letter addressed to Secretary Manuel Lujan, Jr., from the Environmental Defense Fund, the North American Loon Fund, Trumpeter Swan Society, and the Federation of Fly Fishers petitioning the Department to prohibit, by regulation, the use of lead weights for fishing on any National Wildlife Refuge or National Park where the Trumpeter Swan or Common Loon breeds or stops over during migration. Because public comment may aid in the consideration of this petition, the U.S. Fish and Wildlife Service (Service) and the National Park Service (NPS) are publishing the petitioners' letter and soliciting comments from the public on the merits of their petition. Upon receipt

and review of all substantive comments, the Service and NPS will take whatever actions are deemed appropriate with respect to the petitioners' concerns about the use of lead sinkers on national wildlife refuges and national parks.

DATES: All comments must be received on or before September 2, 1993.

ADDRESSES: Address comments to: Assistant Secretary for Fish and Wildlife and Parks, 1849 C Street, NW., MS 3156 MIB, Washington, DC 20240.

FOR FURTHER INFORMATION CONTACT: Duncan L. Brown, U.S. Fish and Wildlife Service, Division of Refuges, 1849 C Street, NW., MS 670 ARLSQ, Washington, DC 20240; Telephone (703) 358–2043.

SUPPLEMENTARY INFORMATION: Pursuant to § 553(e) of the Administrative Procedure Act the Environmental Defense Fund, the North American Loon Fund, the Trumpeter Swan Society, and the Federation of Fly Fishers have petitioned the Department of the Interior to prohibit, by regulation, the use of lead weights for fishing on any National Wildlife Refuge or National Park where the Trumpeter Swan (*Cygnus buccinator*) or Common Loon (*Gavia immer*) breeds or stops over during migration. To that end, the Service and NPS are publishing the letter submitted by the petitioners, in its entirety, and requests that the public review the petition as presented and make comments, as appropriate.

The petition, as received by the Department, is set forth below and as follows:

October 20, 1992.

The Honorable Manuel Lujan, Jr.,
Secretary, Department of the Interior, 1849 C Street, NW., Washington, DC 20240.

Dear Secretary Lujan: Pursuant to the Administrative Procedure Act, 5 U.S.C. 551–706, Migratory Bird Treaty Act, 16 U.S.C. 703–712, National Wildlife Refuge System Administration Act, 16 U.S.C. 668dd and 668ee, and National Park Service Act, 16 U.S.C. 1–3, the Environmental Defense Fund, North American Loon Fund, Trumpeter Swan Society, and Federation of Fly Fishers hereby petition you to prohibit, by regulation, the use of lead weights for fishing on any National Wildlife Refuge, or National Park where the Trumpeter Swan (*Cygnus buccinator*) or Common Loon (*Gavia immer*) breeds or stops over during migration. This action is necessary in light of evidence indicating that a principal source of mortality of these species is poisoning from ingestion of lead fishing sinkers. The U.S. Fish and Wildlife Service and National Park Service have previously restricted fishing with lead weights to protect Trumpeter Swans on one wildlife refuge and one national park. As made clear by that exercise of authority and a flat prohibition on the use of lead fishing sinkers throughout England, the regulation requested here would not interfere with fishing on National Wildlife Refuges or National Parks since alternatives to lead weights are widely available. The bases for this petition are set out below in detail.

I. The Status of the Trumpeter Swan and the Common Loon is Precarious

The Trumpeter Swan comprises essentially two distinct populations. One population numbering approximately 8,000 birds breeds in Alaska and winters on the coast of southern Alaska, British Columbia, Washington, and northern Oregon. The other population of approximately 2,000 birds—the Rocky Mountain population—consists of a migratory population that breeds in western Canada and winters exclusively on the ice-free waters of the Greater Yellowstone Ecosystem; and a non-migratory segment occurring in the area where Montana, Idaho, and Wyoming share common boundaries. Although this latter segment may be non-migratory, extensive movement occurs to and from breeding and wintering grounds within the Yellowstone ecosystem. At the same time, subadults and young pairs may often wander on the periphery of breeding areas. As a result of reintroduction efforts, the Trumpeter Swan also occurs in smaller numbers in Nevada, the Midwest, and eastern Canada.

At one time, the Trumpeter Swan could be found nesting from Alaska to Illinois and wintering on both coasts, the Gulf of Mexico, and large ice-free rivers throughout the United States. However, with loss of habitat and intense hunting pressure in the late 19th and early 20th centuries, the species declined rapidly. With the Trumpeter Swan on the brink of extinction, both state and federal agencies undertook efforts to protect it. Today, the species occurs in greater numbers, but it is by no means fully secure. That is particularly true of the Rocky Mountain population. In addition to being susceptible to disease and inclement weather, the swan is jeopardized by residential development, collisions with powerlines and fences, improper logging practices and road construction, and other forms of environmental pollution. As a result, the Trumpeter Swan is classified as "endangered" in Wisconsin, "threatened" in Wyoming, and "extirpated" in Michigan and Indiana. In Idaho, it has been identified as a "species of special concern."

Like the Trumpeter Swan, the status of the Common Loon is also precarious. Indeed, although the loon was once found nesting as far south as Iowa and Indiana, its breeding range today in the United States is largely restricted to Alaska and the northern tier of states. Specifically, in the continental United States, the loon's breeding range encompasses northeast Washington, northern and northeast Idaho, western Montana, northeast Wyoming, northeast North Dakota, northern Minnesota, northern Wisconsin, northern and central Michigan, northeast New York, northern Massachusetts, Vermont, New Hampshire, and Maine. While the loon breeds within such areas during the summer, it typically migrates to coastal waters for the winter. In doing so, loons use migratory pathways commonly used by other waterfowl. The loon's wintering areas include both the Pacific and Atlantic coasts, and the coastline of the Gulf of Mexico.

In areas where it breeds, loon numbers have been reduced by increased boating activities, shoreline development, drowning in commercial trap nets, entanglement in fishing line, and other forms of human disturbance. At the same time, its wintering area has been degraded by oil spills and other forms of environmental pollution.[1] Annual "die-offs" of loons, occasionally in very large numbers, occur in such areas. As a result of these threats, the loon is now classified as a "threatened species" in Michigan and New Hampshire, a "species of special concern" in New York and Idaho, a "rare species" in Massachusetts, and an "endangered species" in Vermont. In addition, the state of Wisconsin has placed the loon on its "watch list," while Wyoming has designated the loon a "priority one species in need of special management."

II. Ingestion of Lead Fishing Sinkers is a Significant Source of Mortality of Trumpeter Swans and Common Loons

It is now clear that both the Trumpeter Swan and Common Loon are threatened by yet another human activity—the use of lead sinkers for fishing. Each year, at least 1.6 million pounds of lead fishing sinkers are sold in the United States.[2] With respect to the effects of such sinkers on Trumpeter Swans, scientists with the Fish and Wildlife Service reported in 1989 that ingestion of lead fishing weights contributed to the loss of swans in the states of Idaho, Montana, and Wyoming.[3] Specifically, they found that 18 of 72 swans had died from lead toxicosis (i.e., 25%), and that 4 of the 18 birds had been poisoned by ingesting lead sinkers. Because the Trumpeter Swan's typical feeding method involves digging up large amounts of bottom sediments of lakes and streams, it is extremely vulnerable to lead poisoning from ingestion of fishing sinkers lost or discarded within such sediments. Moreover, because the authors of the study observed severe pathological changes associated with particularly low lead levels, they concluded that the Trumpeter Swan appeared to be unusually sensitive to lead toxicosis.

The first report of lead poisoning of Common Loons was published in 1981, when researchers found that three Common Loons from New Hampshire, Maine, and Wisconsin

[1] *See e.g.* Alexander, L.L. 1991. Patterns of Mortality Among Common Loons Wintering in the Northeastern Gulf of Mexico. *Florida Field Nat.* 19: 73–79.

[2] The largest manufacturer of fishing sinkers in the United States—Water Gremlin Co.—has stated that its "sinker production uses approximately 1,000 tons of lead annually." Because this company supplies approximately 80 percent of the market in the United States, one can estimate that at least 1.6 million pounds of lead sinkers are sold in the United States each year. See Letter from Douglas Johnson, Water Gremlin Co., to the Committee on Environmental and Public Works of the United States Senate, June 22, 1990.

[3] Blus, L.J., R.L. Stround, B. Reiswig, and T. McEneaney. 1989. Lead Poisoning and Other Mortality Factors in Trumpeter Swans. *Envtl. Tox. and Chem.* 8: 263–271.

had died after ingesting lead sinkers.[4] More recently, in an investigation of the causes of mortality among Common Loons in New England, the Wildlife Clinic at Tufts University School of Medicine reported that 52% (16/31) of the adult loons it examined had ingested lead sinkers and died from acute to subacute lead toxicosis.[5] Because of the consistency of its results over the last three years, the Clinic concluded that these findings were representative of the Common Loon population as a whole. Moreover, it described its findings as "alarming" because if "lead toxicosis appears primarily to affect breeding adults, it could potentially produce marked effects on population stability, particularly in areas where loons may already be declining from other anthropogenic factors."

That conclusion is particularly troubling in light of reports at an August 1992 conference on threats to the Common Loon, which make it clear that adult birds in other regions of the country are dying after ingesting lead weights. Specifically, the National Wildlife Health Research Center reported that of the 222 loon carcasses it received from 18 states between 1975 through 1991, 14 or 6% had died from lead poisoning.[6] The Minnesota Pollution Control Agency indicated that 17% (37/221) of the adult loons it collected for necropsy in Minnesota between 1984 and 1990 had died of lead poisoning.[7] Although that study did not specifically identify the source of such poisoning, it suggested that it was ingestion of lead fishing sinkers. And, in Michigan, the post-mortem examinations of dead loons undertaken by that state's Rose Lake Wildlife Research Center between 1988 and 1992 indicated that 40% (15/38) had died from lead intoxication, primarily due to ingestion of lead fishing weights.[8]

While the route of exposure through which Trumpeter Swans are exposed to lead fishing weights is evident, it remains unclear how Common Loons ingest lead sinkers. One study found that sinkers were associated with discarded hooks and lines, and suggested that loons may take bait fish lost by fishermen along with attached fishing gear, including lead sinkers. Loons may also ingest sinkers when they take pebbles from bottom sediments to aid in digestion. Several analyses have found that poisoned birds had fishing sinkers in their gizzards. This phenomenon may be even more common in waters contaminated with mercury. Indeed, at least in Michigan, a significant correlation exists between lead and mercury concentrations in dead loons. That has led one scientist to suggest that elevated mercury levels may have sublethal neurotic effects that alter normal loon behavior and predispose the birds to lethal lead intoxication. In any event, no matter what the precise route of exposure may be, there is no doubt that Common Loons, like Trumpeter Swans, are dying after ingesting lead weights.

III. The Secretary of the Interior Has a Mandatory Obligation To Protect Trumpeter Swans and Common Loons From Lead Poisoning on National Wildlife Refuges and National Parks

The Secretary of the Interior is obligated to protect the Trumpeter Swan and Common Loon under the Migratory Bird Treaty Act. See generally 16 U.S.C. §§ 703–712. That Act makes it unlawful for any person to kill any bird included in any one of several conventions entered into by the United States to protect migratory birds. 16 U.S.C. 703. Both species appear on the list of migratory birds protected under the Act. See 50 CFR 10.13. Specifically, to assure that migratory birds are protected, the Act directs the Secretary to "determine when, to what extent, if at all, and by what means, it is compatible with the terms of the conventions to allow * * * killing of any bird * * *." 16 U.S.C. 704. In accordance with such determinations, the Secretary must adopt "suitable regulations" that prevent the killing of migratory birds. *Id.* Clearly, because poisoning of a migratory bird "by any means or in any manner" is prohibited under the Act, *See United States* v. *Corbin Farm Service*, 444 F. Supp. 510, 532 (E.D. Ca. 1978), *affrm'd* 578 F.2d 259 (9th Cir. 1978), the Secretary must prevent the loss of swans and loons from ingestion of lead sinkers.

The Secretary's duty to protect these birds is particularly significant for at least two types of federal areas managed by the Interior Department—the National Wildlife Refuge System and the National Park System. With respect to the former, the Refuge Recreation Act of 1962 directs the Secretary to administer areas within the National Wildlife Refuge system for "public recreation" to the extent that such recreation is "not inconsistent with * * * the primary objectives for which each particular area is established." 16 U.S.C. 460k. Subsequently, with passage of the National Wildlife Refuge System Administration Act in 1966, Congress authorized the Interior Secretary to "permit the use of any area within the System for any purpose, including but not limited to * * * fishing * * * whenever he determines that such uses are compatible with the major purposes for which such areas were established." 16 U.S.C. 668dd(d)(1). Hence, the Secretary may only permit fishing within wildlife refuge areas to the extent that it is consistent and compatible with the purpose for which the refuge was established. And, to that end, the U.S. Fish and Wildlife Service is authorized to regulate the method of fishing on particular wildlife refuges. See 50 CFR 33.3.

Similarly, the Secretary is directed under the National Park Service Act of 1916 to ensure that activities in national parks do not contravene the purposes for which each park has been established. That Act declares that "the fundamental purpose of the * * * parks * * * is to conserve the scenery and the natural and historic objects and the wild life therein and to provide for the enjoyment of the same in such manner and by such means as will leave them unimpaired for the enjoyment of future generations." 16 U.S.C. 1. To that end, the Secretary must publish regulations "necessary or proper for the use and management of the parks." 16 U.S.C. 3. The National Park Service has established regulations governing fishing within National Parks. They provide for certain general rules specifying the manner in which fishing can take place. 36 CFR 2.13. In addition, they include "special regulations" specifically restricting fishing within certain areas. 36 CFR part 7. The adoption of such restrictions is based on a determination that they are: Consistent with the purposes for which the area was established; will not be detrimental to other park wildlife; and will not have an adverse effect on the ecosystem. 49 FR 18449 (April 30, 1984).

There are a number of national wildlife refuges and national parks where Trumpeter Swans and Common Loons currently breed or stop over during migration, and where fishing is permitted. Representative examples of such refuges and parks and the purposes for which they were established are specified in attachment number one. Inasmuch as a principal purpose of these areas and others is to protect migratory birds, the Secretary has a mandatory duty to assure that fishing thereon does not result in the loss of the Trumpeter Swans or Common Loons. Accordingly, the Secretary must issue regulations prohibiting the use of lead weights for fishing on those refuges and parks where these species either breed or stop over during migration. The exercise of such authority here is particularly warranted since both the U.S. Fish and Wildlife Service and the National Park Service have previously restricted the use of lead fishing gear on one refuge and one park, respectively, to protect Trumpeter Swans. The Red Rock Lakes National Wildlife Refuge has prohibited the use of lead fishing sinkers on all refuge fishing waters. Similarly, Yellowstone National Park has banned the use of lead-weighted hooks and indicated that it would restrict the use of all lead fishing tackle by 1994.

Moreover, while that action may have been limited to two areas, lead fishing sinkers have been banned throughout England because of their impacts on Mute Swans (*Cygnus olor*). More than a decade ago, researchers in Great Britain reported that Mute Swans were declining primarily as a result of ingestion of lead fishing sinkers.[9] Because the Mute Swan typically feeds by digging up bottom sediments in streams and

[4] Locke, L.N., S.M. Kerr, and D. Zoromski, 1981. Lead Poisoning in Common Loons. (*Gavia immer*). *Avian Dis.* 26: 392–396.

[5] Pokras, M.A. and Rebecca Chafel, 1992. Lead Toxicosis from Ingested Fishing Sinkers in Adult Common Loons (*Gavia Immer*) in New England. *J. of Zoo and Wildlife Medicine* 23(1): 92–97.

[6] Franson, J.C. 1992. Causes of Mortality in Common Loons. Abstract of Presentation at the "Symposium on the Loon and Its Ecosystem: Status, Management, and Environmental Concerns," College of the Atlantic, Maine.

[7] Ensor, K.L., D.D. Helwig, and L.C. Wemmer, Mercury and Lead in Minnesota Common Loons (*Gavia immer*). Minnesota Pollution Control Agency, Water Quality Division (April 1992).

[8] Poppenga, R.H. 1992. Liver and Kidney Metal Concentrations from a Series of Common Loons Determined by Inductively Coupled Argon Plasma Emission Spectroscopy. Abstract of Presentation at the "Symposium on the Loon and its Ecosystem: Status, Management, and Environmental Concerns," College of the Atlantic, Maine

[9] Simpson, V.R., Hunt, A.E., and French, M.C. 1979. Chronic lead poisoning in a herd of Mute Swans. *Environ. Pollut.* 18: 187–202; Birkhead, M. 1982. Causes of Mortality in the Mute Swan *Cygnus olor* on the River Thames. *J. Zool. Lond.* 1998: 15–25.

lakes, many have been poisoned after consuming lead sinkers lying within such sediments. In an effort to reduce such impacts, England issued regulations in January 1987, making it unlawful under its Control of Pollution Act to sell or import lead weights for fishing. Shortly thereafter, English and Welsh water authorities introduced by-laws under the country's Salmon and Freshwater Fisheries Act that banned the use of lead weights for fishing. As a result of these measures, the loss of swans from lead poisoning throughout England has dropped dramatically [10]

IV. Prohibiting the Use of Lead Sinkers on Refuges and Parks Would Not Interfere With Fishing There Since Alternatives to Lead Weights Are Widely Available

Finally, it is clear that the action requested here would not disrupt fishing on refuges or parks where the Trumpeter Swan or Common Loon either breeds or stops over during migration. That is because the largest manufacturer of lead fishing sinkers in the United States has indicated that such weights can be made of steel[11] a variety of fishing weights not made with lead are currently available in the United States. Indeed, in response to the ban on the use of lead fishing weights in England, anglers in that country have used sinkers made of tin with apparently no adverse impacts on fishing. Many of these sinkers are imported into this country by a company based in Pennsylvania (Belvoirdale, Inc.[12]), and are then distributed to smaller fishing tackle shops. These fishing sinkers and other alternatives are also available through various mail order companies specializing in fishing tackle, including L.L. Bean, Cortland, Cabela's, and Orvis,[13] Inasmuch as the "use of weights [by British fishermen] * * * does not differ in any significant way from that in America."[14] there would appear to be no impact on fishing in the United States by mandated use of sinkers made from something other than lead.

At the same time, and in response to the ban on the use of lead weighted hooks in Yellowstone National Park, one company has developed and patented a hook made of 92% tin and approximately 8% antimony.[15] That weighted hook, known as the "Rocky Mountain Spin Fly," is currently used in the park for both fly fishing and lure fishing. Several other companies have also developed alternatives to lead fishing sinkers. For example, Loon Tackle of Idaho[16] manufactures a product known as "Deep Soft Weight." It is a putty-like substance with 80% the density of lead that can be squeezed onto the fishing line to give it weight. In Canada. Bi Logic Tackle[17] manufactures and distributes sinkers and weighted hooks made of bismuth. Bismuth is being considered for use as an alternative to lead shot in Canada, and it reportedly did not have any adverse effects on mallards during testing for toxicity.[18] In addition, Precision-CEMCO in Mississippi[19] manufactures sinkers made of brass that are used primarily for bass fishing. Finally, Inter-Tac of Colorado[20] distributes "Brite Eyes"—tiny nickel-plated brass weights for use as the eyes of artificial flies.

The identification of such alternatives here does not necessarily mean that we endorse their use. Rather, we believe that they too should be tested for both acute and chronic toxicity to birds and other wildlife. At the same time, however, it is clear that lead weights do pose a significant risk to Trumpeter Swans and Common Loons. Accordingly, for the reasons set forth above, the undersigned organizations respectfully petition you to prohibit by regulation the use of lead weights for fishing on national wildlife refuges and national parks where these species either breed or stop over during migration. Such action is required under the aforementioned statutes and will serve to protect both species from a major source of mortality. We urge the Department to have such rules in effect before these birds return to their respective breeding habitats during the summer of 1993. We also request that the Secretary indicate within 60 days of the date of this petition that such regulations will be established.

Respectfully submitted,

Bruce S. Manheim, Jr.,

Michael J. Bean,

Senior Attorneys, Environmental Defense Fund.

James G. King,

President, The Trumpeter Swan Society.

C. Keith Groty,

President, Federation of Fly Fishers.

Richard F. Weber,

Chairman, North American Loon Fund.

Enclosures: as stated.

Attachment Number One

I. Representative National Wildlife Refuges and National Parks Where the Common Loon Breeds or Stops Over During Migration

Alaska

Innoko National Wildlife Refuge ("to conserve the fish and wildlife populations and habitats in their natural diversity including * * * waterfowl and other migratory * * * birds * * *" 94 Stat. 2386 (Dec. 2, 1980))

Kanuti National Wildlife Refuge ("to conserve the fish and wildlife populations and habitats in their natural diversity including * * * waterfowl and other migratory * * * birds * * *" 94 Stat. 2386 (Dec. 2, 1980))

Kenai National Wildlife Refuge ("to conserve the fish and wildlife populations and habitats in their natural diversity including * * * waterfowl and other migratory * * * birds * * *" 94 Stat. 2391 (Dec. 2, 1980))

Koyukuk National Wildlife Refuge ("to conserve the fish and wildlife populations and habitats in their natural diversity including * * * waterfowl and other migratory * * * birds * * *" 94 Stat. 2386 (Dec. 2, 1980))

Selawik National Wildlife Refuge ("to conserve the fish and wildlife populations and habitats in their natural diversity including * * * waterfowl and other migratory * * * birds * * *" 94 Stat. 2387 (Dec. 2, 1980))

Denali National Park ("it shall be the duty of the [Secretary] * * * to make and publish such rules and regulations * * * necessary or proper for the care, protection, management, and improvement of the [park], the said regulations being primarily aimed at the freest use of the park for recreation purposes by the public and for the preservation of animals, birds, and fish * * *" 16 U.S.C. 351)

Maine

Moosehorn National Wildlife Refuge ("as a refuge and breeding ground for migratory birds and other wildlife," Exec. Order 7650, July 1, 1937, and "for use as an inviolate sanctuary, or for any other management purpose, for migratory birds." 16 U.S.C. 715d) including * * * migratory birds * * *" 94 Stat. 2388 (Dec. 2, 1980))

Denali National Park ("it shall be the duty of the [Secretary] * * * to make and publish such rules and regulations * * * necessary or proper for the care, protection, management, and

---

[10] Sears, J. and A. Hunt. 1991. Lead Poisoning in Mute Swans, *Cygnus olor*, in England. Wildfowl Supp. No. 1: 383–388.

[11] See Letter from Douglas Johnson, Water Gremlin Co., to the Committee of Environment and Public Works of the United States Senate, June 22, 1990.

[12] The address for Belvoirdale, Inc. is P.O. Box 176, Wyncote, Pennsylvania 19095–0176. It can be reached by telephone at (215) 886–7211.

[13] Curiously at the same time that Orvis touts its "commitment to conservation and wetlands protection" by pointing to its "exclusive" offer of such weights, it (on the same page) advertises soft lead for sale. According to Orvis, that substance is the "greatest thing for nymph fishing since the strike indicator" because "it seldom hangs up on the bottom, and if it does you lose the lead and not your whole leader." *See* Orvis Spring Fishing and Outdoor Catalog 1992, Vol. III. No. 3 at pg. 38.

[14] See Letter from Dr. John Harradine, Head of Research. The British Association for Shooting and Conservation to Ms. K. McCracken, Marty Stouffer Productions Ltd. July 31, 1991.

[15] The Rocky Mountain Spin Fly was developed by and is available from Mr. Jerry Cobb, Route No. 4, Box 438, Rayville, Louisiana 71269. He can be reached at (318) 728–6924.

[16] Loon Tackle is located at 7614 West Lemhi, Suite #1, Boise, Idaho 83709 and can be reached at (208) 322–0070.

[17] The address and telephone number for Bi Logic Tackle Company is R.R. 3 Thessalon, Ontario, Canada POR 1LO, (705) 841–2521.

[18] Cooke, S. 1992. Ontario Hunter Develops Challenge to Lead Shot, *Ontario Out of Doors* Jan./Feb. 1992: 12–13.

[19] This company is located at P.O. Box 1015, Starkville, Mississippi 39759 and can be reached at (601) 323–1559. Its products are available from Bass Pro Shops (1–800–227–7776) and Northern Bass Supplies (1–800–227–7032).

[20] The address and telephone number for Inter-Tac is P.O. Box 4031, Woodland Park, Colorado 80866. (719) 687–2272.

improvement of the [park], the said regulations being primarily aimed at the freest use of the park for recreation purposes by the public and for the preservation of animals, birds, and fish * * * 16 U.S.C. 351)

Wrangell-Saint Elias National Park ("the park and preserve shall be managed * * * to protect habitat for, and populations of, fish and wildlife including but not limited to * * * trumpeter swans * * *" 16 U.S.C. 410hh(9)).

Idaho

Minidoka National Wildlife Refuge ("as preserves and breeding grounds for native birds," Exec. Order 1032, Feb. 25, 1909)

Michigan

Seney National Wildlife Refuge ("as a refuge and breeding ground for migratory birds and other wildlife," Exec. Order 7246, Dec. 10, 1935, and "for use as an inviolate sanctuary, or for any other management purpose, for migratory birds." 16 U.S.C. 715d)

Montana

Red Rock Lakes National Wildlife Refuge ("as a refuge and breeding ground for wild birds and animals," Exec. Order 7023, April 22, 1935, and "for use as an inviolate sanctuary, or for any other management purpose, for migratory birds." 16 U.S.C. 715d)

Glacier National Park ("the killing * * * at any time of any bird * * * is prohibited * * *" and the "Secretary shall make and publish such rules and regulations * * * for the protection of the animals and birds in the park, from capture or destruction * * *" 16 U.S.C. 170.")

Missouri

Mingo National Wildlife Refuge ("for use as an inviolate sanctuary, or for any other management purpose, for migratory birds." 16 U.S.C. 715d)

Acadia National Park ("[t]he administration, protection, and promotion of (the park) shall be exercised . . . subject to the provisions of Section 1 and 2 to 4 of the [National Park Service Act]" 16 U.S.C. 342)

Michigan

Seney National Wildlife Refuge ("as a refuge and breeding ground for migratory birds and other wildlife," Exec. Order 7246, Dec. 10, 1935, and "for use as an inviolate sanctuary, or for any other management purpose, for migratory birds." 16 U.S.C. 715d)

Isle Royale National Park ("the killing * * * at any time of any wild bird * * * is prohibited" and "the Secretary * * * shall publish such general rules * * * for the protection of * * * birds in the park from capture or destruction, and he shall make rules and regulations governing the taking of fish from the waters of the * * * park" 16 U.S.C. 408k)

Minnesota

Rice Lake National Wildlife Refuge ("as a refuge and breeding ground for migratory birds and other wildlife," Exec. Order 7221, Oct. 31, 1935, and "for use as an inviolate sanctuary, or for any other management purpose, for migratory birds." 16 U.S.C. 715d)

Sherburne National Wildlife Refuge ("for use as an inviolate sanctuary, or for any other management purpose, for migratory birds." 16 U.S.C. 715d)

Tamarac National Wildlife Refuge ("as a refuge and breeding ground for migratory birds and other wildlife," Exec. Order 7902, May 31, 1938, and "for use as an inviolate sanctuary, or for any other management purpose, for migratory birds." 16 U.S.C. 715d)

Voyageurs National Park ("the Secretary shall administer * * * the park in accordance with the provisions of section 1 and 2 to 4 of the [National Park Service Act]," 16 U.S.C. 160f, and * * * the Secretary may permit recreational fishing on lands and waters * * * except that the Secretary may designate zones where and establish periods when no fishing shall be permitted for reasons of * * * wildlife management * * *" 16 U.S.C. 160g).

Montana

Minnesota

Tamarac National Wildlife Refuge ("as a refuge and breeding ground for migratory birds and other wildlife," Exec. Order 7902, May 31, 1938, and "for use as an inviolate sanctuary, or for any other management purpose, for migratory birds." 16 U.S.C. 715d)

Nevada

Ruby Lake National Wildlife Refuge ("as a refuge and breeding ground for migratory birds and other wildlife," Exec. Order 7923, July 5, 1938, and "for use as an inviolate sanctuary, or for any other management purpose, for migratory birds." 16 U.S.C. 715d)

Oregon

Malheur National Wildlife Refuge ("a refuge and breeding ground for migratory birds and other wild life," Exec. Order 7106, July 19, 1935, as modified by Public Land Order 1511, Sept. 24, 1957, and "for use as an inviolate sanctuary, or for any other management purpose, for migratory birds." 16 U.S.C. 715d)

William L. Finley National Wildlife Refuge ("for use as an inviolate sanctuary, or for any other management purpose, for migratory birds." 16 U.S.C. 715d)

South Dakota

Lacreek National Wildlife Refuge ("as a refuge and breeding ground for migratory birds and other wildlife," Exec. Order 7160, Aug. 26, 1935, and "for use as an inviolate sanctuary, or for any other management purpose, for migratory birds." 16 U.S.C. 715d)

Washington

Ridgefield National Wildlife Refuge ("for use as an inviolate sanctuary, or for any other management purpose, for migratory birds." 16 U.S.C. 715d)

Willapa National Wildlife Refuge ("as a refuge and breeding ground for migratory birds and other wildlife," Exec. Order 7541, Jan. 22, 1937, and "for use as an inviolate sanctuary, or for any other management purpose, for migratory birds." 16 U.S.C. 715d)

Charles M. Russell National Wildlife Refuge ("for the conservation and development of natural wildlife resources * * *," Exec. Order 7509, Dec. 11, 1936, and "for the conservation, maintenance, and management of wildlife resources thereof, and its habitat thereon * * *" 16 U.S.C. 664)

Glacier National Park ("the killing * * * at any time of any wild bird * * * is prohibited * * * nor shall any fish be taken out of the waters of the park in any other way than * * * as may be directed by the Secretary. * * * "the Secretary * * * shall publish such rules * * * for the protection of the * * * birds in the park from capture or destruction," and he "shall make rules and regulations governing the taking of fish from the streams or lakes in the park" 16 U.S.C. 170

North Dakota

Upper Souris National Wildlife Refuge ("for the conservation and development of natural wildlife resources * * *," Exec. Order 7161, Aug. 27, 1935, and "for the conservation, maintenance, and management of wildlife resources thereof, and its habitat thereon * * *" 16 U.S.C. 715d)

Washington

Columbia National Wildlife Refuge ("as a refuge and breeding ground for migratory birds and other wildlife." Public Land Order 243, Sept. 6, 1944, and "for use as an inviolate sanctuary, or for any other management purpose, for migratory birds." 16 U.S.C. 715d)

Wisconsin

Necedah National Wildlife Refuge ("for the conservation and development of natural wildlife resources * * *," Exec. Order 8065, Mar. 14, 1939, and "for the conservation, maintenance, and management of wildlife resources thereof, and its habitat thereon * * *" 16 U.S.C. 715d)

Apostle Islands National Lakeshore ("[t]he lakeshore shall be administered, protected; and developed in accordance with the provisions of sections 1 and 2 to 4 of the [National Park Service Act]," 16 U.S.C. 460w–5, and "the Secretary shall permit * * * fishing * * * except that he may designate zones where, and establish periods when, no * * * fishing shall be permitted for reasons of * * * wildlife management * * *," 16 U.S.C. 460w–4

Wyoming

Yellowstone National Park ("the killing * * * at any time of any bird * * * is prohibited * * *" and the "Secretary shall make and publish such rules and regulations * * * for the protection of the animals and birds in the park, from capture or destruction * * *," 16 U.S.C. 26.

II. Representative National Wildlife Refuges and National Parks Where the Trumpeter Swan Breeds or Occurs

Alaska

Izembek National Wildlife Refuge ("to conserve the fish and wildlife populations and habitats in their natural

diversity including * * * waterfowl and other migratory * * * birds * * *" 94 Stat. 2391 (Dec. 2, 1980), and as a "refuge, breeding ground, and management area for all forms of wildlife * * *." Public Land Order 2216. Dec. 6, 1960.)

Kanuti National Wildlife Refuge ("to conserve the fish and wildlife populations and habitats in their natural diversity including * * * waterfowl and other migratory * * * birds * * *" 94 Stat. 2386 (Dec. 2, 1980))

Kenai National Wildlife Refuge ("to conserve the fish and wildlife populations and habitats in their natural diversity including * * * waterfowl and other migratory * * * birds * * *" 94 Stat. 2391 (Dec. 2, 1980))

Koyukuk National Wildlife Refuge ("to conserve the fish and wildlife populations and habitats in their natural diversity including * * * waterfowl and other migratory * * * birds * * *" 94 Stat. 2386 (Dec. 2, 1980))

Nowitna National Wildlife Refuge ("to conserve fish and wildlife populations and habitats in their natural diversity including * * * trumpeter swans * * *." 94 Stat. 2387 (Dec. 2, 1980))

Tetlin National Wildlife Refuge ("to conserve fish and wildlife populations and habitats in their natural diversity including * * * waterfowl and other migratory * * * birds * * *" 94 Stat. 2388 (Dec. 2, 1980))

Yukon Flats National Refuge ("to conserve fish and wildlife populations and habitats in their natural diversity U.S.C. 715d).

Nisqually National Wildlife Refuge ("for use as an inviolate sanctuary, or for any other management purpose, for migratory birds." 16 U.S.C. 715d)

Wyoming

Grand Teton National Park ("the [park] so established shall be administered in accordance with the general statutes governing national parks * * *" 16 U.S.C. 406d–1.)

Yellowstone National Park ("the killing * * * at any time of any bird * * * is prohibited * * *" and the "Secretary shall make and publish such rules and regulations * * * for the protection of the animals and birds in the park, from capture or destruction * * *." 16 U.S.C. 26).

Richard N. Smith,

Acting Director, U.S. Fish and Wildlife Service.

Dated: April 7, 1993.

Herbert S. Cables,

Director, National Park Service.

[FR Doc. 93–13165 Filed 6–3–93; 8:45 am]

BILLING CODE 4310–55–M

Bureau of Land Management

[CA–060–02–5101–10–B038; CAMC 20175]

Availability of Draft Environmental Impact Report/Environmental Impact Statement for the Fort Cady Minerals Corp. Borate Solution Mining Project

AGENCY: Bureau of Land Management, Interior.

ACTION: Notice of availability; request for public comment.

SUMMARY: Pursuant to section 102(2)(C) of the National Environmental Policy Act of 1969, as amended, and the California Environmental Quality Act, a draft Environmental Impact Report/Environmental Impact Statement (EIR/EIS) has been prepared for the proposed Fort Cady borate solution mining project located in the California Desert Conservation Area, San Bernardino County, California. This EIR/EIS has been prepared jointly by the Bureau of Land Management and the County of San Bernardino. The EIR/EIS describes and analyzes the impacts of a proposed boric acid mine and processing facility on approximately 343 acres of public lands located in San Bernardino County in south-central California near Pisgah Crater, approximately 17 miles east of Newberry Springs and 2.5 miles south of I–40.

Decisions generated from this EIR/EIS will be consistent with the California Desert Conservation Plan, as amended.

DATES: Written comments must be submitted on or before August 3, 1993.

Oral and/or written comments may also be presented at the public meetings scheduled at the following locations and dates:

Location	Date	Time
Newberry Springs Community Services Center, 30887 Newberry Road, Newberry Springs, CA 92365	June 29, 1993	7–9 p.m.
San Bernardino County Govt. Center, Joshua Room, 385 N. Arrowhead Avenue, San Bernardino, CA 92415	June 30, 1993	7–9 p.m.

ADDRESSES: Written comments should be addressed to County of San Bernardino, Dept. of Planning, 385 N. Arrowhead Avenue, San Bernardino, CA 92415, Attn: Ray Johnson.

Copies will be available at public libraries located in San Bernardino, Victorville and Barstow. In addition, copies will be available from the County of San Bernardino, Planning Department, 385 N. Arrowhead Avenue, San Bernardino, CA 92415 or the Bureau of Land Management (BLM), Barstow Resource Area Office at the address above.

Public reading copies will be available for review at the San Bernardino County Government Center at the address above, at 15505 Civic Drive in Victorville, at the Newberry Springs Community Center, 30887 Newberry road, Newberry Springs, libraries in Victorville, Barstow, and San Bernardino, and the following BLM locations:

Barstow Resource Area Office, 150 Coolwater Lane, Barstow, CA 92311–3221.

Office of Public Affairs, Main Interior Building, rm. 5600, 1849 C Street, NW., Washington, DC 20240.

Public Affairs Office, California State Office, rm. E–2857, Federal Office Bldg., 2800 Cottage Way, Sacramento, CA 95825.

California Desert District Office, 6221 Box Springs Blvd., Riverside, CA 92507.

FOR FURTHER INFORMATION CONTACT: Edy Seehafer, Bureau of Land Management, Barstow Resource Area, phone (619) 256–3591 or Ray Johnson, County of San Bernardino Planning Dept., phone (714) 387–4099.

Dated: May 25, 1993.

Karla K.H. Swanson,

Area Manager.

[FR Doc. 93–12910 Filed 6–3–93; 8:45 am]

BILLING CODE 4310–40–M

[CO–070–4210–04–241A]

Temporary Travel Restrictions for the King Mountain Area of Colorado

AGENCY: Glenwood Springs Resource Area, Bureau of Land Management, DOI.

ACTION: Order of area, road and trail use restriction.

SUMMARY: This order limits all motorized vehicle use to designated roads and trails year round, and closes the area to snowmobile use, on certain public lands in the vicinity of King Mountain in the Glenwood Springs

Resource Area, Grand Junction District. This order establishes a designation on 4,065 acres of reconveyed land, and modifies the existing Off Highway Vehicle (OHV) use "Open" designation on 8,244 acres, and it modifies the existing "Limited to Existing Roads and Trails" designation on 3,690 acres in the Blue Hill Archaeological District. This order is issued under the authority of 43 CFR 8364.1 and 43 CFR 8341.2(a) as a temporary measure while the off-highway vehicle (OHV) management portion of the Glenwood Springs Resource Area, Resource Management Plan is reviewed and modified as needed to address public issues, concerns and needs, as well as resource uses, development, impacts and protection.

This order affects reconveyed land and public land in the King Mountain Area, situated in Eagle and Routt counties, thus described:

Sixth Principal Meridian

Reconveyed Land (the old Visintainer Sheep Company Ranch):

T. 1 N., R. 84 W.,
Sec. 19, NE¼SE¼;
Sec. 20, N½SW¼, SW¼SW¼;
Sec. 21, SE¼NE¼, E½SE¼;
Sec. 22, SW¼NE¼, S½NW¼, S½;
Sec. 23, SW¼SW¼;
Sec. 26, N½NW¼ all land west of Highway 131;
Sec. 27, all land west of Highway 131;
Sec. 28, NE¼, S½;
Sec. 29, S½SE¼, SE¼SW¼;
Sec. 30, Lots 2, 3, 4, E½NE¼, SW¼NE¼, SE¼NW¼, N½SE¼, SE¼SE¼;
Sec. 31, Lots 1, 2, 3, 4, S½NE¼, E½W½, SE¼;
Sec. 32, NE¼, S½NW¼, NE¼NW¼, S½;
Sec. 33, N½NE¼, W½W½;
Sec. 34, N½NW¼ all land west of Highway 131.

T. 1 N., R. 85 W.,
Sec. 25, SE¼SW¼, SE¼.

Other Land (King Mountain):

T. 1 N., R. 84 W.,
Sec. 33, S½NE¼, E½W½, SE¼.

T. 1 S., R. 84 W.,
Sec. 4, Lots 2, 3, 4, SW¼, W½SE¼;
Sec. 5;
Sec. 6, Lots 1, 2, 3, E½SW¼, SE¼;
Sec. 7, SE¼NE¼, E½NW¼, SE¼;
Sec. 8, NE¼, E½NW¼, SW¼NW¼, S½;
Sec. 9, S½NE¼, NW¼NE¼, NW¼, S½;
Sec. 17, N½, N½S½, SW¼SW¼;
Sec. 18;
Sec. 19, Lots 1, 2, 3, 4, N½NE¼, SW¼NE¼, E½W½, SE¼;
Sec. 20, Lots 1, 2, 3, NW¼NW¼, S½SW¼;
Sec. 21, SW¼SW¼;
Sec. 28, SW¼NE¼, S½NW¼, NW¼NW¼, SW¼, S½SE¼, NW¼SE¼;
Sec. 29;
Sec. 30, Lots 1, 2, E½NW¼, NE¼;
Sec. 31, Lot 4, SE¼SW¼, S½SE¼;
Sec. 32, E½, N½NW¼, S½SW¼;
Sec. 33, NE¼NE¼, NW¼, S½SW¼, NW¼SW¼, S½SE¼.

T. 1 S., R. 85 W.,
Sec. 13, NE¼, N½SW¼, SE¼SW¼, SE¼;
Sec. 24, NE¼, E½SE¼;
Sec. 25, E½NE¼.

Blue Hill Archaeological District.

T. 2 S., R. 84 W.,
Sec. 4, Lots 6, 7, 8, 9, 10, 11, 14, 15, 16, 17, 20, SW¼;
Sec. 5;
Sec. 6;
Sec. 7, all land north of the Colorado River;
Sec. 8, all land north of the Colorado River.

T. 2 S., R. 85 W.,
Sec. 1, Lots 5, 6, 11, 12, 13, 14, SE¼;
Sec. 11, E½E½;
Sec. 12, Lots 1, 3, 4, N½, N½S½, SE¼SE¼, land north of the Colorado River.

The area described totals 15,999 acres of public land.

EFFECTIVE DATES: This restriction order shall be effective immediately, and shall remain in effect until rescinded or modified by the Authorized Officer.

SUPPLEMENTARY INFORMATION: In an exchange of lands made pursuant to section 206 of the Federal Land Policy and Management Act of 1976, a tract of land adjoining other public land in the King Mountain area was reconveyed to the United States. The reconveyed land includes a system of roads which could provide motorized access to the adjacent public lands.

Prior to the reconveyance, the general public could access the public lands only by non-motorized travel methods since roads across private property had no legal public access provisions.

Current OHV use designations for public lands in the area, established in the Glenwood Springs Resource Area Resource Management Plan, 1984 (Rev. 1988), allow motorized vehicle use on and off the roads and trails year round except in the Blue Hill Archaeological District, where motorized vehicle use is limited to existing roads and trails year round. During public participation related to the land exchange proceedings, State and local agencies, user groups and neighboring landowners expressed concerns that the land exchange would open the King Mountain area to motorized travel consistent with the concurrent RMP travel management designations and cause unacceptable impacts to natural resources, especially wildlife and soils; negatively affect existing uses on public land, like water developments and livestock grazing; and adversely impact adjacent private lands, mostly by littering and trespassing. Additionally, some of the existing roads and trails in the area are not safe for motorized travel by the general public due to narrow clearances, steep grades, rough terrain and deteriorated conditions.

The affected public lands include a critical watershed area with identified soil erosion hazards and water quality concerns; the Blue Hill Archaeological District Area of Critical Environmental Concern which contains significant cultural values; and important elk calving habitat. Furthermore, the public lands are neighbored by private lands and in many places the boundaries are not marked or otherwise identified.

The reconveyed lands contain easements reserved for access to private land and for water developments. The affected public lands contain decreed water rights and developments which supply water to private land and require motorized vehicle access for normal maintenance and operation. The area also contains several grazing allotments which at times require motorized vehicle access for maintenance of range facilities.

Given due consideration of the concerns expressed by the public and the potential impacts of unrestricted motorized vehicle use, a modification of existing OHV use designations is necessary to adequately protect natural resources on public land, minimize conflicts with other uses, prevent trespass problems, and ensure public safety until these issues can be more thoroughly addressed in OHV management portion of the Glenwood Springs Resource Area, Resource Management Plan, scheduled for completion in 1995. Provisions will be made to allow for necessary motorized travel on the public lands for administrative purposes and to facilitate non-motorized public access to the public lands, including facilities for safe ingress and egress from Colorado Highway 131, and Routt County Road 5, with parking and ancillary improvements.

The area, roads, and trails affected by this order will be posted with appropriate regulatory signs. Information, including detailed maps of the restricted area, roads and trails will be available at the access sites and in the Resource Area Office and District Office at the addresses shown below.

The King Mountain Limited Area described herein will be subject to the following motorized vehicle use restrictions:

All motorized vehicle use will be limited to designated roads and trails year round. The roads and trails designated to provide for vehicle use shall include Eagle County roads #37, 47 and 301; Tepee Creek Rd. (BLM Road 8078), Luark Ranch Rd., Stifel Creek trailhead, King Creek trailhead, and

Highway 131 trailhead. Motorized travel on all other existing roads and trails, and off the roads and trails shall be prohibited. The area will be closed to snowmobile use. Persons who are exempt from the restrictions during this period include:

1. Any Federal, State, or local officers engaged in fire, emergency and law enforcement activities.

2. BLM employees engaged in official duties.

3. Persons or agencies holding a valid easement the restricted public land for access to private land, for purposes related to the access of private land on said easement only.

4. Persons or agencies holding a special use permit or right of way, or State adjudicated water right, for access to and maintenance and operations of authorized facilities within the restricted area, for purposes related to access for maintenance and operation of said authorized facilities, and provided such motorized use is limited to the routes specifically identified in the special use permit or right of way.

5. Grazing permittees during the permitted grazing season for grazing related purposes provided such motorized use is limited to existing roads and trails and subject to any additional conditions in the grazing permit. Any motorized use before or after the permitted grazing season necessary for maintenance and operation of range facilities shall require advance approval by the authorized officer specifically authorizing such use and subject to whatever restrictions are deemed necessary.

PENALTIES: Violations of this restriction order are punishable by fines not to exceed $1,000 and/or imprisonment not to exceed 12 months.

FOR FURTHER INFORMATION CONTACT: Michael S. Mottice, Area Manager, Glenwood Springs Resource Area, P.O. Box 1009, Glenwood Springs, CO 81602; (303) 945–2341, or Timothy Hartzell, District Manager, Grand Junction District, 2815 H Road, Grand Junction, Colorado 81506; (303) 244–3050.

Timothy Hartzell,

Grand Junction District Manager.

[FR Doc. 93–13112 Filed 6–3–93; 8:45 am]

BILLING CODE 4310–JB–M

[WY–920–41–5700; WYW118613]

Proposed Reinstatement of Terminated Oil and Gas Lease

Pursuant to the provisions of 30 U.S.C. 188(d), and 43 CFR 3108.2–3(a) and (b)(1), a petition for reinstatement of oil and gas lease WYW118613 for lands in Fremont County, Wyoming, was timely filed and was accompanied by all the required rentals accruing from the date of termination.

The lessee has agreed to the amended lease terms for rentals and royalties at rates of $10.00 per acre, or fraction thereof, per year and 16⅔ percent, respectively.

The lessee has paid the required $500 administrative fee and $125 to reimburse the Department for the cost of this **Federal Register** notice. The lessee has met all the requirements for reinstatement of the lease as set out in section 31 (d) and (e) of the Mineral Lands Leasing Act of 1920 (30 U.S.C. 188), and the Bureau of Land Management is proposing to reinstate lease WYW118613 effective January 1, 1993, subject to the original terms and conditions of the lease and the increased rental and royalty rates cited above.

Pamela J. Lewis,

Supervisory Land Law Examiner.

[FR Doc. 93–13190 Filed 6–3–93; 8:45 am]

BILLING CODE 4310–22–M

[WY–920–41–5700; WYW97172]

Proposed Reinstatement of Terminated Oil and Gas Lease

May 28, 1993.

Pursuant to the provisions of 30 U.S.C. 188(d), and 43 CFR 3108.2–3(a) and (b)(1), a petition for reinstatement of oil and gas lease WYW97172 for lands in Fremont County, Wyoming, was timely filed and was accompanied by all the required rentals accruing from the date of termination.

The lessee has agreed to the amended lease terms for rentals and royalties at rates of $5.00 per acre, or fraction thereof, per year and 16⅔ percent, respectively.

The lessee has paid the required $500 administrative fee and $125 to reimburse the Department for the cost of this **Federal Register** notice. The lessee has met all the requirements for reinstatement of the lease as set out in section 31 (d) and (e) of the Mineral Lands Leasing Act of 1920 (30 U.S.C. 188), and the Bureau of Land Management is proposing to reinstate lease WYW97172 effective January 1, 1993, subject to the original terms and conditions of the lease and the increased rental and royalty rates cited above.

Pamela J. Lewis,

Supervisory Land Law Examiner.

[FR Doc. 93–13191 Filed 6–3–93; 8:45 am]

BILLING CODE 4310–22–M

[WY–920–41–5700; WYW118169]

Proposed Reinstatement of Terminated Oil and Gas Lease

May 24, 1993.

Pursuant to the provisions of 30 U.S.C. 188(d), and 43 CFR 3108.2–3(a) and (b)(1), a petition for reinstatement of oil and gas lease WYW118169 for lands in Sweetwater County, Wyoming, was timely filed and was accompanied by all the required rentals accruing from the date of termination.

The lessee has agreed to the amended lease terms for rentals and royalties at rates of $5.00 per acre, or fraction thereof, per year and 16⅔ percent, respectively.

The lessee has paid the required $500 administrative fee and $125 to reimburse the Department for the cost of this **Federal Register** notice. The lessee has met all the requirements for reinstatement of the lease as set out in section 31 (d) and (e) of the Mineral Lands Leasing Act of 1920 (30 U.S.C. 188), and the Bureau of Land Management is proposing to reinstate lease WYW118169 effective December, 1, 1992, subject to the original terms and conditions of the lease and the increased rental and royalty rates cited above.

Florence R. Speltz,

Supervisory Land Law Examiner.

[FR Doc. 93–13188 Filed 6–3–93; 8:45 am]

BILLING CODE 4310–22–M

[WY–920–41–5700; WYW122309]

Proposed Reinstatement of Terminated Oil and Gas Lease

May 24, 1993.

Pursuant to the provisions of 30 U.S.C. 188(d), and 43 CFR 3108.2–3(a) and (b)(1), a petition for reinstatement of oil and gas lease WYW122309 for lands in Sublette County, Wyoming, was timely filed and was accompanied by all the required rentals accruing from the date of termination.

The lessee has agreed to the amended lease terms for rentals and royalties at rates of $5.00 per acre, or fraction thereof, per year and 16⅔ percent, respectively.

The lessee has paid the required $500 administrative fee and $125 to reimburse the Department for the cost of this **Federal Register** notice. The lessee has met all the requirements for reinstatement of the lease as set out in section 31 (d) and (e) of the Mineral Lands Leasing Act of 1920 (30 U.S.C. 188), and the Bureau of Land Management is proposing to reinstate lease WYW122309 effective November

1, 1992, subject to the original terms and conditions of the lease and the increased rental and royalty rates cited above.

Pamela J. Lewis,

Supervisory Land Law Examiner.

[FR Doc. 93-13189 Filed 6-3-93; 8:45 am]

BILLING CODE 4310-22-M

[WY-930-4210-05; WYW 124275]

Opening of National Forest System Land; Wyoming

AGENCY: Bureau of Land Management, Interior.

ACTION: Notice.

SUMMARY: This notice terminates the temporary segregative effect as to 10 acres of National Forest System lands which were originally included in an application for exchange in the Bridger-Teton National Forest.

EFFECTIVE DATE: June 4, 1993.

FOR FURTHER INFORMATION CONTACT: Janet Booth, BLM Wyoming State Office, 2515 Warren Avenue, P.O. Box 1828, Cheyenne, Wyoming 82001, 307-775-6124.

SUPPLEMENTARY INFORMATION: Pursuant to the regulations contained in 43 CFR 2091.3-2(b), at 9 a.m. on June 4, 1993, the following described lands will be relieved of the temporary segregative effect of exchange application WYW 124275. The remaining lands in the application for exchange will continue to be processed as requested.

Sixth Principal Meridian, Wyoming

T. 36 N., R. 114 W.,
Sec. 3, NE¼SE¼SW¼.

The area described contains 10 acres in Sublette County.

At 9 a.m. on June 4, 1993, the lands shall be opened to such forms of disposition as may by law be made of National Forest System lands, including location and entry under the United States mining laws, subject to valid existing rights, the provisions of existing withdrawals, other segregations of record, and the requirements of applicable law. Appropriation of lands described in this order under the general mining laws prior to the date and time of restoration is unauthorized. Any such attempted appropriation, including attempted adverse possession under 30 U.S.C. 38 (1988) shall vest no rights against the United States. Acts required to establish a location and to initiate a right of possession are governed by State law where not in conflict with Federal law. The Bureau of Land Management will not intervene in disputes between rival locators over possessory rights since Congress has provided for such determination in local courts.

Dated: May 27, 1993.

John A. Naylor,

Chief, Branch of Land Resources.

[FR Doc. 93-13193 Filed 6-3-93; 8:45 am]

BILLING CODE 4310-22-M

[CA-060-43-7122 08 1016; CACA 31899]

Realty Action, California Desert District, Exchange of Public and Private Lands in San Bernardino County, Kern County and Los Angeles County, CA

AGENCY: Bureau of Land Management, Interior.

ACTION: Western Mojave Land Tenure Adjustment (WMLTA) Project, Segregation of Public Lands Exchange Base in Kern, Los Angeles and San Bernardino Counties, California, CACA 31899.

SUMMARY: The Bureau of Land Management is continuing to exchange public land in order to achieve more efficient management of the public land through consolidation of ownership in the WMLTA Project Area. All public lands within the following townships, ranges and sections are being considered for disposal by exchange pursuant to section 206 of the Federal Land Policy and Management Act of October 21, 1976, 43 U.S.C. 1716. This Notice of Realty Action (NORA) supersedes the prior NORA CACA 28461 published June 6, 1991 (56 FR 109; pp. 26137-26139). The following land descriptions reflect land status changes from completed exchanges and other land tenure actions since publication of the prior notice. NORA CACA 28461 is hereby terminated.

San Bernardino Meridian, California

T. 4 N., R. 6 W.
Sec. 1.
T. 4 N., R. 8 W.
Sec. 3,
Sec. 4,
Sec. 10.
T. 4 N., R. 9 W.
Sec. 2,
Sec. 3,
Sec. 11,
Sec. 15.
T. 4 N., R. 10 W.
Sec. 2.
T. 5 N., R. 7 W.
Sec. 2,
Sec. 7,
Sec. 13,
Sec. 26,
Sec. 34.
T. 5 N., R. 9 W.
Sec. 6.
T. 5 N., R. 10 W.
Sec. 2,
Sec. 12,
Sec. 30.
T. 5 N., R. 11 W.
Sec. 23,
Sec. 25.
T. 5 N., R. 12 W.
Sec. 6,
Sec. 7,
Sec. 8,
Sec. 25,
Sec. 26,
Sec. 30,
Sec. 35.
T. 6 N., R. 4 W.
Sec. 1,
Sec. 2,
Sec. 3,
Sec. 4,
Sec. 9,
Sec. 10,
Sec. 11,
Sec. 12,
Sec. 13,
Sec. 14,
Sec. 15,
Sec. 16,
Sec. 17,
Sec. 18,
Sec. 20,
Sec. 21,
Sec. 22,
Sec. 23,
Sec. 28,
Sec. 32.
T. 6 N., R. 5 W.
Sec. 6.
T. 6 N., R. 7 W.
Sec. 6,
Sec. 18,
Sec. 19,
Sec. 20.
T. 6 N., R. 8 W.
Sec. 1,
Sec. 3,
Sec. 30,
Sec. 33.
T. 6 N., R. 11 W.
Sec. 24.
T. 6 N., R. 12 W.
Sec. 33.
T. 6 N., R. 13 W.
Sec. 13,
Sec. 18,
Sec. 24.
T. 6 N., R. 14 W.
Sec. 13.
T. 7 N., R. 3 W.
Sec. 3,
Sec. 4,
Sec. 6,
Sec. 7,
Sec. 8,
Sec. 18,
Sec. 19,
Sec. 20,
Sec. 30,
Sec. 31.
T. 7 N., R. 4 W.
Sec. 8,
Sec. 10,
Sec. 11,
Sec. 12,
Sec. 14,
Sec. 15,
Sec. 20,

Sec. 22,
Sec. 23,
Sec. 24,
Sec. 26,
Sec. 27,
Sec. 28,
Sec. 32,
Sec. 34,
Sec. 35.
T. 7 N., R. 5 W.
Sec. 2,
Sec. 3,
Sec. 4,
Sec. 6,
Sec. 8,
Sec. 10,
Sec. 11,
Sec. 12,
Sec. 14,
Sec. 15,
Sec. 22,
Sec. 23,
Sec. 26,
Sec. 35.
T. 7 N., R. 7 W.
Sec. 4,
Sec. 15,
Sec. 18,
Sec. 19,
Sec. 20,
Sec. 29,
Sec. 31.
T. 7 N., R. 8 W.
Sec. 11,
Sec. 12,
Sec. 14,
Sec. 18,
Sec. 19,
Sec. 24,
Sec. 25.
T. 7 N., R. 9 W.
Sec. 3,
Sec. 11,
Sec. 15,
Sec. 31,
Sec. 32.
T. 8 N., R. 2 W.
Sec. 4,
Sec. 7,
Sec. 8,
Sec. 18.
T. 8 N., R. 3 W.
Sec. 3,
Sec. 6,
Sec. 10,
Sec. 14,
Sec. 15,
Sec. 18,
Sec. 20,
Sec. 22,
Sec. 23,
Sec. 24,
Sec. 26,
Sec. 27,
Sec. 32,
Sec. 34.
T. 8 N., R. 4 W.
Sec. 2,
Sec. 8,
Sec. 10,
Sec. 12,
Sec. 28.
T. 8 N., R. 5 W.
Sec. 24.
T. 8 N., R. 7 W.
Sec. 32.
T. 8 N., R. 8 W.
Sec. 27.
T. 8 N., R. 9 W.
Sec. 27,
Sec. 30.
T. 8 N., R. 10 W.
Sec. 23.
T. 8 N., R. 16 W.
Sec. 34.
T. 9 N., R. 2 W.
Sec. 6,
Sec. 7,
Sec. 15,
Sec. 20,
Sec. 28,
Sec. 30.
T. 9 N., R. 3 W.
Sec. 3,
Sec. 8,
Sec. 10,
Sec. 11,
Sec. 12,
Sec. 14,
Sec. 20,
Sec. 22,
Sec. 23,
Sec. 28,
Sec. 30,
Sec. 31,
Sec. 32.
T. 9 N., R. 4 W.
Sec. 26,
Sec. 30.
T. 9 N., R. 12 W.
Sec. 10,
T. 9 N., R. 13 W.
Sec. 4,
Sec. 8,
Sec. 10,
Sec. 11,
Sec. 14,
Sec. 15.
T. 9 N., R. 14 W.
Sec. 4,
Sec. 6,
Sec. 8.
T. 9 N., R. 15 W.
Sec. 18.
T. 9 N., R. 16 W.
Sec. 20.
T. 10 N., R. 2 W.
Sec. 32,
Sec. 34,
Sec. 35.
T. 10 N., R. 3 W.
Sec. 10,
Sec. 18,
Sec. 20,
Sec. 24,
Sec. 31.
T. 10 N., R. 4 W.
Sec. 4,
Sec. 8,
Sec. 14,
Sec. 15,
Sec. 20,
Sec. 22,
Sec. 23,
Sec. 24,
Sec. 26,
Sec. 27,
Sec. 35.
T. 10 N., R. 7 W.
Sec. 6.
T. 10 N., R. 11 W.
Sec. 2,
Sec. 6,
Sec. 10,
Sec. 12.
T. 10 N., R. 12 W.
Sec. 6,
Sec. 8,
Sec. 10,
Sec. 18,
Sec. 34.
T. 10 N., R. 13 W.
Sec. 8,
Sec. 12,
Sec. 14,
Sec. 22,
Sec. 34.
T. 10 N., R. 14 W.
Sec. 4,
Sec. 6,
Sec. 8,
Sec. 10,
Sec. 18.
T. 10 N., R. 15 W.
Sec. 2,
Sec. 10,
Sec. 12,
Sec. 14,
Sec. 24,
Sec. 26,
Sec. 28,
Sec. 32.
T. 11 N., R. 4 W.
Sec. 7,
Sec. 18.
T. 11 N., R. 6 W.
Sec. 30.
T. 11 N., R. 7 W.
Sec. 6,
Sec. 8,
Sec. 18,
Sec. 20,
Sec. 22,
Sec. 26,
Sec. 28,
Sec. 30.
T. 11 N., R. 8 W.
Sec. 4,
Sec. 6,
Sec. 8,
Sec. 10,
Sec. 12,
Sec. 18,
Sec. 24,
Sec. 26.
T. 11 N., R. 9 W.
Sec. 2,
Sec. 4,
Sec. 10,
Sec. 18,
Sec. 34.
T. 11 N., R. 10 W.
Sec. 20,
Sec. 22,
Sec. 23,
Sec. 24,
Sec. 28.
T. 11 N., R. 11 W.
Sec. 2,
Sec. 6,
Sec. 10,
Sec. 12,
Sec. 14,
Sec. 22.
T. 11 N., R. 12 W.
Sec. 32,
Sec. 34.
T. 11 N., R. 13 W.
Sec. 2,

Sec. 10,
Sec. 14.
T. 11 N., R. 14 W.
Sec. 22,
Sec. 26,
Sec. 30,
Sec. 32,
Sec. 34.
T. 11 N., R. 15 W.
Sec. 24,
Sec. 34.
T. 12 N., R. 7 W.
Sec. 32.
T. 12 N., R. 8 W.
Sec. 32.
T. 12 N., R. 9 W.
Sec. 32.
T. 12 N., R. 10 W.
Sec. 32.
T. 12 N., R. 12 W
Sec. 32.

Mount Diablo Meridian, California

T. 32 S., R. 38 E.
Sec. 12,
Sec. 20,
Sec. 26,
Sec. 28,
Sec. 34.

Comprising 104,200 acres, more or less in the WMLTA "Disposal Zone." Copies of the complete legal descriptions may be obtained from the Barstow Resource Office, address shown below.

In exchange for the above described public lands, BLM will continue, through voluntary exchanges, to acquire non-Federal lands within WMLTA "Consolidation Zones". The WMLTA Consolidation Zones contain approximately 240,000 acres of potential offered lands to be acquired by the Bureau of Land Management. Subsequent NORAs will be published to identify the particular lands and interests involved in each exchange or exchange assembly.

EFFECTIVE DATE: June 4, 1993.

FOR FURTHER INFORMATION CONTACT: For a period of forty-five (45) days, interested parties may submit comments by specific legal descriptions to Neal DeLude, Barstow Resource Area, 150 Coolwater Lane, Barstow, California 92311 (619–256–3591).

SUPPLEMENTARY INFORMATION: In accordance with the regulations at 43 CFR 2201.1(b), publication of this Notice will segregate, subject to existing valid rights, the affected public lands from appropriation under the public land laws and the mining laws, but not the mineral leasing laws or Geothermal Stream Act. The segregative effect will terminate (1) upon issuance of conveyance documents, (2) upon publication of a notice(s) of termination, (3) two years from the date of this publication, or (4) if this notice is superseded by a segregation notation to the public land records under regulations, when effective, to implement the Federal Land Exchange Facilitation Act (FLEFA) of August 20, 1988 (Pub. L. 100–409) amendments to section 206 of the Federal Land Policy and Management Act (FLPMA) of October 21, 1976 (43 U.S.C. 1716).

The disposal of the aforementioned public lands has been analyzed in the Environmental Impact Statement/ Environmental Impact Report (EIS/EIR) for the WMLTA Project and is consistent with the amendments to the California Desert Conservation Area Plan and the Record of Decision of January 1, 1991. Land exchanges are the main means of implementation of the WMLTA Project.

Multiple agency objectives are part of the project purpose and need. Existing checkerboard ownership causes scattered development with threats to resource management by BLM, airspace use by the Air Force, and logical and orderly development of private lands as overseen by the Counties. Consolidation of public lands through exchange for isolated public lands reduces these threats.

Prior to each exchange, a mineral report will be prepared assessing the potential for development of mineral resources. The values of the exchanges will be on an equal value basis. Independent appraisals will establish the fair market value of the public and private land based on highest and best use of the parcels, taking into consideration the conclusions of the mineral report.

Each exchange will be adjusted to equal value or approximately equal value. Equalization will be achieved by acreage adjustment, a payment to the United States by the proponent in an amount not to exceed 25 percent of the value of the public lands to be conveyed, a waiver by the proponent of any excess value owed by the United States, or by a waiver under the amendment to subsection 206(b) FLPMA provided by section 9 FLEFA.

Dated: May 24, 1993.

Henri R. Bisson,

District Manager.

[FR Doc. 93–13114 Filed 6–3–93; 8:45 am]

BILLING CODE 4310–40–M

[NM–060–03–4210–05; NM–87918]

Notice of Realty Action, Sale of Public Lands; Lincoln County, NM

AGENCY: Bureau of Land Management, Interior.

ACTION: Notice of a direct sale of public land in Lincoln County, New Mexico.

SUMMARY: The Bureau of Land Management is proposing to sell a 160-acre isolated parcel of land to the adjacent landowner.

DATES: Comments on this action will be accepted through July 19, 1993.

ADDRESSES: Comments may be mailed to the District Manager, Bureau of Land Management, 1717 W. Second, Roswell, NM 88201–2019.

FOR FURTHER INFORMATION CONTACT: John Rakowski, Realty Specialist, at the above address, or phone (505) 622–9042.

SUPPLEMENTARY INFORMATION: The parcel is suitable for disposal by sale pursuant to section 203 of the Federal Land Policy and Management Act of October 21, 1976. This is an isolated parcel completely surrounded by one landowner. There is no legal access and the parcel contains valuable private improvements. The lands will be sold at no less than the appraised fair market value.

Description: New Mexico Principal Meridian

T. 9 S., R. 19 E.,
Sec. 18, NE¼.
Lincoln County, New Mexico.

Comments: Public comments will be reviewed by the State Director, who may sustain, vacate, or modify this realty action. In the absence of any objections, this realty action will become the final determination of the Department of the Interior.

Dated: May 27, 1993.

Timothy R. Kreager,

Acting District Manager.

[FR Doc. 93–13195 Filed 6–3–93; 8:45 am]

BILLING CODE 4310–FB–M

[NM–920–4210–06; NMNM 10639]

Exchange Classification Termination and Opening Order; New Mexico

AGENCY: Bureau of Land Management, Interior.

ACTION: Notice.

SUMMARY: This notice terminates Exchange Classification NMNM 10639 in its entirety, which segregated 316.59 acres of public land from appropriation, selection, location and entry under the public land laws. The classification is no longer needed since the exchange has been achieved. The land is now part of the Mescalero Sands Natural Area, and will be opened to the public land laws generally.

EFFECTIVE DATE: June 4, 1993.

FOR FURTHER INFORMATION CONTACT:

Georgiana E. Armijo, BLM New Mexico State Office, P.O. Box 27115, Santa Fe, New Mexico 87502–0115, 505–438–7594.

SUPPLEMENTARY INFORMATION: By virtue of the authority vested in the Secretary of the Interior by section 8 of the Act of June 28, 1934, as amended, 43 U.S.C. 315g, 48 Stat. 1269, it is ordered as follows:

1. Pursuant to 43 CFR 2091.7–1 and the authority delegated to me by Bureau of Land Management Manual 1203, Exchange Classification NMNM 10639, which classified 316.59 acres of public land as suitable for exchange, is hereby terminated in its entirety. The land is described as follows:

New Mexico Principal Meridian

T. 12 S., R. 30 E.,
Sec. 1, SE¼;
T. 12 S., R. 31 E.,
Sec. 6, lot 6, NE¼SW¼, and N½SE¼.

The area described contains 316.59 acres in Chaves County.

2. The classification made pursuant to the Act of June 28, 1934, as amended, 43 U.S.C. 315g, 48 Stat. 1269, segregated the public land from all forms of appropriation under the public land laws. The land was subsequently acquired by the United States through exchange and included within the Mescalero Sands Natural Area. The protection afforded by this classification was outdated with the passage of the Federal Land Policy and Management Act of 1976. The necessary protection can be provided through management decisions.

3. At 8 a.m. on June 4, 1993, the land will be opened to the operation of the public land laws generally, subject to valid existing rights, the provisions of existing withdrawals, other segregations of record, and the requirements of applicable law. All valid applications received at or prior to 8 a.m. on June 4, 1993 shall be considered as simultaneously filed at that time. Those received thereafter shall be considered in the order of filing.

Dated: May 26, 1993.

Monte G. Jordan,

Acting State Director.

[FR Doc. 93–13192 Filed 6–3–93; 8:45 am]

BILLING CODE 4310–FB–M

[NV–930–4210–04; N–53387]

Realty Action: Exchange of Public Lands in Clark County, NV

AGENCY: Bureau of Land Management, DOI.

ACTION: Notice of realty action N–53387 for exchange of lands in Clark County, Nevada.

SUMMARY: The following described public land in Clark County, Nevada, including the mineral estate with no known value, has been determined to be suitable for disposal by exchange pursuant to section 206 of the Federal Land Policy and Management Act of October 31, 1976 (43 U.S.C. 1716).

Mount Diablo Meridian, Nevada

T. 21 S., R. 63 E.,
Sec. 27: N½, SW¼.

Aggregating 480 acres, more or less.

In exchange for these lands, the Federal Government will acquire a tract of non-federal land in Red Rock Canyon National Conservation Area, Nevada, described as follows:

Mount Diablo Meridian, Nevada

T. 21 S., R. 58 E.,
Sec. 1: lot 1.
T. 21 S., R. 59 E.,
Sec. 6: lot 4.

Aggregating 62 acres, more or less.

The purpose of the exchange is to acquire non-federal lands located within the Red Rock Canyon National Conservation Area. The exchange is consistent with the Bureau's planning for the lands involved and has been discussed with local governmental officials. The public interest will be served by making the exchange.

If the value of the lands to be exchanged is not equal, the acreage will be adjusted or money will be used to equalize the values upon approval of the final appraisal of the lands.

The patent, when issued, will contain the following reservations to the United States:

1. A right-of-way thereon for ditches and canals constructed by the authority of the United States, Act of August 30, 1890 (43 U.S.C. 945).

2. All minerals having known values.

And will be subject to valid existing third party rights, including but not limited to:

1. Easements of varying widths for road, public utilities and flood control purposes to ensure continued ingress and egress to adjacent lands in accordance with the transportation plan for Clark County.

2. Those rights for a 550 kV transmission line to the Bureau of Reclamation (25%), Nevada Power Company (26.1%), and the City of Los Angeles (48.9%) which have been granted by right-of-way N–4790 under the Act of March 4, 1911 (36 stat 1253; 43 U.S.C. 961).

3. Those rights for an access road to the Bureau of Reclamation which have been granted by right-of-way N–16997 under the Act of December 5, 1924 (43 stat 704; 43 U.S.C. 417).

4. Those rights for a 500 kV transmission line applied for by Nevada Power Company under right-of-way N–17394 under the Act of October 21, 1976 (90 stat 2776; 43 U.S.C. 1761).

5. Those rights for an access road, potable water main, raw water main, and two sanitary force mains to the City of Henderson which have been granted by right-of-way N–39061 under the Act of October 21, 1976 (90 stat 2776; 43 U.S.C. 1761).

6. Those rights for a 500 kV transmission line to the Intermountain Power Agency by right-of-way N–10683 under the Act of October 21, 1976 (90 stat 2776; 43 U.S.C. 1761).

7. Those rights for a 500 kV transmission line to the City of Los Angeles by right-of-way N–49541 under the Act of October 21, 1976 (90 stat 2776; 43 U.S.C. 1761).

8. Those rights for an access road to the City of Henderson which have been granted by right-of-way N–51866 under the Act of October 21, 1976 (90 stat 2776; 43 U.S.C. 1761).

9. Those rights for a 69 kV powerline to Nevada Power Company which have been granted by right-of-way N–54373 under the Act of October 21, 1976 (90 stat 2776; 43 U.S.C. 1761).

10. Those rights for a sewer force main/access road applied for by the City of Henderson under right-of-way N–55346 under the Act of October 21, 1976 (90 stat 2776; 43 U.S.C. 1761).

The segregation of the public land described in this Notice shall terminate upon issuance of a document conveying such lands or upon publication in the **Federal Register** of a notice of termination of the segregation, or the expiration of two years from the date of publication, whichever comes first. For a period of 45 days from the date of publication of this notice in the **Federal Register**, interested parties may submit comments to the District Manager, Las Vegas District, PO Box 26569, Las Vegas, Nevada 89126. Any adverse comments will be reviewed by the State Director.

Dated: May 26, 1993.

Ben F. Collins,

District Manager, Las Vegas, NV.

[FR Doc. 93–13194 Filed 6–3–93; 8:45 am]

BILLING CODE 4310–HC–M

[UT–060–03–4333–04–241A]

Alcoholic Beverage Restriction

AGENCY: Bureau of Land Management, Utah State Office, Interior.

ACTION: Establishment of a supplementary rule prohibiting persons under 21 years of age from possessing alcoholic beverages on public land within the Moab District.

SUPPLEMENTARY INFORMATION: Underage drinking is a growing problem on the public lands. Such activity poses a significant health and safety hazard to both underage violators and other users of the public lands and can result in the destruction of natural resources. This action will allow BLM officers to restrict the possession of alcoholic beverages by minors in a manner consistent with state law. This supplementary restriction is issued under the authority of 43 CFR 8365.1–6. Violation is punishable by fines and/or imprisonment under 43 CFR 8360.0–7. This restriction will go into effect upon publication in the **Federal Register**, and will remain in effect until rescinded or modified by the authorized officer.

FOR FURTHER INFORMATION CONTACT: State Special Agent in Charge, Bureau of Land Management, Utah State Office, P.O. Box 45155, Salt Lake City, Utah 84145, (801) 539–4011.

Douglas M. Koza,

Acting State Director.

[FR Doc. 93–12983 Filed 6–3–93; 8:45 am]

BILLING CODE 4310–DQ–M

[CA–940–4210–06; CACA 31729]

Proposed Withdrawal and Opportunity for Public Meeting; California

AGENCY: Bureau of Land Management, Interior.

ACTION: Notice.

SUMMARY: The Bureau of Land Management proposes to withdraw 7,544 acres of public lands and non-Federal lands in Mono County to protect the nationally significant historic resources within the Bodie Bowl Area of Critical Environmental Concern as well as the recreational opportunities and scenic values associated with them. The withdrawal is requested for a period of 5 years in aid of legislation under consideration by Congress. This notice closes the public lands for up to 2 years from surface entry and mining. The public lands will remain open to mineral leasing.

DATES: Comments and requests for a public meeting must be received by September 2, 1993.

ADDRESSES: Comments and meeting requests should be sent to the California State Director, BLM, 2800 Cottage Way, room E–2845, Sacramento, California 95825.

FOR FURTHER INFORMATION CONTACT: Viola Andrade, BLM California State Office, 916–978–4820.

SUPPLEMENTARY INFORMATION: On May 26, 1993, a petition was approved allowing the Bureau of Land Management to file an application to withdraw the following described public lands from settlement, sale, location, or entry under the general land laws, including the mining laws, subject to valid existing rights:

Mount Diablo Meridian

T. 4 N., R. 26 E.,
- Sec. 1, SE¼NE¼, S½SW¼, and SE¼;
- Sec. 11, NE¼NE¼;
- Sec. 12, N½, N½SW¼, SE¼SW¼, and SE¼;
- Sec. 13, NE¼NE¼.

T. 4 N., R. 27 E.,
- Sec. 3, lot 11;
- Sec. 4, S½N½ and S½;
- Sec. 5, S½SW¼ and SE¼;
- Sec. 6, lots 5 to 7, inclusive, E½SW¼, and SE¼;
- Sec. 7, lots 1 to 4, inclusive, E½, and E½W½;
- Sec. 8, N½, SW¼, N½SE¼, and SW¼SE¼;
- Sec. 9;
- Sec. 10, lots 2, 3, 7, and 8, and W½;
- Sec. 11, W½NW¼;
- Sec. 14, SW¼NE¼, W½NW¼, SE¼NW¼, SW¼, and NW¼SE¼;
- Sec. 15, lots 1 to 8, inclusive, and W½;
- Sec. 16;
- Sec. 17, W½NE¼, W½, and SE¼SE¼;
- Sec. 18, lot 1, NE¼, E½NW¼, and NE¼SE¼;
- Sec. 20, lots 1, 2, 3, and 8, and NE¼;
- Sec. 21, lots 1, 3, 4, and 5, and N½;
- Sec. 22, lots 1 to 4, inclusive, lots 7 and 8, and NW¼;
- Sec. 23, N½NW¼ and SW¼NW¼.

The areas described aggregate 5,935 acres of public lands and 1,609 acres of non-Federal lands in Mono County. In the event any of the non-Federal lands return to Federal ownership, they will become subject to the withdrawal.

The purpose of the proposed withdrawal is to protect the Bodie Bowl Area of Critical Environmental Concern.

For a period of 90 days from the date of publication of this notice, all persons who wish to submit comments, suggestions, or objections in connection with the proposed withdrawal may present their views in writing to the California State Director of the Bureau of Land Management.

Notice is hereby given that an opportunity for a public meeting is afforded in connection with the proposed withdrawal. All interested persons who desire a public meeting for the purpose of being heard on the proposed withdrawal must submit a written request to the California State Director within 90 days from the date of publication of this notice. Upon determination by the authorized officer that a public meeting will be held, a notice of the time and place will be published in the **Federal Register** at least 30 days before the scheduled date of the meeting.

The application will be processed in accordance with the regulations set forth in 43 CFR part 2300.

For a period of 2 years from the date of publication of this notice in the **Federal Register**, the public lands will be segregated as specified above unless the application is denied or canceled or the withdrawal is approved prior to that date. The temporary uses which may be permitted during this segregative period are licenses, permits, cooperative agreements, or other discretionary land use authorizations of a temporary nature.

Dated: May 28, 1993.

Nancy J. Alex,

Chief, Lands Section.

[FR Doc. 93–13161 Filed 6–3–93; 8:45 am]

BILLING CODE 4310–40–M

[NM–010–4210–06/G3–0042; NMNM 89978]

Notice of Proposed Withdrawal and Opportunity for Public Meeting; New Mexico

AGENCY: Bureau of Land Management, Interior.

ACTION: Notice.

SUMMARY: The United States Department of Agriculture, Forest Service, has filed an application to withdraw approximately 232.50 acres of National Forest System land for the new Coyote Ranger District facilities. This notice closes the land for up to 2 years from location and entry under the United States mining laws, subject to valid existing rights. The land will remain open to all other uses which may be made of National Forest System land.

DATES: Comments and requests for a public meeting should be received on or before September 2, 1993.

ADDRESSES: Comments and meeting requests should be sent to the Albuquerque District Manager, BLM, 435 Montano Road NE., Albuquerque, New Mexico 87107.

FOR FURTHER INFORMATION CONTACT: Margie Martinez, BLM Albuquerque District Office, (505) 761–8907.

SUPPLEMENTARY INFORMATION: On February 10, 1993, the United States Department of Agriculture filed an application to withdraw the following described National Forest System land from location and entry under the

United States mining laws, subject to valid existing rights:

New Mexico Principal Meridian

Santa Fe National Forest

T. 23 N., R. 2 E.,
Sec. 26, S½SE¼SE¼;
Sec. 35, N½NE¼, N½SW¼NE¼, SW¼SW¼NE¼, NE¼NE¼NW¼, SE¼NW¼NE¼NW¼, S½NE¼NW¼, SE¼NW¼NW¼, E½SW¼NW¼, SE¼NW¼.

The area described contains approximately 232.50 acres in Rio Arriba County.

The purpose of the proposed withdrawal is to provide protection for the substantial investment that the Forest Service made in the new Coyote Ranger District facilities. Also, this mineral withdrawal will provide for public and employee health and safety.

For a period of 90 days from the date of publication of this notice, all persons who wish to submit comments, suggestions, or objections in connection with the proposed withdrawal may present their views in writing to the Albuquerque District Manager of the Bureau of Land Management.

Notice is hereby given that an opportunity for a public meeting is afforded in connection with the proposed withdrawal. All interested persons who desire a public meeting for the purpose of being heard on the proposed withdrawal must submit a written request to the Albuquerque District Manager within 90 days from the date of publication of this notice. Upon determination by the authorized officer that a public meeting will be held, a notice of the time and place will be published in the **Federal Register** at least 30 days before the scheduled date of the meeting.

The application will be processed in accordance with the regulations set forth in 43 CFR part 2300.

For a period of 2 years from the date of publication of this notice in the **Federal Register**, the land will be segregated as specified above unless the application is denied, canceled, or the withdrawal is approved prior to that date. The temporary uses which may be permitted during this segregative period are land uses permitted by the Forest Service under existing laws and regulations.

Dated: May 25, 1993.

Michael R. Ford,

District Manager.

[FR Doc. 93–13196 Filed 6–3–93; 8:45 am]

BILLING CODE 4310–FB–M

[NM–920–4210–06; NMNM 82085]

Opening of Land in a Proposed Withdrawal; New Mexico

AGENCY: Bureau of Land Management, Interior.

ACTION: Notice.

SUMMARY: The temporary 2-year segregation of a proposed withdrawal of 120 acres of public land for a fish hatchery and for recreational use adjacent to Cutter Dam expired on May 8, 1993, and the land will be opened to surface entry. The mineral estate is owned by the State of New Mexico.

EFFECTIVE DATE: July 6, 1993.

FOR FURTHER INFORMATION CONTACT: Georgiana E. Armijo, BLM, New Mexico State Office, P.O. Box 27115, Sante Fe, New Mexico 87502–0115, 505–438–7594.

SUPPLEMENTARY INFORMATION: A Notice of Proposed Withdrawal was published in the **Federal Register**, 56 FR 21504–5, May 9, 1991, which segregated the land described therein for up to 2 years from surface entry under the public land laws generally, subject to valid existing rights. The 2-year segregation expired on May 8, 1993. The withdrawal application will continue to be processed unless it is canceled or denied. The land is described as follows:

New Mexico Principal Meridian

T. 29 N., R. 8 W.,
Sec. 32, SE¼NE¼ and E½SE¼.

The area described contains 120 acres in San Juan County.

At 8 a.m. on July 6, 1993, the land will be opened to the operation of the public land laws generally, subject to valid existing rights, the provisions of existing withdrawals, other segregations of record, and the requirements of applicable law. All valid applications received at or prior to 8 a.m. on July 6, 1993, shall be considered as simultaneously filed at that time. Those received thereafter shall be considered in the order of filing.

Dated: May 26, 1993.

Monte G. Jordan,

Acting State Director.

[FR Doc. 93–13197 Filed 6–3–93; 8:45 am]

BILLING CODE 4310–FB–M

INTERSTATE COMMERCE COMMISSION

Intent To Engage in Compensated Intercorporate Hauling Operations

This is to provide notice as required by 49 U.S.C. 10524(b)(1) that the named corporations intend to provide or use compensated intercorporate hauling operations as authorized in 49 U.S.C. 10524(b).

1. Parent corporation and address of principal office: Mock Resources, Inc., P.O. Box 19630, Irvine, CA 92713.

2. Wholly owned subsidiaries which will participate in the operations, and State(s) of incorporation: Westpac Trucking Company dba Pacific Western Transport (MC–174330), P.O. Box 19630, Irvine, CA 92713. State of Incorporation: California

Sidney L. Strickland, Jr.,

Secretary.

[FR Doc. 93–13151 Filed 6–3–93; 8:45 am]

BILLING CODE 7035–01–M

[Finance Docket No. 32298]

Illinois Central Railroad Company—Trackage Rights Exemption—Missouri Pacific Railroad Company

Missouri Pacific Railroad Company (MP) has agreed to grant approximately 12.2 miles of local and overhead trackage rights to Illinois Central Railroad Company. The trackage rights are between milepost 79.4 at Percy and milepost 91.6 at Pickneyville, in Randolph and Perry Counties, IL, and include the right to operate over MP's connection to the Captain Mine track near Percy. The trackage rights were to become effective on May 19, 1993.

This notice is filed under 49 CFR 1180.2(d)(7). 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: Myles L. Tobin, Illinois Central Railroad Company, 455 North Cityfront Plaza Dr., Chicago, IL 60611–5504.

As a condition to the use of this exemption, any employees adversely affected by the trackage rights will be protected under *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).

Dated: May 28, 1993.

By the Commission, David M. Konschnik, Director, Office of Proceedings.

Sidney L. Strickland, Jr.,

Secretary.

[FR Doc. 93–13166 Filed 6–3–93; 8:45 am]

BILLING CODE 7035–01–M

JOINT BOARD FOR THE ENROLLMENT OF ACTUARIES

Advisory Committee on Actuarial Examinations; Meeting

Notice is hereby given that the Advisory Committee on Actuarial Examinations will meet in Conference Room A of the Office of Director of Practice, Suite 600, 801 Pennsylvania Avenue, NW., Washington, DC, on Monday and Tuesday, June 28 and 29, 1993, from 8:30 a.m. to 5 p.m.

The purpose of the meeting is to discuss topics and questions which may be recommended for inclusion on future Joint Board examinations in actuarial mathematics and methodology referred to in title 29 U.S. Code, section 1242(a)(1)(B) and to review the May 1993 Joint Board examinations in order to make recommendations relative thereto, including the minimum acceptable pass score. In addition, the examination program, including the syllabus topics for the November 1993 pension actuarial examination and the May 1994 basic actuarial examinations, will be discussed. Included in the syllabus discussion will be the suitability of advance interest topics.

A determination has been made as required by section 10(d) of the Federal Advisory Committee Act (Pub. L. 92–463) that the portions of the meetings dealing with the discussion of questions which may appear on the Joint Board's examinations and review of the May 1993 Joint Board examinations fall within the exceptions to the open meeting requirement set forth in title 5 U.S. Code, section 552(c)(9)(B), and that the public interest requires that such portions be closed to public participation.

The portion of the meeting dealing with the discussion of the other topics will commence at 1:30 p.m. on June 28 and will continue for as long as necessary to complete the discussion, but not beyond 3 p.m. This portion of the meeting will be open to the public as space is available. Time permitting, after discussion of the program, interested persons may make statements germane to this subject. Persons wishing to make oral statements are requested to notify the Committee Management Officer in writing prior to the meeting in order to aid in scheduling the time available, and should submit the written text, or, at a minimum, an outline of comments they propose to make orally. Such comments will be limited to ten minutes in length. Any interested person also may file a written statement for consideration by the Joint Board and Committee by sending it to the Committee Management Officer. Notifications and statements should be mailed no later than June 11, 1993 to Mr. Leslie S. Shapiro, Joint Board for the Enrollment of Actuaries, c/o U.S. Department of the Treasury, Washington, DC 20220 or by facsimile transmission to 202–376–1420.

Dated: May 28, 1993.

Leslie S. Shapiro,

Advisory Committee Management Officer, Joint Board for the Enrollment of Actuaries.

[FR Doc. 93–13147 Filed 6–3–93; 8:45 am]

BILLING CODE 4810–25–M

DEPARTMENT OF JUSTICE

Notice of Lodging of Consent Decree Pursuant to the Clean Water Act

In accordance with Departmental policy, 28 CFR § 50.7, notice is hereby given that a proposed consent decree in *United States* v. *American Felt and Filter Co., Inc.*, Civil Action No. 86–2715, was lodged on May 19, 1993, with the United States District Court for the Southern District of New York. Defendant American Felt and Filter owns and operates a facility in New Windsor, New York which manufactures felt and filter products. The proposed consent decree requires the defendant to develop and implement a Best Management Practices Plan (BMP) to prevent and minimize the potential for the unauthorized discharge of pollutants or hazardous waste to the waters of the United States and sets forth fundamental requirements that the BMP must meet. The proposed decree also requires the defendant to comply with all terms and conditions of its State Pollutant Discharge Elimination System permit and to pay a civil penalty in the amount of $12,500 within fifteen days of the entry of the decree.

The Department of Justice will receive, for a period of thirty (30) days from the date of this publication, comments relating to the proposed consent decree. Comments should be addressed to the Assistant Attorney General for the Environment and Natural Resources Division, Department of Justice, Washington, DC 20530, and should refer to *United States* v. *American Felt and Filter Co., Inc.*, D.J. reference #90–5–1–1–2579.

The proposed consent decree may be examined at the Office of the United States Attorney for the Southern District of New York, 100 Church Street, New York, New York; the Region II Office of the Environmental Protection Agency, 26 Federal Plaza, New York, New York; and at the Consent Decree Library, 1120 G Street, NW., 4th Floor, Washington, DC., 20005, (202) 624–0892. A copy of the proposed consent decree may be obtained in person or by mail from the Consent Decree Library, 1120 G Street, NW. 4th Floor, Washington, DC. In requesting a copy, please enclose a check in the amount of $3.25 (25 cents per page reproduction costs), payable to the Consent Decree Library.

John C. Cruden,

Chief, Environmental Enforcement Section, Environment and Natural Resources Division.

[FR Doc. 93–13198 Filed 6–3–93; 8:45 am]

BILLING CODE 4410–01–M

Notice of Lodging of Settlement Agreement Pursuant to the Comprehensive Environmental Response, Compensation, and Liability Act

In accordance with Departmental policy, 28 CFR § 50.7, notice is hereby given that on May 25, 1993, a settlement agreement in *In re: GEC Industries, Inc.*, Bankruptcy No. 89–44, was lodged with the United States Bankruptcy Court for the District of Delaware.

On October 6, 1989, the United States, on behalf of the U.S. Environmental Protection Agency, filed a proof of claim against GEC Industries, Inc., f/k/a Gates Engineering Co., Inc. ("GEC") for recovery of environmental response costs under the Comprehensive Environmental Response, Compensation and Liability Act ("CERCLA") at the Delaware Sand & Gravel Superfund Site in New Castle, Delaware. The United States alleged that the Debtor arranged for the disposal or treatment of hazardous substances at the Site, within the meaning of Section 107(a)(3) of CERCLA, 42 U.S.C. § 9607(a)(3), between 1973 and 1976. In the Settlement agreement, the Debtor has agreed to pay $50,000.

The Department of Justice will receive comments relating to the proposed settlement agreement for a period of thirty days from the date of publication of this notice. Comments should be addressed to the Acting Assistant Attorney General, Environment and Natural Resources Division, Department of Justice, Washington, DC 20530, and should refer to *In Re: GEC Industries, Inc.*, DOJ Ref. No. 90–11–2–411A. The proposed settlement agreement may be examined at the office of the United States Attorney, District of Delaware, suite 1100, Chemical Bank Plaza, 1201 Market Street, P.O. Box 2406, Wilmington, Delaware 19899. Copies of the settlement agreement may also be examined and obtained by mail at the Consent Decree Library, 1120 G Street, NW., 4th Floor, Washington, DC 20005

(202–624–0892). When requesting a copy of the settlement agreement by mail, please enclose a check in the amount of $1.25 (twenty-five cents per page reproduction costs) payable to the "Consent Decree Library."

Myles E. Flint,

Acting Assistant Attorney General, Environment and Natural Resources Division.

[FR Doc. 93–13199 Filed 6–3–93; 8:45 am]

BILLING CODE 4410–01–M

Lodging of Consent Decree

Notice is hereby given that a proposed Consent Decree in *United States* v. *Masco Corporation,* Civil Action No. 87–C–1352, was lodged on May 14, 1993 with the United States District Court for the Eastern District of Wisconsin. The proposed Consent Decree resolves certain claims of the United States under the Clean Air Act, 42 U.S.C. 7401 *et seq.*, relating to a surface coating facility in Milwaukee, Wisconsin. Under the Consent Decree, Masco will pay a civil penalty of $10,000, certifies that it has discontinued its coating operations emitting VOCs, and agrees not to resume coating operations without complying with the Clean Air Act and the Wisconsin State Implementation Plan.

The Department of Justice will receive comments relating to the proposed Consent Decree for 30 days following the publication of this Notice. Comments should be addressed to the Assistant Attorney General of the Environment and Natural Resources Division, Department of Justice, Washington, DC 20530, and should refer to *United States* v. *Masco Corporation,* D.J. Ref. No. 90–5–2–1–1141. The proposed Consent Decree may be examined at the Office of the United States Attorney for the Eastern District of Wisconsin, 330 Federal Building, 517 E. Wisconsin Ave., Milwaukee, Wisconsin 53202; the Region V Office of the United States Environmental Protection Agency, 77 West Jackson Street, Chicago, Illinois 60604; and at the Consent Decree Library, 1120 G Street, NW., 4th Floor, Washington, DC 20005 (202–624–0892). A copy of the proposed Consent Decree may be obtained in person or by mail from the Consent Decree Library, 1120 G Street, NW., 4th Floor, Washington, DC 20005. In requesting a copy, please enclose a check in the amount of $2.75 (25 cents per page for reproduction costs), payable to the Consent Decree Library.

John C. Cruden,

Chief, Environmental Enforcement Section, Environment and Natural Resources Division.

[FR Doc. 93–13201 Filed 6–3–93; 8:45 am]

BILLING CODE 4410–01–M

Notice of Lodging of Consent Decree

In accordance with the policy of the Department of Justice, 28 CFR § 50.7, notice is hereby given that a proposed Consent Decree in *United States* v. *MSA Manufacturing, Inc.*, No. 1.93–CV–457–MHS, was lodged with the United States District Court for the Northern District of Georgia, on March 1, 1993. This action was brought by the United States pursuant to Section 203(a)(3)(B) of the Clean Air Act, 42 U.S.C. § 7522(a)(3)(B) (amended by Public Law No. 101–549 of 1990).

Under the proposed Consent Decree, MSA Manufacturing, Inc., agrees to pay $28,500 to the United States to resolve the civil claims of the United States against MSA for the manufacture and sale of "test pipes" designed to defeat automobile emission control devices in violation of the Act. The proposed Decree permanently enjoins MSA from further violations of the Clean Air Act and requires MSA to issue a recall letter for the return or destruction of all "test pipes" sold in violation of the Act.

The Department of Justice will receive comments relating to the proposed Consent Decree for a period of 30 days from the date of this publication. Comments should be addressed to the Acting Assistant Attorney General of the Environment and Natural Resources Division, Department of Justice, 10th and Pennsylvania Ave., Washington, DC 20530. All comments should refer to *United States* v. *MSA Manufacturing, Inc.*, D.J. Ref. 90–5–2–1–1581.

The proposed Consent Decree may be examined at the office of the United States Attorney, Richard Russell Building, room 1800, 75 Spring Street, Atlanta, Georgia 30335; the Region IV Office of the Environmental Protection Agency, 345 Courtland St., NE., Atlanta, Georgia 30365; and at the Consent Decree Library, 1120 G Street, NW., 4th Floor, Washington, DC 20005, (202) 624–0892.

A copy of the proposed Consent Decree may be obtained in person or by mail from the Consent Decree Library, 1120 G Street, NW., 4th Floor, Washington, DC 20005. Any request for a copy of the proposed Consent Decree should be accompanied by a check in the amount of $2.50 for copying costs ($0.25 per page) payable to "Consent Decree Library".

John C. Cruden,

Chief, Environmental Enforcement Section, Environment and Natural Resources Division.

[FR Doc. 93–13200 Filed 6–3–93; 8:45 am]

BILLING CODE 4410–01–M

Lodging of Consent Decree Under the Comprehensive Environmental Response, Compensation, and Liability Act and the Resource Conservation and Recovery Act

In accordance with Department policy, 28 CFR 50.7, notice is hereby given that on May 24, 1993, a proposed Consent Decree in *United States* v. *Texaco, Inc.*, Civil Action CIV 93–2990 JSL(SH), was lodged with the United States District Court for the Central District of California. The Complaint was filed in this case for recovery of response costs and injunctive relief against Texaco, Inc., pursuant to sections 106 and 107 of the Comprehensive Environmental Response, Compensation and Liability Act of 1980, as amended ("CERCLA"), 42 U.S.C. 9606 and 9607, and section 7003 of the Solid Waste Disposal Act, as amended, 42 U.S.C. 6973 ("RCRA"). Response costs to be recovered under the Consent Decree are the future oversight costs of EPA. Injunctive relief provided by the Consent Decree involves the clean-up of contamination in the ground water at the Pacific Coast Pipeline Superfund Site pursuant to EPA's Remedial Action Superfund Record of Decision dated March 31, 1992, pertaining to the Pacific Coast Pipeline Superfund Site.

For thirty (30) days from the date of publication of this notice, the Department of Justice will receive written comments relating to the Consent Decree from persons who are not parties to the action. Comments should be addressed to the Acting Assistant Attorney General, Environment and Natural Resources Division, Department of Justice, Washington, D.C. 20530 and should refer to *United States* v. *Texaco, Inc.*, D. J. Ref. No. 90–11–2–840.

The proposed Consent Decree may be examined at the Region IX office of the U.S. Environmental Protection Agency, 75 Hawthorne Street, San Francisco, California 94105 and at the U.S. Attorney's office, 300 N. Los Angeles Street, Los Angeles, California 90012.

Copies of the Consent Decree also may be examined at the Consent Decree Library, 1120 G Street, NW., 4th Floor, Washington, DC 20005, telephone number (202) 634–0892. A copy of the

Consent Decree may be obtained in person or by mail from the Consent Decree Library. In requesting a copy, please tender a check in the amount of $6.00 (25 cents per page reproduction charge) payable to "Consent Decree Library."

Myles E. Flint,

Acting Assistant Attorney General, Environment and Natural Resources Division.

[FR Doc. 93–13202 Filed 6–3–93; 8:45 am]

BILLING CODE 4410–01–M

National Institute of Corrections

Advisory Board Meeting

Time and Date: 1 p.m., Monday, June 28, 1993.

Place: Raintree Plaza Hotel and Conference Center, 1900 Diagonal Highway, Longmont, Colorado.

Status: Open.

Matters To Be Considered: An update on the Intensive Correctional Leadership Training Program, progress reports on the Classification Tracking System, the Airborne Pathogens initiatives, the NIC/SAMHSA agreement, foreign technical assistance, NIC performance measures, and the NIC Annual Coorections Report.

Contact Person for More Information: Larry Solomon, Deputy Director, (202) 307–3106, ext. 155.

Larry Solomon,

Deputy Director.

[FR Doc. 93–13203 Filed 6–3–93; 8:45 am]

BILLING CODE 4410–36–M

DEPARTMENT OF LABOR

Office of the Secretary

Agency Recordkeeping/Reporting Requirements Under Review by the Office of Management and Budget (OMB)

BACKGROUND: The Department of Labor, in carrying out its responsibilities under the Paperwork Reduction Act (44 U.S.C. chapter 35), considers comments on the reporting/recordkeeping requirements that will affect the public.

LIST OF RECORDKEEPING/REPORTING REQUIREMENTS UNDER REVIEW: As necessary, the Department of Labor will publish a list of the Agency recordkeeping/reporting requirements under review by the Office of Management and Budget (OMB) since the last list was published. The list will have all entries grouped into new collections, revisions, extensions, or reinstatements. The Departmental Clearance Officer will, upon request, be able to advise members of the public of the nature of the particular submission they are interested in.

Each entry may contain the following information:

The Agency of the Department issuing this recordkeeping/reporting requirement.

The title of the recordkeeping/reporting requirement.

The OMB and/or Agency identification numbers, if applicable.

How often the recordkeeping/reporting requirement is needed.

Whether small businesses or organizations are affected.

An estimate of the total number of hours needed to comply with the recordkeeping/reporting requirements and the average hours per respondent.

The number of forms in the request for approval, if applicable.

An abstract describing the need for and uses of the information collection.

COMMENTS AND QUESTIONS: Copies of the recordkeeping/reporting requirements may be obtained by calling the Departmental Clearance Officer, Kenneth A. Mills ((202) 219–5095). Comments and questions about the items on this list should be directed to Mr. Mills, Office of Information Resources Management Policy, U.S. Department of Labor, 200 Constitution Avenue, NW., room N–1301, Washington, DC 20210. Comments should also be sent to the Office of Information and Regulatory Affairs, Attn: OMB Desk Officer for (BLS/DM/ESA/ETA/OLMS/MSHA/OSHA/PWBA/VETS), Office of Management and Budget, room 3001, Washington, DC 20503 ([202] 395–6880).

Any member of the public who wants to comment on recordkeeping/reporting requirements which have been submitted to OMB should advise Mr. Mills of this intent at the earliest possible date.

Extension

Mine Safety and Health Administration, Main Fan Maintenance Records, 1219–0012, Weekly, Businesses and other for profit—Small businesses or organizations, 345 respondents—1 minute per response—294 total burden hours.

Operators of underground metal and nonmetal mines are required to keep records of maintenance performed on main fans. The records assure compliance with the regulation that periodic maintenance be performed on main fans and may serve as a warning device for possible ventilation problems before they occur.

Extension

Mine Safety and Health Administration, Form 7000–1, Mine Accident, Injury and Illness Report, 1219–0007, On occasion, Businesses and other for profit—Small businesses or organizations.

Form No.	Respondents	Frequency	Average hours per response	Total hours
7000–1	31,332	1	30 minutes	15,666
Follow-up	16,725	1	1 minute	278
Total hours				15,944

Mine operators are required to submit Form 7000–1 to MSHA to report on accidents, injuries, and illnesses at their mines shortly after an accident or injury has occurred or a work-related illness has been identified. The use of the form provides for uniform information gathering.

Signed at Washington, DC, this 27th day of May 1993.

Kenneth A. Mills,

Departmental Clearance Officer.

[FR Doc. 93–13209 Filed 6–3–93; 8:45 am]

BILLING CODE 4510–43–P

Commission on the Future of Worker-Management Relations: Notice of Meeting

AGENCY: Office of the Secretary, Department of Labor.

ACTION: Notice of Partially Closed Meeting.

SUMMARY: The Commission on the Future of Worker-Management Relations was established in accordance with Federal Advisory Committee Act (FACA) Public Law 92–463. Pursuant to section 10 (a) of FACA, this is to announce that the second meeting of the Commission will be held at the time and place shown below:

TIME AND PLACE: The meeting will be held on Monday, June 21, 1993 from 10 a.m. to 4 p.m. in Conference Room N–3437 A–D in the Department of Labor, 200 Constitution Avenue, NW., Washington, DC.

AGENDA: The agenda for the meeting is as follows:

(a) Presentation by Department of Commerce representatives on the influence of technology in the workplace, and competitiveness studies.

(b) Additional information by Bureau of Labor Statistics representatives on the make-up and nature of the American workforce.

(c) Preliminary reports of the working papers on the suggested plans for the work of the Commission.

PUBLIC PARTICIPATION: The meeting will be open to the public from 10 a.m. to 12 noon and from 2 p.m. until 4 p.m. Seating will be available to the public on a first-come, first-serve basis. Handicapped individuals wishing to attend should contact the Commission to obtain appropriate accommodations. Individuals or organizations wishing to submit written statements should send 11 copies to Mrs. June M. Robinson, Designated Federal Official, Commission on the Future of Worker-Management Relations, U.S. Department of Labor, 200 Constitution Avenue, NW. Room C–2318, Washington, DC 20210.

CLOSED PORTION OF THE MEETING: From 12 noon until 2 p.m. the Commission will meet in closed session in order to discuss internal administrative matters, including personnel and personal issues. This closing of the meeting is authorized by section 10(d) of the Federal Advisory Committee Act and 5 U.S.C. Section 552b(c)(2) and (c)(6). The above indicated matters are protected from disclosure by exemptions 2 and 6, respectively, of Section 552b(c) of Title 5 U.S.C.

FOR FURTHER INFORMATION CONTACT:

Mrs. June M. Robinson, Designated Federal Official, Commission on the Future of Worker-Management Relations, U.S. Department of Labor, Room C–2318 Washington, DC 20210 (202) 219–9148.

Signed at Washington, DC, this 28th day of May 1993.

Robert B. Reich,

Secretary of Labor.

[FR Doc. 93–13210 Filed 6–3–93; 8:45 am]

BILLING CODE 4510–23–M

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.

New General Wage Determination Decisions

The numbers of the decisions added to the Government Printing Office document entitled "General Wage Determinations Issued Under the Davis-Bacon and Related Acts" are listed by Volume and State.

Volume I

Connecticut
CT930007 (June 4, 1993)
Delaware
DE930007 (June 4, 1993)
Florida
FL930054 (June 4, 1993)
Georgia
GA930041 (June 4, 1993)
GA930042 (June 4, 1993)
GA930043 (June 4, 1993)
GA930044 (June 4, 1993)
GA930045 (June 4, 1993)
GA930046 (June 4, 1993)
GA930047 (June 4, 1993)
GA930048 (June 4, 1993)
GA930049 (June 4, 1993)
GA930050 (June 4, 1993)
GA930051 (June 4, 1993)
GA930052 (June 4, 1993)
GA930053 (June 4, 1993)
GA930054 (June 4, 1993)
GA930055 (June 4, 1993)

GA930056 (June 4, 1993)
GA930057 (June 4, 1993)
GA930058 (June 4, 1993)
GA930059 (June 4, 1993)
GA930060 (June 4, 1993)
GA930061 (June 4, 1993)
GA930062 (June 4, 1993)
GA930063 (June 4, 1993)
GA930064 (June 4, 1993)
GA930065 (June 4, 1993)
GA930066 (June 4, 1993)
GA930067 (June 4, 1993)
GA930068 (June 4, 1993)
GA930069 (June 4, 1993)
GA930070 (June 4, 1993)
GA930071 (June 4, 1993)
GA930072 (June 4, 1993)
GA930073 (June 4, 1993)
GA930074 (June 4, 1993)
GA930075 (June 4, 1993)
GA930076 (June 4, 1993)
GA930077 (June 4, 1993)
GA930078 (June 4, 1993)
GA930079 (June 4, 1993)
Massachusetts
MA930011 (June 4, 1993)
Maryland
MD930038 (June 4, 1993)
Maine
ME930024 (June 4, 1993)
North Carolina
NC930034 (June 4, 1993)
New Jersey
NJ930008 (June 4, 1993)
New York
NY930030 (June 4, 1993)
Rhode Island
RI930005 (June 4, 1993)
South Carolina
SC930035 (June 4, 1993)

Volume III

Colorado
CO930015 (June 4, 1993)
CO930016 (June 4, 1993)

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 and State. Dates of publication in the **Federal Register** are in parentheses following the decisions being modified.

Volume I

Connecticut
CT930001 (February 19, 1993)
CT930003 (February 19, 1993)
CT930004 (February 19, 1993)
District of Col.
DC930001 (February 19, 1993)
Florida
FL930001 (February 19, 1993)
FL930015 (February 19, 1993)
FL930017 (February 19, 1993)
FL930045 (February 19, 1993)
Georgia
GA930003 (February 19, 1993)
GA930031 (February 19, 1993)
GA930039 (February 19, 1993)
GA930040 (February 19, 1993)
Kentucky
KY930001 (February 19, 1993)
KY930002 (February 19, 1993)
KY930003 (February 19, 1993)
KY930004 (February 19, 1993)
KY930006 (February 19, 1993)
KY930007 (February 19, 1993)
KY930029 (February 19, 1993)
KY930034 (February 19, 1993)
KY930035 (February 19, 1993)
Maryland
MD930001 (February 19, 1993)
MD930002 (February 19, 1993)
MD930016 (February 19, 1993)
MD930034 (February 19, 1993)
New York
NY930002 (February 19, 1993)
NY930003 (February 19, 1993)
NY930004 (February 19, 1993)
NY930007 (February 19, 1993)
NY930018 (February 19, 1993)
Pennsylvania
PA930013 (February 19, 1993)
Virginia
VA930020 (February 19, 1993)
VA930025 (February 19, 1993)
VA930052 (February 19, 1993)
VA930070 (February 19, 1993)
West Virginia
WV930002 (February 19, 1993)
WV930003 (February 19, 1993)
WV930006 (February 19, 1993)

Volume II

Arkansas
AR930001 (February 19, 1993)
AR930008 (February 19, 1993)
Iowa
IA930004 (February 19, 1993)
IA930005 (February 19, 1993)
IA930009 (February 19, 1993)
IA930010 (February 19, 1993)
IA930014 (February 19, 1993)
IA930016 (February 19, 1993)
Illinois
IL930001 (February 19, 1993)
IL930002 (February 19, 1993)
IL930004 (February 19, 1993)
IL930008 (February 19, 1993)
IL930009 (February 19, 1993)
IL930011 (February 19, 1993)
IL930012 (February 19, 1993)
IL930013 (February 19, 1993)
IL930014 (February 19, 1993)
IL930015 (February 19, 1993)
IL930016 (February 19, 1993)
IL930017 (February 19, 1993)
Indiana
IN930004 (February 19, 1993)
IN930006 (February 19, 1993)
Kansas
KS930003 (February 19, 1993)
KS930004 (February 19, 1993)
KS930005 (February 19, 1993)
KS930006 (February 19, 1993)
KS930008 (February 19, 1993)
KS930009 (February 19, 1993)
KS930012 (February 19, 1993)
KS930016 (February 19, 1993)
KS930018 (February 19, 1993)
KS930019 (February 19, 1993)
KS930020 (February 19, 1993)
KS930021 (February 19, 1993)
KS930022 (February 19, 1993)
Louisiana
LA930005 (February 19, 1993)
Missouri
MO930001 (February 19, 1993)
MO930002 (February 19, 1993)
MO930006 (February 19, 1993)
MO930010 (February 19, 1993)
MO930015 (February 19, 1993)
Minnesota
MN930007 (February 19, 1993)
MN930008 (February 19, 1993)
MN30012 (February 19, 1993)
New Mexico
NM930001 (February 19, 1993)
Ohio
OH930001 (February 19, 1993)
OH930002 (February 19, 1993)
OH930003 (February 19, 1993)
OH930012 (February 19, 1993)
OH930014 (February 19, 1993)
OH930029 (February 19, 1993)
OH930034 (February 19, 1993)
OH930035 (February 19, 1993)
OH930036 (February 19, 1993)
Texas
TX930010 (February 19, 1993)
TX930019 (February 19, 1993)

Volume III

Alaska
AK930001 (February 19, 1993)
Colorado
CO930001 (February 19, 1993)
CO930003 (February 19, 1993)
Idaho
ID930001 (February 19, 1993)
ID930002 (February 19, 1993)
ID930004 (February 19, 1993)
Oregon
OR930001 (February 19, 1993)
OR930004 (February 19, 1993)
South Dakota
SD930003 (February 19, 1993)
SD930005 (February 19, 1993)
Washington
WA930001 (February 19, 1993)
WA930002 (February 19, 1993)
WA930003 (February 19, 1993)
WA930006 (February 19, 1993)
WA930007 (February 19, 1993)
WA930008 (February 19, 1993)
WA930010 (February 19, 1993)

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 State covered by each volume. Throughout the remainder of the year, regular weekly updates will be distributed to subscribers.

Signed at Washington, DC, this 28th day of May 1993.

Alan L. Moss,

Director, Division of Wage Determinations.

[FR Doc. 93–13142 Filed 6–3–93; 8:45 am]

BILLING CODE 4510–27–M

NATIONAL AERONAUTICS AND SPACE ADMINISTRATION

[Notice 93–050]

National Facilities Study: Space Operations and Space Research and Development Facilities

AGENCY: National Aeronautics and Space Administration.

ACTION: Notice of meeting.

BACKGROUND: The National Aeronautics and Space Administration (NASA), the Department of Defense (DOD), Commerce (DOC), Energy (DOE), and Transportation (DOT), and the National Science Foundation are conducting a nation-wide study of U.S. aerospace facilities and developing a national plan for future aerospace facilities to meet national needs. The study, which is led by a Task Force on National Facilities, is organized into three Task Groups: Aeronautics, Space Operations, and Space Research and Development (R&D).

ANNOUNCEMENT: The above U.S. Government Agencies announce an invitation to all interested U.S. aerospace companies to attend a workshop and present their assessment of current capabilities and views of the future need for Space R&D and space operations facilities as well as make recommendations relative to industry view of government facilities of these types. Facilities may include those which are not buildings but are operationally necessary (e.g., ships, ARIA aircraft, etc.). In addition, companies are invited to provide supplementary material with necessary technical detail or their strategic views more completely than will be possible in limited time anticipated for each presentation. Companies wishing to provide inputs, but can not be present at the June meeting, are invited to provide written material only.

REPRESENTATIVE INFORMATION REQUESTED: The following are a representative set of questions that describe the scope of interests of the Space R&D and Space Operations Task Groups. Each participating company should respond in their presentation to the following questions of most interest to their organization and for which they are qualified to address:

(1) What is your organization's interest in the National Facilities Study?

(2) What do you see as the future Space R&D/operations requirements for the nation?

(3) What is your organization's use of Space R&D/operations facilities?

(4) How does your organization acquire the use of Space R&D/operations facilities?

(5) What has been your experience in using government owned Space R&D/operations facilities? What are your organization's current, planned or desired utilization of government facilities to accomplish your long term objectives?

(6) How could the government and industry make better use of existing and future Space R&D/operations facilities?

(7) What policies and incentives would make the joint use of facilities more attractive?

(8) What are the most serious problems with the nation's Space R&D/operations facility infrastructure?

(9) What do you think are the top-level considerations in establishing a Space R&D/operations facilities investment strategy?

(10) What do you think are the top-level considerations in establishing an advocacy strategy to implement a national Space R&D/operations facilities plan?

(11) What are your organization's present and future needs for Space R&D/operations facilities, especially as it pertains to international commercial competitiveness?

(12) Do your facilities provide unique support to commercial space activities? Are they an enabling capability to the commercial space sector?

(13) How would you define "world-class" facilities? Do you have any? If so, explain.

(14) What is the importance of having world-class facilities?

(15) What are your current and/or planned utilization of international facilities to accomplish the programmatic objectives of your organization, including a brief description of the international facility involved.

(16) What are your comments relative to joint funding between government and industry as well as your view of current and proposed shared usage policies?

(17) What new or modernized facilities (outside of your respective organization) do you see as required for the future?

(18) Are there any facilities that you would recommend becoming "nationalized" for by industry? Conversely, are there any facilities that you would recommend be privatized? What risks/issues do you see with either approach?

(19) In addition to the question above, what other issues should the study examine?

(20) Who are your points of contact for follow-up requests for information and/or meetings for this study?

DATES: June 23, 1993, 8:30 a.m. to 5:30 p.m.; June 24, 1993, 8:30 a.m. to 5:30 p.m.; and June 25, 1993, 8:30 a.m. to 5:30 p.m.

ADDRESSES: National Aeronautics and Space Administration, Operations and Checkout Building, Mission Briefing Room, Kennedy Space Center, Florida 32899.

FOR FURTHER INFORMATION CONTACT: Ms. Nancy Bray, SI–PEI–1, National Aeronautics and Space Administration, Kennedy Space Center, Florida 32899, 407/867–7933, (FAX 407/867–7261).

SUPPLEMENTARY INFORMATION: This meeting is for information-gathering purposes. The Space R&D and Operations Task Groups are made up of Government employees only. Accordingly, meetings of these task groups are not subject to the Federal Advisory Committee Act, and attendance is by invitation only. Each organization will be provided a set block of time to make their individual presentation to the government-only Space R&D and Space Operations Task Groups. Interest in participating must be identified to the government point of contact not later than June 11, 1993.

J.R. Daily,

Acting Deputy Administrator.

[FR Doc. 93–13295 Filed 6–2–93; 11:05 am]

BILLING CODE 7510–01–M

National Institute for Literacy

Agency Information Collection Activities Under OMB Review

AGENCY: National Institute for Literacy (NIFL).

ACTION: Notice.

SUMMARY: In compliance with the Paperwork Reduction Act (44 U.S.C. 3501 et seq.), this notice announces that an Information Collection Request (ICR) has been forwarded to the Office of Management and Budget (OMB) for review and comment. The ICR describes the nature of the information collection and its expected cost and burden.

DATES: Comments must be submitted on or before June 20, 1993. For further information, or to obtain a copy of this ICR, contact Victor Westbrook at NIFL, (202) 632–1500.

SUPPLEMENTARY INFORMATION:

National Institute for Literacy

Title: Application for Award for Establishment of the National Center for Adult Literacy and Learning Disabilities. This is a new request for collection.

Abstract: The National Literacy Act established the National Institute for Literacy and requires that the Institute conduct basic and applied research and demonstrations on literacy; collect and disseminate information to Federal, State and local entities, with respect to literacy; and improve and expand the system for delivery of literacy services. This form will be used by public and private non-profit institutions, organizations, agencies, and consortia of such institutions, organizations and agencies, and individuals to apply for funding to establish a National Center for Adult Literacy and Learning Disabilities. Working collaboratively with the Institute the Center is expected to assure that awareness of learning disabilities becomes an integral part of policy and program planning for adult literacy efforts. Evaluations to determine successful applications will be made by a panel of experts using the published criteria. The Institute will use this information to make a cooperative agreement award for a period up to 5-year.

Burden Statement: The burden for this collection of information is estimated to average 120 hours per response annually. This estimate includes the time needed to review instructions, complete the form, and review the collection of information.

Respondents: Public and private, non-profit institutions, agencies, organizations, consortia or individuals involved in literacy.

Estimated Number of Respondents: 30.

Estimated Number of Responses per Respondent: 1.

Estimated Total Annual Burden on Respondents: 3,600 hours.

Frequency of Collection: On occasion.

Send comments regarding the burden estimate, or any other aspect of the information collection, including suggestions for reducing the burden to: Victor A. Westbrook, National Institute for Literacy, 800 Connecticut Ave., NW., Suite 200, Washington, DC 20006, and Dan Chenok, Office of Management and Budget, Office of Information and Regulatory Affairs, 725 17th Street, NW., Washington, DC 20503.

Dated: June 1992.

Lilian Dorka,

Acting Interim Director, National Institute for Literacy.

[FR Doc. 92–13273 Filed 6–3–93; 8:45 am]

BILLING CODE 6055–01–M

NUCLEAR REGULATORY COMMISSION

[Docket No. 50–213]

Connecticut Yankee Atomic Power Co.; Environmental Assessment and Finding of No Significant Impact

The U.S. Nuclear Regulatory Commission (the Commission) is considering issuance of an amendment to Facility Operating License No. DPR–61, issued to Connecticut Yankee Atomic Power Company (CYAPCO, the licensee), for operation of the Haddam Neck Plant, located in Middlesex County, Connecticut.

Environmental Assessment

Identification of the Proposed Action

The proposed amendment will amend the Technical Specifications (TS) to reflect modifications to upgrade the feedwater control system from an analog system to a digital system. The proposed action is in accordance with the licensee's amendment request dated January 29, 1993, with supplemental information provided by letter dated April 30, 1993.

The Need for the Proposed Action

During the refueling for Cycle 17 and 18, CYAPCO will upgrade the feedwater control system to modernize the steam generator feedwater control system. This modification continues the reactor protection system (RPS) modernization effort by replacing the existing obsolete Hagan feedwater control system instrumentation and portions of the original RPS circuitry with a state-of-the-art digital upgrade. These modifications will assure the appropriate isolation of signals from the safety-related systems to the nonsafety-related systems for the steam flow, feedwater flow, and steam generator level subsystems. This TS is needed to reflect the added redundancy to the reactor trip system instrumentation and changes to the reactor trip system instrumentation surveillance depicts the increase in the total number of channels and channels to actuate, as well as the more conservative setpoint from the narrow range instrument which now employs a two out of three coincidence feature rather than one out of two.

Environmental Impacts of the Proposed Action

The Commission has completed its evaluation of the proposed revision to the TS. The TS changes to the reactor trip instrumentation requirements reflect added redundancy for steam generator flow (4 to 8 transmitters), steam generator narrow-range level (4 to 12 transmitters), and the steam flow/feed flow mismatch reactor trip. Because of the change to a state-of-the-art system, the frequency of the reactor trip system instrumentation surveillance requirements for the high steam flow trip and the steam flow/feed flow mismatch has been increased from once every refueling to once every 6 weeks to reflect the on-line testing capability. In addition, the engineered safety features actuation system instrumentation requirements and the feedwater isolation requirements have been changed to reflect the modification to use the steam generator narrow-range level in place of the steam generator wide-range level instrumentation. The new trip setpoint for steam generator level is more conservative than the current TS in that it provides additional overfill protection against the excess feedwater event by tripping at a lower level. Therefore, the TS changes reflect that a more conservative setpoint from the narrow-range level instrument has been selected, an increase in the total number of channels and the channels to actuate, and an increase in the minimum number of channels operable.

The proposed change will also enhance conformance with the single-failure criterion by:

(a) Increasing channel and train independence and redundancy,

(b) Providing a design and test scheme to eliminate identified nondetectable failures,

(c) Reducing potential cascaded and design-basis event failures, and

(d) Eliminating certain common mode failures through the use of qualified Class 1E components.

The staff has reviewed these changes to the TS as a result of the feedwater control system modifications and determined that they reflect added redundancy in various instrumentation, increase the surveillance testing capability, provide more restrictive surveillance and operability requirements, provide more conservative setpoints and do not impact the results of any of the transient accident design analyses. These TS changes will not increase the probability or consequences of accidents, no changes are being made in the types of any effluents that may be released

offsite, and there is no significant increase in the allowable individual or cumulative occupational radiation exposure. Therefore, the Commission concludes that there are no significant radiological environmental impacts associated with the proposed TS amendment.

With regard to potential nonradiological impacts, the proposed amendment does involve features located entirely within the restricted area as defined in 10 CFR part 20. It does not affect nonradiological plant effluents and has no other environmental impact. Therefore, the Commission concludes that there are no significant nonradiological environmental impacts associated with the proposed amendment.

Alternatives to the Proposed Action

Since the Commission has concluded there is no measurable environmental impact associated with the proposed amendment, any alternatives with equal or greater environmental impact need not be evaluated. The principal alternative to the amendment would be to deny the amendment request. Such action would not enhance the protection of the environment.

Alternative Use of Resources

This action does not involve the use of resources not considered previously in the Final Environmental Statement for Haddam Neck.

Agencies and Persons Consulted

The NRC staff consulted with the State of Connecticut regarding the environmental impact of the proposed action.

Finding of No Significant Impact

Based upon the environmental assessment, the Commission concludes that the proposed action will not have a significant effect on the quality of the human environment. Accordingly, the Commission has determined not to prepare an environmental impact statement for the proposed amendment.

For further details with respect to this proposed action, see the licensee's letters dated January 29, 1993 and April 30, 1993. These letters are available for public inspection at the Commission's Public Document Room, the Gelman Building, 2120 L Street, NW., Washington, DC 20555, and at the local public document room located at the Russell Library, 123 Broad Street, Middletown, Connecticut 06547.

Dated at Rockville, Maryland, this 27th day of May 1993.

For the Nuclear Regulatory Commission.

John F. Stolz,

Director, Division of Reactor Projects—I/II, Office of Nuclear Reactor Regulation.

[FR Doc. 93–13170 Filed 6–3–93; 8:45 am]

BILLING CODE 7590–01–M

GE Nuclear Energy; Receipt of Application for Design Certification

Notice is hereby given that the Nuclear Regulatory Commission (the Commission) has received an application from GE Nuclear Energy (GE) dated August 27, 1992, filed pursuant to section 103 of the Atomic Energy Act and 10 CFR part 52, for design certification of the Simplified Boiling Water Reactor (SBWR) Standard Plant Design. On February 25 and 28 and May 7, 1993, GE provided additional information in response to the NRC staff's identification of missing or incomplete information during the staff's acceptance review of the submittal sent August 27, 1993. With the receipt of additional information, the staff considers that the application sufficiently complete to be accepted formally as a docketed petition for design certification. A notice relating to the rulemaking pursuant to 10 CFR 52.51 for design certification, including provisions for participation of the public and other parties, will be published in the future.

The SBWR is a 670 MWe boiling water reactor in which passive safety systems are used for the ultimate safety protection of the plant. All of the safety systems are designed to be passive, where natural forces, such as gravity, natural convection, and stored energy (in the form of compressed gas or batteries), are used as the motive forces of these systems. The SBWR has a number of unique features that distinguish it from the current generation of light-water reactors and the evolutionary light-water reactors. The SBWR application includes the entire power generation complex, except those elements and features considered to be site specific, and is not a modular design in which major components are shared.

A copy of the application and transmittals of additional information are available for public inspection at the Commission's Public Document Room, the Gelman Building, 2120 L Street, NW., Washington, DC. Previous correspondence on this application is filed under Project Number 681. The docket number established for this application is 52–004.

Dated at Rockville, Maryland, this 27th day of May 1993.

For the Nuclear Regulatory Commission.

Dennis M. Crutchfield,

Associate Director for Advanced Reactors and License Renewal, Office of Nuclear Reactor Regulation.

[FR Doc. 93–13169 Filed 6–3–93; 8:45 am]

BILLING CODE 7590–01–M

[Docket No. 50–245]

Exemption

In the Matter of Northeast Nuclear Energy Company (Millstone Unit 1)

I

The Northeast Nuclear Energy Company (NNECO, the licensee) is the holder of Facility Operating License No. DPR–21 which authorizes operation of Millstone Nuclear Power Station, Unit 1. The license provides, among other things, that Millstone Unit 1 is subject to all rules, regulations, and Orders of the Commission now or hereafter in effect.

The Plant is a boiling water reactor at the licensee's site located in New London County, Connecticut.

II

One of the conditions of all operating licenses for water-cooled power reactors, as specified in 10 CFR 50.54(o), is that primary reactor containments shall meet the containment leakage test requirements set forth in 10 CFR part 50, appendix J.

Title 10, CFR part 50, appendix J, section III.C requires containment isolation valves to undergo local leak rate (Type C) testing. The purpose of the testing, and any subsequent repairs, is to assure that leakage through these valves will not result in an unacceptable release of containment atmosphere during, or following, a design basis accident. Appendix J section III.C.1 states, in part,

> Type C tests shall be performed by local pressurization. The pressure shall be applied in the same direction as that when the val[v]e would be required to perform its safety function, unless it can be determined that the results from the tests for a pressure applied in a different direction will provide equivalent or more conservative results.

By letter dated June 5, 1991, the NRC staff granted an exemption from the requirements of 10 CFR part 50, appendix J, Paragraph III.C.1 for certain penetrations at Millstone Unit 1. Specifically, the exemption granted exemptions for Penetrations X–25, X–26, X–202E and X–205. In a letter dated April 15, 1993, NNECO stated that one of the penetrations was not correctly identified in NNECO's request dated April 29, 1988, and in the exemption

which was issued on June 5, 1991. NNECO stated that Penetration X–202E should have been X–202D, and requested that the exemption be corrected. The justification for the exemption granted for penetration X–202E in the June 5, 1991, letter applies to penetration X202D. Penetration X–202E is for a vacuum breaker (torus to drywell) and does not require 10 CFR part 50, appendix J testing. The proposed action would correct the administrative error.

III

Accordingly, the Commission has determined that, pursuant to 10 CFR 50.12(a), the requested exemption amendment is authorized by law, will not present an undue risk to the public health and safety, and is consistent with the common defense and security. Further, the Committee finds that special circumstances are present in that application of the regulation in these particular circumstances would not serve the underlying purpose of the rule and is not necessary to achieve the underlying purpose of the rule. The exemption amendment would correct an administrative error.

The Commission hereby grants an exemption amendment to the exemption granted June 5, 1991, and authorizes that Penetration X–202E be correctly identified as X–202D. The exemption amendment is subject to modification by rule, regulation or order of the Commission.

Pursuant to 10 CFR 51.32, the Commission has determined that the issuance of the exemption amendment will have no significant impact on the quality of the human environment (58 FR 29642).

This exemption amendment is effective upon issuance.

For the Nuclear Regulatory Commission.

Dated at Rockville, Maryland, this 28th day of May 1993.

Steven A. Varga,

Director, Division of Reactor Projects—I/II, Office of Nuclear Reactor Regulation.

[FR Doc. 93–13171 Filed 6–3–93; 8:45 am]

BILLING CODE 7590–01–M

RAILROAD RETIREMENT BOARD

Agency Forms Submitted for OMB Review

SUMMARY: In accordance with the Paperwork Reduction Act of 1980 (44 U.S.C. chapter 35), the Railroad Retirement Board has submitted the following proposal(s) for the collection of information to the Office of Management and Budget for review and approval.

SUMMARY OF PROPOSAL(S):

(1) *Collection title:* Request for Medicare Payment.

(2) *Form(s) submitted:* G–740B, G–740S, HCFA–1500.

(3) *OMB Number:* 3220–0131.

(4) *Expiration date of current OMB clearance:* Three years from date of OMB approval.

(5) *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.

(6) *Frequency of response:* On occasion.

(7) *Respondents:* Individuals or households, Businesses or other for-profit.

(8) *Estimated annual number of respondents:* See justification (Item 13).

(9) *Total annual responses:* 1.

(10) *Average time per response:* See justification (Item 13).

(11) *Total annual reporting hours:* 1.

(12) *Collection description:* The Railroad Retirement Board (RRB) administers the Medicare program for persons covered by the Railroad Retirement system. The collection will obtain the information needed by the Travelers Insurance Company, the RRB's carrier, to pay claims for services and supplies covered under Part B of the program.

ADDITIONAL INFORMATION OR COMMENTS: Copies of the form and supporting documents can be obtained from Dennis Eagan, the agency clearance officer (312–751–4693). Comments regarding the information collection should be addressed to Ronald J. Hodapp, Railroad Retirement Board, 844 North Rush Street, Chicago, Illinois 60611–2092 and the OMB reviewer, Laura Oliven (202–395–7316), Office of Management and Budget, room 3002, New Executive Office Building, Washington, DC 20503.

Dennis Eagan,

Clearance Officer.

[FR Doc. 93–13204 Filed 6–3–93; 8:45 am]

BILLING CODE 7905–01–M

SECURITIES AND EXCHANGE COMMISSION

[Release No. 35–25819]

Filings Under the Public Utility Holding Company Act of 1935 ("Act")

May 28, 1993.

Notice is hereby given that the following filing(s) has/have been made with the Commission pursuant to provisions of the Act and rules promulgated thereunder. All interested persons are referred to the application(s) and/or declaration(s) for complete statements of the proposed transaction(s) summarized below. The application(s) and/or declaration(s) and any amendments thereto is/are available for public inspection through the Commission's Office of Public Reference.

Interested persons wishing to comment or request a hearing on the application(s) and/or declaration(s) should submit their views in writing by June 23, 1993 to the Secretary, Securities and Exchange Commission, Washington, DC 20549, and serve a copy on the relevant applicant(s) and/or declarant(s) at the address(es) specified below. Proof of service (by affidavit or, in case of an attorney at law, by certificate) should be filed with the request. Any request for hearing shall identify specifically the issues of fact or law that are disputed. A person who so requests will be notified of any hearing, if ordered, and will receive a copy of any notice or order issued in the matter. After said date, the application(s) and/or declaration(s), as filed or as amended, may be granted and/or permitted to become effective.

CNG Transmission Corp., et al. (70–7641)

CNG Transmission Corporation ("Transmission"), 445 West Main Street, Clarksburg, West Virginia 26301, a gas pipeline subsidiary company of Consolidated Natural Gas Company, a registered public utility holding company, and CNG Iroquois, Inc. ("Iroquois"), 445 West Main Street, Clarksburg, West Virginia 26301, a subsidiary company of Transmission, have filed a post-effective amendment to their application-declaration filed under sections 6(a), 7, 9(a), 10, 12(b) and 12(c) of the Act and Rules 16, 43, 44 and 45 promulgated thereunder.

By orders dated January 9, 1991 (HCAR No. 25239), February 28, 1991 (HCAR No. 26263) and May 7, 1991 (HCAR No. 25308) ("Orders"), the Commission authorized, through June 30, 1993, several financial transactions related to the acquisition by Iroquois of an aggregate 9.4% general partnership interest in Iroquois Gas Transmission System, L.P. ("Partnership"). The Partnership was formed to construct and own an interstate natural gas pipeline between Canada and Long Island.

The Orders also authorized (i) Iroquois to contribute to the Partnership up to an aggregate amount of $35 million in equity; (ii) Transmission to fund the investment of Iroquois in the Partnership through the issue and sale

to Transmission of Iroquois common stock ("Common Stock"), $10,000 par value, which Iroquois might purchase from Transmission, hold and resell to Transmission, and-or through open account advances to Iroquois, through June 30, 1993, in such amounts that the aggregate equity contributions to Iroquois by Transmission never exceeds $35 million at any one time; (iii) the provision of guarantees and indemnities by Iroquois on behalf of the Partnership in amounts not to exceed $35 million at any one time; and (iv) the provision of guarantees and indemnities by Transmission on behalf of Iroquois not to $35 million at any one time.

The Partnership completed the construction of its natural gas pipeline system in 1992. The Partnership also has financed that construction for the long-term under a credit facility agreement ("Credit Facility") with several institutional lenders. The Partnership now contemplates various future incremental expansions of its natural gas pipeline system. Because it is a 9.4% partner in the Partnership, Iroquois might be required to fund a pro rata portion of such incremental expansions.

Iroquois proposes to provide such funds to the Partnership, through June 30, 1996, up to an aggregate of $20 million in equity. Iroquois also proposes to obtain from Transmission, from time to time through June 30, 1996, up to an aggregate outstanding amount of $20 million through (i) the sale at par value of Iroquois Common Stock, $10,000 par value per share, and-or (ii) open account advances. The open account advances would be under a letter agreement between Iroquois and Transmission and would be payable on demand at any time without premium or penalty and would bear interest, payable monthly, equal to the effective cost of short-term borrowings to Consolidated. If no such borrowings are outstanding, the interest rate would be predicated on the Federal Funds' effective rate of interest as quoted daily by the Federal Reserve Bank of New York.

Iroquois also requests authorization to purchase from Transmission from time to time its shares of Common Stock, hold such shares, and re-issue such shares to Transmission. In the event that Iroquois re-issues such shares, it will do so by June 30, 1996.

Iroquois could also be required to indemnify from time to time third parties as a partner in the Partnership or on behalf of the Partnership and-or to guarantee the performance of Partnership obligations. Further, Transmission could from time to time also be required to indemnify third parties on behalf of Iroquois and to guarantee performance of its obligations. Iroquois and Transmission each propose that its authority to guarantee or indemnify third parties on behalf of Iroquois or the Partnership be extended through June 30, 1996.

In connection with the Credit Facility, the Partnership is required to establish and maintain a debt service reserve account ("Debt Service Account") for interest and required payments of principal on certain outstanding debt of the Partnership. The management committee of the Partnership ("Management Committee") has recommended that the cash from the Debt Service Account be distributed ratably to the partners in the Partnership, which includes Iroquois. The share of Iroquois of the distribution is $2,632,000. Before the distribution is made, the Credit Facility requires that a letter of credit ("Letter of Credit") be obtained to replace the actual cash on deposit in the Debt Service Account, which Letter of Credit would be used if the need for payment from the Debt Service Account arises.

The Management Committee has negotiated with the Bank of Montreal ("Bank") to provide the Letter of Credit. Consistent with the requirements of the Credit Facility, the Bank requires each partner to execute a reimbursement agreement ("Agreement") and related support agreements under which each partner agrees to reimburse its share of the distribution to the Bank if the Bank is required to pay on the Letter of Credit. The bank also requires each parent of a partner to guarantee the reimbursement obligation of its subsidiary partner.

The Partnership and the Bank have tentatively agreed that the Partnership will pay the Bank an upfront fee of $75,000 and an annual administration fee of $25,000 while the Letter of Credit is outstanding. The Letter of Credit provides that the Partnership will pay the Bank a commission based on a certain percentage per annum of the face amount of the Letter of Credit. The percentage ranges from 0.30% to 2.50% and is dependent on the weighted average of the credit ratings of the individual partners. The Letter of Credit has an initial term of one year but could be extended for an additional period of one or more years. However, the Letter of Credit will not be renewed beyond the obligation of the Partnership pursuant to the Credit Facility to maintain a Debt Service Account.

In the event the Bank is required to pay on the Letter of Credit, the obligation of Iroquois to reimburse the Bank will accrue interest, if Iroquois fails to discharge its reimbursement obligation by 3 p.m. on the day of the drawing, at a rate ("Base Rate") of either (i) the current prime rate established by the Bank or (ii) ½ of one percent per annum plus the Federal Funds Rate—whichever is the highest. The interest rate is increased to the Base Rate plus 2% if the reimbursement obligation is not paid within six days after the Bank is required to pay on the Letter of Credit. The initial amount of the Letter of Credit will not include the share of Iroquois therein. After Iroquois receives the required authorization under the Act to transact the above arrangement, the Arrangement provides that the Letter of Credit will be exchanged and substituted for another Letter of Credit that reflects the share therein of Iroquois.

Iroquois requests the Commission to authorize it to obtain, from time to time, letters of credit from various institutional lenders ("LOC Bank") and-or enter into reimbursement agreements under which Iroquois would reimburse the LOC Bank in the event the LOC Bank is required to pay on the letter of credit. Further, Transmission requests the SEC to authorize it to obtain, from time to time, letters of credit and to enter into related reimbursement agreements if Transmission is required to support the letter of credit obligations of Iroquois. The letters of credit, reimbursement agreements, indemnities and guarantees entered into by Iroquois and by Transmission from the date of the supplemental order issued in this post-effective matter until June 30, 1996 will not exceed at any one time $20 million. The maximum interest to be paid on the letters of credit shall not exceed five percent per annum plus the currently effective Federal Funds rate. The maximum term of the letters of credit, including periods of renewal, shall not exceed ten years.

Entergy Corporation, et al. (70–8105)

Entergy Corporation ("Entergy"), 225 Baronne Street, New Orleans, Louisiana 70112, a registered holding company, and Entergy Enterprises, Inc. ("Enterprises"), Three Financial Centre, 900 South Shackelford Road, suite 210, Little Rock, Arkansas 72211, its nonutility subsidiary company, have filed with this Commission an application-declaration under sections 6(a), 7, 9(a), 10 and 13(b) of the Act and rules 87, 90 and 91 thereunder.

Pursuant to Commission orders dated January 11, 1983 (HCAR No. 22818), January 13, 1984 (HCAR No. 23200), January 15, 1985 (HCAR No. 23569), July 25, 1991 (HCAR No. 25353), July 13, 1992 (HCAR No. 25580) and

September 3, 1992 (HCAR No. 25617) ("Orders"), Enterprises (formerly Electec, Inc.) was organized and has been engaged in the analysis and development of various investment opportunities for the Entergy system and the marketing of management, operating, technical and training expertise developed by Entergy system companies to nonaffiliates.[1]

Enterprises is also authorized to render consulting services to certain affiliated Argentine electric utility companies. The authorization requested herein for Enterprises' ongoing consulting and investment development activities is intended to supersede the authorization previously granted in the Orders.

In an effort more clearly to separate Entergy's domestic retail utility businesses and its other businesses, Entergy proposes to make Enterprises the vehicle for managing and, in certain cases, holding, Entergy's interests in exempt and nonutility businesses. As part of this restructuring, Entergy has entered into an agreement with three of its four retail regulators, the City of New Orleans, the Arkansas Public Service Commission and the Mississippi Public Service Commission[2] whereby Entergy agrees, among other things, to the creation and maintenance of a strict division between its regulated domestic retail utility business and its other businesses ("Settlement Agreement").

Enterprises will be initially staffed with approximately 29 employees. Except as provided below, Enterprises would not generally use the personnel and physical facilities of those Entergy system companies primarily engaged, directly or indirectly, in the retail electric utility business in the United States, or the sale of electric energy at wholesale to associates, or the provision of goods and services thereto, including the System Operating Companies, Services, System Energy, EOI and SFI ("Retail Electric Companies").

Enterprises proposes to conduct preliminary development activities with regard to potential acquisitions of interests in businesses which are (1) businesses exempt from regulation under the Act, (2) non-utility businesses which may be retained by registered holding companies under the Act, (3) domestic wholesale electric utility businesses carried out with nonaffiliated utilities, or (4) foreign utility businesses. Subject to any requisite Commission approval, and to the limitations provided below, Entergy proposes to acquire directly, or indirectly through Enterprises or other intermediate companies, interests in such businesses. Such businesses would include, but not be limited to, (1) investments in "eligible facilities" within the meaning of section 32(a) of the Act, (2) investments in "foreign utility companies" within the meaning of section 33 of the Act, (3) investments in facilities or technologies related to energy efficiency, (4) investments in the development of alternative energy sources such as synthetic fuels and solar energy technologies, (5) investments in non-exempt domestic wholesale generating and transmission facilities, (6) investments in non-exempt foreign generating, transmission and distribution facilities, (7) investments in "qualifying facilities" under the Public Utility Regulatory Policies Act of 1978, as amended, and (8) investments in other exempt or nonutility businesses.

Investments in exempt or nonutility businesses would be made through (1) direct ownership of facilities, (2) acquisitions of common stock or other securities of project entities, (3) participation, whether directly or indirectly through special purpose entities, in general or limited partnerships, joint ventures or project financings, and/or (4) participation in other financing arrangements.

Enterprises' preliminary development activities relating to such possible investments may include, but not be limited to, investigating sites, research, preliminary engineering and licensing activities, acquiring options and rights, contract drafting and negotiation, legal, accounting and financial analysis, preparing and submitting bids and proposals, and other necessary activities to identify and analyze investment opportunities.

Except with respect to businesses whose acquisition is not jurisdictional under provisions of the Act now or hereafter in effect, including by virtue of sections 32 and 33 of the Act and/or rules promulgated thereunder, Entergy and Enterprises will not, without further Commission authorization, acquire, directly or indirectly, any securities or utility assets or any other interest in any business, including partnership and joint venture interests, or other participation rights, or invest in any entity formed to develop or own any of the above businesses. Similarly, the financing of any such acquisitions would, to the extent jurisdictional, be subject to further Commission authorization.

In conjunction with its possible investments in exempt and nonutility businesses, Enterprises proposes to continue to render consulting services to nonassociate companies. Consulting activities may include the provision of (1) management expertise, such as strategic planning, (2) technical expertise, such as design engineering, (3) operating expertise, particularly relating to electric generation, transmission and distribution facilities, (4) environmental expertise, such as licensing and compliance, (5) training expertise, (6) technical and procedural resources, such as are embedded in computer systems and programs, (7) fuel procurement and handling expertise, (8) power brokering expertise and, (9) other expertise necessary for specific projects. Such consulting services would be sold to nonassociates of Entergy at market prices. To the extent Enterprises renders energy management or demand side management consulting services, revenues derived from such services will be subject to the 50% revenue restriction of the Commission's order dated December 28, 1992 (HCAR No. 25718).

Enterprises will also be responsible for marketing the expertise of EPI gained through its bulk power business. This expertise would be sold to nonassociates as consulting services. Retail Electric Companies will obtain services from Enterprises only through competitive bidding or as otherwise approved by an appropriate state regulatory commission, subject to requisite Commission approval under the Act.

Enterprises anticipates that it will also provide certain management and support services to present and future associate companies of the Entergy system which would not be considered Retail Electric Companies based on their segregation from Entergy's domestic retail utility business. Such services would include corporate and project development and planning, portfolio

[1] The Entergy system consists of Entergy and (1) four retail electric public-utility subsidiary companies, Arkansas Power & Light Company, Louisiana Power & Light Company, Mississippi Power & Light Company and New Orleans Public Service, Inc. (collectively, "System Operating Companies"), (2) a wholesale generating company that sells power to the System Operating Companies, System Energy Resources, Inc. ("System Energy"), (3) a wholesale generating company that sells power to nonassociates and associates, Entergy Power, Inc. ("EPI"), (4) a service company subsidiary, Entergy Services, Inc. ("Services"), (5) a nuclear management service company, Entergy Operations, Inc. ("EOI"), (6) Enterprises, (7) a fuel supply company, System Fuels, Inc. ("SFI"), (8) an energy management services company, Entergy Systems and Service, Inc., (9) two companies formed to own Entergy's interests in certain Argentine utility companies, Entergy S.A. and Entergy Argentina S.A., and (10) two companies formed to own Entergy's interests in "eligible facilities" within the meaning of section 32(a) of the Act, Entergy Power Development Corporation and Entergy Richmond Power Corporation.

[2] The Louisiana Public Service Commission did not subscribe to the agreement.

management, administrative services, accounting and internal auditing. Enterprises proposes to use a project based accounting system to account for and allocate the costs of providing these services. Enterprises shall fully allocate and charge such associate companies for the direct and indirect costs of its management services.

During the initial start-up period of approximately four to six months, Services will perform certain management services for Enterprises and its associates which are not Retail Electric Companies that, in the long term, will be performed by Enterprises' personnel. However, the applicants state that there are certain activities which, by virtue of common ownership, are more cost effectively performed by Services to meet the mutual needs of Entergy and all of its associates. Such activities include: (1) External financial reports; (2) tax services; (3) pension and benefit administration; (4) risk management; (5) treasury; (6) corporate finance; and (7) legal services. These activities would continue to be performed by Services for Enterprises at cost in accordance with existing Commission authorization. In addition, the Entergy system domestic public-utility companies and SFI may from time to time provide specific and limited services to Enterprises in accordance with existing Commission authorization to enable Enterprises to perform consulting and support services for nonassociate and associate companies, excluding the Retail Electric Companies. A revised pricing methodology for such services is contained in the Settlement Agreement, and requisite approval by the Commission of such pricing will be sought in a separate declaration.

Services would continue to account for, allocate, and charge its costs of providing services to Enterprises utilizing a work order system, modified as appropriate, in accordance with the Uniform System of Accounts for Mutual and Subsidiary Service Companies.

Authorization is requested for Enterprises to issue and sell, and Entergy to acquire, at one time or from time to time, through December 31, 1994, up to 13,000 shares of Enterprises' common stock, no par value, for $1,000 per share, or an aggregate consideration not to exceed $13 million. The proceeds will be used to meet Enterprises' expenses in connection with the restructuring, and to fund ongoing operations through 1994, including overheads, costs associated with the review of business and investment opportunities, and reimbursement to Services, the Entergy system domestic public-utility companies and SFI for services rendered to Enterprises.

Central and South West Corporation (70–8205)

Central and South West Corporation ("CSW"), a registered holding company, and CSW Energy, Inc. ("Energy"), its nonutility subsidiary company, both located at 1616 Woodall Rodgers Freeway, P.O. Box 660164, Dallas, Texas 75202, have filed a declaration under sections 6(a), 7 and 12(b) of the Act and Rule 45 thereunder.

In connection with its development of qualifying cogeneration facilities, qualifying small power production facilities and independent power facilities (collectively "Projects"), Energy represents that it is often called upon to provide lenders, power purchasers, fuel suppliers and others with performance guarantees and to undertake other contractual obligations. Energy states that its inability to provide parent guarantees on a timely basis prevents, hinders, or makes more costly Energy's participation in Projects for which it would otherwise be able to secure contracts. Energy states that guarantees issued by CSW will facilitate Energy's ability to obtain such contracts and will enhance its competitiveness in the marketplace.

Accordingly, CSW and Energy propose to, through December 31, 1995, issue guarantees and bid bonds and provide for letters of credit in an aggregate amount not to exceed $50 million in conjunction with the development of Projects. CSW and Energy represent that these arrangements are required for Energy to bid on or to become an obligor under power contracts and related project agreements for the development of these Projects. The guarantees will be in the form of letters of credit, bid bonds or guarantees and will be issued only for the following purposes: (1) To satisfy bid bond requirements related to Projects that Energy proposes to develop, directly or indirectly; and (2) to satisfy credit support requirements of power contracts, fuel supply contracts and other project agreements to which Energy (or a subsidiary) becomes a party in connection with the development of Projects. The total cost of such guarantees, letters of credit or other support arrangements (including interest on outstanding reimbursement obligations in respect of such letters of credit or guarantees) will not exceed CSW's weighted cost of capital, which was approximately 10.2% on May 18, 1993.

For the Commission, by the Division of Investment Management, pursuant to delegated authority.

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. 93–13222 Filed 6–3–93; 8:45 am]

BILLING CODE 8010–01–M

[Release No. 34–32380; File No. SR-Phlx-92–37]

Self-Regulatory Organizations; Filing of Proposed Rule Change by the Philadelphia Stock Exchange To Amend Rule 1066 Relating to the Definitions of Certain Types of Orders

May 28, 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 14, 1992, the Philadelphia Stock Exchange, Inc. ("Phlx" or "Exchange") filed with the Securities and Exchange Commission ("Commission") the proposed rule change as described in Items I, II, and III below, which Items have been prepared by the Phlx. The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons.

I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

The Phlx, pursuant to Rule 19b–4 of the Act, proposes to amend Rule 1066, titled "Certain Types of Orders Defined." Specifically, the Phlx proposes to amend the definitions of stop and stop-limit orders as well as to add the definitions of all-or-none, opening-only-market, market-on-close and cancel-replacement orders. The text of the proposed rule change is available at the office of the Secretary, the Phlx, and at the Commission.

II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, the Phlx 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 Phlx 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 the Statutory Basis for, the Proposed Rule Change

The Phlx proposes to clarify the definitions of stop order and stop-limit order. Presently, Phlx Rule 106(c) (1) and (2) provides that a stop order becomes a market order and a stop-limit order becomes a limit order after the option contract trades at or above the stop or stop-limit price (or, in the case of a sell order, at or below the stop or stop-limit price). Further, Rule 1066(c)(4) states that such orders may also be triggered by a quotation: In the case of a buy order, when the option contract is bid at or above the stop or stop-limit price; or, in the case of a sell order, when the option contract is offered at or below the stop or stop-limit price.

At this time, the Phlx seeks to clarify the definitions of stop and stop-limit orders by combining the language in Rule 1066(c)(4) with that of, and into, Rule 1066(c)(1). The Phlx believes that locating all of the provisions relating to stop and stop-limit orders in one paragraph should facilitate easy reference. For example, the language presently contained in the second through fourth paragraphs of Rule 1066(c)(4) does not relate to delta orders and should therefore be moved. In summary, the changes to Rule 1066(c)(1) include: (1) Moving the language in Rule 1066(c)(4) relating to stop and stop-limit orders to combine it with the current language in Rule 1066(c) (1) and (2); and (2) combining paragraphs (c)(1) and (c)(2) to result in a single definitional paragraph for stop and stop-limit orders.

The Phlx also proposes to add to Rule 1066 definitions for four types of orders: All-or-none orders, opening-only-market orders, market-on-close orders, and cancel-replacement orders. Sub-paragraphs (5)–(8) of Rule 1066(c) would contain these new definitions. Presently, these types of orders are entered and traded on the Exchange trading floors. In addition, these types of orders have become eligible for entry into the Exchange's automatic order routing and execution systems, such as AUTOM. Accordingly, the Phlx believes that the precise definition of these terms should appear in Exchange rules.

The Phlx believes that the proposed rule change is consistent with section 6 of the Act, in general, and with section 6(b)(5), in particular, in that it is designed to promote just and equitable principles of trade as well as to protect investors and the public interest.

(B) Self-Regulatory Organization's Statement on Burden on Competition

The Phlx does not believe that the proposed rule change will impose any inappropriate burden on competition.

(C) Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received From Members, Participants or Others

No written comments were solicited or received with respect to the proposed rule change.

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

Within 35 days of the date of publication of this notice in the **Federal Register** or within such longer period (i) as the Commission may designate up to 90 days of such date if it finds such longer period to be appropriate and publishes its reasons for so finding or (ii) as to which the self-regulatory organization consents, the Commission will:

(A) By order approve such proposed rule change, or

(B) Institute proceedings to determine whether the proposed rule change should be disapproved.

IV. Solicitation of Comments

Interested persons are invited to submit written data, views and arguments concerning the foregoing. Persons making written submissions should file six copies thereof with the Secretary, Securities and Exchange Commission, 450 Fifth Street NW., Washington, DC 20549. Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for inspection and copying in the Commission's Public Reference Section, 450 Fifth Street NW., Washington, DC. Copies of such filing will also be available for inspection and copying at the principal office of the Phlx. All submissions should refer to File No. SR-Phlx-92–37 and should be submitted by June 25, 1993.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.[1]

[1] 17 CFR 200.30–3(a)(12) (1992)

Margaret H. McFarland,
Deputy Secretary.

[FR Doc. 93–13219 Filed 6–3–93; 8:45 am]
BILLING CODE 8010–01–M

[Release No. 34–32382; File No. SR–NASD–92–41]

Self-Regulatory Organizations; Order Approving Proposed Rule Change by National Association of Securities Dealers, Inc., Relating to Compliance by Nasdaq Market Makers With Rules 10b–6 and 10b–6A Under the Securities Exchange Act of 1934

May 28, 1993.

I. Introduction

On April 1, 1993,[1] the National Association of Securities Dealers, Inc. ("NASD" or "Association") filed with the Securities and Exchange Commission ("SEC" or "Commission") a proposed rule change pursuant to section 19(b)(1) of the Securities Exchange Act of 1934 ("Act"),[2] and rule 19b–4 adopted thereunder.[3] The rule change amends section 8, part V[4] of Schedule D to the NASD By-Laws to provide a mechanism to assist Nasdaq market makers in complying with Rules 10b–6 and 10b–6A under the Act.

Notice of the proposed rule change, together with the substance of the proposal was provided by issuance of a Commission release (Securities Exchange Act Release No. 32160, April 16, 1993), and by publication in the **Federal Register** (58 FR 21609 April 22, 1993). No comment letters were received. This order approves the rule change.

II. Background

A. Rule 10b–6 Compliance

The Commission has alerted the NASD that on occasion NASD members

[1] The NASD amended the proposed rule change three times subsequent to its original filing on October 28, 1992. The NASD filed on January 13, 1993, and April 1, 1993, Amendment Nos. 1 and 2, respectively, to the filing, each of which replaced in its entirety the original filing. Amendment No. 3, filed on April 9, 1993, made technical changes. *See* letter from Suzanne Rothwell, Associate General Counsel, NASD to Selwyn Notelovitz, Branch Chief, Over-the-Counter Regulation, Division of Market Regulation, SEC dated April 8, 1993.

[2] 15 U.S.C. 78s(b)(1) (1988).

[3] 17 CFR 240.19b–4 (1992).

[4] As published for comment, SR–NASD–92–41 proposed amendments to Section 8, Part VI to Schedule D of the NASD By-Laws. On April 30, 1993 to Commission approved another NASD rule change which deleted Part V to Schedule D and renumbered Parts VI to XIV of Schedule D as Parts V to XIII, respectively. Securities Exchange Act Release No. 32246 (April 30, 1993), 58 FR 27598 (May 10, 1993). (order approving SR–NASD–93–14).

engaged in the distribution of securities of companies listed in the Nasdaq System [5] are, through inadvertence or otherwise, not complying with the provisions of the two and nine business day cooling-off periods provided for in Rule 10b–6.[6]

Accordingly, the NASD has proposed to amend section 8, part V of schedule D to the NASD By-Laws to provide a mechanism to assist Nasdaq market makers in complying with Rule 10b–6.

B. Rule 10b–6A Compliance: Passive Market Making

On April 8, 1993, the Commission approved a new exception to Rule 10b–6 and a new companion rule, Rule 10b–6A, to permit "passive market making" in connection with certain distributions of securities quoted in the Nasdaq System during the period when rule 10b–6 would otherwise prohibit such activity.[7] The new provisions apply to firm comment distributions of Nasdaq securities that qualify for the two business day cooling-off period of Rule 10b–6. A passive market maker's bids and purchases are limited by the level of bids of Nasdaq market makers who are not participating in the distribution. Rule 10b–6 requires that each Nasdaq market maker participating in a distribution that determines to engage in passive market making "notify the NASD in writing in advance of its intention to engage in passive market making."[8]

Therefore, to implement the notification requirement of Rule 10b–6A, the NASD proposed to amend Section 8, Part V of Schedule D to the NASD By-Laws to provide a notification procedure to Nasdaq Operations to identify the quotations of Nasdaq market makers participating in a distribution as passive in accordance with Rule 10b–6A.

III. Description of Proposed Rule Change

Under Section 8 to Part V of Schedule D, the manager of a distribution subject to Rule 10b–6 will be required to assume responsibility to request excused withdrawal or passive market maker status on behalf of the underwriting syndicate and selling group.[9] The first step of the excused withdrawal process requires that the manager of the offering, or a member acting in a similar capacity,[10] provide written notification of the prospective distribution to Nasdaq Operations within five days of the filing of the offering documents either with the NASD's Corporate Financing Department or, if exempt from filing with the Department, within five days of the filing with the appropriate regulatory authority.[11] The manager is also required to indicate to Nasdaq Operations that it will manage the distribution, and to identify the Nasdaq security or securities that are the subject of the distribution.[12]

The second part of the excused withdrawal process has two steps. First, not later than noon Eastern Time of the business day prior to the commencement of the cooling-off period,[13] Nasdaq Operations must receive from the manager written notice of the contemplated date and time of commencement of the cooling-off period, the identity of the participants in the distribution, and the identity of the distribution participants that intend to act as passive market makers. Nasdaq Operations will then delete the market makers' quotations or identify the quotations as passive market maker quotations.

Second, the manager is required to inform each market maker participating in the distribution that Nasdaq Operations has been informed of its status regarding the prospective distribution in order to permit a market maker that does not intend to participate in the distribution or act as a passive market maker to prevent its quotations from being deleted or identified as passive. A market maker that has been identified to Nasdaq Operations as a distribution participant will be required to notify Nasdaq Operations and the manager by 4 p.m., ET, the day before the cooling-off period begins that it does not intend to participate in the distribution, or does not intend to engage in passive market making. If a member receives an invitation to be a member of the selling group after the cooling-off period has commenced or if the member is an affiliated purchaser [14] of a distribution participant, such member must timely initiate its own request for excused withdrawal of its quotations or request designation as a passive market maker, to comply with Rule 10b–6(a)(4)(xi) or Rule 10b–6A.

For offerings for which no registration statement is required to be filed, market makers that are distribution participants are required to notify Nasdaq Operations of the date and time of the commencement of the cooling-off period and request withdrawal of their quotations or designation as passive market makers. This separate provision is made for unregistered offerings in part because such offerings often arise on short notice, and generally there is only one or very few distribution participants.

Finally, to the extent that the manager is not a market maker, the NASD's rule obligates each market maker that is a distribution participant to file the required notice unless another market maker assumes the compliance obligation on its behalf.

---

[5] The Nasdaq System includes both Nasdaq SmallCap Securities and National Market System ("Nasdaq/NMS") securities.

[6] Rule 10b–6 prohibits persons engaged in the distribution of securities from bidding for or purchasing any security which is the subject of the distribution or related securities. The Rule generally requires market makers in the security who are also participants in the distribution or affiliated purchasers to withdraw from market making: (1) two business days prior to the commencement of offers or sales in the distribution, if the securities are priced at five dollars per share or more and the public float is 400,000 shares or more (10b–6(a)(4)(xi)(A)), or (2) nine business days prior to the commencement of offers or sales in the distribution in the case of all other securities (10b–6(a)(4)(xi)(C)). *See also Rule 10b–6: Interpretation of "Business Day"* (July 29, 1991) [1991 Transfer Binder] Fed. Sec. L. Rep. (CCH) ¶ 79,751 ("Business Day Letter").

[7] *See* Securities Exchange Act Release No. 32117 (April 8, 1993), 58 FR 19598 (April 15, 1993) ("Release 34–32117").

[8] 17 CFR 240.10b–6A(c)(7). *See also* Release 34–32117.

[9] The obligation to determine whether Rule 10b–6 or Rule 10b–6A is applicable to the particular offering remains with the member participating in the offering. Rule 10b–6 applies to issuances of securities that meet the definition of "distribution" contained in Rule 10b–6(c)(5). Such a distribution can include, *inter alia*, a registered or unregistered offering of securities, a private placement, rights offering, or securities issued in connection with a merger or acquisition.

[10] Where an offering does not have a designated manager, any member performing some or all of the functions of a manager, and/or who agrees to perform the notification function for the distribution participants would be a member acting in a "similar capacity" to a manager for purposes of the proposed rule change.

[11] To facilitate compliance with Rule 10b–6A, Nasdaq Operations has established a "Passive Market Making Surveillance Group." Nasdaq market makers may telephone (800) 537–3929 or (301) 590–6411 between 7 a.m. and 7 p.m., ET, on weekdays. Between 7 p.m. and 7 a.m., ET, and on weekends, Nasdaq Market Makers should call (301) 590–6413 (answering machine) or send inquiries by facsimile to (301) 590–6482.

[12] Where the offering is an exchange offer or convertible debt issue, where the new issue is to be exchanged or may be converted for an existing issue, market makers in the existing issue would be required to withdraw their quotations.

[13] Pursuant to the Business Day Letter, *supra* note 6, "a business day should generally be interpreted as a twenty-four hour period determined with reference to the principal market for the securities to be distributed, and that includes a complete trading session for that market." [1991 Transfer Binder] Fed. Sec. L. Rep. (CCH) at ¶ 78,394.

[14] Rule 10b–6 defines the term "affiliated purchaser" to include a person acting in concert with a distribution participant in making purchases of the securities or a person in a control relationship. 17 CFR 240.10b–6(c)(6)(i).

IV. Expiration of Related Rule Change

On April 16, 1993, the Commission granted temporary accelerated approval to a related NASD rule change, SR–NASD–93–21.[15] The related rule change provided an interim, immediate procedure to facilitate NASD members' compliance with passive market makers' notification obligations required under Rule 10b–6A. The Order approved today is broader in scope than SR–NASD–93–21 as, unlike SR–NASD–93–21, today's rule change *requires* the manager of the offering to assume responsibility to request excused withdrawal or passive market making status on behalf of members of the underwriting syndicate and selling group that are Nasdaq market makers.

The temporary rule change in SR–NASD–93–21, which expires on June 21, 1993 will be replaced by this Order, effective on June 22, 1993.

V. Findings and Conclusion

The Commission finds that the rule change is consistent with the provisions of Section 15A(b)(6) of the Act.[16] Section 15A(b)(6) requires that the rules of the NASD be designed to prevent fraudulent and manipulative acts and practices, promote just and equitable principles of trade, and in general protect investors and the public interest. The Commission finds that the proposed rule change will provide a safeguard for the internal compliance procedures of member firms obligated to comply with Rules 10b–6 and 10b–6A. The Commission believes the proposed rule change will assist market makers in complying with the notification obligation contained in Rule 10b–6A by clarifying the time that such notification should be directed to Nasdaq Operations; and provides a procedure for the manager of an offering to provide the requisite notification to Nasdaq Operations on behalf of the market makers in order to ensure that the quotations of the market makers are identified as passive.

The Commission does not believe that the proposed rule change will result in any burden on competition that is not necessary or appropriate in furtherance of the purposes of the Act, as amended.

It is therefore ordered, pursuant to Section 19(b)(2) of the Act, that the proposed rule change, SR–NASD–92–41 be, and hereby is approved, and will be effective on June 22, 1993.

[15] Securities and Exchange Act Release No. 32159 (April 16, 1993), 58 FR 21613 (April 22, 1993).

[16] 15 U.S.C. § 78o–3(b)(6).

For the Commission, by the Division of Market Regulation, pursuant to delegated authority, 17 CFR 200.30–3(a)(12)

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. 93–13216 Filed 6–3–93; 8:45 am]

BILLING CODE 8010–01–M

[Release No. 34–32383; File No. SR–NASD–93–6]

Self-Regulatory Organizations; National Association of Securities Dealers, Inc.; Order Granting Approval of Proposed Rule Change Relating to the Establishment of a Minor Rule Violations Plan

May 28, 1993.

I. Introduction and Background

On February 16, 1993,[1] the National Association of Securities Dealers, Inc. ("NASD" or "Association") submitted a proposed rule change to the Securities and Exchange Commission ("SEC" or "Commission") pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 ("Act")[2] and Rule 19b–4 thereunder.[3] The rule change amends Article II, Section 10 of the NASD's Code of Procedure[4] to implement a Minor Rule Violations Plan under Rule 19d–1 of the Act.[5]

Notice of the proposed rule change, together with its terms of substance was provided by the issuance of a Commission release (Securities Exchange Act Release No. 32076, March 31, 1993) and by publication in the **Federal Register** (58 FR 18291, April 8, 1993). No comments were received on the proposal by the Commission. This order approves the proposed rule change as amended.[6]

In 1984, the Commission adopted amendments to paragraph (c) of Rule 19d–1 to allow self-regulatory organizations ("SROs") to submit, for Commission approval, plans for the abbreviated reporting of minor rule violations.[7] In adopting Rule 19d–1, the Commission noted that the rule was an attempt to balance the informational needs of the Commission against the reporting burdens of the SROs.[8] Paragraph (c) of the rule attempted to reduce SRO reporting burdens by permitting, where immediate reporting was unnecessary, quarterly reporting of minor rule violations. Various SROs have since adopted minor rule violations plans and have realized that such plans not only reduce reporting burdens but also make their disciplinary systems more efficient.[9]

II. Description of the Rule

The NASD is amending Article II, Section 10 of its Code of Procedure ("Code") to provide for a Minor Rule Violations Plan ("Plan"). The Plan allows the NASD to process and report disciplinary actions involving fines that do not exceed $2,500 and/or a censure in a manner which will relieve many of the administrative burdens normally associated with formal disciplinary proceedings.[10]

New Subsection 10(b)(1) provides general authority to the District Business Conduct Committees and the Market Surveillance Committee (together, the "Committees") and the National Business Conduct Committee ("NBCC") to impose a fine (not to exceed $2,500) and/or a censure on any member or any person associated with a member with respect to the rule violations set forth in an Appendix to Section 10. The Appendix lists violations which under certain factual circumstances are appropriate for disposition under the Plan and carry a fine of $2,500 or less, and/or a censure, according to the NASD's Sanction Guidelines. Pursuant to rule 19d–1, the

[1] By letter dated May 25, 1993, the NASD submitted Amendment No. 1 to the filing which deletes certain violations of the Rules of Practice and Procedure for the Small Order Execution System ("SOES") from the Minor Rule Violations Plan. Letter from Suzanne E. Rothwell, Associate General Counsel, NASD, to Selwyn Notelovitz, Esq., Branch Chief, Over-the-Counter Regulation, SEC, dated May 25, 1993.

[2] 15 U.S.C. § 78s(b)(1) (1988).

[3] 17 CFR 240.19b–4 (1992).

[4] *NASD Manual*, Code of Procedure, Art. II, Sec. 10 (CCH), ¶ 3030.

[5] 17 CFR 240.19d–1.

[6] The effective date of the Minor Rule Violations Plan will be within 90 days of the publication of a Notice to Members announcing Commission approval of the Plan. The Notice to Members announcing approval will set forth the effective date and will be published within 45 days of the approval.

[7] *See* Securities Exchange Act Rel. No. 21013 (June 1, 1984), 49 FR 23833.

[8] *See* Securities Exchange Act Rel. No. 13726 (July 8, 1977), 42 FR 36411.

[9] *See e.g.*, Securities Exchange Act Rel. No. 22415 (September 14, 1985), 50 FR 38600, order approving a minor rule violation plan for the New York Stock Exchange ("NYSE").

[10] Under the NASD's Code of Procedure disciplinary proceedings may be initiated by issuing a formal complaint or by offering the respondent the opportunity to waive a hearing and accept a Summary Complaint proceeding. Prior to the issuance of a formal complaint a disciplinary matter may also be concluded through the use of a Letter of Acceptance, Waiver and Consent. All of these proceedings are generally referred to as "formal disciplinary actions" and are reported to the SEC individually as "final disciplinary actions" pursuant to Rule 19d–1 under the Act. 17 CFR 240.19d–1. Disciplinary actions taken under the Plan will not be considered "final" pursuant to Rule 19d–1(c)(2) under the Act and will be exempt from individual reporting under Rule 19d–1(c)(1). 17 CFR 240.19d–1(c)(1).

NASD may from time-to-time amend the appendix to add or delete violations from the Plan. Any amendment to the Appendix must be filed with the Commission for approval.

The NASD has stated that the criteria for selection of violations for the list were (1) that the NASD's Sanction Guidelines provide for minimum recommended sanctions for the violation less than or equal to $2,500, and (2) that the violations for which the minimum sanctions are imposed are technical in nature—i.e., they are violations which may be characterized as failures to comply with every detailed requirement of a certain rule, and the violation is inadvertent or, at least, does not involve intent to defraud or deceive.

The NASD has stated that it recognizes that some of the rules selected for inclusion in the list may be regarded as providing significant protection to the public, investors or the markets; however, the NASD believes that at the lowest levels of misconduct, violation of such rules warrants sanctions which meet the limits of the Plan and are, thus, appropriate for inclusion. Moreover, the Commission has recognized the "inclusion of a rule in [a SRO's] minor rule violations plan should not be interpreted to mean it is an unimportant rule."[11]

Regardless of the size of the fine called for under the NASD's Sanction Guidelines, if the Committee reviewing the staff's investigative report in a particular case finds that the scope and nature of the violation is too indeterminate or serious to justify a fine which would qualify the matter for disposition under the Plan, the Committee will authorize formal disciplinary action. Therefore, the NASD believes it is unlikely that serious violations will be treated as "technical" or trivial infractions. Any violation which would justify a fine of more than $2,500 will not be disposed of under the Plan.

The NASD has indicated that it will err on the side of caution in the exercise of discretion to dispose of matters under the Plan. As stated by the Commission in a release approving an amendment to the NYSE's Plan "[w]hile the [SEC] is not persuaded the residual availability of full disciplinary proceedings always will justify placing a rule within the minor disciplinary plan, it recognizes that the issue of whether the inclusion of [a rule] within [a plan] will provide a net benefit to the [SRO's] enforcement efforts is ultimately a question of how the program is implemented."[12] The Commission intends to oversee the implementation of the NASD's Minor Rule Violations Plan in order to assure that all violations are treated appropriately regardless of whether they are included in the Plan.

Description of Violations Included in the Plan

A discussion of the NASD's rationale for including each violation, and the limitations on the eligibility of each violation for disposition under the Plan, follows:

Excess Spread Violations. Under Part VI, Section 2(d) of Schedule D of the By-Laws[13] Nasdaq market makers are prohibited from entering quotations that exceed specified maximum allowable spreads. The maximum allowable spreads are established by the NASD after evaluating average spreads and determining the appropriate maximum allowable spread in relation to the average spread.[14] Each day that a market maker has an excess spread is counted as one violation. The first violation in any 12 month period will generally result in a Letter of Caution, while the second or third violations may warrant fines of $1,000 and $2,000, respectively, each appropriate for disposition under the Plan. Subsequent violations would warrant a formal complaint.

Advertising Violations. The NASD's Advertising Rules, Article III, Sections 35 and 35A of the of the Rules of Fair Practice,[15] and Section 8 of the Government Securities Rules,[16] require members to submit certain classes of communications with the public to the NASD for review and approval, and to maintain records of the member's internal review and approval. Specifically, Article III, Sections 35(b) and 35A(b) of the Rules of Fair Practice, and Section 8(b) of the Government Securities Rules require each item of advertising or sales literature to be approved by a principal of the member prior to use and require members to maintain separate files on such advertising and sales literature for three years. Article III, sections 35(c) and 35A(c), and Section 8(c) of the Government Securities Rules require members to file advertising and sales literature with the NASD prior to or immediately subsequent to use, depending on the subject matter and the member's experience, status and disciplinary history.

Failures to comply with the internal review and recordkeeping requirements of the advertising rule are treated in a manner similar to the recordkeeping violations discussed below. The number, egregiousness and history of violations will determine whether they warrant fines of less than $2,500 and may, therefore, be disposed of under the Plan. With respect to the filing requirements, the first two late filings within the previous 12 months will result in a Warning Letter and a Letter of Caution, respectively. The third, fourth and fifth late filings will warrant progressively higher fines, and will exceed $2,500 for the fifth late filing. For those violations which would warrant a fine of $2,500 or less, disposition under the Plan would be appropriate; for all others, a formal complaint would be warranted.

Schedule H Reports. Schedule H, Section 2 to the NASD's By-Laws[17] requires member firms to submit prices and volume reports concerning principal transactions in Non-Nasdaq securities to the Non-Nasdaq Reporting System between 4:00 PM and 6:30 PM on the trade date or between 7:30 AM and 9:30 AM on the day after the trade date. Failure to either make the report or to make it within the required time with respect to securities priced at $5.00 per share or more results in a Warning Letter and a Letter of Caution for the first two violations, with the third, fourth and fifth violations resulting in fines of $250, $500 and $1,000, respectively. With respect to securities priced at less than $5.00, the first violation results in a Letter of Caution, with the second, third and fourth violations resulting in fines of $500, $1,000 and $2,000, respectively. Continuing violations would warrant a formal complaint.

Late Short-sale Filings. Article III, Section 41 of the NASD's Rules of Fair Practice[18] requires members to report total short positions to the NASD on Form NS–1 by the second business day following the "reporting settlement

[11] *See e.g.*, Securities Exchange Act Rel. No. 28995 (March 21, 1991), 56 FR 12967 at n. 14, order approving amendment to NYSE Minor Rule Violation Enforcement and Reporting Plan; Securities Exchange Act Rel. No. 27543 (December 15, 1989); 54 FR 53223 at n. 28, order approving amendment to Amex Minor Disciplinary Rule Violation Plan.

[12] Securities Exchange Act Rel. No. 24985 (October 5, 1987), 52 FR 38296.

[13] *NASD Manual*, Schedule D of the By-Laws, Part VI, Sec. 2(d), (CCH) ¶ 1819.

[14] *See* Securities Exchange Act Rel. No. 31583 (December 9, 1992), 57 FR 60017 (December 17, 1992), notice of NASD proposed rule change to limit excess spreads to 125% of the average of the 3 narrowest spreads in each security.

[15] *NASD Manual*, Rules of Fair Practice, Art. III, Secs. 35(b) and 35A(b), (CCH) ¶¶ 2195, 2195A.

[16] *NASD Manual*, Government Securities Rules, Sec. 8, (CCH) ¶ 2428.

[17] *NASD Manual*, Schedule H of the By-Laws, Sec. 2, (CCH) ¶ 1933.

[18] *NASD Manual*, Rules of Fair Practice, Art. III, Sec. 41, (CCH) ¶ 2200A.

date", which is the 15th of each month, or the preceding settlement date if the 15th is not a settlement date. The first late filing violation will result in a Letter of Caution. The second late filing within the previous 12 months will result in a $1,000 fine, and the third will result in a $2,500 fine. For cases where a fine of less than $2,500 is justified, disposition under the Plan is warranted; otherwise, the NASD will institute formal disciplinary proceedings.

Violations of Trade and Volume Reporting Rules

1. Schedule D to the By-Laws, Part VI, Sections 4 and 5,[19] requires members to submit information and trade data in automated format to the NASD and to the Automated Confirmation Transaction (ACT) System within specified deadlines.

2. Schedule D to the By-Laws, Part XII, Section 2,[20] requires members making a market in Nasdaq National Market System (NMS) securities to, among other things, report transactions within 90 seconds.

3. Schedule D to the By-Laws, Part XIII, Section 2,[21] requires members making a market in Nasdaq SmallCap Market securities to, among other things, report transactions within 90 seconds.

4. Schedule G to the By-Laws, Section 2,[22] requires members to report over-the-counter transactions in listed securities through the Nasdaq Transaction Reporting System within 90 seconds.

Violations of the above-referenced requirements, particularly with respect to volume reports and trade data, will generally result in a Warning Letter or Letter of Caution for the first two violations in any 12 month period. Third, fourth and fifth violations in any 12 month period will result in $250, $500 and $1,000 fines, respectively. Failure to report trades, as opposed to failing to report volume or certain trade data, is generally regarded as a more serious violation and may warrant a higher fine. Further, in egregious cases of failing to report volume, trade data or transactions a formal complaint may be warranted.

Recordkeeping Violations. Article III, Section 21 of the Rules of Fair Practice[23] requires members to keep and preserve various books, accounts, records, memoranda and correspondence. Minor or isolated failures to make, keep or preserve books and records as required will generally result in a Warning Letter or Letter of Caution for the first and second violations. Subsequent or more serious first violations, especially where a pattern of careless or inadequate attention to the recordkeeping requirements is present, will result in fines starting at $500 and may result in a formal complaint.

Description of Other Provisions of the Rule Change

Subsection 10(b)(2) to Article II of the Code provides that any disciplinary action taken by the NASD under the Plan shall be accomplished through the submission of a written Minor Rule Violation Letter ("Letter") to the NASD by the member or associated person specifying the nature of the violation, the rule regulation or statute violated, and consenting to the sanction for the violation. Subsection 10(b)(2) also specifies that the Letter shall include an agreement by the member or associated person to waive the member or person's rights to a hearing or to appeal to the NBCC, the SEC, or the courts.

Subsection 10(b)(3) to Article II of the Code provides that the Letter must be submitted to and accepted by the Committee and the NBCC and, if accepted, will be reported to the SEC pursuant to the Plan. The NASD undertakes, as part of the Plan, to report minor violations to the SEC on a quarterly basis. If the Letter is rejected by the Committee or the NBCC, Subsection 10(b)(3) authorizes the Committee or NBCC to take any other appropriate disciplinary action with respect to the violation or violations.

Finally, Subsection 10(b)(4) provides that the submission of a Letter by a member or person associated with a member shall not have any prejudicial effect nor be given any consideration in any formal disciplinary action initiated by the Committee.

III. Discussion and Conclusion

The Commission finds that the rule change is consistent with the requirements of the Act and the rules and regulations thereunder applicable to the NASD, including the requirements of Sections 15A(b)(7) and 15A(b)(8) of the Act.[24] Section 15A(b)(7) requires that the rules of the NASD provide for appropriate discipline of members and associated persons for violations of the securities laws, the rules and regulations promulgated thereunder and the rules of the NASD. Section 15A(b)(8) requires that the NASD rules provide a fair procedure for the disciplining of members and associated persons. The rule change approved herein established a simplified disciplinary system that will enable the NASD to resolve a range of minor rule violations conveniently and quickly. The Plan provides members with a simple, equitable method under which they can consent to a minor rule violation charge and pay an appropriate fine, thus enabling the NASD to deal more efficiently with minor rule violations. In addition, the Commission notes that because violations of the rules that will be subject to the Plan can be adjudicated quickly and objectively, it is reasonable for them to be included in such an abbreviated periodic reporting plan. The Commission also notes that the NASD will retain the discretion to bring full disciplinary proceedings for violations of rules covered under the Plan and should do so when appropriate for the particular violations involved.

It is therefore ordered, pursuant to Section 19(b)(2) of the Act, that the above-mentioned proposed rule change be, and hereby is, approved.

For the Commission, by the Division of Market Regulation pursuant to delegated authority.[25]

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. 93-13217 Filed 6-3-93; 8:45 am]

BILLING CODE 8010-01-M

[Release No. 34-32378; File No. SR-NASD-93-15]

Self-Regulatory Organizations; Proposed Rule Change by the Nationa Association of Securities Dealers, Inc. Relating to Listing Standards for Hybrid Securities

May 27, 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 March 23, 1993, the National Association of Securities Dealers, Inc. ("NASD" or "Association") filed with the Securities and Exchange Commission ("Commission" or "SEC") the proposed rule change as described in Items I, II, and III below, which Items have been prepared by the NASD. The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons.

[19] *NASD Manual*, Schedule D of the By-Laws, Part VI, Secs. 4 and 5, (CCH) ¶¶ 1820A, 1821.

[20] *NASD Manual*, Schedule D to the By-Laws, Part XII, Sec. 2, (CCH) ¶ 1867.

[21] *NASD Manual*, Schedule D to the By-Laws, Part XIII, Sec. 2, (CCH) ¶ 1867C.

[22] *NASD Manual*, Schedule G to the By-Laws, Sec. 2, (CCH) ¶ 1919.

[23] *NASD Manual*, Rules of Fair Practice, Art. III, Sec. 21, (CCH) ¶ 2171.

[24] 15 U.S.C. § 78o-3(b)(7) and (8).

[25] 17 CFR 200.30-3(a)(12).

I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

The NASD is proposing an amendment to Schedule D of the NASD By-Laws regarding listing standards for hybrid securities products that meet certain minimum listing criteria. The specific listing criteria is discussed below in Part II. A.

The text of the proposed rule change is available at the Office of the Secretary, NASD, and the Commission.

II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, the 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

During the past several years, the NASD and the national securities exchanges have added provisions to their listing standards to accommodate securities that could not be readily categorized under traditional listing guidelines for, among other instruments, common and preferred stock, bonds, debentures, and warrants. For example, in June 1992, the Commission approved amendments to the NASD's rules to accommodate the listing and trading of index warrants through the facilities of the NASD's Automated Quotation ("NASDAQ") system.[1] The driving force behind these amendments to the listing standards is that today, more so than at any time in the past, issuers and underwriters increasingly are creating and proposing to list innovative new securities products. These securities often possess attributes or features of more than one category of currently listed securities (e.g., fixed face amount debt securities incorporating an opportunity, at maturity, to receive an amount in excess of par based upon the performance of an index or group of securities or some other financial instrument; debt securities whose interest or coupon payments are linked to the performance of some other financial instrument or instruments; equity securities whose dividend payments are linked to the performance of some other financial instrument or instruments; warrants to purchase debt securities; and "put" rights issued by an affiliate of a listed company which allow holders to put their common shares back to the issuer at the initial public offering price on a specific date after the initial public offering). Accordingly, because these securities combine different features of various securities, they are commonly referred to as "hybrid" securities. Typically, such securities are designed to achieve more than one objective and, as a consequence, such securities may take a variety of forms depending upon the particular objective(s) being sought as well as general market conditions.

Therefore, in order to best meet the demands of issuers and investors in the NASDAQ marketplace, without compromising the protection of investors or the integrity of the NASDAQ Stock Market, the NASD believes it is necessary to provide added flexibility to its listing guidelines to accommodate such multifaceted, multi-purpose issues. In particular, the NASD proposes to adopt specific listing standards to accommodate hybrid securities products that are not otherwise covered by other listing criteria in the NASD's rules. As discussed in more detail below, the NASD proposes to evaluate each hybrid security on a case-by-case basis to determine whether it is appropriate to trade the security through the facilities of the NASDAQ system and whether there should be any adititional regulatory responsibilities or requirements imposed in connection with the trading of such security, such as the application of the options suitability rule to recommendations to customers concerning the instrument. Accordingly, the NASD will be able to accommodate the listing and trading of new, innovative securities products through the facilities of the NASDAQ system without having to submit a proposed rule change to the Commission in each instance.

Specifically, the NASD proposed to add a new paragraph (d) to Section 2 of Part III of Schedule D to the NASD's By-Laws. This paragraph provides that the NASD will consider designating as a NASDAQ/NMS security any security not otherwise covered by the criteria in paragraphs (a), (b), or (c) of Section 2 of Part III of Schedule D, provided the issuer of the hybrid security and the security offering meet certain requirements. Currently, existing NASDAQ/NMS listing criteria provide for the listing of common stock, preferred stock, rights, warrants, and shares or certificates of beneficial interests of trusts or limited partnership interests in foreign or domestic securities. The specific listing requirements for the hybrid securities are as follows:

(a) The issuer shall have assets in excess of $100 million and stockholders' equity of at least $10 million. In the case of an issuer which is unable to satisfy the income criteria set forth in paragraph (a)(1) of Section 2 of Part III of Schedule D to the By-Laws, [2] the Corporation generally will require the issuer to have the following—(1) assets in excess of $200 million and stockholders' equity of at least $10 million; or (2) assets in excess of $100 million and stockholders' equity of at least $20 million;

(b) There must be a minimum of 400 holders of the security, provided, however, that if the instrument is traded in $1,000 denominations, there must be a minimum of 100 holders;

(c) For hybrid equity securities, there must be a minimum public distribution of 1,000,000 trading units; and

(d) The aggregate market value/principal amount of the security shall be at least $4 million.

These standards are designed to ensure sufficient float and shareholder base for a hybrid security so that fair and efficient dealer markets may be maintained. The NASD notes that the proposed minimum listing standards for hybrid securities are similar to those that have already been approved by the Commission for the New York Stock Exchange ("NYSE").[3] In addition, consistent with the NASD's rules governing index warrants, the proposal provides that hybrid securities will not be subject to Sections 5(a)–(j) of Part III of Schedule D to the NASD's By-Laws because application of these corporate governance standards would be inappropriate given the nature of hybrid products.

The proposal also contains three provisions that will serve to protect investors. First, because the hybrid securities likely will possess

[1] See Securities Exchange Act Release No. 30773 (June 3, 1992), 57 FR 24835 (June 11, 1992). Recently, on February 4, 1993, the NASD proposed additional rule amendments concerning index warrants. See File No. SR–NASD–93–05.

[2] Paragraph (a)(1) of Section 2 provides that the issuer of the security must have annual pre-tax income of at least $750,000 and net income of at least $400,000 in the most recently completed fiscal year or in two of the last three most recently completed fiscal years.

[3] See Securities Exchange Act Release No. 29229 (May 23, 1991), 56 FR 24852 (May 31, 1991) (Order approving File No. SR–NYSE–91–05).

characteristics common to debt, equity, and/or derivative instruments, prior to the commencement of trading of hybrid securities designated pursuant to paragraph (d) of Section 2, the NASD will evaluate the nature and complexity of the issue and, if appropriate, distribute a circular to the membership providing guidance concerning member firm compliance responsibilities and requirements when handling transactions in such securities. Specifically, the circular, if warranted, may address such matters as appropriate customer suitability standards or whether trading in the product should be limited to options approved accounts. In determining whether such a membership circular is necessary, the NASD will consider such characteristics of the issue as unit size and term; cash-settlement, exercise or call provisions; characteristics that may effect payment of dividends and/or appreciation potential; whether the securities are primarily of retail or institutional interest; and such other features of the issue that might entail special risks not normally associated with securities currently trading over the NASDAQ system.

Second, the proposal amends Section 4 of Part III of Schedule D to provide that the aggregate market value or principal amount of a hybrid security must be at least $1 million in order for the security to remain eligible for designation as a NASDAQ/NMS security. This maintenance requirement should help ensure that there is sufficient public float in a hybrid security to support trading in the security.

Third, the proposal amends the Policy of the NASD's Board of Governors issued under Article III, Section 2 of the NASD's Rules of Fair Practice to highlight members' obligations to deal fairly with their customers when making recommendations or accepting orders concerning new financial products.

Lastly, the NASD notes that the proposed guidelines for hybrid securities products are not intended to accommodate the listing of securities that raise significant new regulatory issues and, therefore, would require a separate rule filing submitted pursuant to Rule 19b–4 under the Act. To this end, the NASD represents that it will consult with the Commission on a case-by-case basis concerning the appropriateness of designating a security as a NASDAQ/NMS security pursuant to proposed paragraph (d) of Section 2.

In sum, the NASD believes the proposal strikes an appropriate balance between the NASD's need to adapt and respond to innovations in the securities markets and the NASD's concomitant need to ensure the protection of investors and the maintenance of fair and orderly markets. The NASD believes the proposed numerical, quantitative listing standards should ensure that only substantial companies capable of meeting their contingent obligations created by the hybrid securities products are able to list such products on the NASDAQ system. Similarly, by providing for the distribution of circulars to the membership concerning member firm compliance responsibilities and requirements, the NASD believes the proposal addresses any potential sales practice concerns that may arise in connection with the new hybrid products. In addition, the NASD believes the proposal will promote market efficiency and save valuable Commission and NASD staff resources by affording the NASD an expeditious means to list securities products similar to those already traded through the facilities of the NASDAQ system or on a national securities exchange, but which have no aspects that raise new regulatory issues.

The NASD also believes that the trading of hybrid securities products will provide investors with important investment, hedging, and market timing benefits that will serve to satisfy better their investment and portfolio management needs. Moreover, the NASD believes that hybrid securities products represent innovative financing techniques that provide issuers with increased flexibility to raise capital at potentially lower costs, in return for assuming some market volatility risk.

Therefore, the NASD believes the proposed rule change is consistent with section 15A(b)(6) 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 and a national market system and in general to protect investors and the public interest. Listing hybrid securities products on the NASDAQ system will also facilitate members and investors desiring to trade hybrid securities products in a dealer environment.

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 June 25, 1993.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.[4]

[4] 17 CFR 200.30–3(a)(12) (1992).

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. 93–13140 Filed 6–3–93; 8:45 am]

BILLING CODE 8010–01–M

[Release No. 34–32384; File No. SR–NASD–93–35]

Self-Regulatory Organizations; Filing and Order Granting Accelerated Approval of Proposed Rule Change by the National Association of Securities Dealers, Inc., Relating to an Interim Extension of the OTC Bulletin Board Service Through November 30, 1993

May 28, 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 May 26, 1993, the National Association of Securities Dealers, Inc. ("NASD" or "Association") filed with the Securities and Exchange Commission ("Commission" or "SEC") the proposed rule change as described in Items I and II below, which Items have been prepared by the NASD. The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons and is simultaneously approving the proposal.

I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

On June 1, 1990, the NASD initiated operation of the OTC Bulletin Board Service ("OTCBB Service" or "Service") in accord with the Commission's approval of File No. SR–NASD–88–19, as amended.[1] The OTCBB Service provides a real-time quotation medium that NASD member firms can elect to use to enter, update, and retrieve quotation information (including unpriced indications of interest) for securities traded over-the-counter that are neither included in the Nasdaq System nor listed on a registered national securities exchange (collectively referred to as "unlisted securities"). Essentially, the Service supports NASD members' market making in unlisted securities through authorized Nasdaq Workstation units. Real-time access to quotation information captured in the Service is available to subscribers of Level 2/3 Nasdaq service as well as subscribers of vendor-sponsored services that now include OTCBB Service data. The Service is currently operating under an interim approval that expires on May 30, 1993.[2]

The NASD hereby files this proposed rule change, pursuant to section 19(b)(1) of the Act and Rule 19b-4 thereunder, to obtain authorization for an interim extension of the Service through November 30, 1993. Unless otherwise provided by Commission order,[3] during this interval, there will be no material change in the OTCBB Service's operational features.

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, for the most significant aspects of such statements.

A. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

The purpose of this filing is to ensure continuity in the operation of the OTCBB Service while the Commission considers an earlier NASD rule filing (File No. SR–NASD–92–7) that requested permanent approval of the Service. For the month ending April 30, 1993, the Service reflected the market making positions of 336 NASD member firms displaying quotations/indications of interest in 4,131 unlisted securities.

During the proposed extension, foreign securities and American Depositary Receipts (collectively, "foreign/ADR issues") will remain subject to the twice-daily, update limitation that traces back to the Commission's original approval of the OTCBB Service's operation. As a result, all priced bids/offers displayed in the Service for foreign/ADR issues will remain indicative.

In conjunction with the launch of the Service in 1990, the NASD implemented a filing requirement (under Section 4 of Schedule H to the NASD By-Laws) and review procedures to verify member firms' compliance with Rule 15c2–11 under the Act. During the proposed extension, this review process will continue to be an important component of the NASD's self-regulatory oversight of broker-dealers' market marking in unlisted securities. The NASD also expects to work closely with the Commission staff in developing further enhancements to the Service to fulfill the market structure requirements mandated by the Securities Enforcement Remedies and Penny Stock Reform Act of 1990 ("Reform Act"), particularly section 17B of the Act.[4] The NASD notes that implementation of the Reform Act entails Commission rulemaking in several areas, including the development of mechanisms for gathering and disseminating reliable quotation/transaction information for "penny stocks".

The NASD relies on Sections 11A(a)(1), 15A(b) (6) and (11), and section 17B of the Act as the statutory basis for the instant rule change proposal. Section 11A(a)(1) sets forth the Congressional findings and policy goals respecting operational enhancements to the securities markets. Basically, the Congress found that new data processing and communications techniques should be applied to improve the efficiency of market operations, broaden the distribution of market information, and foster competition among market participants. Section 15A(b)(6) requires, *inter alia*, that the NASD's rules promote just and equitable principles of trade, facilitate securities transactions, and protect public investors. Subsection (11) thereunder authorizes the NASD to adopt rules governing the form and content of quotations for securities traded over-the-counter for the purposes of producing fair and informative quotations, preventing misleading quotations, and promoting orderly procedures for collecting and disseminating quotations. Finally, Section 17B contains Congressional findings and directives respecting the collection and distribution of quotation information on low-priced equity securities that are neither Nasdaq nor exchange listed.

The NASD believes that extension of the Service through November 30, 1993

[1] Securities Exchange Act Release No. 27975 (May 1, 1990), 55 FR 19124.

[2] Securities Exchange Act Release No. 32087 (March 31, 1993), 58 FR 13277.

[3] The NASD currently has a proposed rule change pending with the Commission that would require real-time trade reporting for securities that include those quoted on the OTCBB. The NASD expects to begin dissemination of last-sale information sometime after the approval of the proposal. See Securities Exchange Act Release No. 31695 (January 6, 1993), 58 FR 4189.

[4] On November 24, 1992, the NASD filed an application with the Commission for interim designation of the Service as an automated quotation system to section 17B(b) of the Act. On December 30, 1992, the Commission granted "Qualifying Electronic Quotation System" status for the Service for purposes of certain penny stock rules.

is fully consistent with the foregoing provisions of the Act.

B. Self-Regulatory Organization's Statement on Burden on Competition

The NASD does not believe that the rule change will 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

Written comments were neither solicited nor received.

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

The NASD requests that the Commission find good cause, pursuant to section 19(b)(2) of the Act, for approving the proposed rule change prior to the 30th day after its publication in the Federal Register to avoid any interruption of the Service. The current authorization for the Service extends through May 30, 1993. Hence, it is imperative that the Commission approve the instant filing on or before that date. Otherwise, the NASD will be required to suspend operation of the Service pending Commission action on the proposed extension.

The NASD believes that accelerated approval is appropriate to ensure continuity in the Service's operation pending a determination on permanent status for the Service, as requested in File No. SR–NASD–92–7. Continued operation of the Service will ensure the availability of an electronic quotation medium to support member firms' market making in approximately 4,100 unlisted equity securities and the widespread dissemination of quotation information on these securities. The Service's operation also expedites price discovery and facilitates the execution of customer orders at the best available price. From a regulatory standpoint, the NASD's capture of quotation data from participating market makers supplements the price and volume data reported by member firms pursuant to Section 2 of Schedule H to the NASD By-Laws.

The Commission finds that approval of the proposed rule change is consistent with the Act and the rules and regulations thereunder, and, in particular, with the requirements of section 15A(b)(11) of the Act, which provides that the rules of the NASD relating to quotations must be designed to produce fair and informative quotations, prevent fictitious or misleading quotations, and promote orderly procedures for collecting, distributing, and publishing quotations.

The Commission finds good cause for approving the proposed rule change prior to the 30th day after the date of publishing notice of the filing thereof. Accelerated approval of the NASD's proposal is appropriate to ensure continuity in the Service's operation as an electronic quotation medium that supports NASD members' market making in these securities and that facilitates price discovery and the execution of customer orders at best available price. Additionally, continued operation of the Service will materially assist the NASD's surveillance of trading in unlisted securities that are eligible and quoted in the Service.

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 June 25, 1993.

It is therefore ordered, Pursuant to section 19(b)(2) of the Act, that the proposed rule change be, and hereby is, approved for an interim period through November 30, 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.

[FR Doc. 93–13218 Filed 6–3–93; 8:45 am]

BILLING CODE 8010–01–M

[Release No. IC–19498; 812–8268]

The Montgomery Funds and Montgomery Asset Management, L.P.; Application for Order

May 27, 1993.

AGENCY Securities and Exchange Commission ("SEC").

ACTION: Notice of application for an order under the Investment Company Act of 1940 ("Act").

APPLICANTS: The Montgomery Funds (the "Trust"), including all existing and future series thereof, and all future investment companies advised by Montgomery Asset Management, L.P. or an entity controlling, controlled by, or under common control with Montgomery Asset Management, L.P. (the "Funds"); and Montgomery Asset Management, L.P. (the "Adviser").

RELEVANT ACT SECTIONS: Order sought under section 17(d) of the Act and rule 17d–1 thereunder.

SUMMARY OF APPLICATION: Applicants seek an order that would permit them to operate a joint trading account in repurchase agreements.

FILING DATE: The application was filed on February 9, 1993, and amended and restated on April 30, 1993. Applicants have agreed to file a second amended and restated application during the notice period, the substance of which is incorporated herein.

HEARING OR NOTIFICATION OF HEARING: An order granting the application will be issued unless the SEC orders a hearing. Interested persons may request a hearing by writing to the SEC's Secretary and serving applicants with a copy of the request personally or by mail. Hearing requests should be received by the SEC by 5:30 p.m. on June 21, 1993, and should be accompanied by proof of service on applicants, in the form of an affidavit or, for lawyers, a certificate of service. Hearing requests should state the nature of the writer's interest, the reason for the request, and the issues contested. Persons who wish to be notified of a hearing may request such notification by writing to the SEC's Secretary.

ADDRESSES: Secretary, SEC, 450 Fifth Street, NW., Washington, DC 20549. Applicants, 600 Montgomery Street, San Francisco, California 94111.

FOR FURTHER INFORMATION CONTACT: Barry A. Mendelson, Senior Attorney, at (202) 504–2284, or C. David Messman, Branch Chief, at (202) 272–3018 (Division of Investment Management, Office of Investment Company Regulation).

SUPPLEMENTARY INFORMATION: The following is a summary of the application. The complete application may be obtained for a fee from the SEC's Public Reference Branch.

Applicants' Representations

1. The Trust is an open-end management investment company that currently consists of four series—Montgomery Small Cap Fund, Montgomery Emerging Markets Fund, Montgomery Government Reserve Fund, and Montgomery Short Duration Government Fund. The Adviser, a California limited partnership, provides investment advisory and management services to each series of the Trust.

2. At the end of each trading day, each of the Funds has a cash balance in its primary custodian bank, Boston Safe Deposit and Trust Company, that is not invested in portfolio securities. Currently, each Fund's cash balance is separately invested in short-term liquid assets, including repurchase agreements and time deposits, in order to earn additional income for the Fund. Generally, there remains in the account of each Fund some amount of cash that is received too late or is too small to be invested effectively in a separate transaction.

3. Applicants propose to establish one or more joint accounts into which the Funds may deposit the uninvested cash remaining at the end of each trading day. The aggregate cash in the joint account(s) will be used to enter into one or more short-term repurchase agreements, including tri-party repurchase agreements. In a tri-party repurchase agreement, the securities collateralizing the agreement are held by a third-party custodian (often selected by or affiliated with the investment company's counterparty in the agreement) that is specially approved by the investment company's board of trustees to act as a custodian for the investment company for purposes of taking actual or constructive custody of the securities collateralizing the agreement.

4. One or more joint accounts will be maintained with the Boston Safe Deposit and Trust Company. In addition, the Funds may establish joint accounts at other custodian banks. A joint account will not be distinguishable from any other account maintained by a Fund with a custodian bank except that monies from each Fund will be deposited in the joint account on a commingled basis. A joint account will not have any separate legal existence. The sole function of a joint investment account will be to provide a convenient means of aggregating small amounts of cash from participating Funds and combining into one daily transaction what otherwise would be the many daily transactions for the various Funds necessary to manage their daily uninvested cash balances. The amount of cash invested in the joint account by each participating Fund will fluctuate based upon other portfolio transactions, applicable investment strategies, and daily share purchases and redemptions.

5. The Adviser will be responsible for negotiating the terms of the repurchase agreements in accordance with the guidelines and policies established for each Fund by its board of trustees. The Adviser will have no monetary participation in any joint account but will be responsible for investing Fund assets in the accounts, establishing accounting and control procedures, ensuring the equal proportionate treatment of each Fund, and ensuring that the assets of the Funds continue to be held under proper bank custodial procedures.

6. Each Fund will participate in each joint account on the same basis as every other Fund in conformity with its fundamental investment objectives and policies. Participation in a joint account will be solely at the option of each Fund. A Fund will not be required to maintain a minimum balance in a joint account and will be permitted to withdraw all or any portion of its investment in a joint account at any time. Each Fund will retain sole ownership of any of its assets invested in a joint account, including any interest payable on such assets. Therefore, in the opinion of applicants, a Fund's investment in a joint account will not be subject to the claims of creditors of another Fund participating in that joint account. Moreover, a Fund's liability on any repurchase agreement purchased by a joint account will be limited to its proportionate interest in such repurchase agreement.

7. In connection with its investments in repurchase agreements, each of the Funds has established the same systems and standards. These include quality standards for issuers of the repurchase agreements and requirements that the repurchase agreements be at least 100% collateralized at all times. The systems and standards established by each Fund comply with all existing, and will comply with any future, positions taken by the SEC or its staff by rule, release, letter, guideline, or otherwise relating to repurchase agreement transactions.

8. Cash in a joint account will be invested only in repurchase agreements collateralized by either (a) obligations issued or guaranteed as to principal and interest by the government of the United States or by one of its agencies or instrumentalities ("Government Securities"), or (b) privately issued mortgage-related securities, such as collateralized mortgage obligations, that in turn are collateralized by securities issued by the Government National Mortgage Association, Federal National Mortgage Association, or Federal Home Loan Mortgage Corporation, and that are rated in the highest rating category by a nationally recognized statistical rating organization, or, if unrated, are deemed by the Adviser to be of comparable quality using objective criteria ("Eligible Non-Government Securities").

9. Applicants submit that the Funds will gain in flexibility and will likely receive higher returns by entering into repurchase agreements collateralized by Eligible Non-Government Securities as opposed to agreements collateralized by Government Securities. Applicants acknowledge that collateralizing repurchase agreements with Eligible Non-Government securities is slightly riskier than using Government Securities, but contend that, given the nature of the Eligible Non-Government Securities, the additional risk is minimal.

10. Expenses associated with the joint accounts will be allocated to each participating Fund based upon its percentage share of the total amount in the account on any day. Such expenses will include, but will not be limited to, any account maintenance charge, transaction costs including wire transfer fees, and any incidental operating costs, but will not include a separate management or advisory fee.

11. Applicants believe that the proposed joint accounts will save the Funds substantial transaction fees, allow the Funds to negotiate higher rates of return, increase the Funds' flexibility to invest excess cash near the end of each trading day, and reduce the possibility of errors by reducing the number of trade tickets.

Applicants' Legal Analysis

1. Section 17(d) and rule 17d–1(a), taken together, prohibit an affiliated person of a registered investment company, or an affiliated person of such a person, acting as principal, from participating in, or effecting any transaction in connection with, any joint enterprise or arrangement in which such investment company is a participant, without SEC approval. Rule 17d–1(b) provides that in passing upon applications under rule 17d–1(a), the SEC will consider whether each party's participation in the proposed joint arrangement is consistent with the provisions, policies and purposes of the

Act, and the extent to which such participation is on a basis different from or less advantageous than that of other participants.

2. Each Fund, by participating in the proposed joint accounts, and the Adviser, by managing such accounts, could be deemed to be "joint participants" in a transaction within the meaning of section 17(d) of the Act, and each account could be deemed to be a "joint enterprise or other arrangement" within the meaning of rule 17d–1 under the Act.

3. The Board of Trustees of the Trust has determined that the proposed method of operating the joint accounts will not result in any conflicts of interests between any of the Funds or between any Fund and the Adviser. The Board has further determined that the operation of the joint accounts will be free of any inherent bias favoring one Fund over another. Finally, the Board has determined that the future participation in such joint accounts by one or more new Funds will not alter their conclusions with respect to participation by the present Funds, and that it would be desirable to permit such future participation without the necessity of applying for an amendment to the requested order. For these reasons, applicants submit that the criteria of rule 17d–1 for issuance of an order permitting the proposed joint transactions have been met.

Applicants' Conditions

As express conditions to obtaining an exemptive order, applicants agree that each joint account will operate according to the following procedures:

1. One or more separate cash accounts will be established at each custodian bank into which each Fund will be permitted to deposit its uninvested net cash balances.

2. Cash in each joint account will be invested in repurchase agreements collateralized by Government Securities or Eligible Non-Government Securities. Any such repurchase agreement will have, with rare exceptions, an overnight, over-the-weekend, or over-the-holiday duration, and in no event will it have a duration of more than seven days.

3. All investments held by a joint account will be valued on an amortized cost basis. Each Fund valuing its assets in reliance on rule 2a–7 under the Act will use the weighted average maturity of the repurchase agreements in a joint account for the purpose of computing that Fund's average portfolio maturity with respect to the portion of its assets held in such account on that day.

4. In order to assure that there would be no opportunity for one Fund to use any part of a balance of the joint account credited to another Fund, no Fund will be allowed to create a negative balance in a joint account for any reason, although it will be permitted to draw down its entire balance at any time.

5. The investment in a joint account by each Fund and any collateral held in a joint account by each Fund will be documented daily on the books of the Fund as well as on the books of the custodian bank.

6. Each Fund will participate in the income earned or accrued in a joint account, including all instruments held in the joint account (i.e., cash and securities subject to repurchase agreements), on the basis of the percentage of the total amount in the account on any day represented by its share of the account. Expenses associated with the joint account arrangement will also be allocated to a participating Fund based upon the percentage of the total amount in the account on any day represented by its share of the account.

7. Under the terms of the management or investment advisory agreement of each Fund, the Adviser will administer the investment of the cash balances in, and the operation of, each joint account and will not collect any separate fees for the management of a joint account.

8. The administration of each joint account will be within the fidelity bond coverage required by section 17(g) of the Act and rule 17g–1 thereunder.

9. The Board of Trustees of the Trust on behalf of each of the Funds and the Boards of any future investment companies participating in the joint account will evaluate annually each joint account arrangement and will permit each Fund to continue participating in such arrangements only if they determine that there is a reasonable likelihood that the participating Fund and its shareholders will benefit from continued participation.

For the Commission, by the Division of Investment Management, pursuant to delegated authority.

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. 93–13139 Filed 6–3–93; 8:45 am]

BILLING CODE 8010–01–M

[Rel. No. IC–19497; 812–8284]

The Munder Funds, Inc., et al.; Application for Exemption

May 27, 1993.

AGENCY: Securities and Exchange Commission ("SEC").

ACTION: Notice of application for exemption under the Investment Company Act of 1940 (the "Act").

APPLICANTS: The Munder Funds, Inc. ("MFI") and The Ascher Funds, Inc. ("AFI"), on behalf of themselves and other registered, open-end management investment companies for which Munder Capital Management, Inc. ("Munder") or Ascher & Co. Capital Management Company ("Ascher"), or any person controlled by or under common control with Munder or Ascher, may serve as investment adviser, or for which Ascher/Decision Services, Inc. (the "Distributor"), or any person controlled by or under common control with the Distributor, may serve as distributor, and which offer shares on a basis which is identical in all material respects to the arrangements described in the application (the "Funds"); Munder and Ascher (the "Advisers"); and the Distributor.

RELEVANT ACT SECTIONS: Order requested pursuant to section 6(c) for exemptions from sections 2(a)(32), 2(a)(35), 18(f)(1), 18(g), 18(i), 22(c), and 22(d) of the Act and rule 22c–1 thereunder.

SUMMARY OF APPLICATION: Applicants seek an order to permit the Funds to issue and sell four or more classes of shares representing interests in the same portfolios of securities, assess a CDSC on certain redemptions, and waive the CDSC in certain instances.

FILING DATE: The application was filed on February 19, 1993, and amended on April 7, 1993 and May 19, 1993.

HEARING OR NOTIFICATION OF HEARING: An order granting the application will be issued unless the SEC orders a hearing. Interested persons may request a hearing by writing to the SEC's Secretary and serving applicants with a copy of the request, personally or by mail. Hearing requests should be received by the SEC by 5:30 p.m. on June 21, 1993, and should be accompanied by proof of service on applicants, in the form of an affidavit or, for lawyers, a certificate of service. Hearing requests should state the nature of the writer's interest, the reason for the request, and the issues contested. Persons who wish to be notified of the date of a hearing may request notification by writing to the SEC's Secretary.

ADDRESSES: Secretary, SEC, 450 Fifth Street NW., Washington, DC 20549. MFI and Munder, 480 Pierce Street, Birmingham, Michigan 48009. AFI, Ascher, and the Distributor, 777 South Figueroa, 38th floor, Los Angeles, California 90017.

FOR FURTHER INFORMATION CONTACT: James E. Anderson, Staff Attorney, at (202) 272–7027, or C. David Messman, Branch Chief, at (202) 272–3018 (Division of Investment Management, Office of Investment Company Relations).

SUPPLEMENTARY INFORMATION: The following is a summary of the application. The complete application is available for a fee from the SEC's Public Reference Branch.

Applicants' Representations

1. The Funds are open-end diversified management investment companies. Munder, a registered investment adviser, provides investment advisory services to MFI. Ascher, a registered investment adviser, provides investment advisory services to AFI. The Distributor, a registered broker-dealer, serves as principal underwriter for the Funds.

2. MFI currently offers one series of shares, designated The Munder Multi-Season Growth Fund. Shares of MFI's initial class are offered to the public without a front-end sales charge, subject to a CDSC.[1] AFI initially intends to offer one series of shares, designated The Natural Gas Fund. Shares of AFI's initial class will be offered to the public at net asset value without an initial front-end sales charge.

3. Under applicants' proposal, the Funds could offer shares either: (a) Subject to a conventional front-end sales load and a rule 12b–1 service fee at an annual rate of up to .25% of the average daily net assets ("Class A shares") (the front-end sales load will be waived for purchases in excess of $1 million, but a 1% CDSC will be imposed in the event of redemptions within one year of purchase); (b) subject to a CDSC and a rule 12b–1 service fee at annual rate of up to .25%, and a rule 12b–1 distribution fee at an annual rate of up to .75%, of average daily net assets ("Class B shares"); (c) without a front-end sales charge or CDSC, for purchase exclusively by investors meeting such minimum investment and/or such other eligibility criteria as may be established by the directors of a Fund and to officers, directors, and employees of the relevant fund, its investment adviser, and the Distributor ("Class C shares"); and (d) without imposition of a sales charge (except that a 1% CDSC will be imposed on shares redeemed within one year of purchase) but subject to a rule 12b–1 service fee at an annual rate of up to .25%, and a rule 12b–1 distribution fee at an annual rate of up to .75%, of average daily net assets ("Class D shares"). The Funds also may establish one or more additional classes to be sold with different sales load and service and distribution fee structures, as described below.

4. The CDSC for all classes of shares will be imposed on the lesser of the aggregate net asset value of the shares being redeemed either at the time of purchase or redemption. No CDSC will be imposed on shares acquired through reinvestment of income dividends or capital gains distributions. In determining the rate of any applicable CDSC, it will be assumed that a redemption is made first of shares representing capital appreciation, next of shares representing reinvestment of dividends and capital gains distributions, and finally of shares of a Fund held by the investor for the longest period of time within the CDSC period. It is expected that the CDSC schedule of the Funds will vary depending in part on the front-end sales load applicable to the Class A shares and the compensation paid to a dealer for selling shares of the Fund. Any variation in the CDSC schedules will be set forth in the applicable prospectus.

5. Applicants request the ability to waive or reduce the CDSC in the following instances: (a) Redemptions by investors who have invested $1 million or more in a Fund; (b) redemptions by the officers, directors, and employees of the Advisers or the Distributor and such persons' immediate families; (c) dealers or brokers who have a sales agreement with the Distributor, for their own accounts, or for retirement plans for their employees or sold to registered representatives or full-time employees (and their families) that certify to the Distributor at the time of purchase that such purchase is for their own account (or for the benefit of their families);[2] and (d) involuntary redemptions effected pursuant to a Fund's right to liquidate shareholder accounts having an aggregate net asset value of less than the minimum account balance set forth in the Fund's then-current prospectus.

6. Applicants intend to provide credit for any CDSC paid upon redemption, the proceeds of which are reinvested in a Fund within 90 days of redemption. To effect this credit, the Distributor will purchase, with its own assets, additional shares for the account of an investor who reinvests the proceeds of a redemption on which a CDSC was paid, in an amount equal to the CDSC charged on redemption.

7. Class B shares of a Fund held for a specified number of years will automatically convert to Class A shares of such Fund at the relative net asset values of each of the classes. For purposes of calculating the holding period, Class B shares will be deemed to have been issued on the sooner of: (a) The date on which the issuance of Class B shares occurred; or (b) for Class B shares obtained through an exchange, or a series of exchanges, the date on which the issuance of the original Class B shares occurred. For purposes of conversion to Class A, Class B shares in a shareholder's account that were purchased through the reinvestment of dividends and distributions paid in respect of Class B shares will be considered to be held in a separate subaccount. Each time any Class B shares in the shareholder's account convert to Class A, a *pro rata* portion of the Class B shares in the sub-account will also convert to Class A. The portion will be determined by the ratio that the shareholder's Class B shares converting to Class A bears to the shareholder's total Class B shares not acquired through dividends and distributions.

8. A given class of shares will be exchangeable only for shares of the corresponding class of other Funds. The exchange privilege will be subject to the eligibility criteria applicable to the class of shares of the Fund into which the shareholder wishes to exchange. Applicants will only permit exchanges into shares of money market funds having rule 12b–1 plans, if, either the time period during the shares of the money market funds are held is included with the time period during which the exchanged shares were held in the calculation of the CDSC, or such time period is not included but the amount of the CDSC is reduced by the amount of any rule 12b–1 payments made by the money market funds with respect to those shares. Applicants will comply with rule 11a–3 as to any exchanges.

9. Class A, Class B, Class C, Class D and additional classes of shares created in the future will each represent interests in the same portfolio of investments, and will be identical in all respects except: (a) Each class of shares would have a different designation; (b) each class of shares might be sold under

[1] An order granting exemptive relief to permit MFI to impose a CDSC on redemptions and to waive the CDSC in certain instances was issued in Investment Company Act Release Nos. 19201 (Dec. 31, 1992) (notice) and 19234 (Jan. 26, 1993) (order).

[2] Shares to which this waiver would apply may not be resold except to the Fund.

different sales arrangements (e.g., sales with a front-end sales load, subject to a CDSC, subject to a combination of a front-end sales load and a CDSC, or at net asset value); (c) each class may bear any rule 12b–1 plan payments related to that class (and any other costs related to obtaining shareholder approval of the rule 12b–1 plan for that class or an amendment to its rule 12b–1 plan); (d) each class of shares may bear expenses determined by the board of directors to be allocated to that class ("Class Expenses"), as described in the following paragraph; (e) only shareholders of the affected classes would be entitled to vote on matters pertaining to the rule 12b–1 plan relating to their respective class of shares (e.g., the adoption, amendment, or termination of the rule 12b–1 plan) in accordance with the procedures set forth in rule 12b–1; (f) each class of shares would have different exchange privileges; and (g) classes that impose a rule 12b–1 fee may convert into another class.

10. Class Expenses may include the following: (a) Transfer agency fees as identified by the transfer agent as being attributable to a specific class; (b) printing and postage expenses related to preparing and distributing materials such as shareholder reports, prospectuses and proxies to current shareholders; (c) Blue Sky registration fees incurred by a class of shares; (d) SEC registration fees incurred by a class of shares; (e) the expenses of administrative personnel and services as required to support the shareholders of a specific class; (f) litigation or other legal expenses relating solely to one class of shares; (g) directors' fees incurred as a result of issues relating to one class of shares; and (h) other expenses that are subsequently identified and determined to be properly allocated to one class of shares which shall be approved by the SEC pursuant to an amended order.

Applicant's Legal Analysis

1. Applicants request an order exempting them from the provisions of sections 18(f)(1), 18(g), and18(i) of the Act to the extent that the proposed issuance and sale of various classes of shares representing interests in the same Fund might be deemed: (a) To result in a "senior security" within the meaning of section 18(g); (b) prohibited by section 18(f)(1); and (c) to violate the equal voting provisions of section 18(i).

2. Applicants believe that the proposed multi-class arrangement will better enable the Funds to meet the competitive demands of today's financial services industry. Under the multi-class arrangement, an investor will be able to choose the method of purchasing shares that is most beneficial given the amount of his or her purchase, the length of time the investor expects to hold his or her shares, and other relevant circumstances. The proposed arrangement would permit the Funds to facilitate both the distribution of their securities and provide investors with a broader choice as to the method of purchasing shares without assuming excessive accounting and bookkeeping costs or unnecessary investment risks.

3. The proposed allocation of expenses and voting rights relating to the rule 12b–1 plans in the manner described is equitable and would not discriminate against any group of shareholders. In addition, such arrangements should not give rise to any conflicts of interest because the rights and privileges of each class of shares are substantially identical.

4. Applicants believe that the proposed multi-class arrangement does not present the concerns that section 18 of the Act was designed to address. The multi-class arrangement will not increase the speculative character of the shares of the Fund. The multi-class arrangement does not involve borrowing, nor will it affect the Funds' existing assets or reserves, and does not involve a complex capital structure. Nothing in the multi-class arrangement suggests that it will facilitate control by holders of any class of shares.

5. Applicants submit that the requested exemption to permit the Funds to implement the proposed CDSCs is appropriate in the public interest, consistent with the protection of investors, and consistent with the purposes fairly intended by the policy and provisions of the Act. The proposed CDSC arrangements will provide shareholders the option of having their full payment invested for them at the time of their purchase of shares of the Funds with no deduction of an initial sales charge.

Applicants' Conditions

Applicants agree that any order granting the requested relief shall be subject to the following conditions:

1. Each class of shares will represent interests in the same portfolio of investments of the Fund, and be identical in all respects, except as set forth below. The only differences among the classes of shares of the Fund will relate solely to: (a) The designation of each class of shares of a Fund; (b) the impact of the respective sales charge, if any, for each class of shares (e.g., Class A shares would be subject to a front-end sales load, Class B shares would be subject to a CDSC, and Class C and Class D would not be subject to a sales load); (c) expenses assessed to a class as a result of a rule 12b–1 plan providing for a service and/or distribution fee (e.g., Class A shares would pay a service fee, Class B and Class D shares would pay a service fee and a distribution fee, and Class C shares would not pay a service fee or a distribution fee); (d) Class Expenses, which are limited to: (i) Transfer agency fees as identified by the transfer agent as being attributable to a specific class (e.g., a higher transfer agency fee may be imposed on the Class B shares than on the Class A, Class C, or Class D shares, and a higher transfer agency fee may be imposed on the Class A and Class D shares than on Class C shares); (ii) printing and postage expenses related to preparing and distributing materials such as shareholder reports, prospectuses and proxies to current shareholders; (iii) Blue Sky registration fees incurred by a class of shares; (iv) SEC registration fees incurred by a class of shares; (v) the expenses of administrative personnel and services as required to support the shareholders of a specific class; (vi) litigation or other legal expenses relating solely to one class of shares; and (vii) directors' fees incurred as a result of issues relating to one class of shares; (e) voting rights on matters exclusively affecting one class of shares (e.g., the adoption, amendment, or termination of the rule 12b–1 plan) in accordance with the procedures set forth in rule 12b–1; (f) the different exchange privileges of the various classes of shares as described in the prospectuses (and as more fully described in the statements of additional information) of the Funds; and (g) classes that impose a 12b–1 fee may convert to another class. Any additional incremental expenses not specifically identified above that are subsequently identified and determined to be properly allocated to one class of shares shall not be so allocated until approved by the SEC.

2. The directors of each of the Funds, including a majority of the independent directors, shall have approved the multi-class system, prior to the implementation of the multi-class system by a particular Fund. The minutes of the meetings of the directors of each of the Funds regarding the deliberations of the directors with respect to the approvals necessary to implement the multi-class arrangement will reflect in detail the reasons for determining that the proposed system is in the best interest of the Fund and its shareholders.

3. The initial determination of the Class Expenses, if any, that will be allocated to a particular class of a Fund and any subsequent changes thereto will be reviewed and approved by a vote of the directors of the affected Fund, including a majority of the independent directors. Any person authorized to direct the allocation and disposition of monies paid or payable by a Fund to meet class-specific expenses shall provide to the directors, and the directors shall review, at least quarterly, a written report of the amounts so expended and the purpose for which the expenditures were made.

4. On an ongoing basis, the directors of the Funds, pursuant to their fiduciary responsibilities under the Act and otherwise, will monitor each Fund for the existence of any material conflicts among the interests of the various classes of shares. The directors, including a majority of the independent directors, shall take such action as is reasonably necessary to eliminate any such conflicts that may develop. The Adviser of the affected Fund and the Distributor will be responsible for reporting any potential or existing conflicts to the directors. If a conflict arises, the Adviser of the affected Fund and the Distributor at their own cost will remedy such conflict up to and including establishing a new registered management investment company.

5. The directors of the Funds will receive quarterly and annual statements concerning distribution and shareholder servicing expenditures complying with paragraph (b)(3)(ii) of rule 12b–1, as it may be amended from time to time. In the statements, only expenditures properly attributable to the sale or servicing of a particular class of shares will be used to justify any distribution or servicing fee charged to that class. Expenditures not related to the sale or servicing of a particular class will not be presented to the directors to justify any fee attributable to that class. The statements, including the allocations upon which they are based, will be subject to the review and approval of the independent directors in the exercise of their fiduciary duties.

6. Dividends paid by the Fund with respect to each class of its shares, to the extent any dividends are paid, will be calculated in the same manner, at the same time, on the same day, and will be in the same amount, except that fee payments made under the rule 12b–1 plan relating to a particular class will be by each such class and except that any Class Expenses will be borne by the applicable class of shares.

7. The methodology and procedures for calculating the net asset value and dividends/distributions of the various classes and the proper allocation of income and expenses among the classes has been reviewed by experts (the "Experts"). The experts have rendered reports, which have been provided to the staff of the SEC, stating that such methodology and procedures are adequate to ensure that such calculations and allocations will be made in an appropriate manner. On an ongoing basis, the Experts, or appropriate substitute Experts, will monitor the manner in which the calculations and allocations are being made and based upon such review, will render at least annually a report to the Fund that the calculations and allocations are being made properly. The reports of the Expert shall be filed as part of the periodic reports filed with the SEC pursuant to sections 30(a) and 30(b)(1) of the Act. The work papers of the Experts with respect to such reports, following request by the Funds which the Funds agree to make, will be available for inspection by the SEC staff upon the written request for such work papers by a senior member of the SEC's Division of Investment Management or of a Regional Office of the SEC, limited to the Director, an Associate Director, the Chief Accountant, the Chief Financial Analyst, an Assistant Director, and any Regional Administrators or Associate and Assistant Administrators. The initial reports of the Expert are "reports on policies and procedures placed in operation" and the ongoing reports will be "reports on policies and procedures placed in operation and tests of operating effectiveness" as defined and described in SAS No. 70 of the AICPA, as it may be amended from time to time, or in similar auditing standards as may be adopted by the AICPA from time to time.

8. Applicants have adequate facilities in place to ensure implementation of the methodology and procedures for calculating the net asset value and dividends/distributions among the various classes of shares and the proper allocation of income and expenses among such classes of shares and this representation has been concurred with by the Experts in their initial report referred to in condition 7 above and will be concurred with by the Experts, or appropriate substitute Experts, on an ongoing basis at least annually in the ongoing reports referred to in condition 7 above. The applicants agree to take immediate corrective measures if the Experts, or appropriate substitute Experts, do not so concur in the ongoing reports.

9. The prospectuses of the Funds will include a statement to the effect that a salesperson and any other person entitled to receive compensation for selling or servicing Fund shares may receive different levels of compensation for selling one particular class of shares over another in a Fund.

10. The Distributor will adopt compliance standards as to when shares of a particular class may appropriately be sold to particular investors. Applicants will require all persons selling shares of the Funds to agree to conform to these standards.

11. The conditions pursuant to which the exemptive order is granted and the duties and responsibilities of the directors of the Funds with respect to the multi-class arrangement will be set forth in guidelines which will be furnished to the directors.

12. Each Fund will disclose in its prospectus the respective expenses, performance data, distribution arrangements, services, fees, sales loads, deferred sales loads, and exchange privileges applicable to each class of shares offered through the prospectus. All classes of shares of a Fund will be offered and sold through a single prospectus. The shareholder reports will contain, in the statement of assets and liabilities and statement of operations, information related to the Fund as a whole generally and not on a per class basis. Each Fund's per share data, however, will be prepared on a per class basis with respect to all classes of shares of such Fund. To the extent any advertisement or sales literature describes the expenses or performance data applicable to any class of shares, it will disclose the expenses and/or performance data applicable to all classes. The information provided by applicants for publication in any newspaper or similar listing of the Funds' net asset values and public offering prices will separately present each class of shares.

13. Applicants acknowledge that the grant of the exemptive order requested by this application will not imply SEC approval, authorization, or acquiescence in any particular level of payments that the Funds may make pursuant to rule 12b–1 distribution plans or shareholder services plans in reliance on the exemptive order.

14. Any class of shares with a conversion feature ("Purchase Class") will convert into another class ("Target Class") of shares on the basis of the relative net asset values of the two classes, without the imposition of any sales load, fee, or other charge. After conversion, the converted shares will be subject to an asset-based sales charge and/or service fee (as those terms are defined in Article III, Section 26 of the

NASD's Rules of Fair Practice), if any, that in the aggregate are lower than the asset-based sales charge and service fee to which they were subject prior to the conversion.

15. If a Fund implements any amendment to its rule 12b–1 plan (or, if presented to shareholders, adopts or implements any amendment of a non-rule 12b–1 shareholder services plan) that would increase materially the amount that may be borne by the Target Class shares under the plan, existing Purchase Class shares will stop converting into Target Class shares unless the Purchase Class shareholders, voting separately as a class, approve the proposal. The directors shall take such action as is necessary to ensure that existing Purchase Class shares are exchanged or converted into a new class of shares ("New Target Class"), identical in all material respects to the Target Class as it existed prior to implementation of the proposal, no later than such shares previously were scheduled to convert into Target Class shares. If deemed advisable by the directors to implement the foregoing, such action may include the exchange of all existing Purchase Class shares for a new class ("New Purchase Class"), identical to existing Purchase Class shares in all material respects except that New Purchase Class shares will convert into New Target Class shares. New Target Class or New Purchase Class may be formed without further exemptive relief. Exchanges or conversions described in this condition shall be effected in any manner that the Directors reasonably believe will not be subject to federal taxation. In accordance with condition 4, any additional cost associated with the creation, exchange, or conversion of New Target Class or New Purchase Class shall be borne solely by the Adviser of the affected Fund and the Distributor. Purchase Class shares sold after the implementation of the proposal may convert into Target Class shares subject to the higher maximum payment, provided that the material features of the Target Class plan and the relationship of such plan to the Purchase Class shares are disclosed in an effective registration statement.

16. Applicants will comply with the provisions of proposed Rule 6c–10 under the Act, Investment Company Act Release No. 16169 (Nov. 2, 1988), as currently proposed and as it may be reproposed, adopted, or amended.

For the SEC, by the Division of Investment Management, under delegated authority.

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. 93–13138 Filed 6–3–93; 8:45 am]

BILLING CODE 8010–01–M

[Rel. No. IC–19500; 811–947]

Newton Growth Fund, Inc.; Application for Deregistration

May 28, 1993.

AGENCY: Securities and Exchange Commission ("SEC").

ACTION: Notice of application for deregistration under the Investment Company Act of 1940 (the "Act").

APPLICANT: Newton Growth Fund, Inc.

RELEVANT ACT SECTION: Section 8(f).

SUMMARY OF APPLICATION: Applicant seeks an order declaring that it has ceased to be an investment company.

FILING DATE: The application on Form N–8F was filed on April 5, 1993, and amended on May 11, 1993.

HEARING OR NOTIFICATION OF HEARING: An order granting the application will be issued unless the SEC orders a hearing. Interested persons may request a hearing by writing to the SEC's Secretary and serving applicant with a copy of the request, personally or by mail. Hearing requests should be received by the SEC by 5:30 p.m. on June 22, 1993, and should be accompanied by proof of service on applicant, in the form of an affidavit or, for lawyers, a certificate of service. Hearing requests should state the nature of the writer's interest, the reason for the request, and the issues contested. Persons may request notification of a hearing by writing to the SEC's Secretary.

ADDRESSES: Secretary, SEC, 450 Fifth Street, NW., Washington, DC 20549. Applicant, 1000 N. Water Street, Milwaukee, WI 53202.

FOR FURTHER INFORMATION CONTACT: Felicia H. Kung, Senior Attorney, at (202) 504–2803, or Elizabeth G. Osterman, Branch Chief, at (202) 272–3016 (Division of Investment Management, Office of Investment Company Regulation).

SUPPLEMENTARY INFORMATION: The following is a summary of the application. The complete application may be obtained for a fee at the SEC's Public Reference Branch.

Applicant's Representations

1. Applicant, a publicly traded Maryland corporation, registered under the Act as an open-end diversified management investment company in late 1960.

2. At a meeting held on September 14, 1992, applicant's board of directors unanimously adopted and recommended to applicant's shareholders an agreement and plan of reorganization (the "Reorganization Plan") between applicant and the Marshall Funds, Inc. ("Marshall Funds") (File No. 811–7047). The Reorganization Plan provides that the assets of applicant's's sole portfolio would be exchanged for shares of the Marshall Stock Fund, a series of the Marshall Funds with investment objectives and policies similar to applicant's portfolio.

3. M&I Investment Management Corporation, a wholly-owned subsidiary of a registered bank holding company, acts as the investment adviser to applicant's portfolio. Prior to the reorganization, applicant offered shares of its portfolio directly to the public without the benefit of a registered broker-dealer serving as principal underwriter to comply with underwriting and distribution restrictions imposed on banks and their affiliates by the federal banking laws. Pursuant to the Reorganization Plan, Federated Securities Corporation would serve as principal distributor of the shares after the reorganization. Applicant's board of directors determined that restructuring applicant's operations through the sale of its portfolio's assets to the Marshall Funds in accordance with the Reorganization Plan would improve applicant's ability to promote the sale of its shares, and was in the best interests of shareholders of its portfolio.

4. Applicant mailed to its shareholders proxy materials, dated October 27, 1992, relating to the proposed reorganization. On December 11, 1992, applicant had 3,945,614.461 shares outstanding, each share with a net asset value of $10.13. At a special meeting held on December 4, 1992, applicant's shareholders approved the reorganization.

5. On December 11, 1992, pursuant to the Reorganization Plan and in compliance with rule 17a–8, applicant transferred all of the assets of its sole portfolio, Newton Growth Fund, to the Marshall Stock Fund in exchange for shares of the Marshall Stock Fund. The transfer of applicant's assets in exchange for shares of the Marshall Stock Fund was based on the relative net asset value of the portfolios. Shares of the Marshall Stock Fund were distributed to applicant's shareholders *pro rata* in complete liquidation of their interests in the Newton Growth Fund.

6. All expenses in connection with the reorganization, such as legal, accounting, proxy solicitation, liquidation, and other administrative fees and expenses, were paid by M&I Investment Management Corporation.

7. As of the date of the application, applicant had no shareholders, assets, or liabilities. Applicant is not a party to any litigation or administrative proceeding. Applicant is not presently engaged in, nor does it propose to engaged in, any business activities other than those necessary for the winding up of its affairs.

8. Applicant intends to effect its dissolution with the appropriate Maryland authorities after receipt of the requested order.

For the Commission, by the Division of Investment Management, under delegated authority.

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. 93-13220 Filed 6-3-93; 8:45 am]

BILLING CODE 8010-01-M

[Rel. No. IC-19499; 811-2001]

Newton Income Fund, Inc.; Application for Deregistration

May 28, 1993.

AGENCY: Securities and Exchange Commission ("SEC").

ACTION: Notice of application for deregistration under the Investment Company Act of 1940 (the "Act").

APPLICANT: Newton Income Fund, Inc.

RELEVANT ACT SECTION: Section 8(f).

SUMMARY OF APPLICATION: Applicant seeks an order declaring that it has ceased to be an investment company.

FILING DATE: The application on Form N-8F was filed on April 5, 1993, and amended on May 11, 1993.

HEARING OR NOTIFICATION OF HEARING: An order granting the application will be issued unless the SEC orders a hearing. Interested persons may request a hearing by writing to the SEC's Secretary and serving applicant with a copy of the request, personally or by mail. Hearing requests should be received by the SEC by 5:30 p.m. on June 22, 1993, and should be accompanied by proof of service on applicant, in the form of an affidavit or, for lawyers, a certificate of service. Hearing requests should state the nature of the writer's interest, the reason for the request, and the issues contested. Persons may request notification of a hearing by writing to the SEC's Secretary.

ADDRESSES: Secretary, SEC, 450 Fifth Street, NW., Washington, DC 20549. Applicant, 1000 N. Water Street, Milwaukee, WI 53202.

FOR FURTHER INFORMATION CONTACT: Felicia H. Kung, Senior Attorney, at (202) 504-2803, or Elizabeth G. Osterman, Branch Chief, at (202) 272-3016 (Division of Investment Management, Office of Investment Company Regulation).

SUPPLEMENTARY INFORMATION: The following is a summary of the application. The complete application may be obtained for a fee at the SEC's Public Reference Branch.

Applicant's Representations

1. Applicant is a Maryland corporation and is registered as an open-end diversified management investment company under the Act. On January 14, 1970, applicant filed a notification of registration under section 8(a) of the Act. On January 14, 1970, applicant filed a registration statement under the Securities Act of 1933 and section 8(b) of the Act. Applicant's registration statement was declared effective in February of 1970, and its initial public offering commenced shortly thereafter.

2. At a meeting held on September 14, 1992, applicant's board of directors unanimously adopted and recommended to the shareholders of its two portfolios, Newton Income Fund ("Newton Income") and Newton Money Fund ("Newton Money"), that they each approve an agreement and plan of reorganization (the "Reorganization Plans"). The Reorganization Plans provide that the assets of Newton Income and Newton Money would be exchanged for shares of Marshall Government Income Fund ("Marshall Government") and Marshall Money Market Fund ("Marshall Money Market"), respectively. Marshall Government and Marshall Money Market are each series of the Marshall Funds, Inc. ("Marshall Funds") (File No. 811-7047), and have investment objectives and policies similar to applicant's corresponding portfolios.

3. M&I Investment Management Corporation, a wholly-owned subsidiary of a registered bank holding company, acts as the investment adviser to applicant's portfolios. Prior to the reorganization, applicant offered shares of its two portfolios directly to the public without the benefit of a registered broker-dealer serving as principal underwriter to comply with underwriting and distribution restrictions imposed on banks and their affiliates by the federal banking laws. Pursuant to the Reorganization Plans, Federated Securities Corporation would serve as principal distributor of the shares after the reorganization. Applicant's board of directors determined that restructuring applicant's operations through the sale of its portfolios' assets to the Marshall Funds in accordance with the Reorganization Plans would improve applicant's ability to promote the sale of its shares, and was in the best interests of the shareholders of its portfolios.

4. Applicant mailed to its shareholders proxy materials, dated October 27, 1992, relating to the proposed reorganization. On December 11, 1992, applicant had 4,160,359.573 shares outstanding of its Newton Income portfolio, each share with a net asset value of $10.00, and 287,065,413.94 shares outstanding of its Newton Money portfolio, each share with a net asset value of $1.00. At a special meeting held on December 4, 1992, applicant's shareholders approved the Reorganization Plans.

5. On December 11, 1992, pursuant to the Reorganization Plans and in compliance with rule 17a-8, applicant transferred all of the assets of its Newton Income portfolio to the Marshall Government portfolio in exchange for shares of the Marshall Government portfolio. In addition, applicant transferred all of the assets of its Newton Money portfolio to the Marshall Money Market portfolio in exchange for shares of the Marshall Money Market portfolio. The transfer of applicant's assets for shares of the Marshall Funds was based on the relative net asset values of the portfolios. Share of the two series of the Marshal Funds were distributed to shareholders of the Newton Income and the Newton Money portfolios *pro rata* in accordance with their respective interests in the Newton Income and Newton Money portfolios, and in complete liquidation of their interests in applicant.

6. All expenses in connection with the reorganizations, such as legal, accounting, proxy solicitation, liquidation, and other administrative fees and expenses, were paid by M&I Investment Management Corporation.

7. As of the date of the application, applicant had no shareholders, assets, or liabilities. applicant is not a party to any litigation or administrative proceeding. Applicant is not presently engaged in, nor does it propose to engage in, any business activities other than those necessary for the winding up of its affairs.

8. Applicant intends to effect its dissolution with the appropriate Maryland authorities after receipt of the requested order.

For the Commission, by the Division of Investment Management, under delegated authority.

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. 93-13221 Filed 6-3-93; 8:45 am]

BILLING CODE 8010-01-M

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

[Summary Notice No. PE-93-24]

Petitions for Exemption; Summary of Petitions Received; Dispositions of Petitions Issued

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Notice of petitions for exemption received and of dispositions of prior petitions.

SUMMARY: Pursuant to FAA's rulemaking provisions governing the application, processing, and disposition of petitions for exemption (14 CFR part 11), this notice contains a summary of certain petitions seeking relief from specified requirements of the Federal Aviation Regulations (14 CFR chapter I), dispositions of certain petitions previously received, and corrections. The purpose of this notice is to improve the public's awareness of, and participation in, this aspect of FAA's regulatory activities. Neither publication of this notice nor the inclusion or omission of information in the summary is intended to affect the legal status of any petition or its final disposition.

DATES: Comments on petitions received must identify the petition docket number involved and must be received on or before June 24, 1993.

ADDRESSES: Send comments on any petition in triplicate to: Federal Aviation Administration, Office of the Chief Counsel, Attn: Rule Docket (AGC-10), Petition Docket No. _____, 800 Independence Avenue, SW., Washington, DC 20591.

The petition, any comments received, and a copy of any final disposition are filed in the assigned regulatory docket and are available for examination in the Rules Docket (AGC-10), room 915G, FAA Headquarters Building (FOB 10A), 800 Independence Avenue, SW., Washington, DC 20591; telephone (202) 267-3132.

FOR FURTHER INFORMATION CONTACT: Mr. Frederick M. Haynes, Office of Rulemaking (ARM-1), Federal Aviation Administration, 800 Independence Avenue, SW., Washington, DC 20591; telephone (202) 267-3939.

This notice is published pursuant to paragraphs (c), (e), and (g) of § 11.27 of part 11 of the Federal Aviation Regulations (14 CFR part 11).

Issued in Washington, DC, on May 28, 1993.

Michael Chase,

Acting Assistant Chief Counsel for Regulations.

Petitions for Exemption

Docket No.: 25168
Petitioner: Evergreen International Airlines, Inc.
Sections of the FAR Affected: 14 CFR 121.583(a)(8)
Description of Relief Sought: To extend Exemption No. 4856B to allow Evergreen International Airlines to continue to transport its employees/dependents on its DC-8 cargo flights.

Docket No.: 26865
Petitioner: Regional Airline Association
Sections of the FAR Affected: 14 CFR 121.417(d)
Description of Relief Sought: To extend Exemption No. 5477 to allow member airlines of the Air Transport Association and other similarly situated air carriers an extension of the compliance date, until July 31, 1994, for its crew members to complete the fire fighting drill using the appropriate protective breathing equipment.

Docket No.: 27239
Petitioner: Mr. Charles A. Yates
Sections of the FAR Affected: 14 CFR 121.383(c)
Description of Relief Sought: To allow petitioner to serve as a pilot in Part 121 air carrier operations after his 60th birthday.

Docket No.: 27246
Petitioner: Deutsche Lufthansa AG
Sections of the FAR Affected: 14 CFR 129.18(a)
Description of Relief Sought/Disposition: To allow Lufthansa Airlines to operate its DC-10 aircraft in the U.S. without the Traffic Alert and Collision Avoidance System (TCAS) installed until March 31, 1994.

Docket No.: 27253
Petitioner: Mr. Kenneth Corica
Sections of the FAR Affected: 14 CFR 121.383(c)
Description of Relief Sought: To allow petitioner to serve as a pilot in Part 121 air carrier operations after his 60th birthday.

Docket No.: 27255
Petitioner: Mr. John Anderson, Jr.
Sections of the FAR Affected: 14 CFR 121.383(c)
Description of Relief Sought: To allow petitioner to serve as pilot in Part 121 air carrier operations after his 60th birthday.

Docket No.: 27256
Petitioner: Mr. Jerry J. Fielding
Sections of the FAR Affected: 14 CFR 121.383(c)
Description of Relief Sought: To allow petitioner to serve as pilot in Part 121 air carrier operations after his 60th birthday.

Docket No.: 27269
Petitioner: Mr. Gerald D. Kofford
Sections of the FAR Affected: 14 CFR 121.383(c)
Description of Relief Sought: To allow petitioner to serve as pilot in Part 121 air carrier operations after his 60th birthday.

Docket No.: 27274
Petitioner: Mr. Lawrence L. Combs
Sections of the FAR Affected: 14 CFR 121.383(c)
Description of Relief Sought: To allow petitioner to serve as pilot in Part 121 air carrier operations after his 60th birthday.

Docket No.: 27279
Petitioner: Mr. Conrad H. McEachern, Jr.
Sections of the FAR Affected: 14 CFR 121.383(c)
Description of Relief Sought: To allow petitioner to serve as pilot in Part 121 air carrier operations after his 60th birthday.

Docket No.: 27294
Petitioner: Air Transport Association of America
Sections of the FAR Affected: 14 CFR 121.309(f)(2)
Description of Relief Sought/Disposition: To allow members of the Air Transport Association and other similarly situated Part 121 operators to conduct operations with the B-747 airplane with the aft megaphone positioned at door 4-left rather than door 5-left, which is the most rearward location on that airplane.

Dispositions of Petitions

Docket No.: 21882
Petitioner: Lord Day and Lord, Barrett Smith
Sections of the FAR Affected: 14 CFR 61.77 and 63.23
Description of Relief Sought/Disposition: To extend Exemption No. 4849 to allow the issuance of U.S. special purpose pilot and flight engineer certificates to China Airlines airmen, without them holding a current certificate or license issued by a foreign certificating state to the Convention on International Civil Aviation.
Grant, May 18, 1993, Exemption No. 4849C

Docket No.: 26474

Petitioner: Donald Hillery
Sections of the FAR Affected: 14 CFR 21.197(a)(1)
Description of Relief Sought/ Disposition: To extend Exemption No. 5348 to permit Deere & Company (Deere) to operate their new Cessna Model 650, N400JD, serial no. 650–0035 without obtaining a special flight permit when flaps are in the up position.
Grant, May 21, 1993, Exemption No. 5348B

Docket No.: 26523
Petitioner: Lone Star Flight Museum
Sections of the FAR Affected: 14 CFR 45.25 and 45.29
Description of Relief Sought/ Disposition: To extend Exemption No. 5344 to permit Lone Star Flight Museum and its members to operate their historic military aircraft with two-inch registration marks located beneath the horizontal stabilizer.
Grant, May 21, 1993, Exemption No. 5344A

Docket No.: 26599
Petitioner: Regional Airline Association
Sections of the FAR Affected: 14 CFR 91.203
Description of Relief Sought/ Disposition: To amend Exemption No. 5515 which allows Regional Airline Association member airlines to temporarily operate U.S.-registered aircraft in domestic airline operations without the registration or airworthiness certificates on board, by amending condition 4 of the original exemption to allow the privileges of this exemption to be exercised for temporary replacement of a missing or mutilated registration and/or airworthiness certificate which is current and in effect and only applies to U.S.-registered aircraft listed in the air carriers' FAA-approved operations specifications.
Grant, May 21, 1993, Exemption No. 5515A

Docket No.: 27092
Petitioner: Xerox Corporation
Sections of the FAR Affected: 14 CFR 61.55(b)(2)(i); 61.57(c) and (d); 61.58(c)(1) and (d); 61.67(d)(2); 61.157(d)(1) and (2) and (e)(1) and (2); and Part 61, Appendix A
Description of Relief Sought/ Disposition: To allow Xerox Corporation to use an approved simulator for Flight Crew Training of Xerox Pilots on the soon to be FAA certified Canadair Regional Jet, CL 65.
Withdrawn, May 10, 1993

Docket No.: 27124
Petitioner: Vertiflite Air Services, Inc.
Sections of the FAR Affected: 14 CFR 141.35(d)
Description of Relief Sought/ Disposition: To permit Vertiflight to designate Mr. James Craig Folger to serve as chief flight instructor of its commercial pilot-helicopter course without meeting certain experience requirements for such a designation.
Grant, May 18, 1993, Exemption No. 5653

[FR Doc. 93–13176 Filed 6–3–93; 8:45 am]
BILLING CODE 4910–13–M

Federal Highway Administration

Environmental Impact Statement: Mason County, WV

AGENCY: Federal Highway Administration (FHWA), DOT.
ACTION: Notice of intent.

SUMMARY: The FHWA is issuing this notice to advise the public that an Environmental Impact Statement will be prepared for a proposed highway project in Mason County, West Virginia.

FOR FURTHER INFORMATION CONTACT: Billy R. Higginbotham, Division Administrator, Federal Highway Administration, 550 Eagan Street, Suite 300, Charleston, West Virginia 25301, Telephone: (304) 558–3093.

Ben L. Hark, Environmental Section Chief, Roadway Design Division, West Virginia Department of Transportation, 1900 Kanawha Boulevard East, Building 5, room A–830, Capitol Complex, Charleston, West Virginia 25305–0430, Telephone: (304) 558–3236.

SUPPLEMENTARY INFORMATION: The FHWA, in cooperation with the West Virginia Division of Highways (WVDOH), will prepare an Environmental Impact Statement (EIS) for the relocation of WV Route 2 and 62 from the end of the proposed Shadle Bridge to the existing WV Route 2 and 62 intersection 2.5 miles east of Point Pleasant (approximate project length, 2.5 miles), the relocation of U.S. Route 35 from the existing WV Route 2/U.S. Route 35 interchange to a point approximately 1.5 miles east of the city of Henderson (approximate project length, 2.0 miles), and the widening of WV Route 2 from Ferry Creek to Henderson (approximate project length, 2.3 miles). The proposed highway project is considered necessary to adequately provide for a safe and efficient transportation system to serve the existing and future transportation needs of the area and to sustain and encourage local and regional economic development.

Alternatives under consideration will include, but are not limited to (1) taking no action, (2) where possible, widening the existing two-lane highway to four-lane, and (3) constructing a four-lane, partially controlled access on new location. Additional alternatives may be evaluated based upon the results of the preliminary environmental and engineering studies and the public and agency involvement process. Incorporated into and studied with the various build alternatives will be design variations of grade and alignment.

Letters describing the proposed action and soliciting comments will be sent to appropriate Federal, State, and local agencies, and to private organizations and citizens who have previously expressed, or are known to have, interest in this proposal. A scoping field view meeting has been scheduled for June 9, 1993 at the project location. Public meetings and public hearings will be held. Public notice will be given of the times and places for the meetings and hearings. The Draft EIS will be available for public and agency review and comment prior to the public hearing.

To ensure that the full range of issues related to this proposed action are addressed and all significant issues identified, comments and suggestions are invited from all interested parties. Comments or questions concerning the proposed action should be directed to the FHWA at the address provided.

(Catalog of Federal Domestic Assistance Number 20.205, Highway Research Planning and Construction. The regulations implementing Executive Order 12372 regarding intergovernmental consultation on federal programs and activities apply to this program.)

Billy R. Higginbotham,
Division Administrator.

[FR Doc. 93–13205 Filed 6–3–93; 8:45 am]
BILLING CODE 4910–22–M

Environmental Impact Statement: 35TH Avenue SE, 100TH Street SE to Seattle Hill Road, Snohomish County, WA

AGENCY: Federal Highway Administration (FHWA), DOT.
ACTION: Notice of intent.

SUMMARY: The FHWA is issuing this notice to advise the public that an environmental impact statement (EIS) will be prepared for a proposed highway project in Snohomish County, Washington.

FOR FURTHER INFORMATION CONTACT: Barry F. Morehead, Federal Highway Administration, Evergreen Plaza Building, 711 South Capitol Way, Suite 501, Olympia, Washington, 98501, Telephone: (206) 753–2120; Dennis C. Jackson, State Design Engineer,

Washington State Department of Transportation, Transportation Building, Olympia,Washington, 98504, Telephone: (206) 705–7231; Ronald Q. Anderson, District Administrator, Washington State Department of Transportation, District 1, 15700 Dayton Avenue North, Seattle, Washington, 98133–9710, Telephone: (206) 440–4691; or John Andrews, Environmental Planner, Snohomish County Department of Public Works, 2930 Wetmore Avenue, Everett, Washington, 98201, Telephone: (206) 388–3488.

SUPPLEMENTARY INFORMATION: The FHWA, in cooperation with the Washington State Department of Transportation (WSDOT) and Snohomish County will prepare an EIS on a proposal to improve 35th Avenue SE in Snohomish County, Washington. The improvements will involve widening the existing 35th Avenue SE from 100th Street SE to Seattle Hill Road, a distance of about 3.2 miles.

Improvements to the corridor are considered necessary to provide for existing and projected traffic demands and to improve traffic and pedestrian safety. Alternatives under consideration include (1) taking no action; (2) widening the corridor from 132nd Avenue SE to 100th SE to a three lane, center turn lane roadway; and (3) widening the same corridor section to four lanes. Both build alternatives include sidewalks, curbs, bus pullouts, bike lanes, and a traffic signal. Both build alternatives will also include the improvement of 35th Avenue SE from 132nd Street SE to Seattle Hill Road as a two lane corridor with shoulders.

Letters describing the proposed action and soliciting comments will be sent to the appropriate federal, state, and local agencies as well as citizens and organizations that have previously expressed or are known to have an interest in this project. A number of Community Advisory Team and public meetings will be held between April and September 1993. Agency and public scoping meetings will be held in May 1993. In addition, a public hearing will be held. Public notice will be given of the date, time, place of the meetings and hearing. The draft EIS will be available for public and agency review and comment prior to the public hearing.

To ensure that the full range of issues related to this proposed project are addressed and all significant issues identified, comments and suggestions are invited from all interested parties. Comments or questions concerning this proposed action and the EIS should be directed to the FHWA at the address provided above.

(Catalog of Federal Domestic Assistance Program Number 20.205, Highway Research, Planning and Construction. The regulations implementing Executive Order 12372 regarding intergovernmental consultation of federal programs and activities apply to this program.)

Issued on: May 18, 1993.

Sharon R. Price,

Area Engineer, Olympia, Washington.

[FR Doc. 93–13115 Filed 6–3–93; 8:45 am]

BILLING CODE 4910–22–M

Maritime Administration

Approval of Applicant as Trustee

Notice is hereby given that Bank One, Texas, National Association, Houston, Texas, with offices 910 Travis, Houston, Texas, has been approved as Trustee pursuant to Public Law 100–710 and 46 CFR part 221.

Dated: May 28, 1993.

By Order of the Maritime Administrator.

James E. Saari,

Secretary.

[FR Doc. 93–13124 Filed 6–3–93; 8:45 am]

BILLING CODE 4910–81–M

National Highway Traffic Safety Administration

[Docket No. 93–39; Notice 1]

General Motors Corp.; Receipt of Petition for Temporary Exemption From Four Federal Motor Vehicle Safety Standards

General Motors Corporation of Warren, Michigan ("GM"), has petitioned for a temporary exemption from four Federal motor vehicle safety standards for a passenger car that is electrically powered ("GMEV"). The basis of the petition is that an exemption will facilitate the development and field evaluation of low-emission motor vehicles.

The notice of receipt of a petition is published in accordance with agency regulations on the subject, and does not represent any agency decision or other exercise of judgment concerning the merits of the petition (49 CFR 555.7(a)).

Petition is made on behalf of the GMEV, a 2-passenger vehicle based upon the design of the recent GM Impact experimental car. GM has asked for an exemption of one year (October 1993–94) so that it may manufacture and distribute a fleet of 50 GMEVs for field evaluation. This evaluation is necessary to obtain data related to customer usage patterns and field experience with electric vehicles, and to obtain technical data related to vehicle performance under real world conditions. The GMEVs will not be sold, but will be "provided to private individuals for use and evaluation, and demonstrated to public officials, utility companies and the media * * * ."

GM has designed the GMEV to comply with all Federal motor vehicle safety standards, but will be unable to conduct all the testing necessary to confirm compliance of the GMEV to certain aspects of some standards. Thus, GM argues that the exemptions it has requested would not unreasonably degrade the safety of the vehicles.

The standards for which GM has requested exemption are:

Standard No. 108, Lamps, Reflective Devices, and Associated Equipment.

The lamp assemblies to be used on the GMEV are produced in limited numbers from "temporary tooling." As of the time of the petition, it had not been possible to test the lamps, and for this reason GM is unable "to quantify the extent to which the lamps comply with the candlepower requirements at each test point." However, the petitioner "believes that any non-compliance condition would be confined to tail lamp and headlamp high beam candlepower values that would be slightly below the minimum requirements at a few test points." Because GMEVs will be operated primarily in urban areas where upper beams are not used, GM believes that the GMEV will be readily visible and provide ample illumination for safety.

Standard No. 201 Occupant Protection in Interior Impact. Although the GMEV has been designed to conform to this standard, GM has not conducted testing to determine whether the requirements of S3.1 Instrument panels will be met at the right designated seating position. GM believes that testing would confirm compliance, and notes that if a noncompliance was indicated, "There would be no unreasonable degradation in safety especially because the GMEV will have a passenger side air bag to provide protection in this area of the instrument panel."

Standard No. 203 Impact Protection for the Driver From the Steering Control System.

Standard No. 209 Occupant Crash Protection. The GMEV will have a crash protection system comprised of a 3-point manual lap and shoulder belt restraint and a supplemental restraint system of air bags for both seating positions. This system has been designed to comply to Standard No. 208 but because of the limited fleet of vehicles, GM will not be able to perform all the barrier crash testing necessary to

evaluate all occupant restraint system performance requirements. Limited barrier impact testing indicates conformance. If complete testing should indicate a noncompliance, GM believes that it would be "slight in degree and would not be a level of safety degradation that approaches unreasonableness."

In conformance of Standard No. 208 is demonstrated, the GMEV would not be subject to Standard No. 203. However, since GM cannot yet demonstrate conformance to Standard No. 208, it requests exemption from Standard No. 203 as well.

Petitioner argued that granting the exemption would be in the public interest and consistent with the National Traffic and Motor Vehicle Safety Act because the data derived "would facilitate the development of vehicles which would fully comply with FMVSS and satisfy the numerous requirements of potential buyers." It notes that the production and sale of zero-emission vehicles "is widely believed to be desirable as a means to potentially improve the air quality in many areas of the United States."

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 St., 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 comment closing date indicated below 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: July 6, 1993.

(Authority: 15 U.S.C. 1410; delegations of authority at 49 CFR 1.50 and 501.8.)

Issued On: May 28, 1993.

Stanley R. Scheiner,

Acting Associate Administrator.

[FR Doc. 93–13096 Filed 6–3–93; 8:45 am]

BILLING CODE 4910–59–M

DEPARTMENT OF THE TREASURY

Intent To Establish a Treasury Bank Secrecy Act Advisory Group on Reporting Requirements

AGENCY: Departmental Offices, Treasury.

ACTION: Establishment of a Bank Secrecy Act Advisory Group on Reporting Requirements.

SUMMARY: The Department of the Treasury (Treasury) is establishing a Bank Secrecy Act Advisory Group on Reporting Requirements which, as provided by law, shall not be subject to the Federal Advisory Committee Act. Treasury has received applications and now invites additional applications for participation in the Advisory Group. Through the Advisory Group the Secretary shall receive advice on the manner in which the reporting requirements of the Bank Secrecy Act (31 U.S.C. 5311–5328) and Section 6050I of the Internal Revenue Code of 1986 (26 U.S.C. 6050I) could be modified to maximize law enforcement utility while minimizing costs to the regulated industry, and shall inform the private sector of the ways in which these reports and suspicious transaction reports have been used. Applicants must satisfy the requirements described in this notice. The Advisory Group will be convened on a regular basis in Washington, DC, by the Secretary of the Treasury. Participants in the Group will not be remunerated for their time, services or travel.

DATES: Written application to participate in the Advisory Group must be postmarked no later than July 6, 1993 and submitted to Peter G. Djinis, Director, Office of Financial Enforcement, at the address indicated below. All applications received will be considered. Treasury requests such applicants to provide information described in this notice.

ADDRESSES: Office of Financial Enforcement, Office of the Assistant Secretary (Enforcement), Department of the Treasury, room 5000, Treasury Annex, 1500 Pennsylvania Avenue, NW., Washington, DC 20220.

FOR FURTHER INFORMATION CONTACT: A. Carlos Correa, Assistant Director, Regulations and Rulings, Office of Financial Enforcement, 202–622–0400.

SUPPLEMENTARY INFORMATION: As required by Section 1564 of the Annunzio-Wylie Anti-Money Laundering Act, Public Law 102–550 (October 28, 1992), the Department of the Treasury is establishing a Bank Secrecy Act Advisory Group on Reporting Requirements (the "Advisory Group") comprising representatives of the Departments of the Treasury and Justice, the Office of National Drug Control Policy, professional organizations and associations, and other interested persons, financial institutions, and trades and businesses subject to or interested in the reporting requirements of Sections 5311 through 5328 of Title 31, United States Code, (the Bank Secrecy Act) and/or Section 6050I of the Internal Revenue Code of 1986. Among other things, the Bank Secrecy Act and Section 6050I of the Internal Revenue Code require financial institutions, certain persons, and trades and businesses to file reports regarding large transactions in currency (IRS Forms 4789/8362—Currency Transaction Report/by Casinos), financial interests in foreign bank accounts (TD F 90–22.1—Report of Foreign Bank and Financial Accounts), cash payments over $10,000 (IRS Form 8300) received in a trade or business, and international transportations of currency or monetary instruments (Customs Form 4790).

Purpose: The Advisory Group shall serve as a means by which the Secretary:

(1) Receives advice on the manner in which the referenced reporting requirements should be modified to maximize their benefit to law enforcement while minimizing the burden on the regulated industry;

(2) Informs private sector representatives of the ways in which the referenced reports have been used; and,

(3) Informs private sector representatives of how information regarding suspicious financial transactions provided by financial institutions has been used.

Meeting Dates and Remuneration: The Advisory Group will be convened on a regular basis in Washington, DC, by the Secretary of the Treasury. Group members will not be remunerated for their time, services or travel.

Composition of Advisory Group and Application Requirements: The Department of the Treasury seeks broad-based representation from all aspects of the industries affected by the referenced reporting requirements. Any person, professional organization or association, and other interested persons, financial institutions, trades or businesses, or person(s) or organization(s) representing such entities, should write to the Department of the Treasury, Office of Financial Enforcement, to advise of their interest and qualifications.

Income tax, criminal record and other background checks will be performed on all associations, organizations, persons and/or entities considered for participation in the Advisory Group. No person who is subject to the registration requirements of the Foreign Agents Registration Act may serve on this Advisory Group.

Applicants to the Advisory Group should fully identify themselves and, if

appropriate, the organization and/or entity which s/he represents. The applicant must also provide his/her social security number, date of birth, address, and a brief biographical sketch, including a description of his/her expertise on the subject matter of the Advisory Group. Applicants must also include the following information with respect to an association, organization or entity they seek to represent on the Advisory Group: name and address, tax identification number, membership size, the purpose and commercial or other activity of the association, entity or organization, and services offered.

Written application for selection should be sent to the Office of Financial Enforcement, (OFE) Department of the Treasury, 1500 Pennsylvania Avenue, NW., Room 5000—Treasury Annex, Washington, DC 20220, within 30 days of the date of this notice. Questions may be directed to A. Carlos Correa, Assistant Director, Regulations & Rulings—OFE, at (202) 622–0400.

Dated: May 25, 1993.

Ronald K. Noble,

Assistant Secretary (Enforcement).

[FR Doc. 93–13206 Filed 6–3–93; 8:45 am]

BILLING CODE 4810–25–M

Customs Service

Testing of Pressed and Toughened (Specially Tempered) Glassware

AGENCY: Customs Service, Department of the Treasury.

ACTION: Notice of revised procedure and request for further comments on the testing of pressed and toughened (specially tempered) glassware.

SUMMARY: Customs is requesting comments on a proposed method for testing pressed and toughened (specially tempered) glassware, involving the use of polarized light to determine tempering in glass articles. These articles are normally imported under Item numbers 7013.29.05, 7013.32.10, 7013.39.10, and 7013.99.20 of the Harmonized Tariff Schedule of the United States (HTSUS).

DATES: Comments must be received on or before July 6, 1993.

ADDRESSES: Written comments (preferably in triplicate) may be addressed to and inspected at the Office of Laboratories and Scientific Services, room 7113, 1301 Constitution Avenue, NW., Washington, DC 20229.

FOR FURTHER INFORMATION CONTACT: Mr. Robert L. Zimmerman, Jr., Office of Laboratories & Scientific Services, (202) 927–1060.

SUPPLEMENTARY INFORMATION:

Background

As a result of comments sought through a **Federal Register** Notice (Oct. 9, 1991), the U.S. Customs Service published a method for the analysis of "pressed and toughened (specially tempered)" glass articles as a second **Federal Register** Notice (May 4, 1992). In the second Notice, Customs stated that it would give further consideration to the issue of the use of polarized light in the determination of tempering of these glass articles. This has been completed. This Notice will discuss these issues and includes a proposed revised U.S. Customs Recommended Laboratory Method for these products.

The bases of the tests described herein were addressed in the U.S. Court of International Trade in the "Libbey Glass Case". The Court's opinion can be found in 736 F. Supp. 277 (Slip Op. 90–15, 1990), the U.S. Court of International Trade. The opinion was affirmed on appeal [921 F.2d 1263 (Fed. Cir. 1990)].

The new method includes two major changes. First, for clear and translucent glassware, it has been determined that polarized light can be used to demonstrate that glassware articles have been full surface tempered for Customs purposes. Second, for opaque glassware, the interpretation of the center punch test has been expanded to include certain other breakage patterns in addition to "diced" pieces.

Also, with respect to opaque glassware, the review indicated that information on the cooling parameters, i.e., the cooling curve data, used in the tempering process would complement the recommended method, and be beneficial in the laboratory evaluation of these glass articles. If this data is submitted the laboratory will consider it in the overall evaluation of the commodity.

Prior to publishing a final method, consideration will be given to any written comments, timely submitted, received by Customs as a result of this current Notice. This consideration may include a rigorous assessment of any suggested techniques or methods through an interlaboratory testing program.

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 Section 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 Office of Laboratories & Scientific Services, room 7113, U.S. Customs Service Headquarters, 1301 Constitution Avenue, NW., Washington, DC 20229.

Method

Safety Precaution: Certain procedures described in this method pose a potential hazard to personnel from the proximity to or handling of breaking or broken glass. This method shall not be undertaken without supervisory concurrence that adequate precautions for personnal safety have been implemented.

This method is a series of tests designed to determine that an article has been "pressed" (Macroscopic); determine that it has been "toughened" (Thermal Shock); determine that is has been "tempered" (Polariscopic Examination or Center Punch); determine that an article has been sufficiently tempered to satisfy the qualifier "specially" (Thermal Shock).

I. Apparatus

A. Center Punch

The center punch is a slender tool having one end tapered to a point. The tool should be approximately 8" to 12" in length to permit insertion into tall-form tumblers and other articles of similar shape while the non-pointed end extends above the rim. This is necessary for ease of handling and for safety while performing the center punch test. The pointed end of the center punch should not be sufficiently sharp to chip the glassware on contact without the application of pressure.

B. Photographic Equipment

A camera (equipped with or supplemented by adequate lighting) capable of photographing broken glass patterns or fragments in sufficient detail to reveal physical characteristics such as the size of the pieces, their shape, and number is recommended for making a permanent record of borderline or unusual samples.

C. Polariscope

The basic instrument consists of a light source, a polarizer, and an analyzer. The addition of a full-wave retardation, or tint, plate permits observation of color-enhanced stress patterns. Ideally, the working space, or distance between the polarizer and the analyzer, should be large enough to accommodate samples ranging up to eight inches in height.

D. Other Apparatus and Supplies

The method requires various common laboratory articles such as an ordinary hammer, a caliper or similar device for measuring the diameter of the opening and the maximum inside diameter of

the sample, an oven and water bath, and other equipment and supplies. Appropriate safety devices and appropriate protective clothing are also required.

II. Preparation of the Sample

When available a representative number of samples should be analyzed. However, it is recognized that for any of several reasons, e.g., cost of the item, only a limited number of samples may be submitted for analysis. The possibility exists that only one sample may be available for testing.

The analyses should be conducted in the order listed below. The test protocol should be terminated at the point that a sample fails to meet any of the key criteria, i.e., "pressed", "toughened", "tempered", or "specially".

III. Analysis Procedures

A. Macroscopic Analysis—Examine Each Article of Glassware as Follows:

1. Visual Inspection

Inspect the sample for

- Identifying marks, labels, sizes, etc., especially those that may have been caused by a push-up valve and a mold that have been pressed into the article;
- The style (stemware, tumbler, bowl, plate, etc.);
- The presence of ribs, handles, flutes, etc.;
- The size of the rim or opening, if applicable;
- The size of the most bulbous portion of the article;
- Any other unusual characteristics (e.g., chips, cracks)

Interpretation of Visual Inspection results: Characteristics such as mold marks, ribs, handles, flutes, are often indicative of a pressed rather than blown glass article.

2. Dimensional Measurement (Applies Only to Stemware, Tumblers, Bowls, etc.)

- Using a caliper or similar device, measure the minimum diameter of the mouth, opening, or upper rim of the sample. With the same device, measure the maximum inside diameter. Record both measurements.

Interpretation of Dimensional Measurement results: A sample having a maximum inside diameter greater than the minimum diameter of the mouth, opening, or upper rim is not likely to have been "pressed".

Interpretation of the Macroscopic Analysis Test: The analyst is advised to consider the overall features of the article and the dimensional analysis test results in determining that an article has been "pressed". If the results show that the sample is not "pressed" the testing sequence for this sample should be terminated at this point.

B. Thermal Shock Test:

- Heat the sample(s) in an oven to 160°C for 30 minutes.
- Remove 1 sample from the oven and immediately immerse it in a water bath set at 25°C. This effects a 135°C difference in temperature.

Note: Reasonable alternate oven and water bath settings up to ±10°C are acceptable as long as the 135°C difference in temperature is maintained.

Interpretation of Thermal Shock Test results: Annealed glassware and inadequately or partially tempered glassware will generally not survive this test of durability or toughness. If breakage occurs, the sample is not "toughened" for Customs purposes. Record the findings, and terminate the analysis. If breakage does not occur, proceed to the Center Punch Test for opaque glassware or to the Polariscopic Examination if the article is transparent or translucent.

C. Polariscopic Examination

This method for the qualitative evaluation of temper in glassware should be conducted only on those transparent or translucent articles which survive the Thermal Shock Test. This method is not applicable to opaque items or to articles which have been tempered by a process other than thermal tempering.

- Place the full-wave retardation plate (tint plate) between the polarizer and the analyzer. The polarized light must pass through both the sample and the retardation plate for the color-enhanced polariscopic pattern to be observed through the analyzer. Position the retardation plate in direct contact with the polarizer or, alternatively, just in front of the analyzer.
- Turn on the light source.
- Evaluate the stress in the bottom of the intact article by placing its bottom surface in contact with the polarizer so that the polarized light passes perpendicularly through the bottom surface, or as close to perpendicularly as possible, depending upon the article's shape. [This positioning does not work well with stemware because of color patterns caused by the stem itself. With these items, it will be necessary to hold the glass at a slight angle to view the base and the bowl separately.]
- Evaluate the stress in the sides of the intact article, especially near the rim or edge, by positioning the article so that the polarized light passes perpendicularly through the sides near the rim, or as close to perpendicularly as possible, depending upon the article's shape. Observation of the stress patterns in the sidewall and rim areas should be made while viewing through a single thickness of glass. For some items, especially stemware, tumblers, and mugs, this will require holding the article at a slight angle to the polarizer (open end raised slightly).

Interpretation of the Polariscopic Examination: Thermal tempering of glassware involves heating to the softening point followed by rapid cooling. The surfaces cool first and reach a temperature where they become rigid. With further cooling, the interior or core tries to shrink but is prevented from doing so by the rigid surface layers. This results in the surfaces being locked into a state of high compression and the interior locked into compensating tension.

When polarized light rays travel through a stressed material, they divide into slow and fast fronts. As a result of the difference in speed of the slow and fast rays, interferences occur and a pattern of colors is observed. These colors can be used to evaluate the stresses in the article. As the stress increases, the observed color changes to reflect the amount of stress. The color changes follow a rigorous sequence as the stress-induced retardation—distance between the fast and slow rays—increases. In low-stress areas, black and shades of gray are seen. Evaluation of low stress is simplified by using a color-enhancing retardation or tint plate which adds a shift of one fringe order, or 565 nm, in the color pattern throughout the observed field. With the tint plate in place, even low and moderately stressed articles will exhibit a contrasting color effect.

Annealed glassware will exhibit a uniform coloration of the polarized light passing through it; there will be essentially no change from background. Tempered articles will exhibit nonuniform coloration of the polarized light on the bottom surface and sidewalls and bands of color parallel to the rim or lip.

If the sample passes the Thermal Shock Test and shows evidence of full-surface tempering (as opposed to rim-tempering or partial tempering) when examined polariscopically, the sample has been "toughened (specially tempered)" for Customs purposes.

D. Center Punch Test for Opaque Glassware

- Set the sample to be tested on a solid, level surface.

• Hold the center punch vertically, and place the pointed end against the inside center bottom or heel.

• Strike the dull end of the punch with a hammer, using blows of gradually increasing severity, until breakage occurs.

• Note the breakage pattern, number, and relative shape and size of the fragments (indicate this without making an actual count). Without disturbing the broken pieces, photograph the breakage pattern and/or typical fragments in the case of a borderline or unusual sample.

• Allow the broken pieces to remain undisturbed for 24 hours. Note whether evidence is present of continued breakage, e.g., more pieces, smaller pieces, increased crazing in unbroken pieces.

Interpretation of the Center Punch Test results: The Court decisions in the Libbey Glass case (cited above) hold that the term "toughened (specially tempered)" applies to full-surface tempered glassware which has greater resistance to mechanical and thermal shock than ordinary annealed or partially tempered glassware; that "specially" is not to be equated with "highly"; and that to qualify for classification under this term, glassware does not have to be tempered so fully that it dices completely upon breakage. The Court also recognized that uniformity of tempering from point to point in an article is affected by the article's configuration or shape and by variations in thickness.

"Toughened (specially tempered)" glassware will require more force to break by the center punch test than ordinary annealed glassware. While the presence of dicing (small cubes of roughly equal dimension on all six sides) and/or crazing (diced pieces remaining tenuously in contact with neighboring pieces) is a strong indication that an article has been tempered, it must be recognized that few, if any, tempered articles will dice completely when broken and that some tempered articles will not exhibit any dicing or crazing at all. The degree and uniformity of tempering and the article's shape and thickness greatly affect the breakage pattern.

With flatter articles such as plates and saucers, a radial breakage into wedge-shaped pieces is frequently observed. Often a network of cracks develop in these pieces as the process of stress relief continues. After remaining undisturbed for 24 hours, it is not uncommon to find that more but narrower wedges, long rectangular strips, and even some diced pieces have been generated by this continuation of breakage. This radial breakage pattern, with or without evidence of continuation of breakage upon standing, is an indication that the article has been tempered.

With drinking glasses, the stem and base of stemware styles seldom disintegrate. The most common breakage pattern for stemware is for the bowl to break, leaving a tack-shaped fragment consisting of the intact base and a portion of the stem.

When faced with an inconclusive breakage pattern, laboratory analysts may give consideration to the cooling curve data, if provided by the importer, in determining that the article has been properly tempered.

IV. Conclusion

An important feature of "toughened (specially tempered)" glassware is its resistance to breakage, its durability. A sample that has survived the thermal shock test has been proven to be "toughened" for Customs purposes. The Center Punch Test then assists in establishing that this toughness or durability is the result of a full-surface tempering process. If the sample passes the Thermal Shock Test and shows evidence of full-surface tempering per the guidance given above for the Polariscopic Examination or the Center Punch Test, then the sample has been sufficiently tempered to satisfy the qualifier "specially."

John B. O'Loughlin,

Director, Office of Laboratories and Scientific Services.

[FR Doc. 93–13242 Filed 6–3–93; 8:45 am]

BILLING CODE 4820–02–P

OFFICE OF THE UNITED STATES TRADE REPRESENTATIVE

Establishment of Dispute Settlement Panel Concerning Certain U.S. Automobile Taxes and Corporate Average Fuel Economy (CAFE) Requirements

AGENCY: Office of the United States Trade Representative.

ACTION: Notice.

SUMMARY: The Office of the United States Trade Representative (USTR) is providing notice that the Council of Representatives of the General Agreement on Tariffs and Trade (GATT) has decided, pursuant to a request by the European Communities (EC), to establish a dispute settlement panel to review the complaint by the EC against the U.S. "gas guzzler" tax, automobile luxury tax, and Corporate Average Fuel Economy (CAFE) requirements.

FOR FURTHER INFORMATION CONTACT: Daniel Brinza, Senior Advisor and Special Counsel for Natural Resources, Office of the General Counsel, USTR, 600 17th Street, NW., Washington, DC 20506, (202) 395–7305.

SUPPLEMENTARY INFORMATION: USTR is providing notice of the request for, and establishment of, a dispute settlement panel to examine the consistency of the U.S. "gas guzzler" tax (26 U.S.C. 4064 et seq.), automobile luxury tax (26 U.S.C. 4001 et seq.), and Corporate Average Fuel Economy (CAFE) requirements (15 U.S.C. 2001 et seq.) with the obligations of the United States under the GATT. The EC is the complaining party in this dispute, and Sweden, Japan and Australia have reserved their rights to intervene before the panel as third parties.

In particular, the panel is expected to examine the incidence of those taxes, and the fines assessed under the CAFE requirements, on domestic automobiles as compared to automobiles imported from the EC.

Members of the panel are currently being selected. Once the panel has been formed, it is expected to meet as necessary at the GATT headquarters in Geneva, Switzerland, to consider information relevant to the dispute. The panel will then provide a report to the GATT Council detailing its findings and recommendations.

A. Jane Bradley,

Assistant U.S. Trade Representative for Dispute Resolution.

[FR Doc. 93–13149 Filed 6–3–93; 8:45 am]

BILLING CODE 3190–01–M

[Docket No. 301–91]

Initiation of Section 301 Investigation and Request for Public Comment: Intellectual Property Laws and Practices of the Republic of Brazil

AGENCY: Office of the United States Trade Representative.

ACTION: Notice of initiation of investigation under section 302(b)(2)(A) of the Trade Act of 1974, as amended: request for written comments.

SUMMARY: The United States Trade Representative (USTR) has initiated an investigation under Section 302(b)(2)(A) of the Trade Act of 1974, as amended (the Trade Act) with respect to certain acts, policies and practices of the Government of the Republic of Brazil that deny adequate and effective protection of intellectual property rights. The USTR invites written comments from the public on the matters being investigated.

DATES: This investigation was initiated on May 28, 1993. Written comments from the public are due on or before 12 noon, on Friday, July 2, 1993.

FOR FURTHER INFORMATION CONTACT: Jon Huenemann, Director for Southern Cone Affairs (Brazil) (202) 395–5190, Gilbert Donahue, Director for Intellectual Property (202) 395–6864, or Catherine Field, Associate General Counsel (202) 395–3432.

SUPPLEMENTARY INFORMATION: Section 182(a) of the Trade Act requires the USTR to identify foreign countries that deny adequate and effective protection or enforcement of intellectual property rights or that deny fair and equitable market access for persons that rely on intellectual property protection. Accordingly, on April 30, 1993, the USTR identified Brazil, India, and Thailand as priority foreign countries under that provision. In identifying Brazil as a priority foreign country, the USTR noted deficiencies in that country's intellectual property acts, policies and practices including: (1) Several areas in the patent law, such as, the scope of patentable subject matter, inclusion of overly broad compulsory licensing provisions and working requirements, and a short term of protection; (2) failure to provide copyright protection for computer software as a literary work, too short a term of protection for software and penalties for copyright infringement that are insufficient to deter piracy; (3) inadequate protection for trade secrets; (4) no protection for semiconductor mask works (layout designs), and (5) significant levels of copyright piracy and trademark counterfeiting.

Investigation and Consultations

Section 302(b)(2)(A) of the Trade Act requires the USTR to initiate an investigation of any act, policy, or practice that was the basis of the identification of a country as a priority foreign country under section 182(a)(2) of the Trade Act, unless such acts, policies and practices are already subject to investigation or action under the section 301 chapter of the Trade Act, or the investigation is not in the national economic interest. The investigation initiated under section 302 is to determine whether such act, policy or practice is actionable under section 301 of the Trade Act.

Pursuant to section 303(a) of the Trade Act, the USTR will request consultations with the Brazilian Government concerning the issues under investigation. USTR will seek information and advice from the appropriate representatives provided for under section 135 of the Trade Act in preparing the U.S. presentations for such consultations.

Within 6 months after the date on which this investigation was initiated, (i.e., on or before November 28, 1993) pursuant to section 304 of the Trade Act, the USTR must determine on the basis of the investigation and the consultations, whether any act, policy or practice described in section 301 of the Trade Act exists and, if that determination is affirmative, decide what action, if any, to take under section 301 of the Trade Act. The deadline for making these determinations may, however, be extended to 9 months after the date of initiation of this investigation if the USTR determines that certain conditions are met.

Requirements for Submissions

Interested persons are invited to submit written comments on the acts, policies and practices of the Government of Brazil that are the subject to this investigation, the amount of burden or restriction on U.S. commerce caused by these acts, policies and practices, and the determinations required under section 304 of the Trade Act.

Comments must be filed in accordance with the requirements set forth in 15 CFR 2006.8(b) (55 FR 20593) and are due no later than 12 noon, Friday, July 2, 1993. Comments must be in English and provided in twenty copies to: Chairman, section 301 Committee, Room 223, USTR, 600 17th St., NW., Washington, DC 20506.

Comments will be placed in a file (Docket 301–91) open to public inspection pursuant to 15 CFR 2006.13, except confidential business information exempt from public inspection in accordance with 15 CFR 2006.15. [Confidential business information submitted in accordance with 15 CFR 2006.15 must be clearly marked "Business Confidential" in a contrasting color ink at the top of each page on each of 20 copies, and must be accompanied by the nonconfidential summary of the confidential information. The nonconfidential summary will be placed in the Docket which is open to public inspection.

Ira Shapiro,

General Counsel.

[FR Doc. 93–13150 Filed 6–3–93; 8:45 am]

BILLING CODE 3190–01–M

Sunshine Act Meetings

Federal Register
Vol. 58, No. 106
Friday, June 4, 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 DEPOSIT INSURANCE CORPORATION

Notice of Agency Meeting

Pursuant to the provisions of the "Government in the Sunshine Act" (5 U.S.C. 552b), notice is hereby given that at 9:30 a.m. on Wednesday, June 9, 1993, the Federal Deposit Insurance Corporation's Board of Directors will meet in closed session, by vote of the Board of Directors, pursuant to sections 552b(c)(2), (c)(4), (c)(6), (c)(8), (c)(9)(A)(ii), (c)(9)(B), and (c)(10) of Title 5, United States Code, to consider the following matters:

Summary Agenda

No substantive discussion of the following items is anticipated. These matters will be resolved with a single vote unless a member of the Board of Directors requests that an item be moved to the discussion agenda.

Reports of the Office of Inspector General.

Matters relating to the Corporation's supervisory and corporate activities.

Recommendations with respect to the initiation, termination, or conduct of administrative enforcement proceedings (cease-and-desist proceedings, termination-of-insurance proceedings, suspension or removal proceedings, or assessment of civil money penalties) against certain insured depository institutions or officers, directors, employees, agents or other persons participating in the conduct of the affairs thereof;

Names of persons and names and locations of depository institutions authorized to be exempt from disclosure pursuant to the provisions of subsections (c)(6), (c)(8), and (c)(9)(A)(ii) of the "Government in the Sunshine Act" (5 U.S.C. 552b(c)(6), (c)(8), and (c)(9)(A)(ii)).

Note: Some matters falling within this category may be placed on the discussion agenda without further public notice if it becomes likely that substantive discussion of those matters will occur at the meeting.

Discussion Agenda

Matters relating to the possible closing of certain insured depository institutions:

Names and locations of depository institutions authorized to be exempt from disclosure pursuant to the provisions of subsections (c)(8), (c)(9)(A)(ii), and (c)(9)(B) of the "Government in the Sunshine Act" (5 U.S.C. 552b(c)(8), (c)(9)(A)(ii), and (c)(9)(B)).

The meeting will be held in the Board Room on the sixth floor of the FDIC Building located at 550—17th Street NW., Washington, DC.

Requests for further information concerning the meeting may be directed to Mr. Hoyle L. Robinson, Executive Secretary of the Corporation, at (202) 898–6757.

Dated: June 2, 1993.

Federal Deposit Insurance Corporation.

Hoyle L. Robinson,

Executive Secretary.

[FR Doc. 93–13360 Filed 6–2–93; 2:39 pm]

BILLING CODE 6714–01–M

FEDERAL DEPOSIT INSURANCE CORPORATION

Notice of Agency Meeting

Pursuant to the provisions of the "Government in the Sunshine Act" (5 U.S.C. 552b), notice is hereby given that the Federal Deposit Insurance Corporation's Board of Directors will meet in open session at 9:00 a.m. on Wednesday, June 9, 1993, to consider the following matters:

Summary Agenda

No substantive discussion of the following items is anticipated. These matters will be resolved with a single vote unless a member of the Board of Directors requests that an item be moved to the discussion agenda.

Reports of actions approved by the standing committees of the Corporation and by officers of the Corporation pursuant to authority delegated by the Board of Directors.

Memorandum and resolution re: Delegation of Authority to Defer Appointing Receiver for Critically Undercapitalized Institutions.

Memorandum and resolution re: Proposed amendments to Part 303 of the Corporation's rules and regulations, entitled "Applications, Requests, Submittals, Delegations of Authority, and Notices Required to be Filed by Statute or Regulation," which would (1) amend the Corporation's requirements for publishing notice of the filing of applications for proposed merger transactions under the Bank Merger Act; and (2) clarify that the public comment period begins when the first notice is published and is 30 days for non-emergency merger transactions and 10 days for emergency merger transactions.

Discussion Agenda

Memorandum and resolution re: Proposed amendments to Parts 303 and 308 of the Corporation's rules and regulations, entitled "Applications, Requests, Submittals, Delegations of Authority, and Notices Required to be Filed by Statute or Regulation," and "Rules of Practice and Procedure," respectively, and proposed amendments to the Corporation's rules and regulations in the form of a new Part 364 entitled, "Standards for Safety and Soundness," all of which would prescribe safety and soundness standards in the areas of operation and management, asset quality and earnings, and compensation as required by section 39 of the Federal Deposit insurance Act, as added by section 132 of the Federal Deposit Insurance Corporation Improvement Act of 1991.

Memorandum and resolution re: Proposed amendments to Part 325 of the Corporation's rules and regulations, entitled "Capital Maintenance," which would (1) ensure that depository institutions effectively measure and monitor their interest rate risk ("IRR") and maintain adequate capital for that risk, and (2) provide for considerations to IRR in the overall determination of an institution's minimum capital ratio.

The meeting will be held in the Board Room on the sixth floor of the FDIC Building located at 550—17th Street, N.W., Washington, D.C.

The FDIC will provide attendees with auxiliary aids (e.g., sign language interpretation) required for this meeting. Those attendees needing such assistance should call (202) 898–6745 (Voice); (202) 898–3509 (TTY), to make necessary arrangements.

Requests for further information concerning the meeting may be directed to Mr. Hoyle L. Robinson, Executive Secretary of the Corporation, at (202) 898–6757.

Dated: June 2, 1993.

Federal Deposit Insurance Corporation.

Hoyle L. Robinson,

Executive Secretary.

[FR Doc. 93–13361 Filed 6–2–93; 2:39 pm]

BILLING CODE 6714–01–M

FEDERAL HOUSING FINANCE BOARD

"FEDERAL REGISTER" CITATION OF PREVIOUS ANNOUNCEMENT: 58 FR 29693, May 21, 1993.

PREVIOUSLY ANNOUNCED TIME AND DATE OF THE MEETING: 9:00 a.m. Wednesday, May 26, 1993.

CHANGES IN THE MEETING: The following topic was deleted from the agenda during the closed portion of the meeting.

• Discussion of the merits of the System's moving to 20:1 in conjunction with changes

to the Financial Management Policy guidelines, particularly those that effect the limits on Mortgage Backed Securities investment.

The following topic was added to the agenda during the closed portion of the meeting.

• Review of 1992 Incentive Award for the President of the FHLBank of San Francisco.

The Board determined that agency business required its consideration of this matter on less than seven days' notice to the public; that no earlier notice of these changes in the subject matter of the meeting was practicable; that the public interest did not require consideration of the matter in a meeting open to public observation; and that the matter could be considered in the closed portion of the meeting pursuant to section 552b(c)(6) of title 5 of the United States Code.

CONTACT PERSON FOR MORE INFORMATION: Elaine L. Baker, Executive Secretary to the Board, (202) 408–2837.

Philip L. Conover,

Managing Director.

[FR Doc. 93–13279 Filed 6–1–93; 4:44 pm]

BILLING CODE 6725–01–M

BOARD OF GOVERNORS OF THE FEDERAL RESERVE SYSTEM

TIME AND DATE: 10:00 a.m., Wednesday, June 9, 1993.

PLACE: Marriner S. Eccles Federal Reserve Board Building, C Street entrance between 20th and 21st Streets, N.W., Washington, D.C. 20551.

STATUS: Closed.

MATTERS TO BE CONSIDERED:

1. Personnel actions (appointments, promotions, assignments, reassignments, and salary actions) involving individual Federal Reserve System employees.

2. Any items carried forward from a previously announced meeting.

CONTACT PERSON FOR MORE INFORMATION: Mr. Joseph R. Coyne, Assistant to the Board; (202) 452–3204. You may call (202) 452–3207, beginning at approximately 5 p.m. two business days before this meeting, for a recorded announcement of bank and bank holding company applications scheduled for the meeting.

Dated: June 1, 1993.

Jennifer J. Johnson,

Associate Secretary of the Board.

[FR Doc. 93–13335 Filed 6–2–93; 12:48 pm]

BILLING CODE 6210–01–P

Federal Register

Friday
June 4, 1993

Part II

Department of Labor

Wage and Hour Division

29 CFR Part 825
Family and Medical Leave Act; Interim Final Rule

DEPARTMENT OF LABOR

Wage and Hour Division

29 CFR Part 825

RIN 1215–AA85

The Family and Medical Leave Act of 1993

AGENCY: Wage and Hour Division, Labor.

ACTION: Interim final rule; request for comments.

SUMMARY: This document contains interim regulations implementing the Family and Medical Leave Act of 1993 called ("FMLA" or "the Act").

The Act is effective on August 5, 1993, six months from the date of its enactment. Where a collective bargaining agreement is in effect on August 5, 1993, the Act is effective when the collective bargaining agreement terminates or February 5, 1994, whichever is earlier.

The purpose of these regulations is to set forth the requirements of Title I and Title IV of the Act. Title I applies to covered private employers and public agencies (except for most of the Federal Government, which is governed by Title II). Title IV of the Act primarily concerns the relationship between FMLA and other laws, as well as collective bargaining agreements and other employer plans and programs.

DATES: *Effective Date:* This interim final rule is effective on August 5, 1993.

Comments: Comments are due on or before September 2, 1993.

ADDRESSES: Submit written comments to the Administrator, Wage and Hour Division, U.S. Department of Labor, room S–3502, 200 Constitution Avenue, NW., Washington, DC 20210. Commenters who wish to receive notification of receipt of comments are requested to include a self-addressed, stamped post card. As a convenience to commenters, comments may be transmitted by facsimile ("FAX") machine to (202) 219–5122. This is not a toll-free number.

FOR FURTHER INFORMATION CONTACT: J. Dean Speer, Division of Policy and Analysis, Wage and Hour Division, Employment Standards Administration, U.S. Department of Labor, room S–3506, 200 Constitution Avenue, NW., Washington, DC 20210; telephone (202) 219–8412. This is not a toll-free number.

SUPPLEMENTARY INFORMATION:

I. Paperwork Reduction Act

Recordkeeping requirements contained in the regulation (§ 825.500) have been submitted to the Office of Management and Budget under the provisions of the Paperwork Reduction Act of 1980 (Pub. L. 96–511) for review.

The public reporting burden for collection of information requirements contained in these regulations is estimated to average as follows:

3 minutes 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.

This estimate is based on the assumption that most of the information required by these regulations is already maintained by those employers subject to the minimum wage and overtime provisions of the Fair Labor Standards Act (FLSA) under Regulations, 29 CFR part 516. Additional FMLA-specific recordkeeping requirements, not otherwise required under the FLSA, are the minimum necessary for determining compliance with FMLA. These regulations establish no new reporting requirements. Send comments regarding this burden estimate or any other aspect of this collection of information, including suggestions for reducing this burden, to the Office of Information Management, U.S. Department of Labor, room N–1301, 200 Constitution Avenue NW., Washington, DC 20210; and the Office of Information and Regulatory Affairs, Office of Management and Budget, Washington, DC 20503.

II. Background

The Family and Medical Leave Act (FMLA) was enacted into law on February 5, 1993. In general, FMLA entitles qualified employees to up to 12 weeks of unpaid leave per year for the birth or adoption of a child, to care for a spouse or an immediate family member with a serious health condition, or when unable to work because of a serious health condition. Employers covered by the law are required to maintain any pre-existing health coverage during the leave period and, once the leave period is concluded, to reinstate the employee to the same or an equivalent job.

A. Purpose of FMLA.

Enactment of FMLA was predicated on two overarching concerns—the needs of the American workforce, and the development of high-performance work organizations. Increasingly, America's children and elderly are dependent upon family members who spend many hours at work. When a family emergency arises, requiring workers to attend to a seriously-ill child or parent, or to a newly-born infant, or even to their own serious illness, workers need reassurance that they will not be asked to choose between continuing their employment and meeting their personal and family obligations, or tending to vital needs at home.

The FMLA is both intended and expected to benefit employers as well as their employees. The Department believes that a direct correlation exists between stability in the family and productivity in the workplace. FMLA will encourage the development of high performance work organizations. When workers can count on durable links to their workplace they are able to make a full commitment to their job. The record of hearings on family and medical leave is full of testimonials from some of America's most respected business leaders on the powerful productive advantages of stable workplace relationships, and on the comparatively small costs of guaranteeing that those relationships will not be dissolved while workers attend to pressing family health obligations or their own serious illness.

This "family friendly" law reflects policies and practices already adopted by many employers across the United States and in most other industrialized countries. In fact, such policies have been found to be good for both workers and businesses.

FMLA benefits working people by allowing a healthier balance between their family and work lives. In enacting the law, Congress found that especially with the very significant increase in single-parent households and homes where both parents are working, it is important for the development of children and the family unit that parents be able to have time to participate in early child-rearing and to attend to serious illness affecting their immediate family, including the elder care needs affecting more and more families in our country. When a newborn or newly adopted child arrives or a serious family medical problem occurs, employees should not have to choose between taking the time needed to attend to such important events and the loss of their job and health insurance coverage. The FMLA—like similar State laws and employer policies—is intended to promote a healthier balance between work and family responsibilities, ensuring that family development and cohesiveness are encouraged by this nation's public policy.

FMLA will benefit employers too. Many employers—in all areas and kinds of industries, and throughout the public sector—have long-established policies and practices that accommodate their employees' family and medical leave

needs. Many private employers with such policies have come to regard them as providing a competitive advantage in today's labor markets. Such family and medical leave policies are seen as an important attraction in recruiting and retaining employees, and in promoting employee loyalty, involvement and commitment to their employer's business goals and operations. These businesses have also found that the costs associated with accommodating their employees' family and medical leave needs are almost always minimal. In fact, several studies show that family and medical leave policies are actually cost-beneficial in that any costs incurred are more than offset by savings realized from lower turnover, higher productivity, and reducing or avoiding the costs of training new employees.

In addition, employers with family and medical leave policies report that abuse of their policy is extremely uncommon. When employees' paid leave is exhausted or cannot be used, continuing leave in an unpaid status is a powerful incentive for employees to return to work as soon as they are able. Employers have told us that their policies are intentionally structured to minimize requirements for employee notice and justification for family and medical leave for two reasons. First, because their experience is that their workers cannot afford and do not ask for such leave unless it is absolutely necessary. Second, when confronting a serious family or medical situation, the employee's stress is only compounded by unnecessary demands by the employer.

Employees needing family or medical leave, even when not risking the possible loss of their job or health insurance, experience other kinds of stress unrelated to the event occurring in their personal lives. Employers report that many employees fear that leaving their job for some period of time will affect their employer's business, that their work will not get done or be done correctly, or that they will return to an accumulated backlog of work. Employers have found that it is extremely important to involve the employees in planning for how their work will get done during their absence. This effort helps relieve both the employer's and the employee's anxieties in this regard, and fosters cooperation among co-workers who may be called on to help cover the unit's work during the absence.

These principles provide valuable guidance in implementing family and medical leave policies as required by the FMLA. Meeting employees' leave needs—regulated primarily by the fact that few workers can afford to take unnecessary unpaid leave—will work best, afford the greatest business advantages, and produce the greatest payback in the long term when done in a spirit of cooperation, openness and in recognition of the fact that both the employer and employee will benefit. Employees treated fairly and equitably, with sympathy and understanding of the situation they face, and with a minimum of unnecessary requirements will be more loyal, dedicated and productive, and a greater asset to their organization.

B. Applicability of Different Titles Under FMLA

Title I of the Act applies to private employers of 50 or more employees, public agencies, and certain Federal employers and entities, such as the U.S. Postal Service and Postal Rate Commission. Similar provisions in Title II of the Act apply to most other Federal employees. Separate regulations implementing that title will be issued and administered by the U.S. Office of Personnel Management (OPM). Title III concerns the establishment of a "Commission on Leave." Title IV contains various provisions pertaining to effective dates, regulations, and the effect of the Act on more generous leave policies, other laws, and existing employment benefits. Title V extends similar leave provisions to certain employees of the Senate and House of Representatives.[1]

C. Significant Dates Under FMLA

The Act requires the Department of Labor to issue regulations implementing Title I and Title IV by no later than June 5, 1993. The provisions of Title I are effective on August 5, 1993 (six months after the date of enactment) except where a collective bargaining agreement (CBA) is in effect on that date. Where a CBA is in effect, these provisions take effect on the date of termination of the CBA or on February 5, 1994, whichever is earlier.

D. March 1993 NPRM Under FMLA

To obtain public input to assist in the development of these regulations, the Department published a notice of proposed rulemaking in the **Federal Register** on March 10, 1993 (58 FR 13394). Public comment was invited on a variety of questions and issues. The notice provided for a comment period until March 31, 1993. A total of 393 comments were received in response to the notice—from employers, trade and professional associations, advocacy organizations, labor unions, State and local governments, law firms and employee benefit firms, academic institutions, financial institutions, medical institutions, governments, Members of Congress, and others. About 16 percent of the comments were concerned solely with the definition of the term "health care provider," urging that Christian Scientist practitioners be included in the definition. A number of comments were received after the comment period closed on March 31. These comments have also been included in the rulemaking record and will be considered in the preparation of the final rule.

In addition, the Department met with Congressional staff and outside parties who provided background information and raised questions to be considered in preparation of the notice of proposed rulemaking. Notes of these meetings are included in the rulemaking record. Participating in one such meeting were representatives of the Society for Human Resource Management, National Association of Manufacturers, National Restaurant Association, National Association of Wholesale Distributors, Labor Policy Association, Federated Department Stores, Houston Lighting and Power Company, Alexander & Alexander, Towers Perrin, General Motors, ARCO, Oneida Ltd., and Southwest Air. Another meeting included representatives of the AFL–CIO, Service Employees International Union, National Education Association, American Association of Retired Persons, American Federation of State, County and Municipal Employees, Association of Professional Flight Attendants, and the Independent Federation of Flight Attendants. Meetings were also held with representatives of the National Retail Federation, the States of Connecticut, Oregon, and Wisconsin; and The First Church of Christ, Scientist. Teleconferences were held with representatives of Businesses for Social Responsibility and the State of California's Fair Employment Practices Department. A meeting was also held with majority and minority staff of the interested Congressional Committees in which these staff were afforded the opportunity to review and discuss draft regulations. Notes of this meeting have been made part of the rulemaking record. The discussion during this meeting resulted in a number of clarifications of regulatory language and a revision of the definition of "serious

[1] Title VI contains a sense of the Congress provision requiring a review and report from the Secretary of Defense on departmental policy with respect to the service of homosexuals in the Armed Forces.

health condition" contained in these regulations.

The Department also has been working with the U.S. Office of Personnel Management (OPM) to coordinate our respective rulemaking efforts under the Act. We have also conferred with the U.S. Equal Employment Opportunity Commission (EEOC), the U.S. Internal Revenue Service (IRS), and the Resolution Trust Corporation.

E. Structure of Interim Final Rule

One of the Department's primary goals in this rulemaking process is to produce "user-friendly" regulations—in other words, regulations which are accessible, understandable, and usable by a person who is not familiar with the Act. The rulemaking process has also made clear to us that the public wants its questions answered in a way that permits the Act to be implemented as it was intended and without unnecessary litigation.

To assist the public, these regulations have been structured in a question and answer format, with both major and minor questions grouped as we believe they would most logically be asked. An index is also provided as an appendix at the end of the regulations to facilitate their use.

Our objective is to establish clear principles and guidelines that can be applied in varying factual circumstances. We cannot, however, address all of the questions that might arise under the multitude of industry- or company-specific situations that can occur under the Act. We will endeavor to address such additional matters as they are raised in this rulemaking process, or suggest the appropriate source for obtaining further information and answers to questions on issues which extend beyond the scope of FMLA or which cannot be resolved directly through FMLA's implementing regulations. For example, employers and employees have expressed a desire to learn how particular fringe benefit plans or practices with respect to "cafeteria plans," "flexible spending accounts," and the "continuation of health benefits provisions" of Title X of the Consolidated Omnibus Budget Reconciliation Act of 1986 ("COBRA") interact with FMLA, particularly in regard to the tax implications of such programs. The Department urges that employers and employees with an interest in these areas consult directly with the IRS to obtain guidance.

III. Summary and Discussion of Regulatory Provisions

Subpart A—What Is the Family and Medical Leave Act, and to Whom Does It Apply?

Subpart A briefly summarizes the provisions of the Act and its purposes, including how the effective date provisions of the Act apply to leave taken or underway on its effective date, which employers are covered by the Act, which employees are "eligible" for FMLA benefits, and in what kinds of situations the Act requires employers to allow FMLA leave. Section 825.100 describes the Act's basic provisions and requirements. Section 825.101 briefly explains the Congressional findings and purposes, and the rationale for why the Act was passed.

When Is the Act Effective? (§ 825.102)

The Act takes effect on August 5, 1993, unless a collective bargaining agreement (CBA) is in effect on that date. If a CBA is in effect on August 5, 1993, FMLA takes effect upon termination of the CBA, but no later than February 5, 1994 (*i.e.*, 12 months after the date of enactment).

The Act's legislative history explains that employment with a covered employer before the Act takes effect is to be counted in determining whether an employee is "eligible" for FMLA leave. Accordingly, an employer must consider periods of employment before the Act's effective date when determining if the law applies to it and if its employees are eligible for leave. For example, an employer must count the number of employees employed in both calendar years 1992 and 1993 to determine if it employed at least 50 employees during 20 or more weeks in either year. If the employer employed 50 or more employees during 20 or more calendar weeks in either calendar year as of the Act's effective date, the employer is subject to the law on August 5, 1993, the date the law takes effect.

How Does the Act Affect Leave in Progress on, or Taken Before, the Effective Date of the Act? (§ 825.103)

Because both the leave entitlements and notice provisions of the Act are not effective until August 5, 1993, only leave starting on and after that date is considered FMLA leave which can be counted against an employee's 12-week entitlement. Alternatives suggested by comments, but not adopted, include: (1) Only leave requested on or after the Act's effective date should count; (2) leave beginning before the Act takes effect and continuing on the effective date should all be counted against the 12-week entitlement; and, (3) any leave taken for FMLA-eligible purposes over the prior 12-month period before the Act's effective date should be counted towards the 12-week entitlement. It is recognized that the regulation may allow some opportunity for leave-stacking, *e.g.*, where an employee has already taken leave to which the employee is entitled under State law or the employer's plan. However, this circumstance will exist only in the initial implementation and transition period.

What Employers Are Covered by the Act? (§ 825.104)

FMLA covers employers who employ 50 or more employees (see the next section) and who are engaged in commerce or in any industry or activity affecting commerce. The Act uses the "affecting commerce" test under the Labor Management Relations Act (LMRA), rather than the narrower standard of the Fair Labor Standards Act (FLSA). When determining if activities affect "commerce," courts interpret this test very broadly, in effect finding that coverage coincides with the full scope of Congressional power to regulate commerce under the Constitution. See *National Labor Relations Board* v. *Reliance Fuel Corp.*, 371 U.S. 224, 226 (1963) (per curiam). Under Title VII of the Civil Rights Act of 1964 (Title VII), the U.S. Court of Appeals for the Ninth Circuit stated that it is difficult to imagine any activities, businesses or industries employing 15 or more employees (the Title VII threshold) that do not affect commerce among the States in some degree. Because FMLA has an even higher coverage threshold than Title VII, any employer with 50 or more employees will be deemed to be an employer "* * * engaged in commerce or in any industry or activity affecting commerce * * *" within the meaning of FMLA.

The notice of proposed rulemaking raised questions concerning who is the employer under arrangements involving leased employees, employees of franchises, and other loosely related business operations, *e.g.*, related but separate corporate entities. Principles established under Title VII and the LMRA are applied in the regulation to make this determination. Ordinarily the legal entity will be the employer. However, there are circumstances where the relationship between two entities is so close that they will be considered an integrated employer and, therefore, treated as a single employer in counting employees and for other purposes. Although the standards are somewhat

different, it is believed that an employer who meets the "enterprise" test under the FLSA would ordinarily meet the integrated employer test.

In Determining Whether an Employer Is Covered by FMLA, What Does it Mean to Employ 50 or More Employees for Each Working Day During Each of 20 or More Calendar Workweeks in The Current or Preceding Calendar Year? (§ 825.105)

This language parallels language in Title VII of the Civil Rights Act of 1964, and is intended to receive the same interpretation. As most courts and the EEOC have interpreted the language, it is intended to mean "employ" in the sense of maintain on the payroll. It is not necessary that every employee actually perform work on each working day to be counted for this purpose. For example, a bank that is open for business five days per week will be considered to have all employees who are regularly maintained on its payroll as employed for each working day, even though only a few of its employees, such as security guards or maintenance personnel, may work on weekend days. Similarly, part-time employees and employees on leaves of absence would be counted as employed for each working day so long as they are on the employer's payroll for each day of the workweek. On the other hand, an employee who is added to the employer's payroll after the beginning of a workweek, or who terminates employment prior to the end of the workweek, will not count as being employed on each working day in that week. (See S. Rep. 103–3 (1993), pp. 21–22; see also, H.R. Rep. 103–8, Part 1 (1993), pp. 33–34.) Employees on long-term or indefinite lay-off will also not be counted.

Although there is contrary case law, the interpretation of this statutory provision contained in the legislative history is the predominant view and, we believe, is the better construction of the provision. Therefore, a "maintained on the payroll" test is used in the regulations.

How Is "Joint Employment" Treated Under FMLA? (§ 825.106)

Title VII, the LMRA, and the FLSA all utilize the concept of joint employment. These principles are spelled out in the regulations, utilizing the principles of the FLSA interpretative bulletin, 29 CFR part 791, and the regulations under the Migrant and Seasonal Agricultural Worker Protection Act, 29 CFR 500.20(i). Under the FMLA, however, the application of these principles is somewhat more difficult because, for example, ordinarily only one employer furnishes an employee's benefits.

These regulations provide that where there is a joint employment relationship, all individuals working for an entity (including those shared with the joint employer) are counted in determining coverage. A primary employer is responsible for satisfying the basic FMLA responsibilities to an employee taking FMLA leave, while a secondary employer is prohibited from discriminating or retaliating against that employee. With respect to its regular work force, on the other hand, a covered secondary employer must comply with all of its responsibilities under FMLA.

What Is Meant by "Successor in Interest"? (§ 825.107)

The FMLA defines the term "employer" to include "any successor in interest of an employer." Thus, a "successor in interest" employer must take into account the Act's coverage, eligibility, and other FMLA responsibilities of the predecessor employer when determining and satisfying its FMLA obligations. This means that an employee's FMLA leave eligibility is determined by treating the employment by the predecessor and successor employers as continuous employment by a single employer. Further, an eligible employee who commences FMLA leave while employed by the predecessor employer must be restored to employment by the "successor in interest" upon concluding the leave (assuming the exemption for "key employees" does not apply, discussed below in § 825.217).

The factors to be considered in determining whether an employer is a "successor in interest" are those utilized under Title VII and a number of cases under the Vietnam Era Veterans' Readjustment Act of 1974 (VEVRA), which relate essentially to whether there is continuity of the same business operations with the same plant, work force, jobs and working conditions, supervisory personnel, machinery and equipment, and products or services, and the ability of the predecessor to provide relief. One of these factors, notice to the employer, is not included because—as suggested in *Horton* v. *Georgia-Pacific Corp.*, 114 Lab. Cas. (CCH) ¶ 12,060 (E.D. Mich. 1990), arising under VEVRA—that factor is not considered pertinent to an employee returning from leave.

What Is a "Public Agency"? (§ 825.108)

"Public agency" is defined in accordance with section 3(x) of the FLSA, which includes the government of the United States; the government of a State or political subdivision of a State; any agency of the United States (including the United States Postal Service and Postal Rate Commission), a State, or a political subdivision of a State, or any interstate governmental agency. Under the FLSA, States and political subdivisions of States are considered to be single public agency employers, the same test used in these regulations.

While the 50-employee coverage test does not apply to public agencies, the public agency employer must employ 50 employees within a 75-mile area around the worksite in order for an employee to be "eligible" and entitled to FMLA leave (see § 825.110 below). Thus, a State is considered a single public agency employer under FMLA for purposes of counting the number of employees to determine if they are "eligible" for FMLA leave. Likewise, any political subdivision of a State, such as a county or a city, is a single public agency employer for this purpose.

Where there is a question about whether an agency is a single public agency employer (separate from other governmental jurisdictions), the listing in the U.S. Bureau of Census' "Census of Governments" will be conclusive.

Are Federal Agencies Covered by These Regulations? (§ 825.109)

Most Federal executive branch employees are covered by Title II of FMLA, administered by the Office of Personnel Management (OPM). The Department has worked with OPM to determine which executive branch employees are excluded from Title II and, therefore, covered by these regulations. The Federal employees covered by these regulations include: (1) Employees of the U.S. Postal Service, Postal Rate Commission, and Library of Congress; (2) employees of a corporation supervised by the Farm Credit Administration, if private interests elect or appoint a member of the board of directors; (3) part-time employees who do not have an established regular tour of duty during the administrative workweek; (4) employees serving under temporary appointments with a time limitation of one year or less; (5) employees of legislative and judicial branch agencies employed in a unit which has employees in the competitive service (*e.g.*, the Government Printing Office and the U.S. Tax Court); and (6) other Federal executive agencies if they are not covered by Title II of FMLA and OPM jurisdiction. The 50-employees-within-75-miles eligibility test applies to Federal employees covered by these regulations. For employees covered by

these regulations, the U.S. Government constitutes a single employer.

Which Employees Are "Eligible" To Take Leave Under the FMLA? (§ 825.110)

To be "eligible," an employee must have worked for the employer: (1) For at least 12 months and (2) for at least 1,250 hours during the year preceding the start of the leave, and (3) be employed at a worksite where the employer employs at least 50 employees within a 75-mile radius.

In determining whether an employee has 1,250 hours of service, the Act requires that FLSA hours-worked principles be applied. Therefore, all hours which an employer suffers or permits an employee to work are counted towards hours of service (see 29 CFR part 785). For example, on-call time would be hours of service where it meets the FLSA hours-worked requirements (29 CFR part 785.17), as would ground time for flight crews.

The regulations describe how to determine hours of service for this purpose for employees not subject to the minimum wage and overtime requirements of the FLSA, and for whom no record of hours-worked are kept. For purposes of this regulation, FLSA-exempt employees for whom no hours-worked records have been kept and who have worked for the employer for at least 12 months are presumed to have met the 1,250 hours of service requirement for eligibility. For example, in consideration of the time spent at home reviewing homework and tests, full-time teachers in an elementary or secondary school system, or institution of higher education, or other educational establishment or institution, are deemed to meet the 1,250 hour test. An employer must be able to clearly demonstrate that such an employee did not work 1,250 hours during the preceding 12-month period if FLMA leave is to be denied on the basis that the employee is not an "eligible" employee.

In Determining if an employee Is "Eligible" Under FMLA, How Is the Determination Made Whether the Employer Employs 50 Employees Within 75 Miles of the Worksite Where the Employee Requesting Leave Is Employed? (§ 825.111)

The term "single site of employment" from the Worker Adjustment and Retraining Notification Act (WARN) regulations, 20 CFR Part 639, applies in determining what constitutes a "worksite" for purposes of FMLA. Because the purpose of the 75-mile radius limit is to afford employers the opportunity to utilize employees among proximate worksites when an employee goes on leave, and because of practical difficulties in determining 75 miles "as the crow flies," the regulations provide that 75 miles from the worksite is measured based on surface miles on public roads.

It is important to recognize the distinction made under FMLA between the 50-employees test for determining if a private employer is covered by the Act, and the separate 50-employees-employed-within-75-miles-of-the-worksite test for determining if an employee is "eligible" to take FMLA leave. It is conceivable that a covered employer, employing more than 50 employees at multiple, geographically dispersed worksites, might have no eligible employees if fewer than 50 employees are working within 75 miles of each worksite. For example, an employer that operates a chain of convenience stores with none of the locations within 75 miles of each other could employ hundreds of employees, and be covered by the Act, but still not have any employees who are eligible for FMLA leave if fewer than 50 employees work at each location.

A number of different options were considered for when the count should be made to determine how many employees are employed within 75 miles for eligibility purposes. Commenters variously suggested the point at which an employee requests leave, the point at which an employee begins leave, a fixed year (such as the calendar year or leave year), or at the same time as when employer coverage is determined.

Under FMLA, the purpose of an employee providing notice to an employer of the need for leave is primarily to give the employer an opportunity to plan for handling the work during the employee's absence, such as by reassigning the work among staff in the unit where the employee taking leave is assigned, assigning an employee on temporary duty from another office or worksite, or hiring a temporary replacement. At the same time, the employee needs the opportunity to make plans regarding the leave—for example, to coordinate leave with a spouse so at least one parent can be with a child who is in the hospital, obtain reservations to travel to a distant city to care for a parent, and the like.

Employees should be encouraged to give the employer as much notice as possible so both can make necessary arrangements. Both the employee and the employer benefit from knowing whether or not the employee is going to be entitled to leave so that each can make appropriate plans. It is in their mutual interest to make this determination when the employee requests leave.

If there are not 50 employees employed within 75 miles at that time, the employee may renew his or her request at a later date.

Both the use of a fixed date and the use of the same method used in determining employer coverage were considered inconsistent with the Act's use of the present tense in defining "eligible" employees. In addition, the use of a fixed date could be manipulated to reduce eligibility.

In this regard, the Department also gave serious consideration to an option not suggested by commenters. This option is that where notice is given 30 or more days prior to the commencement of leave, the count would be made on the 30th day preceding the start of leave, or, at the employer's option, as of the date leave is requested; where 30 days notice is not given, the count would be made at the time notice is given or the date leave begins, whichever is earlier. This option might alleviate the inconvenience potentially presented to a seasonal employer who receives a notice for leave during the height of the season, for leave to be taken at a time when the employer's staff is reduced. However, this should not be a significant concern because many seasonal employers may not be covered because of the coverage requirement that an employer employ 50 or more employees in at least 20 workweeks. Comments are specifically invited on whether the problems envisioned for seasonal employers are significant, and whether this or another approach should be considered to address those problems.

Under What Kinds of Circumstances Are Employers Required To Grant Family or Medical Leave? (§ 825.112)

An eligible employee is entitled to FMLA leave for the birth of a child, and to care for such child; for the placement of a child for adoption or foster care; to care for the employee's seriously-ill spouse, child, or parent; and because of a serious health condition that makes the employee unable to perform his or her job functions. Circumstances may require that leave for the birth of a child, or for placement for adoption or foster care, be taken prior to the actual birth or placement. With respect to placement for adoption, the regulations do not require use of licensed adoption agencies. Foster care is defined to require State action, rather than just an informal arrangement to take care of another person's child.

What Do "Spouse," "Parent," and "Son or Daughter" Mean for Purposes of an Employee Qualifying To Take FMLA Leave? (§ 825.113)

An eligible employee may take FMLA leave to care for the employee's spouse, son, daughter, or parent, if the spouse, son, daughter, or parent has a serious health condition.

"Spouse" is defined in accordance with applicable State law, including common law marriages where recognized by the State. It is clear from the legislative history that unmarried domestic partners are not intended to qualify for family leave to care for their partner.

FMLA defines "son or daughter" to include a child 18 years or over who is "incapable of self-care because of a mental or physical disability." To define mental or physical disability, regulations under the Social Security Act and Medicare were examined, in addition to regulations under the Americans with Disabilities Act (ADA). The applicable portion of the ADA definition of mental or physical disability is adopted in these regulations. The additional requirement that the son or daughter be incapable of self care means that he or she is incapable of performing several of the activities of daily living without assistance.

What is a "serious health condition"? (§ 825.114) An eligible employee may take FMLA leave to care for a spouse, son, daughter, or parent with a serious health condition, or because of the employee's own serious health condition. FMLA defines a "serious health condition" as one which requires either inpatient care, or "continuing treatment by a health care provider." Although the meaning of inpatient care is evident, the alternative definition raises difficult questions.

The term "serious health condition" is intended to cover conditions or illnesses affecting one's health to the extent that inpatient care is required, or absences are necessary on a recurring basis or for more than a few days for treatment or recovery. Furthermore, the Congressional reports indicate that this term is not intended to cover short-term conditions for which treatment and recovery are very brief, since such conditions would generally be covered by employers' sick leave policies. Examples of a serious health condition cited in the legislative history include heart attacks, heart conditions requiring heart bypass or valve operations, most cancers, back conditions requiring extensive therapy or surgical procedures, strokes, severe respiratory conditions, spinal injuries, appendicitis, pneumonia, emphysema, severe arthritis, severe nervous disorders, injuries caused by serious accidents on or off the job, ongoing pregnancy, severe morning sickness, the need for prenatal care, childbirth and recovery from childbirth.

Because of this legislative history, the notice of proposed rulemaking asked whether there should be a minimum number of days of absence in order for an illness to be "serious." A variety of suggestions were received, ranging from no minimum requirement to a requirement of disability within the meaning of the ADA. Where inpatient care is not involved, the regulations require that the absence from work, or from school or incapacity in performing other daily activities in the case of a family member, be for a period of more than three days in addition to requiring the continuing treatment of a health care provider. This provision is similar to a statutory provision under many State workers' compensation laws and the Federal Employees' Compensation Act (FECA), also administered by the Department of Labor, which generally provide for a three-day waiting period before compensation is paid to an employee for a temporary disability (see 5 U.S.C. 8117), sometimes after a "continuation of pay" period.

Because the statute permits intermittent leave or leave on a "reduced leave schedule" in cases of medical necessity, it is also clear that the Act contemplates that employees would be entitled to FMLA leave in some cases because of doctor's visits or therapy—*i.e.*, that the absence requiring leave need not be due to a condition that is incapacitating at that point in time. Thus, the legislative history explains that absences to receive treatment for early stage cancer, to receive physical therapy after a hospital stay or because of severe arthritis, or for prenatal care are covered by the Act. Therefore, the regulations provide that a serious health condition includes treatment for a serious, chronic health condition which, if left untreated, would likely result in an absence from work of more than three days, and for prenatal care.

Consistent with these definitions, voluntary or cosmetic treatments (such as most treatments for orthodontia or acne) which are not medically necessary are not included in the definition of "serious health condition," unless inpatient hospital care is required. Restorative dental surgery after an accident or removal of cancerous growths would be included if the other conditions of the regulation are met. Treatments for allergies or stress may be included if the conditions of the regulation are met. Prenatal care is explicitly included; routine physical examinations are explicitly excluded.

Treatment of substance abuse may also be included, such as where a stay in an inpatient treatment facility is required. On the other hand, absence because of the employee's use of the substance, without treatment, does not qualify for leave. It should be pointed out that the inclusion of substance abuse as a "serious health condition" does not prevent an employer from taking employment action against an employee who is unable to perform the essential functions of the job—provided the employer complies with the ADA and does not take action against the employee because the employee has exercised his or her right to take FMLA leave for treatment of that condition.

For any condition other than one that requires inpatient care, the employee or family member must be receiving continuing treatment by a health care provider. "Continuing treatment" includes (i) Two or more visits to a health care provider; (ii) two or more treatments by a health care practitioner on referral from, or under the direction of, a health care provider; or (iii) a single visit to a health care provider that results in a regimen of continuing treatment under the supervision of the health care provider—for example, a course of medication or therapy to resolve the health condition. In addition, there was concern about persons who have serious, chronic conditions such as Alzheimer's or late-stage cancer, or who have suffered a severe stroke, who obviously are severely ill but may not be receiving continuing active care from a doctor. Therefore, the rule encompasses such serious conditions which are under continuing supervision by a health care provider.

Some may argue that this approach may encompass health conditions that are not really serious, while others may view the approach as excluding certain situations that were intended to require the granting of FMLA leave. However, the Department believes the regulation's definition is most consistent with the statute and legislative history.

What Does It Mean That "the Employee Is Unable To Perform the Functions of the Position of the Employee"? (§ 825.115)

An eligible employee may take FMLA leave because of a serious health condition that makes the employee unable to perform the functions of the employee's position. FMLA's legislative

history states that this provision does not mean that the employee must be so incapacitated that the employee is unable to work at all, but that it may include necessary absence from work to receive treatment, during which time the employee would be temporarily "unable to perform the functions of the position." Limitations are provided by the additional requirement that any intermittent or reduced leave be medically necessary.

Employers suggested that the "unable to perform the functions of the [employee's] position . . ." requirement should be limited to the essential functions of the employee's position. The Department believes this is a reasonable suggestion. As part of the certification of a serious health condition (to be discussed below), a health care provider will, when required, include a statement that the employee is unable to perform the essential functions of the employee's job. However, a seriously-ill employee will often be unable to perform work of any kind; requiring employers to provide a list of the employee's essential job functions to a health care provider in such cases would be unnecessary and burdensome. Therefore, employers who wish the health care provider to review an employee's ability to perform his or her essential job functions will have the option of designating the essential job functions in a position description provided to the health care provider for this purpose (similar to what occurs in workers' compensation determinations).

What Does it Mean That an Employee Is "Needed To Care for" a Family Member? (§ 825.116)

An eligible employee may take FMLA leave in order to care for the employee's spouse, child, or parent with a serious health condition. An employer may request that an employee support a leave request for this purpose with a certification from the health care provider that includes a statement that the employee is "needed to care for" the family member. It is clear from the legislative history that this provision is intended to accommodate needs for leave to provide psychological comfort, such as to a seriously ill child or parent, and to arrange "third-party" care for a family member (*e.g.*, by a visiting nurse, in a nursing home, *etc.*). Generally, an employee must decide that he or she will provide needed care rather than through another person, or through inpatient care in a hospital, hospice, or nursing home. Because health care providers may not be in a position to know that the employee is needed to care for the family member, the health care provider must either certify that third-party care is required or that the employee's presence would be beneficial to the patient. Such certification, after review of an employee's statement of the care the employee will provide, will be sufficient to satisfy this requirement and entitle the employee to FMLA leave.

For an Employee Seeking Intermittent Leave or Leave on a Reduced Leave Schedule, What Is Meant by "the Medical Necessity for" Intermittent Leave or Leave on a Reduced Leave Schedule? (§ 825.117)

An employer may request that an eligible employee seeking intermittent leave or leave on a reduced leave schedule due to a serious health condition of the employee or immediate family member support requested leave for this purpose with a certification from the health care provider that such leave is medically necessary and the expected duration and schedule of such leave. This provision of the certification section was added as a technical amendment just prior to FMLA's passage in the Senate. There is, therefore, little explanation of the provision in the legislative history. The regulations require that there be a medical need for the leave, and that the medical need can best be accommodated through an intermittent or reduced leave schedule. The requirement for certification of the medical necessity of intermittent leave or leave on a reduced leave schedule would normally be satisfied by the specified description of the treatment regimen provided.

What Is a "Health Care Provider"? (§ 825.118)

A "serious health condition" requires either inpatient care or continuing treatment by a "health care provider." Further, an employer may require that an employee's request for leave to care for a seriously-ill family member, or because of the employee's own serious health condition that makes the employee unable to perform his or her job, be supported by a certification issued by the "health care provider" of the employee or of the son, daughter, spouse, or parent of the employee, as appropriate.

FMLA defines a "health care provider" as a doctor of medicine or osteopathy who is authorized to practice medicine or surgery (as appropriate) by the State in which the doctor practices; or (2) any other person determined by the Secretary to be capable of providing health care services. Many employer commenters asked that the definition be limited to doctors of medicine or osteopathy; others wanted providers of a broad range of medical services to be included. Because health care providers will need to indicate their diagnosis in health care certificates, such a broad definition was considered inappropriate.

After review of definitions under various programs, including OPM rules and Medicare, the definition of "physician" under the Federal Employees' Compensation Act, 5 U.S.C. 8101(2); was used in these regulations as a starting point, which also includes podiatrists, dentists, clinical psychologists, optometrists, and chiropractors (limited to treatment consisting of manual manipulation of the spine to correct a subluxation as demonstrated by X-ray to exist) authorized to practice in the State and performing within the scope of their practice as defined under State law. In addition, nurse practitioners and nurse-midwives who provide diagnosis and treatment of certain conditions, especially at health maintenance organizations and in rural areas where other health care providers may not be available, are included in the definition, provided they are performing within the scope of their practice as allowed by State law.

A very significant number of comments were received from Christian Scientists urging inclusion of Christian Science practitioners in the definition of a "health care provider." Colloquies on the floor of both the House and Senate make clear Congressional intent that such practitioners be covered by the definition. However, employers may require that second or third opinions be obtained by health care providers other than Christian Science practitioners.

Subpart B—What Leave Is an Employee Entitled To Take Under the Family and Medical Leave Act?

Subpart B explains the leave to which an employee is entitled, the requirements for maintenance of health benefits during periods of leave, employee rights to job and benefit restoration upon returning to work, and provisions to protect employees from adverse action.

How Much Leave May an Employee Take? (§ 825.200)

An eligible employee is entitled to take up to 12 weeks of FMLA leave in "any 12-month period." After review of the alternatives suggested, the Department concluded that maximum employer flexibility should be accommodated for ease of

administration, in view of some employers' established practice of using a "leave year," and because of varying State law requirements. Employers will, therefore, be allowed to choose a uniform method to compute the 12-month period from various alternatives, including a fixed 12-month period for all employees, 12 months measured forward from the first date leave is used, and a rolling 12-month period measured backward from the date leave is used. Employee advocacy groups generally opposed the rolling 12-month period measured backward from the date leave is used. However, this method is the only one which clearly would not allow "stacking" of back-to-back leave entitlements, and seems clearly to be permissible under the plain meaning of the statutory language. While employers may change the uniform method used to define the 12-month period, the regulations afford protections to employees in such event.

If Leave Is Taken for the Birth of a Child, or for Placement of a Child for Adoption or Foster Care, When Must the Leave Be Concluded? (§ 825.201)

An employee's entitlement to FMLA leave for birth or placement of a child expires 12 months after the birth or placement.

How Much Leave May a Husband and Wife Take if They Are Employed by the Same Employer? (§ 825.202)

FMLA limits the leave that may be taken by spouses who work for the same employer to a combined total of 12 workweeks during any 12-month period if leave is taken for birth or placement for adoption or foster care. This limitation applies even if the spouses work at different worksites or in different divisions of the same company, as long as they are employed by the same employer. The legislative history states that this limitation is intended to eliminate any incentive for employers to refuse to hire married couples. The limitation does not apply, however, to leave taken by either spouse to care for the other who is seriously-ill and unable to work, to care for a child with a serious health condition, or for his or her own serious illness. This limitation also applies in the law to FMLA leave to care for a parent with a serious health condition. However, because FMLA leave is not available to care for a parent-in-law with a serious health condition (though such leave may be allowed under State law or an employer's policy or practice), the circumstances in which such limitation might actually apply are extremely unlikely.

Does FMLA Leave Have To Be Taken All at Once, or Can It Be Taken in Parts? (§ 825.203)

FMLA permits an employee taking leave for birth or because of placement for adoption or foster care to take leave intermittently or by working a reduced workweek only with the employer's approval. However, leave to care for a seriously ill family member or because of the employee's own serious health condition may be taken whenever "medically necessary." Although some employers favored a minimum four-hour leave duration, the Department concluded that no minimum limitation should be made. There are other protections for employers in the statute; for example, if leave is foreseeable, an employee is required to try to schedule the leave so as not to unduly disrupt the employer's operations, and the employer may place the employee in an alternative position which better accommodates intermittent leave. Furthermore, it is considered unlikely that an employee would have several short instances of intermittent leave on an emergency basis which qualify as serious health conditions. Similarly, there is no basis in the statute for limiting the period of time for intermittent leave.

May an Employer Transfer an Employee to an "Alternative Position" in Order To Accommodate Intermittent Leave or a Reduced Leave Schedule? (§ 825.204)

If an employee requests intermittent leave or a reduced work schedule to care for a seriously-ill family member or for the employee's own serious health condition, and the need for leave is foreseeable based on planned medical treatment, the employer may temporarily transfer the employee to an available alternative position with equivalent pay and benefits if the employee is qualified for the position and it better accommodates recurring periods of leave than the employee's regular job. This provision gives employers greater staffing flexibility by enabling them to transfer employees on a temporary basis who need intermittent leave or a reduced leave schedule to positions that are more suitable to recurring periods of leave. At the same time, however, it ensures that employees will not be adversely affected by their need for such leave.

The Act places no limitations on the nature of the alternative position to which an employee may be transferred. There is no requirement that an employee agree, although such a requirement may be imposed by a collective bargaining agreement, for example. Furthermore, an employer may be required by the ADA to accommodate the employee's health condition. Even in the absence of ADA protections, it would be desirable for any placement by the employer to accommodate the employee's health condition. In any event, an employer would be permitted to alter the employee's existing position to better accommodate the intermittent or reduced leave, or to transfer the employee to a part-time position. However, the employee must receive equivalent pay and benefits in the new position, even if the position would not otherwise provide benefits, for example.

How Does One Determine the Amount of Leave Used Where an Employee Takes Leave Intermittently or on a Reduced Leave Schedule? (§ 825.205)

Only the time actually taken as FMLA leave may be charged against the employee's entitlement when leave is taken intermittently or on a reduced leave schedule. This section explains, through various examples, how changes in an employee's work schedule due to intermittent leave affect the calculation of the amount of FMLA leave taken. If an employee who normally works five-day workweeks takes one day off on FMLA leave, only one-fifth of one week of FMLA leave has been used. If a full-time employee switches to half-days under a reduced leave schedule, one-half week of FMLA leave is used each week.

For part-time employees and those who work variable hours, the FMLA leave entitlement is calculated on a pro rata or proportional basis. If an employee who normally worked a schedule of 30 hours per week needed to change to 20 hours a week on a reduced leave schedule, the ten hours of FMLA leave equals one-third of a week of FMLA leave each week. If an employee's work schedule varies from week to week, the average weekly hours worked during the 12 weeks prior to the start of the FMLA leave will be used to calculate the employee's "normal" work schedule for this purpose.

May an Employer Deduct Hourly Amounts From an Employee's Salary, When Providing Unpaid Leave Under FMLA, Without Affecting the Employee's Qualifications for Exemption as an Executive, Administrative, or Professional Employee Under the Fair Labor Standards Act? (§ 825.206)

Yes. Employers will be able to "dock" the pay of otherwise salaried and exempt employees for family and medical leave-related absences of less

than one full day without affecting their exempt status under the Fair Labor Standards Act's (FLSA) minimum wage and overtime requirements, but only in situations where an employer is required to provide leave under FMLA. Thus, for example, hourly deductions may not be taken where leave is required by State law or pursuant to the employer's more generous leave program, but not by FMLA, without affecting the employee's FLSA exempt status. Thus, an employer not covered by the FMLA may not take deductions for partial-day absences for reasons which would have been required by FMLA without disqualifying the employee for the FLSA exemption. Similarly, a covered employer may not make such deductions from the pay of employees not "eligible" under FMLA without disqualifying the employee for FLSA exemption. Of course, in such cases, employers can provide paid leave for such absences, consistent with the employee being paid "on a salary basis," or may treat the employee as non-exempt and take such deductions but pay overtime premium pay for hours worked over 40 each workweek.

This position comports with the explicit requirements of FMLA; there is no reason to believe that more was contemplated by Congress. Any further change in the FLSA exemption provisions would have to be promulgated under the FLSA regulations, after full notice and comment.

While it is considered inappropriate for the Department to address the effects of pay "docking" in other, analogous leave situations in these regulations, the Department is concerned about the tension between the effects of partial-day "docking" under FLSA and FMLA's encouragement of more generous employment policies and adherence with more generous State laws.

Is FMLA Leave Paid or Unpaid? (§ 825.207)

Although FMLA leave is generally unpaid, the Act permits an employee to substitute accrued paid leave under certain circumstances. Similarly, an employer is permitted to require an employee to substitute paid leave. Accrued paid vacation or personal leave may be substituted for any FMLA-qualifying purpose. In addition, accrued paid family leave may be substituted for birth or adoption, or to care for a seriously-ill immediate family member; and, accrued paid medical or sick leave may be substituted to care for a seriously-ill immediate family member or for the employee's own serious health condition. Thus, if an employee takes leave for birth, adoption, or to care for a seriously-ill family member, accrued paid vacation leave, personal leave, or family leave may be substituted for all or part of the period of leave. Accrued paid vacation leave, personal leave, or medical or sick leave may be used to care for a seriously-ill family member or because of the employee's own serious medical condition for all or part of the period of leave—"except that nothing in [the Act] shall require an employer to provide paid sick leave or paid medical leave in any situation in which such employer would not normally provide any such paid leave" (emphasis added).

The meaning of the quoted limiting phrase is in dispute. Several of the sponsors of the legislation and the Women's Legal Defense Fund (WLDF) contend in their comments that the limitation was intended to apply only to use of paid sick leave for types of illnesses (i.e., medical conditions) that would otherwise be covered by the employer's plan (for example, if substance abuse treatment were excluded, paid leave could not be used for that purpose), but not to limit an employee's ability to use paid sick leave to care for an ill family member if the employer's plan does not permit such use of paid sick leave. However, the history of this provision lacks an explanation that it is so intended and cannot, therefore, overcome the clearer reading of the statutory language.

A number of more minor issues concerning substitution of paid leave are also addressed in the regulation. For example, the legislative history requires a similar limitation to be placed on use of paid family leave, explaining that the term "family leave" refers to "paid leave provided by the employer covering the particular circumstances for which the employee is seeking leave" for birth, adoption, or to care for a seriously ill family member. In other words, if the employer's family leave plan provides leave only for birth, it cannot be used for another purpose; or if the plan provides leave to care for a child, but not for a spouse, it cannot be used to care for a spouse.

On the other hand, the Act contains no similar limitation for use of paid vacation or personal leave. Therefore, an employee can use paid vacation leave for any FMLA purpose, without limitation. Thus, an employee would be able to use paid vacation leave for any FMLA-qualifying purpose despite an employer's requirement that it be used in periods of at least a day or a week at a time, or despite the fact that by reason of an employee's seniority or the staffing needs of the employer, a vacation would not normally be allowed at that time. The employer is provided protection, however, by the requirement that the employee attempt to schedule foreseeable leave so as not to unduly disrupt the employer's operations.

Employers expressed considerable concern that an employee not be allowed to take an additional 12 weeks of FMLA leave for birth of a child after conclusion of a disability leave period provided under the employer's plan. It appears clear this was not intended. Any period before and after birth where a mother is not able to work for medical reasons may be considered leave for a serious health condition, despite the fact that the period after birth is also leave to care for the newborn child.

On the other hand, some employers wished to prohibit an employee from later using paid sick or personal leave if the employee takes only unpaid FMLA leave. There is nothing in the Act which prohibits such use of paid leave, but employers may, subject to the limitation just discussed, require use of paid leave during the FMLA leave period. Employers are not permitted to count paid leave which was not for an FMLA purpose against an employee's FMLA leave entitlement.

Furthermore, if an employee uses paid leave, whether or not under circumstances that qualify as FMLA leave, an employee is only required to comply with the employer's requirements for use of paid leave. If FMLA provides more stringent notice or certification requirements, an employer may not impose them upon the employee's use of paid leave. On the other hand, if the employee wishes to extend a paid leave period with unpaid FMLA leave, the FMLA notice and certification requirements will apply as of the first day of the leave period (if the leave was for an FMLA purpose from the beginning or some earlier date).

May an Employer Require an Employee To Designate Paid Leave as FMLA Leave and, as a Result, Count It Against the Employee's Total FMLA Leave Entitlement? (§ 825.208)

Under FMLA an employee may elect or an employer may require an employee to substitute certain paid leave for unpaid FMLA leave. An employee requesting unpaid FMLA leave must explain the reasons for the needed leave to allow the employer to determine that the leave qualifies under the Act. In many cases, in explaining the reasons for a request to use paid leave, especially when the need for the leave was unexpected or unforeseen, an employee will (even though, under the employer's policy, may not be required to) provide sufficient information for the

employer to designate the paid leave as substituting for all or some portion of the employee's FMLA leave entitlement. An employee using accrued paid leave, especially vacation or personal leave, may in some cases not spontaneously explain the reasons or the plans for using accrued leave. As noted in the regulations (see § 825.302(c)), an employee giving notice of the need for unpaid FMLA leave does not need to expressly assert rights under the Act or even mention the FMLA to meet his or her obligation to provide notice, though the employee would need to state a qualifying reason for the needed leave. An employee requesting or notifying the employer of an intent to use accrued paid leave, even if for a purpose covered by FMLA, would not need to assert such right either. However, if an employee requesting to use paid leave for an FMLA-qualifying purpose does not explain the reason for the leave and—consistent with the employer's established policy or practice—the employer denies the employee's request, the employee will need to state an FMLA-qualifying reason for the needed leave so that the employer is aware of the employee's entitlement (i.e., that the leave may not be denied) and, then, may designate that the paid leave be appropriately counted against (substituted for) the employee's 12-week FMLA leave entitlement. Similarly, an employee using accrued paid vacation leave who seeks an extension of unpaid leave for an FMLA-qualifying purpose will need to state the reason. If this is due to an event which occurred during the period of paid leave, the employer may count the leave used after the FMLA-qualifying event against the employee's 12-week entitlement. In all circumstances, it is the employer's responsibility to designate leave, paid or unpaid, as FMLA-qualifying, based on information provided by the employee.

If the employer decides that paid leave should be substituted for unpaid leave, or that paid leave taken under an employer's existing leave plan should be counted as FMLA leave, the decision must be made in response to the request (notice) by the employee. If circumstances are such that this decision is not made before leave has begun, *e.g.*, because the need for the leave was unexpected, or because an employee was on personal, vacation or sick leave for an FMLA purpose and did not advise the employer of the purpose and the employee requests an extension of the leave, the employer or the employee may retroactively redesignate the entire leave period (or the appropriate part) as FMLA leave. In no event may such designation be made after leave is concluded, or based on information other than that provided by the employee.

Is an Employee Entitled to Benefits While Using FMLA Leave? (§ 825.209)

FMLA requires an employer to maintain coverage under any "group health plan . . . for the duration of such leave and under the conditions coverage would have been provided if the employee had continued in employment continuously for the duration of such leave." An employer is not required to provide health benefits unless the employer already does so. However, if a plan is established or changed by the employer during an employee's leave period, entitlement to benefits starts at the same point as if the employee were still on the job.

The legislative history explains that a "qualifying event" triggering requirements that an employer allow an employee to continue health benefits coverage (but paying the full cost) for purposes of Title X of the Consolidated Omnibus Budget Reconciliation Act of 1986 (COBRA), "may occur when it becomes known that an employee is not returning to employment and therefore ceases to be entitled to leave under this act." Thus, the employer's obligation to provide health benefits, except as provided under COBRA, would cease at that point. On the other hand, if an employer has given a "key employee" notice that substantial and grievous economic injury would occur if the employee were to be reinstated, and the employee declines to return to work in response to the notice, the employer's obligation to maintain health benefits continues.

Some commenters asked whether government entities are subject to the requirement to maintain health benefits of eligible employees during periods of FMLA leave, because government entities are excluded from the IRS definition of "employer" under the Internal Revenue Code for purposes of imposing an excise tax on employers or employee organizations which contribute to "nonconforming" group health plans. The Internal Revenue Code subsection which excludes Federal and other government entities from the definition of "group health plan" for this purpose (the Internal Revenue Code of 1986 at 26 U.S.C. 5000(d)) is a separate provision from that incorporated into FMLA (section 5000(b)(1)). FMLA includes public agencies within its definition of covered employers. There is no indication in either the Act or its legislative history supporting a view that public agencies are not required to maintain employee's health benefits during periods of FMLA leave, and they must do so.

How May Employees on FMLA Leave Pay Their Share of Health Benefit Premiums? (§ 825.210)

In the case of paid FMLA leave, the employer's and employee's share, if any, of health plan premiums are to be paid in the manner customarily used. In the case of unpaid FMLA leave, employers and employees are encouraged to work out arrangements which accommodate both administrative convenience for the employer and the financial situation of the employee who would not be receiving a paycheck during the leave period. Therefore, the regulations provide options for payment of the employee's share of premiums if the leave is unpaid; any such arrangement must be clearly specified in advance.

What Special Health Benefits Continuation Rules Apply to Multi-Employer Health Plans? (§ 825.211)

Multi-employer health plans are comprised of several employers contributing to the same plan, pursuant to one or more collective bargaining agreements—an arrangement used widely in the construction industry. Questions arise as to an employer's responsibility to continue contributions to such a plan when an employee takes unpaid FMLA leave.

Except where the plan provides another method for maintaining coverage, such as a pool to which all employers contribute, the employer must continue to make contributions during the employee's FMLA leave. Coverage by the health plan must be maintained at the level coverage would have been provided if the employee had continued to be employed. The employee may not be required to use "banked" hours or pay a greater premium than the employee would have paid if leave had not been taken. Plans are encouraged to develop rules which accommodate this FMLA requirement in the context of the situations in the particular industry.

What Are the Consequences of an Employee's Failure To Make Timely Health Plan Premium Payments? (§ 825.212)

These regulations encourage the employee and employer to make arrangements for payment of the employee's share of premiums to maintain health care coverage that are mutually acceptable to both parties. The regulations provide for a 30-day grace period after the agreed upon date for payment within which the employee

may make payment of the premium without affecting health benefit coverage. If the employee does not make the payment within the 30-day grace period, the employer may cease to maintain health coverage on the date the grace period ends, or the employer may continue health coverage by making both the employer's and employee's premium payments. If the employer chooses to continue coverage in this manner, the employer is entitled to recover the additional payments made on behalf of the employee while on leave after the employee returns to work.

If the employer chooses to discontinue health coverage as a result of non-payment of premiums by the employee after the grace period, upon the employee's return to work, the employee's group health (and other) benefits must be restored to at least the same level and terms as were provided when leave commenced. Therefore, the restored employee shall not be required to meet any qualification requirements such as a waiting period including any new preexisting condition waiting period, waiting for an open season, or passing a medical examination.

May an Employer Recover Premiums It Paid for Maintaining Group Health Plan Coverage During FMLA Leave? (§ 825.213)

An employer may recover premiums it paid for maintaining group health plan coverage during any period of unpaid FMLA leave if the employee fails to return to work after the employee's FMLA leave entitlement has expired, unless the reason the employee does not return to work is due to: (1) The continuation, recurrence, or onset of a serious health condition that would entitle the employee to FMLA leave (either affecting the employee or an immediate family member), or (2) "other circumstances beyond the control of the employee." These exceptions are intended to prevent an employer from recapturing health insurance premiums from employees who are unable to return to work from their FMLA leave because they are themselves disabled by a serious health condition, or because they are needed to care for a seriously ill family member, or because the employee's circumstances suddenly and unexpectedly change during leave. For example, an expectant mother who took FMLA leave for the birth of her child and after 10 weeks of leave discovers that her baby has serious birth defects requiring immediate surgery, might find it impossible to return to work at the end of 12 weeks of leave. Recognizing that workers should not be adversely affected in such cases for failure to return to work due to circumstances beyond their control, FMLA exempts workers in these situations from liability for repayment of health insurance premiums paid by their employers during the leave period.

The regulations clarify that "other circumstances beyond the control of the employee" would include, for example, circumstances where someone other than an immediate family member with a serious health condition needs the employee to provide care; the employee is laid off while on FMLA leave; the employee is a "key employee" who elects not to return to work after being notified that the employer intends to deny reinstatement because of the threat of substantial and grievous economic injury to the employer's operations and is not reinstated by the employer; or the employee's spouse is unexpectedly transferred more than 75 miles away from the employee's worksite. "Circumstances beyond the control of the employee" do not include such situations as where an employee desires to remain with a parent in a distant city even though the parent no longer needs the employee's care, or a mother decides not to return to work, choosing instead to remain at home with her newborn child.

If an employee fails to return to work at the end of the leave period because of a serious health condition, the employer may request that the employee furnish a medical certification from the health care provider of the employee or the employee's family member to support the employee's claim. If the employee fails to furnish the requested certification within 30 days of the employer's request, the employer may recover the health insurance premiums it paid during the period of unpaid leave.

If an employee fails to pay his or her share of health benefit premiums and the employer elects to continue health coverage for the employee (in order to be able to restore the employee on return to work) by paying the employee's share, and the employee fails to return to work at the end of the FMLA leave period in circumstances where recovery is allowed, the employer may recover all of the health benefit premiums it paid (both the employer's and the employee's share) during the period of unpaid FMLA leave.

An employee who does not return to work for at least 30 calendar days is considered to have failed to "return" to work for this purpose.

The employer's recovery is limited to the premiums it paid during any period of unpaid FMLA leave in the circumstances where recovery is allowed. If paid leave is substituted for all or any part of the FMLA leave period, the employer may not recapture health insurance premiums paid during any period of paid leave.

When circumstances allow for an employer to recover health insurance premium payments it made from a non-returning employee, the employer may deduct the amount due from any sums owed to the employee (*e.g.*, vacation pay, profit-sharing, final paycheck, *etc.*), provided the deductions do not otherwise violate any wage payment or other laws that may apply (including State law). A self-insured employer may only recover its share of allowable "premiums" as would be calculated under COBRA, excluding the two percent administrative costs fee.

What Are an Employee's Rights on Returning to Work From FMLA Leave? (§ 825.214)

An eligible employee who takes FMLA leave is entitled to be restored to the same position that the employee held when the leave started, or to an equivalent position with equivalent benefits, pay, and other terms and conditions of employment. The legislative history characterizes this as an appropriately stringent standard for assigning employees who return from leave to jobs other than the position which they previously held. FLMA does not entitle a restored employee to any more rights, benefits, or employment beyond that to which the employee would have been entitled had the employee not taken FMLA leave.

What Is an Equivalent Position? (§ 825.215)

At the conclusion of FMLA leave, an employer must restore the employee to the same job the employee held before going on leave, or an equivalent position. The legislative history makes it clear that the standard for an equivalent position is not "comparability" or "similarity," and that a "correspondence" to the duties, terms and conditions, and privileges of the previous position is required. An equivalent position must have the same pay, benefits and working conditions. It must involve the same or substantially similar duties and responsibilities, and must entail substantially equivalent skill, effort, responsibility and authority. If special qualifications are required for the position that have lapsed during the employee's leave (e.g., continuing education requirement for emergency medical technicians, flying a minimum number of hours, completing a required training course, etc.), the employee must

be given a reasonable opportunity to fulfill the requirements after returning to work.

Benefits must be resumed upon the employee's return to work at the same level as were provided when leave began, without any new qualification period, physical exam, etc. An employee is not entitled to accrue additional benefits during a period of unpaid leave; any new or additional coverage or changes in health benefits, however, must be made available to an employee while on leave. Any increases in pay or changes in benefits which are not dependent upon seniority or accrual during the leave period must be made effective upon the employee's return to work.

Because benefits—health insurance coverage and other benefits—must be resumed at the end of an employee's FMLA leave in the same manner and at the same levels as provided when the leave began, some employers may find it necessary to modify life insurance or other benefits programs in order to be able to restore employees to equivalent benefits upon return from FMLA leave, make arrangements for continued payment of costs to maintain such other benefits during unpaid FMLA leave, or pay these costs subject to recovery from the employee following return from leave.

The employee must be restored to the same worksite from which the employee commenced leave, or to a geographically proximate worksite. If the employee's original worksite has been closed or moved, and other employees were transferred to another worksite, the employee must have the same rights for transfer as would have been available had the employee not taken leave. The employee is entitled to be returned to the same shift or equivalent schedule, and have the same opportunity for bonuses, profit-sharing and other non-discretionary payments. The requirement that a restored employee receive the same or equivalent pay and benefits does not extend to intangible or unmeasurable aspects of the job, such as perceived loss of or potentially diminished opportunities for promotion.

Are There Any Limitations on an Employer's Obligation To Reinstate an Employee? (§ 825.216)

An employee has no greater right to restoration or to other benefits than if the employee had been continuously employed during the leave period. If the employee is denied restoration or other benefits, the employer must be able to show that the employee would not have continued to be employed, or to have received the benefits, if the employee had continued to work until the time restoration was requested. For example, the employer may have had a reduction-in-force, eliminated a shift, or eliminated overtime work. Under such circumstances, the employee would not be entitled to reinstatement, or to work overtime hours not available to other employees, if the employee would have been affected by these changes if not on FMLA leave. If, however, the employee has been replaced on the night shift by another employee, the employer may not deny the employee the opportunity to return to the same shift.

What Is a "key" Employee? (§ 825.217)

Under very limited circumstances, explained below, an employee who qualifies as a "key" employee may be denied restoration to employment. A key employee is an employee who is salaried, and is "among the highest paid 10 percent" of the employees employed within 75 miles of his or her worksite. The regulations use the Department's definition of payment "on a salary basis" set forth in the FLSA regulations at 29 CFR 541.118. A key employee must be among the highest paid 10 percent of all salaried and non-salaried, eligible and ineligible, employees. To determine who are the highest paid 10 percent, year-to-date earnings as of the date leave is requested are considered.

Upon requesting FMLA leave, an employee must be notified by the employer of his/her status as a key employee if there is any possibility that the employer may deny reinstatement after the leave. (See section 825.219, below.)

What Does "Substantial and Grievous Economic Injury" Mean? (§ 825.218)

An employer may deny restoration to a "key employee" only if necessary to prevent substantial and grievous economic injury to the operations of the employer. In addressing this provision, the Department considered two alternative interpretations: (1) That the employee's taking leave must cause substantial and grievous economic injury to the operations of the employer; and (2) that the employee's restoration to employment after taking leave must cause the substantial and grievous economic injury. The plain meaning of the statutory language is that it must be the restoration to employment, rather than the taking of the leave, which would cause the injury. The legislative history on this point, however, is somewhat confused. The following statement appears in the House and Senate reports:

> In measuring grievous economic harm, a factor to be considered is the cost of losing a key employee if the employee chooses to take the leave, notwithstanding the determination that restoration will be denied.

Other characterizations of the statutory language are straightforward. The House and Senate reports both state that the Act contains a limited exemption from the restoration requirement for certain highly compensated employees, and restoration may be denied to such employees if the employer shows that such denial is necessary to prevent substantial and grievous economic injury. The minority, in the committee report and on the floor, unambiguously characterize the test as injury caused by restoration. The provision is described as only exempting such employees from the right to reinstatement if denial of such reinstatement would be necessary to prevent grievous injury. This requirement is stressed in floor statements by Representative Goodling:

> Note that the focus, strangely, is not on the impact of the employee's absence, but on the reinstatement. Let us read the text of the bill and then the Members will understand what it is all about. Maybe if he or she was making $500,000 a year, reinstatement might lead to grievous harm but when else?
>
> I realize this is strange language that is in this bill, and it may have been structured this way in order to require the employer to continue to pay health insurance benefits for the employee, but that fact does not change the bill's focus on the effect of reinstatement.

In their comments in response to the Notice of Proposed Rulemaking, minority Members and Congresswoman Roukema, a sponsor of the bill, urge that the test should involve the injury caused by the employee's taking of the leave. Quoting Congresswoman Roukema's floor statements when the bill was passed in 1991:

> An employer may deny reinstatement * * * to avoid serious economic harm from an employee's being out on leave * * * In addition, the substitute retains the key employee exemption, where the top * * * employees may be denied reinstatement if their absence would cause substantial and grievous harm to an employer's operations. This provision is designed to ensure that employers do not experience financial difficulties when highly specialized or compensated essential workers request family or medical leave.

Based on the language of the Act itself and the overall sense of the legislative history, the rule requires an employer to show that the restoration to employment would cause the injury in order to deny restoration to a "key employee". For example, if circumstances necessitated that an employer permanently replace an employee taking FMLA leave, the

disruption to the company caused by restoration to that position or to another equivalent position filled by a valuable employee could cause substantial and grievous economic injury to the company. While this interpretation is the more supportable, the Department recognizes that such a test will be extremely difficult to meet.

The regulation does not explicitly define the test for determining the hardship or injury to the employer which must be sustained. Although minor inconveniences and costs clearly would not constitute substantial and grievous injury, it is not necessary that reinstatement threaten the economic viability of the firm. A lesser injury which causes substantial, long-term economic injury would be sufficient. Comment is invited on whether further regulatory guidance should be given on the factors which may be taken into account and the degree of hardship which would be necessary to constitute "substantial and grievous economic injury" to the employer's operations.

What Are the Rights of a Key Employee? (§ 825.219)

An employer is required to notify employees of their status as key employees if the employer believes there is a possibility that the employee will not be restored at the end of the leave period. However, it is believed that employers will normally want to continue to reinstate a key employee after a leave period, and that, in any event, the "substantial and grievous economic injury" test can only rarely be met. An employer that will not deny restoration is not required to determine which employees are key employees, or to notify them of that status when leave is requested.

If a key employee elects not to return to work after receiving the employer's notification that restoration will cause substantial and grievous economic injury, the employer must continue to maintain health benefits and cannot recover its share of the premiums paid during the period of leave.

The key employee may still request reinstatement at the end of the leave period even though the employee did not return to work after receiving the employer's notification. The employer must then determine if substantial and grievous economic injury would result from reinstatement at that time, and so notify the employee (in writing either in person or by certified mail) if reinstatement is denied.

How Are Employees Who Exercise Their Rights Protected? (§ 825.220)

It is unlawful for an employer to: (1) interfere with, restrain, or deny the exercise of (or attempt to exercise) any right provided by the Act; or (2) discharge or in any other manner discriminate against any individual for opposing or complaining about any unlawful practice under the Act. It is also unlawful for any person to discharge or in any other manner discriminate against individuals for having: (1) filed charges, instituted (or caused to be instituted) any proceeding under or related to the Act; (2) given (or be about to give) any information in connection with an inquiry or proceeding relating to a right under the Act; or (3) testified (or be about to testify) in any inquiry or proceeding relating to a right under the Act.

This "opposition" clause is derived from Title VII of the Civil Rights Act of 1964 and is intended to be construed similarly. Thus, an employee is protected against employer retaliation for opposing any practice which the employee reasonably believes to be a violation. Any violation of FMLA or its implementing regulations constitutes interfering with, restraining, or denying the exercise of rights provided by FMLA. An employer cannot treat employees who use FMLA leave in a manner that discriminates against them for taking FMLA leave. Thus, for example, an employer cannot use an employee's taking of FMLA leave as a negative factor in employment actions, as promotions or discipline, nor can FMLA leave be counted under "no fault" attendance policies.

Subpart C—How Do Employees Learn of Their FMLA Rights and Obligations, and What Can an Employer Require of an Employee?

Subpart C explains employers' obligations to notify employees of their rights and responsibilities under FMLA, and describes employees' obligations to provide notice and medical certifications.

What Posting Requirements Does the Act Place on Employers? (§ 825.300)

Covered employers must post a notice describing the Act's provisions. The regulations specify the text and format for this notice. Employers are encouraged to produce their own notices for display; copies of the notice may also be obtained from the Wage and Hour Division.

What Other Notices to Employees Are Required of Employers Under FMLA? (§ 825.301)

Employers must furnish additional notice and information to employees on entitlements and obligations for FMLA leave, through employee handbooks if the employer ordinarily distributes such handbooks to employees, or by furnishing written guidance when employees request FMLA leave. These and other specific notice requirements are intended to ensure that employees are aware of FMLA obligations which may apply particularly to their situation, including, for example, any requirement to furnish medical certification substantiating a serious health condition, arrangements for paying the employee's portion of insurance premiums during leave periods, their status as a "key employee" potentially subject to being denied restoration to employment, and any requirement for medical certification of fitness to return to work.

What Notice Does an Employee Have To Give an Employer When the Need for FMLA Leave is Foreseeable (§ 825.302) and Not Foreseeable (§ 825.303)?

Employees must give 30 days advance notice to employers of the need to take unpaid FMLA leave when it is foreseeable for the birth or placement of a child for adoption or foster care, or for planned medical treatment. When it is not practicable under the circumstances to provide such advance notice, *e.g.*, premature birth, such notice must be given "as soon as practicable," ordinarily within one or two business days of when the employee learns of the need for the leave. Verbal notice sufficient to inform the employer that the employee will be needing FMLA leave satisfies the FMLA notice requirement. An employer may also require an employee to comply with the employer's usual rules for requesting leave, but may not disallow FMLA leave on this basis.

When planning medical treatments, employees should consult with employers when giving notice and make reasonable efforts to schedule the leave so as not to unduly disrupt the employer's operations, subject to the approval of the health care provider.

When unforeseen events occur that require FMLA leave, employees must give notice as soon as practicable, ordinarily within one or two working days. Notice should be given either in person or by phone when medical emergencies are involved, and may be given by the employee's spouse or other family member if the employee is

unable to do so due to a serious health condition. Written notice pursuant to the employer's established policy or practice cannot be required in the case of a medical emergency.

What Recourse Do Employers Have if Employees Fail To Comply With the Act's Notice Requirements? (§ 825.304)

An employer can always waive FMLA notice or its own notice requirements. If an employer does choose to take action against an employee for failing to provide adequate notice, its policies and procedures must be uniformly applied, although variation because of differing circumstances would be permitted. In all cases, before action can be taken against an employee, it must be clear that the employee had actual notice of the FMLA notice requirements. In most cases this would be satisfied by the display of the required notice at the worksite where the employee is employed. Furthermore, the need for leave and approximate date leave would be taken must have been clearly foreseeable. For example, knowledge that an employee would receive a call about the availability of a child for adoption at some unknown point in the future would not be sufficient.

If all of these requirements are satisfied, questions arise as to the permissible consequences of an employee's failure to satisfy the notice requirement. The structure and intent of the Act require that the employer be permitted to deny leave until 30 days after notice is provided. The Department considered but for various reasons rejected other options, including an equitable formulation which would make denial of leave dependent upon circumstances such as whether there was any reasonable excuse by the employee; prejudice to the employer caused by delay in providing notice; undue hardship to the employee; whether the failure was material, willful or due to the employee's lack of knowledge of the circumstances; and duration of leave.

When Must an Employee Provide Medical Certifications To Support a FMLA Leave Request? (§ 825.305)

Employers may require a medical certification from a health care provider to support FMLA leave requests either to care for an employee's seriously-ill family member, or for leave due to a serious health condition that makes the employee unable to perform the functions of the employee's job. Employees must provide such certification "in a timely manner." The regulations define "timely manner" as within 15 calendar days, unless it is not practicable to do so under the circumstances. Employers must advise the employee if medical certification will be required when the employee requests leave so the employee can obtain it during visits to the health care provider.

How Much Information May Be Required in Medical Certifications of a Serious Health Condition? (§ 825.306)

The regulations provide an optional form for required medical certifications. The form, which is to be completed by the health care provider, makes maximum use of easy checklist entries. The form may be reproduced by employers.

A certification for medical leave must include a statement that the employee "is needed to care for" a seriously-ill family member or, in the case of an employee's serious health condition, a statement that the employee is "unable to perform the functions of the position of the employee." Some of this information may not be readily known to the health care provider. For example, the health care provider may know that the seriously-ill family member needs care, but may not know whether the employee is needed to provide such care. Similarly, the health care provider may know that an employee is so seriously ill as to be unable to perform any work, but may not know in less serious circumstances without further information whether the employee is able to perform some of the "functions of the position of the employee." The regulations implement the statutory requirements affecting such leave in the first case by having the employee certify as to the care the employee will provide to the family member. In the case of an employee's serious health condition, the health care provider may review a description of the employee's essential job functions provided by the employer or, if none is provided, may ascertain such functions from the employee when determining (and certifying) that either the employee is unable to perform work of any kind, or is unable to perform the essential functions of the employee's position. The requirement for certification of the "medical necessity" of intermittent leave or leave on a reduced leave schedule should be satisfied by the specified description of the treatment regimen provided.

Comment is invited regarding the appropriate timing of the certification when there is a need for an employee to care for an immediate family member with a chronic, degenerative serious health condition, and where the family member may not be under the continuing treatment of a health care provider, e.g., a father who has been diagnosed with a deteriorating health condition due to age, and is unable to care for himself but has not visited a health care provider for several months due to poor financial condition or living in a remote location where access to a health care provider is limited. Should the employee be able to use a certification obtained during the past six months or a year to support a current request for FMLA leave?

What Can an Employer Do if It Questions the Adequacy of a Medical Certification? (§ 825.307; § 825.308)

An employer may require the employee to obtain a second medical opinion, at the employer's expense. The second health care provider may not be employed on a regular basis by the employer. If the opinions of the first and second health care provider differ, the employer may require a third opinion, again at the employer's expense, from a health care provider mutually agreed upon by the employer and employee. The third opinion shall be final and binding.

In this regard, the Department requested comments on methods for selecting a third health care provider if the employer and employee cannot reach agreement. This issue has not been resolved in these regulations. The suggestions made in response to the notice included requiring the employer and employee each to furnish lists from which the other would be required to select; having the employee designate the provider unless there is a lack of good faith; creating a dispute resolution procedure; following established resolution mechanisms such as those of the American Arbitration Association; and having a health care provider selected by the local medical society. The interim final regulations obligate both the employer and the employee to act in good faith in attempting to reach agreement on the third opinion provider in cases of differing first and second opinions. If the employer fails to act in good faith, the employer will be bound by the first certification. If the employee fails to act in good faith, the second certification will be binding. Comments are invited on this rule, and on appropriate alternatives, if any, that may be more workable.

An employer can require an employee to obtain subsequent recertifications to support continuing FMLA medical leave "on a reasonable basis." The regulations, at § 825.308, permit the employer to request such recertification not more often than every 30 days unless: (1) The employee requests an

extension of leave; (2) changed circumstances occur regarding the illness or injury; or, (3) the employer receives information that casts doubt upon the continuing validity of the most recent certification.

What Notice May an Employer Require Regarding an Employee's Intent To Return to Work? (§ 825.309)

An employer may require periodic reports from an employee on FMLA leave regarding the employee's status and intent to return to work. If the employee provides a statement of intent to return to work, even if the statement is qualified, entitlement to leave and maintenance of health benefits continues. However, if the employee gives an unequivocal notice of intent not to return to work, the employer's obligations to provide health benefits (except pursuant to COBRA requirements) and to restore the employee end.

Under What Circumstances May an Employer Require That an Employee Submit a Medical Certification That the Employee Is Able (or Unable) To Return to Work (e.g., a "Fitness-for-Duty" Report)? (§ 825.310)

As a condition of restoration of an employee who has taken leave due to the employee's serious health condition, the employer may have a uniformly applied policy or practice that requires presentation of certification from the employee's health care provider that the employee is able to resume work, *i.e.*, is fit for duty. The employer's policy must apply uniformly to similarly-situated employees, and comply with ADA requirements as well as those of State or local law or any applicable collective bargaining agreement. Subject to certain limitations, the regulations allow an employer to deny restoration to employment until a fitness-for-duty certificate is presented, provided the employee has been provided with specific notice that such certification will be required at the time leave was requested.

Because of concern that obtaining certification in a timely manner may not be in the employee's control, the Department considered other approaches, such as requiring an employer to temporarily restore the employee until such certification is received; or, allowing an employer to deny restoration only if the employer has medical evidence that the employee is not able to return to work and, in the absence of such evidence, requiring temporary restoration of the employee while awaiting certification. The statute expressly allows employers to require fitness-for-duty certification as a condition of restoration. Thus, there appears to be little flexibility to require restoration under the circumstances described above. Comment is invited on whether there is a more workable alternative consistent with the statutory scheme.

What Happens if an Employee Fails To Satisfy the Medical Certification Requirements? (§ 825.311)

If an employee fails to provide timely certification within 15 days (where practicable) of being asked to do so by the employer, and the need for leave was foreseeable, the employer may deny the employee leave until the required certification is provided. If the need for leave is not foreseeable, the employee must still attempt to provide the certification within 15 days of the employer's request, or as soon thereafter as practicable under the circumstances.

Under What Circumstances Can a Covered Employer Refuse To Provide FMLA Leave or Reinstatement to Eligible Employees? (§ 825.312)

This section describes the circumstances under which an employer may refuse to grant FMLA leave or job reinstatement at the conclusion of FMLA leave. Generally, an eligible employee who has complied with FMLA's notice and certification requirements may not be denied the taking of FMLA leave. An employer may, however, deny restoration to an eligible employee under the terms of the "key employee" exemption, as discussed in § 825.218, if necessary to prevent substantial and grievous economic injury to the employer's operations and if the employer has so notified the employee and given the employee an opportunity to elect not to return to work.

Subpart D—What Enforcement Mechanisms Does FMLA Provide?

Subpart D describes what employees can do if they believe their FMLA rights have been violated. Eligible employees who are denied the taking of FMLA leave or who are denied reinstatement at the end of the leave in violation of the Act may file a complaint with the Department of Labor or file a private lawsuit against the employer to obtain damages and other relief. Complaint resolution and enforcement procedures similar to those established under the Fair Labor Standards Act (FLSA) will be utilized by the Department in handling complaints under the FMLA.

Subpart D also provides procedures for the assessment of penalties against employers that willfully violate the Act's posting requirement.

Subpart E—What Records Must Be Kept To Comply With the FMLA?

Subpart E contains the employer recordkeeping requirements relating to the FMLA. These are based on similar records already required under the Fair Labor Standards Act (FLSA) regulations, 29 CFR part 516. Some FMLA-specific requirements not otherwise required under FLSA are included where necessary for determining FMLA compliance. A special provision similar to that under the ADA requires confidentiality of medical information.

Subpart F—What Special Rules Apply to Employees of Schools?

Subpart F contains special rules applicable to employees of "local educational agencies," which include public school boards and elementary and secondary schools under their jurisdiction, and private elementary and secondary schools. These include limitations on the taking of intermittent leave or leave on a reduced leave schedule, taking leave near the conclusion of an academic term, and restoration to an equivalent position.

To Whom Do the Special Rules Apply? (§ 825.600)

The special rules applicable to educational agencies apply only to primary and secondary schools; they do not apply to colleges and universities, preschools, or other types of educational institutions. The 50-employee test is not applicable in determining employer coverage, but the 50-employees-within-75-miles test does apply in determining employee eligibility. The special rules discussed below for using FMLA leave on an intermittent or reduced leave schedule basis, or close to the end of the term apply only to "instructional employees." This term is narrowly defined to include only those employees whose principal function is to teach and instruct students, thereby excluding auxiliary personnel such as teacher aides and counselors.

What Limitations Apply to the Taking of Intermittent Leave or Leave on a Reduced Leave Schedule? (§ 825.601, § 825.603(a))

When an instructional employee requests intermittent or reduced leave for planned medical treatment for more than 20 percent of the total number of working days in the period during which the leave would be used, the employer may require the employee to elect either to (1) take leave for a

"particular duration" of time which is not greater than the duration of the planned treatment, or (2) be transferred to an alternative position.

Several commenters characterized leave taken for a particular duration as "forced leave," and suggested that any leave taken beyond what was requested by the employee should not be counted as FMLA leave. However, the election to take leave of a particular duration is made by the employee, and there is no suggestion in the statute that this time period would not be counted as FMLA leave.

If an instructional employee requesting intermittent leave or leave on a reduced leave schedule does not give proper notice as required under § 825.302 of the regulations, an employer may deny the taking of leave until 30 days after notice was provided, or may require the employee to take leave for either a "particular duration" or accept an alternative position.

What Limitations Apply to the Taking of Leave Near the End of an Academic Term? (§§ 825.602, 825.603(b))

FMLA addresses several different scenarios applicable to leave taken near the end of the academic term.

First, if an instructional employee begins leave more than five weeks before the end of a term, and if the leave will last at least three weeks and the employee would otherwise return to work during the three weeks before the end of the term, the employer may require the employee to continue taking leave until the end of the term.

Second, if an instructional employee takes leave for a reason other than the employee's serious health condition which commences during the five weeks before the end of the term, and if the leave will last more than two weeks and the employee would otherwise return to work during the last two weeks of the term, the employer may require the employee to continue taking leave until the end of the term.

Finally, if the employee takes leave for a reason other than the employee's own serious health condition which begins during the last three weeks of the term, and if the leave will last more than five working days, the employer may require the employee to take leave until the end of the term.

Although commenters suggest that "academic term" be defined as the entire school year, the legislative history also utilizes the term "semester." Therefore, the regulations provide that the academic term is the school semester, but that in no case may a school have more than two academic terms or semesters each year for purposes for FMLA. The entire period of leave taken, including any involuntary leave through the end of the school term, counts against an employee's 12-week entitlement; however, the employer has the obligation to maintain health benefits and to reinstate the employee if the leave entitlement ends before the involuntary period is completed.

What Special Rules Apply to Restoration to "an Equivalent Position"? (§ 825.604)

Restoration of an employee to an equivalent position must be based on "established school board policies and practices, private school policies and practices, and collective bargaining agreements." The regulations define established policies, whether for school boards, private schools, or collective bargaining agreements, as written policies which are made known to employees, and deal with the restoration rights of an employee upon return from leave. Such policies are required to provide substantially the same protections as provided in the Act for returning employees. Of course, State law or collective bargaining agreements may provide greater rights than FMLA.

Subpart G—How Do Other Laws, Employer Practices, and Collective Bargaining Agreements Affect Employee Rights under FMLA?

Subpart G discusses the provisions of Title IV of FMLA, which concern the relationship of FMLA to other laws, existing employer benefit policies, and collective bargaining agreements.

What if an Employer Provides More Benefits Than Required by FMLA? (§ 825.700)

An employer must comply with any employee benefit program or collective bargaining agreement that provides greater family or medical leave rights than are established by FMLA. On the other hand, employee rights under FMLA cannot be diminished—for example, through a provision in a collective bargaining agreement providing for restoration to a position which is not equivalent. An employer is not prohibited from amending its employee benefit programs, although nothing in FMLA should be construed to discourage employers from adopting or retaining more generous leave policies.

FMLA provides a different effective date for employees covered by a collective bargaining agreement which is in effect on August 5, 1993. Specifically, the Act is effective on the date the agreement terminates (*i.e.*, expires) or February 5, 1994, whichever is earlier. This special provision applies to collective bargaining agreements whether or not the agreement contains family or medical leave rights.

Do State Laws Providing Family and Medical Leave Still Apply? (§ 825.701)

FMLA does not supersede "any provision of any State or local law that provides greater family or medical leave rights than the rights established under [FMLA]." Although some commenters suggested that this provision should not apply to procedural requirements, such as notice and certification, a colloquy on the House floor concerning certification indicates an intent that any more generous procedural provision would apply as well.

An employer must comply with any provisions of State or local law that provide greater family or medical leave rights than the rights established by the Federal FMLA. The Department will not enforce State family and medical leave laws, and States may not enforce FMLA. The rule places no obligation on employees to designate whether the leave they are taking is FMLA leave as opposed to leave under State law. Thus, employers covered by both Federal FMLA and applicable State law must comply with the provisions of both.

For example, an employer covered by a State law and not the Federal FMLA would have to comply with the State law, even if it otherwise affords less benefits. Similarly, an employee "eligible" under only one law would receive the benefits of that law.

If State law provides 16 weeks of family and medical leave in two years, an employee may be entitled to take 16 weeks one year under the State law and 12 weeks in the next year under the FMLA. If the employee took qualifying leave for 12 weeks in the first year, the employee would be entitled to up to 12 weeks of leave in the second year under the FMLA, not four or 16. State- and FMLA-mandated leave entitlements run concurrently; an employee would not be entitled to 28 weeks of family and medical leave in a single year in the example given.

If State law provides half-pay for employees temporarily disabled because of pregnancy for six weeks, the employee would be entitled to an additional six weeks of leave under FMLA. A shorter notice period under State law would apply unless an employer has already provided, or an employee is requesting, more leave than required under State law. If State law allows only one certification, no

additional certifications may be required by the employer unless the employer has already provided, or an employee is requesting, more leave than required under State law.

If State law provides six weeks of leave, which includes leave to care for a seriously ill grandparent or a "spouse equivalent," and leave is used for that purpose, the employee is still entitled to 12 weeks of FMLA leave. If FMLA leave is used for a purpose for which leave is also allowed under State law, the employer would not be required to provide additional leave beyond that required by State law to care for the grandparent or "spouse equivalent."

If State law prohibits mandatory leave beyond the actual period of pregnancy disability, an instructional employee employed by an educational agency may not be required to remain on leave until the end of the academic term, as is permitted by FMLA under certain circumstances.

Some 34 States, the District of Columbia and Puerto Rico provide some type of leave guarantee through law. Of these, the laws of 23 jurisdictions apply to both private and public employees. The remaining 13 jurisdictions have laws that apply to public employees only. While the type of benefits provided in these 36 jurisdictions vary considerably, 12 of them have FMLA-type leave for employees in both the private and public sectors: California, Connecticut, the District of Columbia, Hawaii, Maine, Minnesota, New Jersey, Oregon, Rhode Island, Vermont, Washington, and Wisconsin. The Department of Labor recognizes that compliance with the provisions of both the Federal FMLA and the laws of the States may be complex for some employers. To assist employees and employers in this regard, the Department is preparing informational materials which compare the provisions of each State law side-by-side with FMLA and, to the extent possible, designate which provision the Department considers "more generous."

How Does FMLA Affect Federal and State Anti-discrimination Laws? (§ 825.702)

It is important that employers be aware that nothing in FMLA modifies or affects their obligation to comply with Federal and State anti-discrimination laws. Issues will particularly arise concerning an employer's obligations to comply with the Americans with Disabilities Act. As stated above, the employer must comply with both laws. A few examples of situations where ADA may require more than FMLA are set forth in the regulations. The Department intends to work closely with the Equal Employment Opportunity Commission to assure the smooth implementation of these laws.

Subpart H—Definitions

Subpart H contains definitions of the terms used under FMLA, which are contained in the sections of the regulations where discussed and repeated in here.

Index to Part 825

In addition to the definitions contained in Subpart H, a subject matter index is contained as Appendix A to the regulations.

Commenters are invited to comment on any issues or concerns which should be considered in developing the final rule.

IV. Statutory and Executive Order Requirements

Executive Order 12291

Because of the importance and likely impact of FMLA, the Department will treat this as a major rule under Executive Order 12291. Furthermore, the statute may have an annual impact on the economy of $100 million or more. This conclusion is based on cost impact information provided to the Congress by the U.S. General Accounting Office (GAO) regarding various family and medical leave proposals under consideration since 1985. The data used by GAO and their methodologies in arriving at their estimates are detailed in their report entitled Parental Leave: Estimated Costs of H.R. 925, the Family and Medical Leave Act of 1987 (GAO/HRD–88–34, Nov. 10, 1987).

GAO's most recent report, dated February 1, 1993 (*Family and Medical Leave Cost Estimate* (GAO/HRD–93–14R)), estimated the cost to employers of maintaining health insurance coverage for workers on unpaid family and medical leave under H.R. 1—the bill substantially enacted as the FMLA—at about $674 million annually. Based on adjustments to reflect 1992 health insurance costs and employment levels, GAO estimated that, of all covered employees, about 2.5 million were likely to take leave under H.R. 1 due to the birth or adoption of a child, to care for a seriously ill child, parent or spouse, or an employee's own health condition. The number of employees eligible to take leave (potential beneficiaries) for the reasons permitted under the legislation, and the costs to employers of continuing health insurance during such leave, are summarized by GAO as follows:

Reason for leave	Potential beneficiaries	Cost in millions
Birth or adoption of a child	908,000	$244
Seriously ill child	64,000	19
Seriously ill parent	177,000	80
Seriously ill spouse	731,000	241
Employees own health (temporary medical leave)	659,000	90
Total	2,539,000	674

Source: GAO/HRD–93–14R, Family and Medical Leave Cost Estimate.

The GAO arrived at these estimates based on various assumptions including:

(1) unpaid leave for newly born or adopted children would be used exclusively by women, and all eligible women would take the full 12 weeks, but existing paid vacation, sick, and disability leave would be used for 6 of these weeks;

(2) unpaid leave to care for a seriously ill child (serious illness being defined as 31 or more days of bed rest) would be used by one parent for an average of 7.8 weeks, but existing paid vacation leave would be used for 1.6 of these weeks;

(3) unpaid leave to care for a seriously ill parent or spouse (serious illness being defined as above) would be used by one related worker for the full 12 weeks, but existing paid vacation leave would be used for 1.6 of these weeks; and,

(4) unpaid leave for an employee's own serious illness (serious illness being defined as above) would be used by 60 percent of the eligible employees (40 percent having short-term disability coverage that would provide paid leave for the duration of the illness) for an average of about 8.9 weeks, but existing paid sick and vacation leave would be used for 3.3 of these weeks.

Underpinning GAO's estimates is an assumption that employers will experience no measurable costs under the law beyond those of maintaining health insurance during periods of permitted absences. This conclusion is based on the results of a survey of 80 firms conducted in Detroit, MI, and Charleston, SC, designed to obtain data on the usage of parental leave, and how employers manage extended absences. GAO found that there is no measurable net cost to business associated with replacing workers (less than one-third of the workers were replaced) or maintaining current levels of productivity while workers not replaced were on unpaid leave. (Absences, for the most part, were handled by reallocating work among the remaining workforce.)

It is also GAO's view that its estimates are likely to overstate the actual cost to

employers for maintaining health insurance during leave permitted by the new law because GAO could not adjust to account for the mitigating influence of existing leave practices either voluntarily provided by employers or required under State law. Likewise, GAO indicated that certain of its leave usage assumptions may tend to overstate actual experience in the workplace.

The Department is also aware of the Minority Views contained in the House Report (H.R. Rept. 103–8, 103d Cong., 1st Sess., p. 60) which characterize the GAO's cost estimates as being significantly understated either because assumptions are inconsistent with the legislative provisions or are in conflict with conclusions reached by other studies. For example, the Minority Report takes issue with GAO's assumption, based on a limited study of two marketplaces, that no costs would be incurred other than for maintaining health insurance coverage and questions the conclusions that no losses in productivity would occur, that temporary replacement workers could be hired at costs comparable to that of the employee, and, where no replacement was hired, that the employee's work could be assumed by other employees. By way of contrast, the Minority Report points to a study by the American Society for Personnel Administrators (ASPA)—now the Society for Human Resource Management (SHRM)—which indicates that there are also costs associated with recruiting new temporary replacement workers, the training of replacement workers, and the lower level of productivity of temporary replacement workers. For example, the ASPA study estimates the cost of recruiting a new employee amounts to about one-third of the new employee's annual salary, the training of a new employee at about 10 percent of the new employee's annual salary, the cost of productivity downtime—the time lost while the new employee learns the job—at 50 percent of the first year's salary. Based on these guidelines, the Minority Report concludes that the approximate cost of replacing an employee earning an annual salary of $12,000 would amount to $4,000 in recruitment costs, $1,200 in training costs, and $6,000 in lost productivity, or a total of $11,200. The Report also concludes—based on GAO's estimate that some 30 percent of the employees who would likely take advantage of the FMLA leave provisions would be replaced with temporary workers—that the ASPA guidelines would result in a cost of some $56 million just for temporary replacement workers. The Minority Report also referred to the somewhat higher estimates of a 1990 study conducted by the Small Business Administration (SBA) entitled Leave Policies in Small Business. The SBA study estimated the cost of six weeks of unpaid maternity and infant care leave alone at $612 million a year and nearly double that amount if such leave was for 12 weeks as provided in FMLA.

Among other things, the Minority Report also questioned GAO's assumptions: relating the term "serious health condition" to an illness requiring 31 or more days of bed rest or, in the case of an ill parent, to long-term care requiring daily assistance with personal hygiene, mobility, or taking medication; excluding from coverage "key employees," *i.e.*, the highest paid 10 percent of employees in the employer's workforce; and, substituting available paid vacation, sick, and disability leave from the full amount of leave allowed. With respect to GAO's definition of "serious health condition," the Minority Report noted GAO's observation in its Report of November 10, 1987, that the cost of the family leave legislation then under consideration would increase by nearly $120 million if serious illness was defined as 21 days or more of bed rest rather than 31 days.

Quantifying the costs of the FMLA legislation is currently highly dependent on assumptions, many of which are abstract at best, and the limitations of available data. For example, with respect to the higher estimated costs if serious illness were defined to be something less than the 31 days GAO used, these regulations define the term "serious health condition" as follows:

(1) Any period of incapacity or treatment in connection with or consequent to inpatient care (*i.e.*, an overnight stay) in a hospital, hospice, or residential medical care facility;

(2) Any period of incapacity requiring absence from work, school, or other regular daily activities of more than three calendar days, that also involves continuing treatment by (or under the supervision of) a health care provider; and,

(3) Continuing treatment by (or under the supervision of) a health care provider for a chronic or long-term health condition that is incurable or so serious that, if not treated, would result in a period of incapacity of more than three calendar days; and for prenatal care.

This definition is considerably less stringent than GAO's; thus, estimates based on the regulatory definition would likely increase costs. On the other hand, there are some factors not taken into account by GAO that would mitigate costs, such as the influence of existing State laws. Some 34 States, the District of Columbia and Puerto Rico already provide some type of leave guarantee through law. While the coverage and types of benefits provided vary considerably, FMLA does not supersede such laws. It also can be presumed that absences shorter than those estimated by GAO would often be covered by employers' existing leave policies.

The Department is examining the methodology, various assumptions and data used by GAO in an effort to determine whether provisions of the bill finally enacted, or these implementing regulations, are likely to have any significant effect on the GAO's estimates. If the Department determines from its review that a more definitive or significantly different estimate can be prepared, the Department will publish a further Regulatory Impact Analysis at a later date.

In this regard, the Department notes further that of the nearly 400 comments received in response to its notice, several commenters expressed concern about the law's impact on their operations. They indicated, for example, that FMLA would impact profitability because of the burden of recruiting, selecting, placing, and training temporary workers to fill clerical and labor vacancies at a much lower rate of efficiency; because managerial employees cannot be replaced by temporary workers; because the employer becomes liable for the unemployment costs of temporary workers; because temporary workers are not typically eligible for hospitalization coverage until after 30 days of employment, which increases hospitalization costs; and, because temporary workers have more accidents, adding to workers' compensation costs. None of the commenters, however, provided any data or cost specific information in response to the Department's request for data relating to the economic impact of the Act.

The Department again requests comments on the foregoing estimates of the impact of the FMLA and these implementing regulations.

Regulatory Flexibility Analysis

The Regulatory Flexibility Act of 1980 requires agencies to prepare regulatory flexibility analyses, and to develop alternatives, whenever possible, in drafting regulations that will have a "significant economic impact on a substantial number of small entities."

The Department has determined that such an analyses is not required for this rulemaking. This conclusion is based on the fact that FMLA only covers private employers of 50 or more employees, and public agencies. Small entities, *i.e.*, employers with fewer than 50 employees, are exempt. Thus, coverage under the FMLA is limited to an estimated 300,000 employers, or about five percent of all employers. Accordingly, this regulation will not have a significant economic impact on a substantial number of small entities within the meaning of the Regulatory Flexibility Act. The Secretary has certified to the Chief Counsel for Advocacy of the Small Business Administration to this effect. Therefore, no regulatory flexibility analysis is required.

This document was prepared under the direction and control of Charles E. Pugh, Acting Administrator, Wage and Hour Division, Employment Standards Administration, U.S. Department of Labor.

List of Subjects in 29 CFR Part 825

Employee benefit plans, Health, Health insurance, Labor management relations, Maternal and child health, Teachers.

Signed in Washington, DC, this 28th day of May, 1993.

Robert B. Reich,

Secretary of Labor.

John R. Fraser,

Acting Assistant Secretary for Employment Standards.

Title 29, chapter V, subchapter C, "Other Laws", is amended by adding a new part 825 to read as follows:

PART 825—THE FAMILY AND MEDICAL LEAVE ACT OF 1993

Subpart A—What Is the Family and Medical Leave Act, and to Whom Does It Apply?

Sec.
825.100 What is the Family and Medical Leave Act?
825.101 What is the purpose of the Act?
825.102 When is the Act effective?
825.103 How does the Act affect leave in progress on, or taken before, the effective date of the Act?
825.104 What employers are covered by the Act?
825.105 In determining whether an employer is covered by FMLA, what does it mean to employ 50 or more employees for each working day during each of 20 or more calendar workweeks in the current or preceding calendar year?
825.106 How is "joint employment" treated under FMLA?
825.107 What is meant by "successor in interest"?
825.108 What is a "public agency"?
825.109 Are Federal agencies covered by these regulations?
825.110 Which employees are "eligible" to take leave under FMLA?
825.111 In determining if an employee is "eligible" under FMLA, how is the determination made whether the employer employs 50 employees within 75 miles of the worksite where the employee requesting leave is employed?
825.112 Under what kinds of circumstances are employers required to grant family or medical leave?
825.113 What do "spouse," "parent," and "son or daughter" mean for purposes of an employee qualifying to take FMLA leave?
825.114 What is a "serious health condition"?
825.115 What does it mean that "the employee is unable to perform the functions of the position of the employee"?
825.116 What does it mean that an employee is "needed to care for" a family member?
825.117 For an employee seeking intermittent FMLA leave or leave on a reduced leave schedule, what is meant by "the medical necessity for" such leave?
825.118 What is a "health care provider"?

Subpart B—What Leave Is an Employee Entitled to Take Under the Family and Medical Leave Act?

825.200 How much leave may an employee take?
825.201 If leave is taken for the birth of a child, or for placement of a child for adoption or foster care, when must the leave be concluded?
825.202 How much leave may a husband and wife take if they are employed by the same employer?
825.203 Does FMLA leave have to be taken all at once, or can it be taken in parts?
825.204 May an employer transfer an employee to an "alternative position" in order to accommodate intermittent leave or a reduced leave schedule?
825.205 How does one determine the amount of leave used where an employee takes leave intermittently or on a reduced leave schedule?
825.206 May an employer deduct hourly amounts from an employee's salary, when providing unpaid leave under FMLA, without affecting the employee's qualifications for exemption as an executive, administrative, or professional employee under the Fair Labor Standards Act?
825.207 Is FMLA leave paid or unpaid?
825.208 May an employer require an employee to designate paid leave as FMLA leave and, as a result, count it against the employee's total FMLA leave entitlement?
825.209 Is an employee entitled to benefits while using FMLA leave?
825.210 How may employees on FMLA leave pay their share of health benefit premiums?
825.211 What special health benefits maintenance rules apply to multi-employer health plans?
825.212 What are the consequences of an employee's failure to make timely health plan premium payments?
825.213 May an employer recover premiums it paid for maintaining "group health plan" coverage during FMLA leave?
825.214 What are an employee's rights on returning to work from FMLA leave?
825.215 What is an equivalent position?
825.216 Are there any limitations on an employer's obligation to reinstate an employee?
825.217 What is a "key employee"?
825.218 What does "substantial and grievous economic injury" mean?
825.219 What are the rights of a key employee?
825.220 How are employees who exercise their rights protected?

Subpart C—How Do Employees Learn of Their FMLA Rights and Obligations, and What Can an Employer Require of an Employee?

825.300 What posting requirements does the Act place on employers?
825.301 What other notices to employees are required of employers under the FMLA?
825.302 What notice does an employee have to give an employer when the need for FMLA leave is foreseeable?
825.303 What are the requirements for an employee to furnish notice to an employer where the need for FMLA leave is not foreseeable?
825.304 What recourse do employers have if employees fail to provide the required notice?
825.305 When must an employee provide medical certification to support a FMLA leave request?
825.306 How much information may be required in medical certifications of a serious health condition?
825.307 What can an employer do if it questions the adequacy of a medical certification?
825.308 Under what circumstances can an employer request subsequent recertifications of medical conditions to support leave requests?
825.309 What notice may an employer require regarding an employee's intent to return to work?
825.310 Under what circumstances may an employer require that an employee submit a medical certification that the employee is able (or unable) to return to work (*e.g.*, a "fitness-for-duty" report)?
825.311 What happens if an employee fails to satisfy the medical certification requirements?
825.312 Under what circumstances can a covered employer refuse to provide FMLA leave or reinstatement to eligible employees?

Subpart D—What Enforcement Mechanisms Does FMLA Provide?

825.400 What can employees do who believe that their rights under FMLA have been violated?
825.401 Where can an employee file a complaint of FMLA violations with the Federal government?
825.402 How is an employer notified of a violation of the posting requirement?
825.403 How may an employer appeal the assessment of a penalty for willful violation of the posting requirement?
825.404 What are the consequences of an employer not paying the penalty assessment after a final order is issued?

Subpart E—What Records Must Be Kept To Comply With the FMLA?

825.500 What records must an employer keep to comply with the FMLA?

Subpart F—What Special Rules Apply to Employees of Schools?

825.600 To whom do the special rules apply?
825.601 What limitations apply to the taking of intermittent leave or leave on a reduced leave schedule?
825.602 What limitations apply to the taking of leave near the end of an academic term?
825.603 Is all leave taken during "periods of a particular duration" counted against the FMLA leave entitlement?
825.604 What special rules apply to restoration to "an equivalent position?"

Subpart G—How Do Other Laws, Employer Practices, and Collective Bargaining Agreements Affect Employee Rights Under FMLA?

825.700 What if an employer provides more generous benefits than required by FMLA?
825.701 Do State laws providing family and medical leave still apply?
825.702 How does FMLA affect Federal and State anti-discrimination laws?

Subpart H—Definitions

825.800 Definitions.

Appendix A to Part 825—Index
Appendix B to Part 825—Certification of Physician or Practitioner
Appendix C to Part 825—Notice to Employees of Rights under FMLA

Authority: 29 U.S.C. 2654; Secretary's Order 1–93 (58 FR 21190).

Subpart A—What Is the Family and Medical Leave Act, and to Whom Does It Apply?

§ 825.100 What is the Family and Medical Leave Act?

(a) The Family and Medical Leave Act of 1993 (FMLA or Act) gives "eligible" employees of a covered employer the right to take unpaid leave, or paid leave if it has been earned, for a period of up to 12 workweeks in any 12 months because of the birth of a child or the placement of a child for adoption or foster care, because the employee is needed to care for a family member (child, spouse, or parent) with a serious health condition, or because the employee's own serious health condition makes the employee unable to do his or her job. Under certain circumstances, this leave may be taken on an intermittent basis rather than all at once, or the employee may work a part-time schedule.

(b) An employee on FMLA leave is also entitled to have health benefits maintained while on leave. If an employee was paying all or part of the premium payments prior to leave, the employee would continue to pay their share during the leave period. The employer can recover its share only if the employee does not return to work for a reason other than the serious health condition of the employee or the employee's immediate family member, or another reason beyond the employee's control.

(c) An employee generally has a right to return to the same position or an equivalent position with equivalent pay, benefits and working conditions at the conclusion of the leave.

(d) The employer has a right to 30 days advance notice from the employee where practicable. In addition, the employer may require an employee to submit certification from a health care provider to substantiate that the leave is due to the serious health condition of the employee or the employee's immediate family member. Failure to comply with these requirements may result in the denial of FMLA leave. Pursuant to a uniformly applied policy, the employer may also require that an employee present a certification of fitness to return to work when the absence was caused by the employee's serious health condition. The employer may deny restoration to employment without such certificate relating to the health condition which caused the employee's absence.

§ 825.101 What is the purpose of the Act?

(a) FMLA is intended to allow employees to balance their work and family life by taking reasonable unpaid leave for medical reasons, for the birth or adoption of a child, and for the care of a child, spouse, or parent who has a serious health condition. The Act is intended to balance the demands of the workplace with the needs of families, to promote the stability and economic security of families, and to promote national interests in preserving family integrity. It was intended that the Act accomplish these purposes in a manner that accommodates the legitimate interests of employers, and in a manner consistent with the Equal Protection Clause of the Fourteenth Amendment in minimizing the potential for employment discrimination on the basis of sex, while promoting equal employment opportunity for men and women.

(b) The enactment of FMLA was predicated on two fundamental concerns—the needs of the American workforce, and the development of high-performance organizations. Increasingly, America's children and elderly are dependent upon family members who must spend long hours at work. When a family emergency arises, requiring workers to attend to seriously-ill children or parents, or to newly-born or adopted infants, or even to their own serious illness, workers need reassurance that they will not be asked to choose between continuing their employment, and meeting their personal and family obligations or tending to vital needs at home.

(c) The FMLA is both intended and expected to benefit employers as well as their employees. A direct correlation exists between stability in the family and productivity in the workplace. FMLA will encourage the development of high-performance organizations. When workers can count on durable links to their workplace they are able to make their own full commitments to their jobs. The record of hearings on family and medical leave indicate the powerful productive advantages of stable workplace relationships, and the comparatively small costs of guaranteeing that those relationships will not be dissolved while workers attend to pressing family health obligations or their own serious illness.

§ 825.102 When is the Act effective?

(a) The Act is effective on August 5, 1993. If a collective bargaining agreement is in effect on that date, the Act is effective on February 5, 1994, or the date the agreement expires, whichever is sooner. Application to collective bargaining agreements is discussed further in § 825.700(c).

(b) The period prior to the Act's effective date must be considered in determining employer coverage and employee eligibility. For example, as discussed further below, as of August 5, 1993, an employer must count employees/workweeks for calendar year 1992 and calendar year 1993 (to date). If 50 or more employees were employed during 20 or more workweeks in either 1992 or 1993 (year to date), the employer is covered under FMLA on August 5, 1993. If not, the employer is not covered on August 5, 1993, but must continue to monitor employment levels each workweek remaining in 1993 to

determine if and when it might become covered.

§ 825.103 How does the Act affect leave in progress on, or taken before, the effective date of the Act?

(a) The right to take FMLA leave begins on the Act's effective date. Any leave taken prior to the Act's effective date may not be counted for purposes of FMLA. If leave qualifying as FMLA leave was underway prior to the effective date of the Act and continues after the Act's effective date, only that portion of leave taken on or after August 5, 1993, may be counted against the employee's leave entitlement under the FMLA.

(b) If an employer-approved leave is underway when the Act takes effect, no further notice may be required of the employee unless the employee requests an extension of the leave. For leave which commences on the effective date or shortly thereafter, such notice must be given which is practicable considering the foreseeability of the need for leave and the effective date of the statute.

(c) Starting on the Act's effective date, an employee is entitled to FMLA leave if the reason for the leave is qualifying under the Act, even if the event occasioning the need for leave (*e.g.*, the birth of a child) occurred before the effective date (so long as any other requirements are satisfied).

§ 825.104 What employers are covered by the Act?

(a) An employer covered by FMLA is any person engaged in commerce or in any industry or activity affecting commerce, who employs 50 or more employees for each working day during each of 20 or more calendar workweeks in the current or preceding calendar year. Employers covered by FMLA also include any person acting, directly or indirectly, in the interest of a covered employer to any of the employees of the employer, any successor in interest of a covered employer, and any public agency. Public agencies are covered employers without regard to the number of employees employed. Private elementary and secondary schools are also covered employers without regard to the number of employees employed. (See § 825.600.)

(b) The terms "commerce" and "industry affecting commerce" are defined in accordance with section 501 (1) and (3) of the Labor Management Relations Act of 1947 (LMRA) (29 U.S.C. 142 (1) and (3)), as set forth in the definitions at § 825.800 of this part. For purposes of the FMLA, employers who meet the 50-employee coverage test are deemed to be engaged in commerce or in an industry or activity affecting commerce.

(c) Normally the legal entity which employs the employee is the employer under FMLA. Applying this principle, a corporation is a single employer rather than its separate establishments or divisions.

(1) Where one corporation has an ownership interest in another corporation, it is a separate employer unless it meets the "joint employment" test discussed in § 825.106, or the "integrated employer" test contained in paragraph (c)(2) of this section.

(2) Separate entities will be deemed to be parts of a single employer for purposes of FMLA if they meet the "integrated employer" test. Where this test is met, the employees of all entities making up the integrated employer will be counted in determining employer coverage and employee eligibility. Factors considered in determining whether two or more entities are an integrated employer include:

(i) Common management;

(ii) Interrelation between operations;

(iii) Centralized control of labor relations; and

(iv) Degree of common ownership/financial control. A determination of whether or not separate entities are an integrated employer is not determined by the application of any single criterion, but rather the entire relationship is to be reviewed in its totality.

(d) An "employer" includes any person who acts directly or indirectly in the interest of an employer to any of the employer's employees. The definition of "employer" in section 3(d) of the Fair Labor Standards Act (FLSA), 29 U.S.C. 203(d), similarly includes any person acting directly or indirectly in the interest of an employer in relation to an employee. As under the FLSA, individuals such as corporate officers "acting in the interest of an employer" are individually liable for any violations of the requirements of FMLA.

§ 825.105 In determining whether an employer is covered by FMLA, what does it mean to employ 50 or more employees for each working day during each of 20 or more calendar workweeks in the current or preceding calendar year?

(a) Any employee whose name appears on the employer's payroll will be considered employed each working day of the calendar week, and must be counted whether or not any compensation is received for the week.

(b) Employees on paid or unpaid leave, including FMLA leave, leaves of absence, disciplinary suspension, etc., are counted as long as the employer has a reasonable expectation that the employee will later return to active employment. Employees on layoff, whether temporary, indefinite or long-term, are not counted. Part-time employees, like full-time employees, are considered to be employed each working day of the calendar week, as long as they are maintained on the payroll.

(c) An employee who does not begin to work for an employer until after the first working day of a calendar week, or who terminates employment before the last working day of a calendar week, is not considered employed on each working day of that calendar week.

(d) A private employer is covered if it maintained 50 or more employees on the payroll during 20 or more calendar workweeks (not consecutive workweeks) in either the current or the preceding calendar year.

(e) Once a private employer meets the 50 employees/20 workweeks threshold, the employer remains covered until it reaches a future point where it no longer has employed 50 employees for 20 (nonconsecutive) workweeks in the current and preceding calendar year. For example, if an employer who meets the 50 employees/20 workweeks test in the current calendar year as of August 5, 1993, subsequently drops below 50 employees before the end of 1993 and continues to employ fewer than 50 employees in all workweeks throughout calendar year 1994, the employer continues to be covered throughout calendar year 1994 because it met the coverage criteria for 20 workweeks of the preceding (*i.e.*, 1993) calendar year.

§ 825.106 How is "joint employment" treated under FMLA?

(a) Where two or more businesses exercise some control over the work or working conditions of the employee, the businesses may be joint employers under FMLA. Joint employers may be separate and distinct entities with separate owners, managers and facilities. Factors which are considered in determining whether an employer-employee relationship exists include, but are not limited to:

(1) The nature and degree of control of the workers;

(2) The degree of supervision, direct or indirect, of the work;

(3) The power to determine the pay rates or the methods of payment of the workers;

(4) The right, directly or indirectly, to hire, fire, or modify the employment conditions of the workers; and

(5) Preparation of the payroll and payment of wages.

(b) A determination of whether or not a joint employment relationship exists is not determined by the application of any single criterion, but rather the entire relationship is to be viewed in its totality.

(c) A joint employment relationship often exists in situations:

(1) Where there is an arrangement between employers to share an employee's services or to interchange employees;

(2) Where one employer acts directly or indirectly in the interest of the other employer in relation to the employee; or,

(3) Where the employers are not completely disassociated with respect to the employee's employment and may be deemed to share control of the employee, directly or indirectly, because one employer controls, is controlled by, or is under common control with the other employer.

(d) Employees jointly employed by two employers must be counted by both employers, whether or not maintained on one of the employer's payroll, in determining employer coverage and employee eligibility. For example, an employer who jointly employs 15 workers from a leasing or temporary help agency and 40 permanent workers is covered by FMLA.

(e) In joint employment relationships, only the primary employer is responsible for giving required notices to its employees, providing leave, maintenance of health benefits, and job restoration. Factors considered in determining which is the "primary" employer include authority/responsibility to hire and fire, assign/place the employee, make the payroll, and provide employment benefits. For employees of temporary help or leasing agencies, for example, the placement agency most commonly would be the primary employer.

(f) A secondary employer with 50 or more employees—including jointly employed employees of e.g., a temporary help agency—is responsible for compliance with the prohibited acts provisions (§ 825.220) with respect to its temporary/leased employees. These include prohibitions against interfering with an employee's attempt to exercise rights under the Act, or discharging or discriminating against an employee for opposing a practice which is unlawful under FMLA. The secondary employer will be responsible for compliance with all the provisions of the FMLA with respect to its regular, permanent workforce.

§ 825.107 What is meant by "successor in interest"?

(a) For purposes of FMLA, in determining whether an employer is covered because it is a "successor in interest" to a covered employer, the following factors will be considered:

(1) Substantial continuity of the same business operations;

(2) Use of the same plant;

(3) Continuity of the work force;

(4) Similarity of jobs and working conditions;

(5) Similarity of supervisory personnel;

(6) Similarity in machinery, equipment, and production methods;

(7) Similarity of products or services; and

(8) The ability of the predecessor to provide relief.

(b) A determination of whether or not a "successor in interest" exists is not determined by the application of any single criterion, but rather the entire circumstances are to be viewed in their totality.

(c) When an employer is a "successor in interest," employees' entitlements are the same as if the employment by the predecessor and successor were continuous employment by a single employer.

§ 825.108 What is a "public agency"?

(a) An "employer" under FMLA includes any "public agency," as defined in section 3(x) of the Fair Labor Standards Act, 29 U.S.C. 203(x). Section 3(x) of the FLSA defines "public agency" as the government of the United States; the government of a State or political subdivision of a State; or an agency of the United States, a State, or a political subdivision of a State, or any interstate governmental agency. "State" is further defined in Section 3(c) of the FLSA to include any State of the United States, the District of Columbia, or any Territory or possession of the United States.

(b) The determination of whether an entity is a "public" agency, as distinguished from a private employer, is determined by whether the agency has taxing authority, or whether the chief administrative officer or board, etc., is elected by the voters-at-large or their appointment is subject to approval by an elected official.

(c) A State or a political subdivision of a State constitutes a single public agency and, therefore, a single employer for purposes of determining employee eligibility. For example, a State is a single employer; a county is a single employer; a city or town is a single employer. Where there is any question about whether a public entity is a public agency, as distinguished from a part of another public agency, the U.S. Bureau of the Census' "Census of Governments" will be determinative, except for new entities formed since the most recent publication of the "Census." For new entities, the criteria used by the Bureau of Census will be used to determine whether an entity is a public agency or a part of another agency, including existence as an organized entity, governmental character, and substantial autonomy of the entity.

(d) All public agencies are covered by FMLA regardless of the number of employees; they are not subject to the coverage threshold of 50 employees carried on the payroll each day for 20 or more weeks in a year. However, employees of public agencies must meet all of the requirements of eligibility, including the requirement that the agency (*e.g.*, State) employ 50 employees at the worksite or within a 75-mile radius.

§ 825.109 Are Federal agencies covered by these regulations?

(a) Most employees of the government of the United States, if they are covered by the FMLA, are covered under Title II of the FMLA (incorporated in Title V, Chapter 63, Subchapter 5 of the United States Code) which is administered by the U.S. Office of Personnel Management (OPM). OPM has separate regulations at 5 CFR part 630, subpart L. In addition, employees of the Senate and House of Representatives are covered by Title V of the FMLA.

(b) The Federal Executive Branch employees within the jurisdiction of these regulations include:

(1) Employees of the Postal Service;

(2) Employees of the Postal Rate Commission;

(3) Employees of the Library of Congress;

(4) Employees of a corporation supervised by the Farm Credit Administration if private interests elect or appoint a member of the board of directors;

(5) A part-time employee who does not have an established regular tour of duty during the administrative workweek; and

(6) An employee serving under an intermittent appointment or temporary appointment with a time limitation of one year or less.

(c) Employees of other Federal executive agencies are also covered by these regulations if they are not covered by Title II of FMLA.

(d) Employees of the legislative or judicial branch of the United States are covered by these regulations only if they are employed in a unit which has

employees in the competitive service. Examples include employees of the Government Printing Office and the U.S. Tax Court.

(e) For employees covered by these regulations, the U.S. Government constitutes a single employer for purposes of determining employee eligibility. These employees must meet all of the requirements for eligibility, including the requirement that the Federal Government employ 50 employees at the worksite or within a 75-mile radius.

§ 825.110 Which employees are "eligible" to take leave under FMLA?

(a) An "eligible employee" is an employee of a covered employer who:

(1) Has been employed by the employer for at least 12 months, and

(2) Has been employed for at least 1,250 hours of service during the 12-month period immediately preceding the commencement of the leave, and

(3) Is employed at a worksite where 50 or more employees are employed by the employer within 75 miles of that worksite.

(b) The 12 months an employee must have been employed by the employer need not be consecutive months. If an employee is maintained on the payroll for any part of a week, the week counts as a week of employment. For purposes of determining whether intermittent/occasional/casual employment qualifies as "at least 12 months," 52 weeks is deemed to be equal to 12 months.

(c) Whether an employee has worked the minimum 1,250 hours of service is determined according to the principles established under the Fair Labor Standards Act (FLSA) for determining compensable hours of work (*see* 29 CFR part 785). The determining factor is the number of hours an employee has worked for the employer within the meaning of the FLSA. The determination is not limited by methods of recordkeeping, or by compensation agreements that do not accurately reflect all of the hours an employee has worked for or been in service to the employer. Any accurate accounting of actual hours worked under FLSA's principles may be used; in the absence of actual records of hours worked, employees who are exempt from FLSA's requirement that a record be kept of their hours worked (*e.g.*, bona fide executive, administrative, and professional employees as defined in FLSA Regulations, 29 CFR part 541) and who have worked for the employer for at least 12 months will be presumed to have worked at least 1,250 hours during the previous 12 months. See § 825.500(d). For this purpose, full-time teachers (see § 825.800 for definition) of an elementary or secondary school system, or institution of higher education, or other educational establishment or institution are deemed to meet the 1,250 hour test. An employer must be able to clearly demonstrate that such an employee did not work 1,250 hours during the previous 12 months in order to claim that the employee is not "eligible" for FMLA leave.

(d) The determinations of whether an employee has worked for the employer for at least 1,250 hours in the past 12 months and has been employed by the employer for a total of at least 12 months must be made as of the date leave commences. If an employee notifies the employer of need for FMLA leave before the employee meets these eligibility criteria, the employer may confirm the employee's eligibility based upon a projection that the employee will be eligible on the date leave would commence or may advise the employee when the eligibility requirement is met. In the former case, the employer may not subsequently challenge the employee's eligibility and, provided the other requirements of these regulations are met, the employee will have satisfied the notice requirements even if not yet eligible for FMLA benefits.

(e) The period prior to the FMLA's effective date must be considered in determining an employee's eligibility.

§ 825.111 In determining if an employee is "eligible" under FMLA, how is the determination made whether the employer employs 50 employees within 75 miles of the worksite where the employee requesting leave is employed?

(a) Generally, a worksite can refer to either a single location or a group of contiguous locations. Structures which form a campus or industrial park, or separate facilities in proximity with one another, may be considered a single site of employment. On the other hand, there may be several single sites of employment within a single building, such as an office building, if separate employers conduct activities within the building. For example, an office building with 50 different businesses as tenants will contain 50 sites of employment. The offices of each employer will be considered separate sites of employment for purposes of FMLA. An employee's worksite under FMLA will ordinarily be the site the employee reports to or, if none, from which the employee's work is assigned.

(1) Separate buildings or areas which are not directly connected or in immediate proximity are a single worksite if they are in reasonable geographic proximity, are used for the same purpose, and share the same staff and equipment. For example, if an employer manages a number of warehouses in a metropolitan area but regularly shifts or rotates the same employees from one building to another, the multiple warehouses would be a single worksite.

(2) For employees with no fixed worksite, *e.g.*, construction workers, transportation workers, salespersons, *etc.*, the "worksite" is the site to which they are assigned as their home base, from which their work is assigned, or to which they report. For example, if a construction company headquartered in New Jersey opened a construction site in Ohio, and set up a mobile trailer on the construction site as the company's offices, the construction site in Ohio would be the worksite for any employees hired locally who report to the mobile trailer/company office daily for work assignments, etc. If that construction company also sent personnel such as job superintendents, foremen, engineers, an office manager, *etc.*, from New Jersey to the job site in Ohio, those workers sent from New Jersey continue to have the headquarters in New Jersey as their "worksite."

(b) The 75-mile radius is measured by road miles, using surface transportation over public streets, roads, highways and waterways, by the shortest route from the facility where the eligible employee requesting leave is employed.

(c) The determination of how many employees are employed within 75 miles of the worksite of an employee is based on the number of employees maintained on the payroll. Employees of educational institutions who are employed permanently or who are under contract are "maintained on the payroll" during any portion of the year when school is not in session.

(d) Whether 50 employees are employed within 75 miles to ascertain an employee's eligibility for FMLA benefits is determined when the employee requests the leave. Whether the leave is to be taken at one time or on an intermittent or reduced leave schedule basis, once an employee is determined eligible after requesting leave, the employee's eligibility is not affected by any subsequent change in the number of employees employed at or within 75 miles of the employee's worksite. Similarly, an employer may not terminate employee leave that has already started if the employee-count drops below 50. For example, if an employer employs 60 employees in August, but expects that the number of employees will drop to 40 in December, the employer must grant FMLA benefits

to an employee who requests leave in August for a period of leave to begin in December.

§ 825.112 Under what kinds of circumstances are employers required to grant family or medical leave?

(a) Employers covered by FMLA are required to grant leave to eligible employees:

(1) For birth of a son or daughter, and to care for the newborn child;

(2) For placement with the employee of a son or daughter for adoption or foster care;

(3) To care for the employee's spouse, son, daughter, or parent with a serious health condition; and

(4) Because of a serious health condition that makes the employee unable to perform the functions of the employee's job.

(b) The right to take leave under FMLA applies equally to male and female employees. A father, as well as a mother, can take family leave for the birth, placement for adoption or foster care of a child.

(c) Circumstances may require that FMLA leave begin before the actual date of birth of a child. An expectant mother may take FMLA leave before the birth of the child for prenatal care or if her condition makes her unable to work.

(d) FMLA leave can begin before the actual placement or adoption of a child if an absence from work is required for the placement for adoption or foster care to proceed. For example, the employee may be required to attend counselling sessions, appear in court, consult with his or her attorney or the doctor(s) representing the birth parent, or submit to a physical examination. The source of an adopted child (*e.g.*, whether from a licensed placement agency or otherwise) is not a factor in determining eligibility for leave for this purpose. There is no maximum age limit on a child being adopted or placed for foster care for purposes of determining eligibility for leave.

(e) Foster care is 24-hour care for children in substitution for, and away from, their parents or guardian. Such placement is made by or with the agreement of the State as a result of a voluntary agreement between the parent or guardian that the child be removed from the home, or pursuant to a judicial determination of the necessity for foster care, and involves agreement between the State and foster family that the foster family will take care of the child. Although foster care may be with relatives of the child, State action is involved in the removal of the child from parental custody.

§ 825.113 What do "spouse," "parent," and "son or daughter" mean for purposes of an employee qualifying to take FMLA leave?

(a) Spouse means a husband or wife as defined or recognized under State law for purposes of marriage, including common law marriage in States where it is recognized.

(b) Parent means a biological parent or an individual who stands or stood *in loco parentis* to an employee when the employee was a child. This term does not include parents "in law."

(c) Son or daughter means a biological, adopted, or foster child, a stepchild, a legal ward, or a child of a person standing *in loco parentis*, who is either under age 18, or age 18 or older and "incapable of self-care because of a mental or physical disability."

(1) "Incapable of self-care" means that the individual requires active assistance or supervision to provide daily self-care in several of the "activities of daily living" or "ADLs." Activities of daily living include adaptive activities such as caring appropriately for one's grooming and hygiene, bathing, dressing, eating, cooking, cleaning, shopping, taking public transportation, paying bills, maintaining a residence, using telephones and directories, using a post office, etc.

(2) "Physical or mental disability" means a physical or mental impairment that substantially limits one or more of the major life activities of an individual. Regulations at 29 CFR part 1630, issued by the Equal Employment Opportunity Commission under the Americans with Disabilities Act (ADA), 42 U.S.C. 12101 *et seq.*, define these terms.

(3) Persons who are "*in loco parentis*" include those with day-to-day responsibilities to care for and financially support a child or, in the case of an employee, who had such responsibility for the employee when the employee was a child. A biological or legal relationship is not necessary.

§ 825.114 What is a "serious health condition"?

(a) For purposes of FMLA, "serious health condition" means an illness, injury, impairment, or physical or mental condition that involves:

(1) Any period of incapacity or treatment in connection with or consequent to inpatient care (*i.e.*, an overnight stay) in a hospital, hospice, or residential medical care facility;

(2) Any period of incapacity requiring absence from work, school, or other regular daily activities, of more than three calendar days, that also involves continuing treatment by (or under the supervision of) a health care provider; or

(3) Continuing treatment by (or under the supervision of) a health care provider for a chronic or long-term health condition that is incurable or so serious that, if not treated, would likely result in a period of incapacity of more than three calendar days; or for prenatal care.

(b) "Continuing treatment by a health care provider" means one or more of the following:

(1) The employee or family member in question is treated two or more times for the injury or illness by a health care provider. Normally this would require visits to the health care provider or to a nurse or physician's assistant under direct supervision of the health care provider.

(2) The employee or family member is treated for the injury or illness two or more times by a provider of health care services (*e.g.*, physical therapist) under orders of, or on referral by, a health care provider, *or* is treated for the injury or illness by a health care provider on at least one occasion which results in a regimen of continuing treatment under the supervision of the health care provider—for example, a course of medication or therapy—to resolve the health condition.

(3) The employee or family member is under the continuing supervision of, but not necessarily being actively treated by, a health care provider due to a serious long-term or chronic condition or disability which cannot be cured. Examples include persons with Alzheimer's, persons who have suffered a severe stroke, or persons in the terminal stages of a disease who may not be receiving active medical treatment.

(c) Voluntary or cosmetic treatments (such as most treatments for orthodontia or acne) which are not medically necessary are not "serious health conditions," unless inpatient hospital care is required. Restorative dental surgery after an accident, or removal of cancerous growths are serious health conditions provided all the other conditions of this regulation are met. Treatments for allergies or stress, or for substance abuse, are serious health conditions if all the conditions of the regulation are met. Prenatal care is included as a serious health condition. Routine preventive physical examinations are excluded.

(d) The scope of "serious health condition" is further clarified by the requirements of the Act that the health care provider may be required to certify: in the case of family medical leave, that the "employee is needed to care for" the family member; in the case of medical leave, that "the employee is unable to

perform the functions of the position of the employee"; and, in addition, in the case of leave taken "intermittently or on a reduced leave schedule," the medical necessity for such leave. (See §§ 825.115, 825.116, 825.117, 825.306, 825.310, and 825.311.)

§ 825.115 What does it mean that "the employee is unable to perform the functions of the position of the employee"?

An employee is "unable to perform the functions of the position" where the health care provider finds that the employee is unable to work at all or is unable to perform any of the essential functions of the employee's position within the meaning of the Americans with Disabilities Act (ADA), 42 U.S.C. 12101 *et seq.*, and the regulations at 29 CFR part 1630. An employer has the option, in requiring certification from a health care provider, to provide a statement of the essential functions of the employee's position for the provider to review.

§ 825.116 What does it mean that an employee is "needed to care for" a family member?

(a) The medical certification provision that an employee is "needed to care for" a family member encompasses both physical and psychological care. It includes situations where, for example, because of a serious health condition, the family member is unable to care for his or her own basic medical, hygienic, or nutritional needs or safety, or is unable to transport himself or herself to the doctor, etc. The term also includes providing psychological comfort and reassurance which would be beneficial to a seriously ill child or parent receiving inpatient care.

(b) The term also includes situations where the employee may be needed to fill in for others who are caring for the family member, or to make arrangements for changes in care, such as transfer to a nursing home.

(c) An employee's intermittent leave or a reduced leave schedule necessary to care for a family member includes not only a situation where the family member's condition itself is intermittent, but also where the employee is only needed intermittently—such as where other care is normally available, or care responsibilities are shared with another member of the family or a third party.

§ 825.117 For an employee seeking intermittent FMLA leave or leave on a reduced leave schedule, what is meant by "the medical necessity for" such leave?

For intermittent leave or leave on a reduced leave schedule, there must be a medical need for leave (as distinguished from voluntary treatments and procedures) and it must be that such medical need can be best accommodated through an intermittent or reduced leave schedule. The treatment regimen and other information described in the certification of a serious health condition (*see* § 825.306) meets the requirement for certification of the medical necessity of intermittent leave or leave on a reduced leave schedule. Employees needing intermittent FMLA leave or leave on a reduced leave schedule must attempt to schedule their leave so as not to disrupt the employer's operations. In addition, an employer may assign an employee to an alternative position with equivalent pay and benefits that better accommodates the employee's intermittent or reduced leave schedule.

§ 825.118 What is a "health care provider"?

(a) The Act defines "health care provider" as:

(1) A doctor of medicine or osteopathy who is authorized to practice medicine or surgery (as appropriate) by the State in which the doctor practices; or

(2) Any other person determined by the Secretary to be capable of providing health care services.

(b) Others "capable of providing health care services" include only:

(1) Podiatrists, dentists, clinical psychologists, optometrists, and chiropractors (limited to treatment consisting of manual manipulation of the spine to correct a subluxation as demonstrated by X-ray to exist) authorized to practice in the State and performing within the scope of their practice as defined under State law;

(2) Nurse practitioners and nurse-midwives who are authorized to practice under State law and who are performing within the scope of their practice as defined under State law; and

(3) Christian Science practitioners listed with the First Church of Christ, Scientist in Boston, Massachusetts. Where an employee or family member is receiving treatment from a Christian Science practitioner, an employee may not object to any requirement from an employer that the employee or family member submit to examination (though not treatment) to obtain a second or third certification from a health care provider other than a Christian Science practitioner.

Subpart B—What Leave Is an Employee Entitled To Take Under the Family and Medical Leave Act?

§ 825.200 How much leave may an employee take?

(a) An eligible employee is entitled to a total of 12 workweeks of leave during any 12-month period for any one, or more, of the following reasons:

(1) The birth of a son or daughter, and to care for the newborn child;

(2) The placement with the employee of a son or daughter for adoption or foster care;

(3) To care for the employee's spouse, son, daughter, or parent with a serious health condition; and

(4) Because of a serious health condition that makes the employee unable to perform the functions of his or her job.

(b) An employer is permitted to choose any one of the following methods for determining the "12-month period" in which the 12 weeks of leave entitlement occurs:

(1) The calendar year;

(2) Any fixed 12-month "leave year," such as a fiscal year, a year required by State law, or a year starting on an employee's "anniversary" date;

(3) The 12-month period measured forward from the date any employee's first FMLA leave begins; or,

(4) A "rolling" 12-month period measured backward from the date an employee uses any FMLA leave (except that such measure may not extend back before August 5, 1993).

(c) Under methods in paragraphs (b)(1) and (b)(2) of this section an employee would be entitled to up to 12 weeks of FMLA leave at any time in the fixed 12-month period selected. An employee could, therefore, take 12 weeks of leave at the end of the year and 12 weeks at the beginning of the following year. Under the method in paragraph (b)(3) of this section, an employee would be entitled to 12 weeks of leave during the year beginning on the first date FMLA leave is taken; the next 12-month period would begin the first time FMLA leave is taken after completion of any previous 12-month period. Under the method in paragraph (b)(4) of this section, the "rolling" 12-month period, each time an employee takes FMLA leave the remaining leave entitlement would be any balance of the 12 weeks which has not been used during the immediately preceding 12 months. For example, if an employee has taken eight weeks of leave during the past 12 months, an additional four weeks of leave could be taken. If an employee used four weeks beginning February 1, 1994, four weeks beginning

June 1, 1994, and four weeks beginning December 1, 1994, the employee would not be entitled to any additional leave until February 1, 1995. However, on February 1, 1995, the employee would be entitled to four weeks of leave, on June 1 the employee would be entitled to an additional four weeks, etc.

(d) Employers will be allowed to choose any one of the alternatives in paragraph (b) of this section provided the alternative chosen is applied consistently and uniformly to all employees. An employer wishing to change to another alternative is required to give at least 60 days notice to all employees, and the transition must take place in such a way that the employees retain the full benefit of 12 weeks of leave under whichever method affords the greatest benefit to the employee. Under no circumstances may a new method be implemented in order to avoid the Act's leave requirements.

(e) Methods for determining an employee's 12-week leave entitlement are described in § 825.205.

§ 825.201 If leave is taken for the birth of a child, or for placement of a child for adoption or foster care, when must the leave be concluded?

An employee's entitlement to leave for a birth or placement for adoption or foster care expires at the end of the 12-month period beginning on the date of the birth or placement, unless State law allows, or the employer permits leave to be taken for a longer period. Any such FMLA leave must be concluded within this one-year period.

§ 825.202 How much leave may a husband and wife take if they are employed by the same employer?

(a) A husband and wife who are eligible for FMLA leave and are employed by the same covered employer are permitted to take only a combined total of 12 weeks of leave during any 12-month period if the leave is taken:

(1) For birth of a son or daughter or to care for the child after birth;

(2) For placement of a son or daughter for adoption or foster care, or to care for the child after placement; or

(3) To care for a parent (but not a parent "in-law") with a serious health condition.

(b) This limitation on the total weeks of leave applies as long as a husband and wife are employed by the "same employer." It would apply, for example, even though the spouses are employed at two different worksites of an employer located more than 75 miles from each other, or by two different operating divisions of the same company. On the other hand, if one spouse is ineligible for FMLA leave, the other spouse would be entitled to a full 12 weeks of FMLA leave.

(c) Where the husband and wife both use a portion of the total 12-week FMLA leave entitlement for one of the purposes in paragraph (a) of this section, the husband and wife would each be entitled to the difference between the amount he or she has taken individually and 12 weeks for FMLA leave for a purpose other than those contained in paragraph (a) of this section. For example, if each spouse took 6 weeks of leave for the birth of a child, each could later use an additional 6 weeks due to a personal illness or to care for a sick child.

§ 825.203 Does FMLA leave have to be taken all at once, or can it be taken in parts?

(a) FMLA leave may be taken "intermittently or on a reduced leave schedule" under certain circumstances. Where leave is taken because of a birth or placement of a child for adoption or foster care, an employee may take leave intermittently or on a reduced leave schedule only if the employer agrees. Where FMLA leave is taken to care for a sick family member or for an employee's own serious health condition, leave may be taken intermittently or on a reduced leave schedule when medically necessary.

(b) "Intermittent leave" is leave taken in separate blocks of time due to a single illness or injury, rather than for one continuous period of time, and may include leave of periods from an hour or more to several weeks. Examples of intermittent leave would include leave taken on an occasional basis for medical appointments, or leave taken several days at a time spread over a period of six months, such as for chemotherapy.

(c) A "reduced leave schedule" is a leave schedule that reduces an employee's usual number of working hours per workweek, or hours per workday. In other words, a reduced leave schedule is a change in the employee's schedule for a period of time, normally from full-time to part-time. Such a schedule reduction might occur, for example, where an employee, with the employer's agreement, works part-time after the birth of a child; or because an employee who is recovering from a serious health condition is not strong enough to work a full-time schedule.

(d) There is no limit on the size of an increment of leave when an employee takes intermittent leave or leave on a reduced leave schedule. However, an employer may limit leave increments to the shortest period of time (one hour or less) that the employer's payroll system uses to account for absences or use of leave. For example, an employee might take two hours off for a medical appointment, or might work a reduced day of four hours over a period of several weeks while recuperating from an illness.

§ 825.204 May an employer transfer an employee to an "alternative position" in order to accommodate intermittent leave or a reduced leave schedule?

(a) If an employee requests intermittent leave or leave on a reduced leave schedule that is foreseeable based on planned medical treatment, including during a period of recovery from a serious health condition, the employer may require the employee to transfer temporarily to an available alternative position for which the employee is qualified and which better accommodates recurring periods of leave than does the employee's regular position.

(b) Transfer to an alternative position may require compliance with any applicable collective bargaining agreement, federal law (such as the Americans with Disabilities Act), and State law. Transfer to an alternative position may include altering an existing job to better accommodate the employee's need for intermittent or reduced leave.

(c) The alternative position must have equivalent pay and benefits. An alternative position for these purposes does not have to have equivalent duties. The employer may increase the pay and benefits of an existing alternative position, so as to make them equivalent to the employee's regular job. The employer may also transfer the employee to a part-time job with the same hourly rate of pay and benefits, provided the employee is not required to take more leave than is medically necessary. For example, an employee desiring to take leave in increments of 4 hours per day could be transferred to a half-time job paying the same hourly rate as the employee's previous job and enjoying the same benefits. The employer may not eliminate benefits which otherwise would not be provided to part-time employees; however, an employer may proportionately reduce earned benefits, such as vacation leave, where such a reduction is normally made by an employer for its part-time employees.

§ 825.205 How does one determine the amount of leave used where an employee takes leave intermittently or on a reduced leave schedule?

(a) If an employee takes leave on an intermittent or reduced leave schedule,

only the amount of leave actually taken may be counted toward the 12 weeks of leave to which an employee is entitled. For example, if an employee who normally works five days a week takes off one day, the employee would use ⅕ of a week of FMLA leave. Similarly, if a full-time employee who normally works 8-hour days works 4-hour days under a reduced leave schedule, the employee would use ½ week of FMLA leave each week.

(b) Where an employee normally works a part-time schedule or variable hours, the amount of leave to which an employee is entitled is determined on a pro rata or proportional basis by comparing the new schedule with the employee's normal schedule. For example, if an employee who normally works 30 hours per week works only 20 hours a week under a reduced leave schedule, the employee's ten hours of leave would constitute one-third of a week of FMLA leave for each week the employee works the reduced leave schedule.

(c) If an employer has made a permanent or long-term change in the employee's schedule (for reasons other than FMLA), the hours worked under the new schedule are to be used for making this calculation.

(d) If an employee's schedule varies from week to week, a weekly average of the hours worked over the 12 weeks prior to the beginning of the leave period would be used for calculating the employee's normal workweek.

§ 825.206 May an employer deduct hourly amounts from an employee's salary, when providing unpaid leave under FMLA, without affecting the employee's qualification for exemption as an executive, administrative, or professional employee under the Fair Labor Standards Act?

(a) Leave taken under FMLA may be unpaid. If an employee is otherwise exempt from minimum wage and overtime requirements of the Fair Labor Standards Act (FLSA) as a salaried executive, administrative, or professional employee (under regulations issued by the Secretary), 29 CFR part 541, providing unpaid FMLA-required leave to such an employee will not cause the employee to lose the FLSA exemption. This means that under regulations currently in effect, where an employee meets the specified duties test, and is paid, on a salary basis, a salary of at least the amount specified in the regulations, the employer may make deductions from the employee's salary for any hours taken as intermittent or reduced FMLA leave within a workweek, without affecting the exempt status of the employee. The fact that an employer provides FMLA leave, whether paid or unpaid, and maintains records required by this part regarding FMLA leave, will not be relevant to the determination whether an employee is exempt within the meaning of 29 CFR part 541.

(b) This special exception to the "salary basis" requirements of the FLSA exemption applies only to employees of covered employers who are eligible for FMLA leave, and to leave which qualifies as (one of the four types of) FMLA leave. Hourly or other deductions which are not in accordance with 29 CFR part 541 may not be taken, for example, from the salary of an otherwise exempt employee who works for an employer with fewer than 50 employees, or where the employee has not worked long enough to be eligible for FMLA leave without potentially affecting the employee's eligibility for exemption. Nor may deductions which are not permitted by part 541 be taken from such an employee's salary for any leave which does not qualify as FMLA leave, for example, deductions from an employee's pay for leave required under State law or under an employer's policy or practice for a reason which does not qualify as FMLA leave, *e.g.*, leave to care for a grandparent or for a medical condition which does not qualify as a serious health condition; or for leave which is more generous than provided by FMLA, such as leave in excess of 12 weeks in a year. Employers may comply with State law or the employer's own policy/practice under these circumstances and maintain the employee's eligibility for exemption by not taking hourly deductions from the employee's pay, in accordance with FLSA requirements, or may take such deductions, treating the employee as an "hourly" employee and pay overtime premium pay for hours worked over 40 in a workweek.

§ 825.207 Is FMLA leave paid or unpaid?

(a) Generally, FMLA leave is unpaid. However, under the circumstances described in this section, FMLA permits an eligible employee to choose to substitute paid leave for FMLA leave, and an employer to require an employee to substitute paid leave for FMLA leave.

(b) Where an employee has earned or accrued paid vacation, personal or family leave, that leave may be substituted for all or part of any (otherwise) unpaid FMLA leave relating to birth, placement of a child for adoption or foster care, or care for a family member. An employee is entitled to substitute paid family leave only under circumstances permitted by the employer's family leave plan. For example, if the employer's leave plan allows use of family leave to care for a child but not for a parent, the employer may but is not required to allow accrued family leave to be substituted for FMLA leave used to care for a parent.

(c) Substitution of paid accrued vacation, personal, or medical/sick leave may be made for all or part of any (otherwise) unpaid FMLA leave needed to care for a family member or the employee's own serious health condition. However, an employer may but is *not* required to, allow substitution of paid sick or medical leave for unpaid FMLA leave "in any situation" where the employer would not normally allow such paid leave.

(1) An employee has a right to substitute paid medical/sick leave to care for a seriously ill family member only if the employer's leave plan allows paid leave to be used for that purpose. Similarly, an employee does not have a right to substitute paid medical/sick leave for a serious health condition which is not covered by the employer's leave plan.

(2) Paid leave provided under a plan covering temporary disabilities is considered sick/medical leave for purposes of FMLA substitution. For example, disability leave for the birth of a child would be considered FMLA leave for a serious health condition and counted in the 12 weeks of leave permitted under FMLA.

(d) Paid vacation or personal leave, including leave earned or accrued under plans allowing "paid time off," may be substituted, at either the employee's or the employer's option, for any qualified FMLA leave. No limitations may be placed by the employer on substitution of paid vacation or personal leave for these purposes.

(e) If neither the employee nor the employer elects to substitute paid leave for unpaid FMLA leave under the above conditions and circumstances, the employee will remain entitled to all the paid leave which is earned or accrued under the terms of the employer's plan.

(f) If an employee uses paid leave under circumstances which do not qualify as FMLA leave, the leave will not count against the 12 weeks of FMLA leave to which the employee is entitled. For example, paid sick leave used for a medical condition which is not a serious health condition does not count against the 12 weeks of FMLA leave entitlement.

(g) Whenever an employee uses paid leave, the employee can only be required to comply with the requirements of the employer's leave plan, and not any more stringent requirements of FMLA (*e.g.*, notice or

certification requirements) unless the paid leave period is followed by a period of unpaid FMLA leave. For example, an employee having only four weeks of sick leave available under the employer's plan, may need to take an additional four weeks of unpaid FMLA leave. If the employee requests a total of eight weeks of leave, FMLA notice and certification may be required by the employer (unless such notice and certification would not otherwise be required by the employer of employees using unpaid leave for such a period of time).

§ 825.208 May an employer require an employee to designate paid leave as FMLA leave and, as a result, count it against the employee's total FMLA leave entitlement?

(a) An employee requesting unpaid FMLA leave must explain the reasons for the needed leave so as to allow the employer to determine that the leave qualifies under the Act. In many cases, in explaining the reasons for a request to use paid leave, especially when the need for the leave was unexpected or unforeseen, an employee will (even though, under the employer's policy, they may not be required to) provide sufficient information for the employer to designate the paid leave as substituting for all or some portion of the employee's FMLA leave entitlement. An employee using accrued paid leave, especially vacation or personal leave, may in some cases not spontaneously explain the reasons or their plans for using their accrued leave.

(1) As noted in § 825.302(c), an employee giving notice of the need for unpaid FMLA leave does not need to expressly assert rights under the Act or even mention the FMLA to meet their obligation to provide notice, though they would need to state a qualifying reason for the needed leave. An employee requesting or notifying the employer of an intent to use accrued paid leave, even if for a purpose covered by FMLA, would not need to assert such right either. However, if an employee requesting to use paid leave for an FMLA-qualifying purpose does not explain the reason for the leave—consistent with the employer's established policy or practice—and the employer denies the employee's request, the employee will need to provide sufficient information to establish an FMLA-qualifying reason for the needed leave so that the employer is aware of the employee's entitlement (i.e., that the leave may not be denied) and, then, may designate that the paid leave be appropriately counted against (substituted for) the employee's 12-week entitlement. Similarly, an employee using accrued paid vacation leave who seeks an extension of unpaid leave for an FMLA-qualifying purpose will need to state the reason. If this is due to an event which occurred during the period of paid leave, the employer may count the leave used after the FMLA-qualifying event against the employee's 12-week entitlement.

(2) In all circumstances, it is the employer's responsibility to designate leave, paid or unpaid, as FMLA-qualifying, based on information provided by the employee.

In any circumstance where the employer does not have sufficient information about the reason for an employee's use of paid leave, the employer should inquire further to ascertain whether the paid leave is potentially FMLA-qualifying.

(b) The employer may designate paid leave as FMLA leave only on the basis of information provided by the employee to the employer (as opposed to information sought or obtained from another party). The employer must immediately notify the employee that the paid leave is designated (see § 825.301(c)), and will be counted as FMLA leave. If there is a dispute between an employer and an employee as to whether paid leave qualifies as FMLA leave, it should be resolved through discussions between the employee and the employer.

(c) If the employer requires paid leave to be substituted for unpaid leave, or that paid leave taken under an existing leave plan be counted as FMLA leave, this decision must be made by the employer at the time the employee requests or gives notice of the leave, or when the employer determines that the leave qualifies as FMLA leave if this happens later. The employer's designation must be made before the leave starts, or before an extension of the leave is granted, unless the employer does not have sufficient information as to the employee's reason for taking the leave until after the leave commenced. In no event may an employer designate leave as FMLA leave after the leave has ended.

(d) If either the employer or the employee designates leave as FMLA leave after leave has begun, such as when an employee requests an extension of the paid leave with unpaid FMLA leave, the entire or some portion of the paid leave period may be retroactively counted as FMLA leave, to the extent that the leave period qualified as FMLA leave.

§ 825.209 Is an employee entitled to benefits while using FMLA leave?

(a) During any FMLA leave, an employer must maintain the employee's coverage under any group health plan (as defined in the Internal Revenue Code of 1986 at 26 U.S.C. 5000(b)(1)) on the same conditions as coverage would have been provided if the employee had been continuously employed during the entire leave period. All employers covered by FMLA, including public agencies, are subject to the Act's requirements to maintain health coverage. The definition of "group health plan" is set forth in § 825.800.

(b) The same health benefits provided to an employee prior to taking FMLA leave must be maintained during the FMLA leave. For example, if family member coverage is provided to an employee, family member coverage must be maintained during the FMLA leave. Similarly, benefit coverage during FMLA leave for medical care, surgical care, hospital care, dental care, eye care, mental health counseling, substance abuse treatment, *etc.*, must be maintained during leave if provided in an employer's group health plan, including a supplement to a group health plan, whether or not provided through a flexible spending account or other component of a cafeteria plan.

(c) If an employer provides a new health plan or benefits or changes health benefits or plans while an employee is on FMLA leave, the employee is entitled to the new or changed plan/benefits to the same extent as if the employee were not on leave. For example, if an employer changes a group health plan so that dental care becomes covered under the plan, an employee on FMLA leave must be given the same opportunity as other employees to receive (or obtain) the dental care coverage.

(d) Notice of any opportunity to change plans or benefits must also be given to an employee on FMLA leave. If the plan permits an employee to change from single to family coverage upon the birth of a child or otherwise add new family members, such a change in benefits must be made available while an employee is on FMLA leave. If the employee requests the changed coverage it must be provided by the employer.

(e) An employee may choose not to retain health coverage during FMLA leave. However, when an employee returns from leave, the employee is entitled to be reinstated on the same terms as prior to taking the leave, without any qualifying period, physical examination, exclusion of pre-existing conditions, *etc.*

(f) Except as required by the Consolidated Omnibus Budget Reconciliation Act of 1986 (COBRA) and for "key" employees (as discussed below), an employer's obligation to maintain health benefits under FMLA ceases if and when an employee informs the employer of his or her intent not to return from leave (including at the start of leave if the employer is so informed before the leave starts), or the employee fails to return from leave, and thereby terminates employment, or the employee exhausts his or her FMLA leave entitlement.

(g) If a "key employee" (see § 825.218) does not return from leave when notified by the employer that substantial or grievous economic injury will result from his or her reinstatement, the employee's entitlement to group health benefits continues unless and until the employee advises the employer that the employee does not desire restoration to employment at the end of the leave period, or FMLA leave entitlement is exhausted, or reinstatement is actually denied.

§ 825.210 How may employees on FMLA leave pay their share of health benefit premiums?

(a) Group health plan benefits must be continued on the same basis as coverage would have been provided if the employee had been continuously employed during the FMLA leave period. Therefore, any share of health plan premiums which had been paid by the employee prior to FMLA leave must continue to be paid by the employee during the FMLA leave period. If premiums are raised or lowered, the employee would be required to pay the new premium rates.

(b) If the FMLA leave is substituted paid leave, the employee's share of premiums must be paid by the method normally used during any paid leave, presumably as a payroll deduction.

(c) If FMLA leave is unpaid, the employer has a number of options for obtaining payment from the employee. The employer may require that payment be made to the employer or to the insurance carrier, but no additional charge may be added to the employee's premium payment for administrative expenses. The employer may require employees to pay their share of premium payments in any of the following ways:

(1) Payment would be due at the same time as it would be made if by payroll deduction;

(2) Payment would be due on the same schedule as payments are made under COBRA;

(3) Payment would be prepaid pursuant to a cafeteria plan at the employee's option;

(4) The employer's existing rules for payment by employees on "leave without pay" would be followed, provided that such rules do not require prepayment (*i.e.*, prior to the commencement of the leave) of the premiums that will become due during a period of unpaid FMLA leave; or,

(5) Another system voluntarily agreed to between the employer and the employee, which may include prepayment of premiums (*e.g.*, through increased payroll deductions when the need for the FMLA leave is foreseeable).

(d) The employer must provide the employee with advance written notice of the terms and conditions under which these payments must be made. (See § 825.301.)

(e) An employer may not require more of an employee using FMLA leave than the employer requires of other employees on "leave without pay."

§ 825.211 What special health benefits maintenance rules apply to multi-employer health plans?

(a) A multi-employer health plan is a plan to which more than one employer is required to contribute, and which is maintained pursuant to one or more collective bargaining agreements between employee organization(s) and the employers.

(b) An employer under a multi-employer plan must continue to make contributions on behalf of an employee using FMLA leave as though the employee had been continuously employed, unless the plan contains an explicit FMLA provision for maintaining coverage such as through pooled contributions by all employers party to the plan.

(c) During the duration of an employee's FMLA leave, coverage by the health plan, and benefits provided pursuant to the plan, must continue at the level coverage would have been continued if the employee had continued to be employed.

(d) An employee using FMLA leave cannot be required to use "banked" hours or pay a greater premium than the employee would have been required to pay if the employee had been continuously employed.

§ 825.212 What are the consequences of an employee's failure to make timely health plan premium payments?

(a) While an employer may continue to maintain health benefits, an employer's obligations to maintain health insurance coverage ceases if an employee's premium payment is more than 30 days late. All other obligations of an employer under FMLA would continue; for example, the employer continues to have an obligation to reinstate an employee upon return from leave.

(b) The employer may recover the employee's share of any premium payments missed by the employee for any FMLA leave period during which the employer maintains health coverage by paying the employee's share after the premium payment is missed.

(c) If coverage lapses because an employee has not made required premium payments, upon the employee's return from FMLA leave the employer must still restore the employee to coverage/benefits equivalent to those the employee would have had if leave had not been taken and the premium payment(s) had not been missed. See § 825.215(d)(1)–(5). In such case, an employee may not be required to meet any qualification requirements imposed by the plan, including any new preexisting condition waiting period, to wait for an open season, or to pass a medical examination to obtain reinstatement of coverage.

§ 825.213 May an employer recover premiums it paid for maintaining "group health plan" coverage during FMLA leave?

(a) In addition to the circumstances discussed in § 825.212(b), an employer may recover its share of health plan premiums during a period of unpaid FMLA leave from an employee if the employee fails to return to work after the employee's FMLA leave entitlement has been exhausted or expires, *unless* the reason the employee does not return is due to:

(1) The continuation, recurrence, or onset of a serious health condition which would entitle the employee to leave under FMLA; or

(2) Other circumstances beyond the employee's control. Examples of other circumstances beyond the employee's control include such situations as where an employee's spouse is unexpectedly transferred to a job location more than 75 miles from the employee's worksite; a relative or individual other than an immediate family member has a serious health condition and the employee is needed to provide care; the employee is laid off while on leave; or, the employee is a "key employee" who decides not to return to work upon being notified of the employer's intention to deny restoration because of substantial and grievous economic injury to the employer's operations and is not reinstated by the employer. Other circumstances beyond the employee's

control would not include a situation where an employee desires to remain with a parent in a distant city even though the parent no longer requires the employee's care, or a mother's decision not to return to work to stay home with a newborn child.

(3) When an employee fails to return to work because of the continuation, recurrence, or onset of a serious health condition, thereby precluding the employer from recovering its (share of) health benefit premium payments made on the employee's behalf during a period of unpaid FMLA leave, the employer may require medical certification of the employee's or the family member's serious health condition. Such certification is not required unless requested by the employer. The employee is required to provide medical certification in a timely manner which, for purposes of this section, is within 30 days from the date of the employer's request. For purposes of medical certification, the employee may use the optional DOL form developed for this purpose (see § 825.306(a) and Appendix B of this part). If the employer requests medical certification and the employee does not provide such certification in a timely manner (within 30 days), the employer may recover the health benefit premiums it paid during the period of unpaid FMLA leave.

(4) When circumstances permit, the employer's right to recover its share of health premiums paid during periods of unpaid FMLA leave extends to the entire period of unpaid FMLA leave taken by the employee.

(b) An employee who returns to work for at least 30 calendar days is considered to have "returned" to work.

(c) When an employee elects or an employer requires paid leave to be substituted for FMLA leave, the employer may not recover its (share of) health insurance premiums for any period of FMLA leave covered by paid leave.

(d) The amount that self-insured employers may recover is limited to only the employer's share of allowable "premiums" as would be calculated under COBRA, excluding the 2 percent fee for administrative costs.

(e) When an employee fails to return to work, except for the reasons stated in paragraphs (a)(1) and (a)(2) of this section, health premiums paid by the employer during a period of FMLA leave are a debt owed by the non-returning employee to the employer. The existence of this debt caused by the employee's failure to return to work does not alter the employer's responsibilities for coverage and, under a self-insurance plan, payment of claims incurred during the period of FMLA leave. In the circumstances where recovery is allowed, the employer may recover its share of health insurance premiums through deduction from any sums due to the employee (*e.g.*, unpaid wages, vacation pay, profit sharing, *etc.*), provided such deductions do not otherwise violate applicable Federal or State wage payment or other laws. Alternatively, the employer may initiate legal action against the employee to recover its share of health insurance premiums.

(f) Under some circumstances an employer may elect to maintain other benefits, *e.g.*, life insurance, disability insurance, *etc.*, by paying the employee's (share of) premiums during periods of unpaid FMLA leave. For example, to ensure the employer can meet its responsibilities to provide equivalent benefits to the employee upon return from unpaid FMLA leave, it may be necessary that premiums be paid continuously to avoid a lapse of coverage. In such circumstances the employer is entitled to recover any premium payments made on the employee's behalf to maintain coverage of benefits during unpaid FMLA leave pursuant to the guidance set out in paragraphs (a) through (e) of this section, whether or not the employee returns from FMLA leave.

§ 825.214 What are an employee's rights on returning to work from FMLA leave?

(a) On return from FMLA leave, an employee is entitled to be returned to the same position the employee held when leave commenced, or to an equivalent position with equivalent benefits, pay, and other terms and conditions of employment.

(b) Ordinarily an employee will be restored to the same position the employee held prior to FMLA leave, with the same pay and benefits, if the position remains available. However, an employee has no right to return to the same position.

§ 825.215 What is an equivalent position?

(a) An equivalent position must have the same pay, benefits and working conditions, including privileges, perquisites and status. It must involve the same or substantially similar duties and responsibilities, which must entail substantially equivalent skill, effort, responsibility, and authority.

(b) If an employee is no longer qualified for the position because of the employee's inability to attend a necessary course, renew a license, fly a minimum number of hours, etc., as a result of the leave, the employee shall be given a reasonable opportunity to fulfill those conditions upon return to work. If the employee is unable to perform the position because of a physical or mental condition, including the continuation of a serious health condition, the employer's obligations may be governed by the Americans with Disabilities Act (ADA).

(c) *Equivalent Pay.* An employee is entitled to any unconditional pay increases which may have occurred during the FMLA leave period, such as cost of living increases. Pay increases conditioned upon seniority, length of service, or work performed would not have to be granted unless it is the employer's policy or practice to do so with respect to other employees on "leave without pay." In such case, any pay increase would be granted based on the employee's seniority, length of service, work performed, etc., excluding the period of unpaid FMLA leave. An employee is entitled to be restored to a position with the same or equivalent pay premiums, such as a shift differential. If an employee departed from a position averaging ten hours of overtime (and corresponding overtime pay) each week, an employee is ordinarily entitled to such a position on return from FMLA leave.

(d) *Equivalent Benefits.* "Benefits" include all benefits provided or made available to employees by an employer, including group life insurance, health insurance, disability insurance, sick leave, annual leave, educational benefits, and pensions, regardless of whether such benefits are provided by a practice or written policy of an employer through an employee benefit plan as defined in Section 3(3) of the Employee Retirement Income Security Act of 1974, 29 U.S.C. 1002(3).

(1) At the end of an employee's FMLA leave, benefits must be resumed in the same manner and at the same levels as provided when the leave began, and subject to any changes in benefit levels that may have taken place during the period of FMLA leave affecting the entire workforce, unless otherwise elected by the employee. Upon return from FMLA leave, an employee cannot be required to requalify for any benefits the employee enjoyed before FMLA leave began. For example, if an employee was covered by a life insurance policy before taking leave but is not covered or coverage lapses during the period of unpaid FMLA leave, the employee cannot be required to meet any qualifications, such as taking a physical examination, in order to requalify for life insurance upon return from leave. Accordingly, some employers may find it necessary to

modify life insurance and other benefits programs in order to restore employees to equivalent benefits upon return from FMLA leave, make arrangements for continued payment of costs to maintain such benefits during unpaid FMLA leave, or pay these costs subject to recovery from the employee on return from leave.

(2) An employee may, but is not entitled to, accrue any additional benefits or seniority during unpaid FMLA leave. Benefits accrued at the time leave began, however, (e.g., paid vacation, sick or personal leave to the extent not substituted for FMLA leave) must be available to an employee upon return from leave.

(3) If an employee desires to continue life insurance, disability insurance, or other types of benefits for which he or she typically pays during unpaid FMLA leave, the employer is required to follow established policies or practices for continuing such benefits for other instances of leave without pay. If the employer has no established policy, the employee and the employer are encouraged to agree upon arrangements before FMLA leave begins.

(4) With respect to pension and other retirement plans, any period of FMLA leave will be treated as continued service (*i.e.*, no break in service) for purposes of vesting and eligibility to participate. If, for example, the plan requires an employee to be working on a specific date in order to be credited with a year of service for vesting or participation purposes, an employee on FMLA leave who subsequently returns to work shall be deemed to have been working on that date.

(5) Employees on unpaid FMLA leave are to be treated as if they continued to work for purposes of changes to benefit plans. They are entitled to changes in benefits plans, except those which may be dependent upon seniority or accrual during the leave period, immediately upon return from leave or to the same extent they would have qualified if no leave had been taken. (In this regard, § 825.209 addresses health benefits.)

(e) *Equivalent Terms and Conditions of Employment.* An equivalent position must have substantially similar duties, conditions, responsibilities, privileges and status as the employee's original position.

(1) The employee must be reinstated to the same or a geographically proximate worksite where the employee had previously been employed. If the employee's original worksite has been closed, the employee is entitled to the same rights as if the employee had not been on leave when the worksite closed. For example, if an employer transfers all employees from a closed worksite to a new worksite in a different city, the employee on leave is also entitled to transfer under the same conditions as if he or she had continued to be employed.

(2) The employee is ordinarily entitled to return to the same shift or the same or an equivalent work schedule.

(3) The employee must have the same or an equivalent opportunity for bonuses, profit-sharing, and other similar discretionary and non-discretionary payments.

(4) FMLA does not prohibit an employer from accommodating an employee's request to be restored to a different shift, schedule, or position which better suits the employee's personal needs on return from leave, or to offer a promotion to a better position. However, an employee cannot be induced by the employer to accept a different position against the employee's wishes.

(f) The requirement that an employee be restored to the same or equivalent job with the same or equivalent pay, benefits, and terms and conditions of employment does not extend to intangible, unmeasurable aspects of the job. For example, the perceived loss of potential for future promotional opportunities is not encompassed in equivalent pay, benefits and working conditions; nor would any increased possibility of being subject to a future layoff. However, restoration to a job slated for layoff when the employee's original position is not would not meet the requirements of an equivalent position.

§ 825.216 Are there any limitations on an employer's obligation to reinstate an employee?

(a) An employee has no greater right to reinstatement or to other benefits and conditions of employment than if the employee had been continuously employed during the FMLA leave period. An employer must be able to show that an employee would not otherwise have been employed at the time reinstatement is requested in order to deny restoration to employment. For example, an employer would have the burden of proving that an employee would have been laid off during the FMLA leave period and, therefore, would not be entitled to reinstatement. If a shift has been eliminated, or overtime has been decreased, an employee would not be entitled to return to work that shift or the original overtime hours upon reinstatement. However, if a position on, for example, a night shift has been filled by another employee, the employee is entitled to return to the same shift on which employed before taking FMLA leave.

(b) If an employee was hired for a specific term or only to perform work on a discrete project, the employer has no obligation to restore the employee if the employment term or project is over and the employer would not otherwise have continued to employ the employee. On the other hand, if an employee was hired to perform work on a contract, and after that contract period the contract was awarded to another contractor, the successor contractor may be required to restore the employee if it is a successor employer. See § 825.107.

(c) In addition to the circumstances explained above, an employer may deny job restoration: to salaried eligible employees ("key employees," as defined in paragraph (c) of § 825.218) if such denial is necessary to prevent substantial and grievous economic injury to the operations of the employer; or, to an employee who fails to provide a fitness for duty certificate to return to work under the conditions described in § 825.309.

§ 825.217 What is a "key employee"?

(a) A "key employee" is a salaried FMLA-eligible employee who is among the highest paid 10 percent of all the employees employed by the employer within 75 miles of the employee's worksite.

(b) The term "salaried" means "paid on a salary basis," as defined in 29 CFR 541.118. This is the Department of Labor regulation defining employees who may qualify as exempt from the minimum wage and overtime requirements of the FLSA as executive, administrative, and professional employees.

(c) A "key employee" must be "among the highest paid 10 percent" of all the employees—both salaried and non-salaried, eligible and ineligible—who are employed by the employer within 75 miles of the worksite.

(1) In determining which employees are among the highest paid 10 percent, year-to-date earnings are divided by weeks worked by the employee (including weeks in which paid leave was taken). Earnings include wages, premium pay, incentive pay, and non-discretionary and discretionary bonuses. Earnings do not include incentives whose value is determined at some future date, *e.g.*, stock options, or benefits or perquisites.

(2) The determination of whether a salaried employee is among the highest paid 10 percent shall be made at the time of the request for leave. No more than 10 percent of the employer's

employees within 75 miles of the worksite may be "key employees."

§ 825.218 What does "substantial and grievous economic injury" mean?

(a) In order to deny restoration to a key employee, an employer must determine that the restoration of the employee to employment will cause "substantial and grievous economic injury" to the operations of the employer, not whether the absence of the employee will cause such substantial and grievous injury.

(b) An employer may take into account its ability to replace on a temporary basis (or temporarily do without) the employee on FMLA leave. If permanent replacement is unavoidable, the cost of then reinstating the employee can be considered in evaluating whether substantial and grievous economic injury will occur from restoration; in other words, the effect on the operations of the company of reinstating the employee in an equivalent position.

(c) A precise test cannot be set for the level of hardship or injury to the employer which must be sustained. If the reinstatement of a "key employee" threatens the economic viability of the firm, that would constitute "substantial and grievous economic injury." A lesser injury which causes substantial, long-term economic injury would also be sufficient. Minor inconveniences and costs that the employer would experience in the normal course of doing business would certainly not constitute "substantial and grievous economic injury."

§ 825.219 What are the rights of a key employee?

(a) An employer who believes that reinstatement may be denied to a key employee, must give written notice to the employee at the time FMLA leave is requested (or when FMLA leave commences, if earlier) that he or she qualifies as a key employee. At the same time, the employer must also fully inform the employee of the potential consequences with respect to reinstatement and maintenance of health benefits if the employer should determine that substantial and grievous economic injury to the employer's operations will result if the employee is reinstated from FMLA leave. If such notice cannot be given immediately because of the need to determine whether the employee is a key employee, it shall be given as soon as practicable after receipt of a request for leave (or the commencement of leave, if earlier). It is expected that in most circumstances there will be no desire that an employee be denied restoration after FMLA leave and, therefore, there would be no need to provide such notice. However, an employer who fails to provide such timely notice will lose its right to deny restoration even if substantial and grievous economic injury will result from reinstatement.

(b) As soon as an employer makes a good faith determination, based on the facts available, that substantial and grievous economic injury to its operations will result if a key employee who has requested or is using FMLA leave is reinstated, the employer shall notify the employee in writing of its determination, that it cannot deny FMLA leave, and that it intends to deny restoration to employment on completion of the FMLA leave. It is anticipated that an employer will ordinarily be able to give such notice prior to the employee starting leave. The employer must serve this notice either in person or by certified mail. This notice must explain the basis for the employer's finding that substantial and grievous economic injury will result, and must provide the employee a reasonable time in which to return to work, taking into account the circumstances, such as the length of the leave and the urgency of the need for the employee to return.

(c) If an employee does not return to work in response to the employer's notification of intent to deny restoration, the employee continues to be entitled to maintenance of health benefits and the employer may not recover its cost of health benefit premiums. A key employee's rights under FMLA continue unless and until the employee either gives notice that he or she no longer wishes to return to work, or the employer actually denies reinstatement at the conclusion of the leave period.

(d) After notice to an employee has been given that substantial and grievous economic injury will result if the employee is reinstated to employment, an employee is still entitled to request reinstatement at the end of the leave period even if the employee did not return to work in response to the employer's notice. The employer must then determine whether there will be substantial and grievous economic injury from reinstatement, based on the facts at that time. If it is determined that substantial and grievous economic injury will result, the employer shall notify the employee in writing (in person or by certified mail) of the denial of restoration.

§ 825.220 How are employees who exercise their rights protected?

(a) The FMLA prohibits interference with an employee's rights under the law, and with legal proceedings or inquiries relating to an employee's rights. More specifically, the law contains the following employee protections:

(1) An employer is prohibited from interfering with, restraining, or denying the exercise of (or attempts to exercise) any rights provided by the Act.

(2) An employer is prohibited from discharging or in any other way discriminating against any person (whether or not an employee) for opposing or complaining about any unlawful practice under the Act.

(3) All persons (whether or not employers) are prohibited from discharging or in any other way discriminating against any person (whether or not an employee) because that person has—

(i) Filed any charge, or has instituted (or caused to be instituted) any proceeding under or related to this Act;

(ii) Given, or is about to give, any information in connection with an inquiry or proceeding relating to a right under this Act;

(iii) Testified, or is about to testify, in any inquiry or proceeding relating to a right under this Act.

(b) Any violations of the Act or of these regulations constitute interfering with, restraining, or denying the exercise of rights provided by the Act. "Interfering with" the exercise of an employee's rights would include, for example, not only refusing to authorize FMLA leave, but discouraging an employee from using such leave. It would also include manipulation by an employer to avoid responsibilities under FMLA, such as unnecessarily transferring employees from one worksite to another in order to keep worksites below the 50-employee threshold for employee eligibility under the Act.

(c) An employer is prohibited from discriminating against employees who use FMLA leave. For example, if an employee substitutes paid leave for unpaid FMLA leave and the employer does not normally require written notice or certification for use of paid leave, an employer cannot require written notice or certification for the *paid* FMLA leave. Similarly, if an employee on leave without pay would otherwise be entitled to full benefits (other than health benefits), the same benefits would be required to be provided to an employee on unpaid FMLA leave. By the same token, employers cannot use the taking of FMLA leave as a negative

factor in employment actions, such as promotions or disciplinary actions; nor can FMLA leave be counted under "no fault" attendance policies.

(d) Employees cannot waive their rights under FMLA. For example, employees (or their collective bargaining representatives) cannot "trade off" the right to take FMLA leave against some other benefit offered by the employer. Employers are prohibited from inducing an employee to waive rights under the Act.

(e) Individuals, and not merely employees, are protected from retaliation for opposing (*e.g.*, file a complaint about) any practice which is unlawful under the Act. They are similarly protected if they oppose any practice which they reasonably believe to be a violation of the Act or regulations.

Subpart C—How Do Employees Learn of Their FMLA Rights and Obligations, and What Can an Employer Require of an Employee?

§ 825.300 What posting requirements does the Act place on employers?

(a) Every employer subject to the FMLA is required to post and keep posted on its premises, in conspicuous places where employees are employed, a notice explaining the Act's provisions and providing information concerning the procedures for filing complaints of violations of the Act with the Wage and Hour Division. The notice must be posted prominently where it can be readily seen by employees and applicants for employment. Employers may duplicate the text of the notice contained in Appendix C of this part, or copies of the required notice may be obtained from local offices of the Wage and Hour Division. When duplicating the text of the notice, no reproduction of the notice smaller than 8½ inches by 11 inches will satisfy the posting requirements of this regulation, and the reproduction must contain fully legible text.

(b) An employer that willfully violates the posting requirement may be assessed a civil money penalty by the Wage and Hour Division not to exceed $100 for each separate offense. Furthermore, an employer that fails to post the required notice cannot take any adverse action against an employee, including denying FMLA leave, for failing to furnish the employer with advance notice of a need to take FMLA leave.

(c) Where an employer's workforce is comprised of a significant portion of workers who are not literate in English, the employer shall be responsible for providing the information required by the notice provisions of this regulation in a language in which the employees are literate.

§ 825.301 What other notices to employees are required of employers under the FMLA?

(a) If an employer has any written guidance to employees concerning employee benefits or leave rights, such as in an employee handbook, information concerning FMLA entitlements and employee obligations under the FMLA must be included in the handbook or other document. For example, if an employer provides an employee handbook to all employees that describes the employer's policies regarding leave, wages, attendance, and similar matters, the handbook must incorporate information on FMLA rights and responsibilities and the employer's policies regarding the FMLA. Informational publications describing the Act's provisions are available from local offices of the Wage and Hour Division and may be incorporated in such employer handbooks or written policies.

(b) If an employer does not have written policies, manuals, or handbooks describing employee benefits and leave provisions, the employer shall provide written guidance to an employee concerning all the employee's rights and obligations under the FMLA whenever an employee requests leave under the FMLA. Employers may duplicate and provide the employee a copy of the FMLA Fact Sheet available from the nearest office of the Wage and Hour Division to provide such guidance.

(c) In addition, when an employee provides notice of the need for FMLA leave, the employer shall provide the employee with notice detailing the specific expectations and obligations of the employee and explaining any consequences of a failure to meet these obligations. Such specific notice should include, as appropriate:

(1) That the leave will be counted against their annual FMLA leave entitlement;

(2) Any requirements for the employee to furnish medical certification of a serious health condition and the consequences of failing to do so (see § 825.305);

(3) The employee's right to substitute paid leave and whether the employer will require the substitution of paid leave, and the conditions related to any substitution;

(4) Any requirement for the employee to make any premium payments to maintain health benefits and the arrangements for making such payments (see § 825.210);

(5) Any requirement for the employee to present a fitness-for-duty certificate to be restored to employment (see § 825.309);

(6) Their status as a "key employee" and the potential consequence that restoration may be denied following FMLA leave, explaining the conditions required for such denial (see § 825.218);

(7) The employee's right to restoration to the same or an equivalent job upon return from leave (see §§ 825.214 and 825.604); and,

(8) The employee's potential liability for payment of health insurance premiums paid by the employer during the employee's unpaid FMLA leave if the employee fails to return to work after taking FMLA leave (see § 825.213). This specific notice may include other information—*e.g.*, whether the employer will require periodic reports of the employee's status and intent to return to work, or will require any recertification relating to a serious health condition—but is not required to do so. A prototype notice is available from local offices of the Department of Labor's Wage and Hour Division, which employers may adapt for their optional use to meet these specific notice requirements.

(d) Employers are also expected to responsively answer questions from employees concerning their rights and responsibilities under the FMLA.

§ 825.302 What notice does an employee have to give an employer when the need for FMLA leave is foreseeable?

(a) An employee must provide the employer at least 30 days advance notice before FMLA leave is to begin if the need for the leave is foreseeable based on an expected birth, placement for adoption or foster care, or planned medical treatment for a serious health condition of the employee or of a family member. If 30 days notice is not practicable, such as because of a lack of knowledge of approximately when leave will be required to begin, a change in circumstances, or a medical emergency, notice must be given as soon as practicable. For example, an employee's health condition may require leave to commence earlier than anticipated before the birth of a child. Similarly, little opportunity for notice may be given before placement for adoption.

(b) "As soon as practicable" means as soon as both possible and practical, taking into account all of the facts and circumstances in the individual case. For foreseeable leave where it is not possible to give as much as 30 days notice, "as soon as practicable" ordinarily would mean at least verbal notification to the employer within one or two business days of when the need

for leave becomes known to the employee.

(c) An employee shall provide at least verbal notice sufficient to make the employer aware that the employee needs FMLA-qualifying leave, and the anticipated timing and duration of the leave. The employee need not expressly assert rights under the FMLA or even mention the FMLA, but may only state that leave is needed for an expected birth or adoption, for example. The employer should inquire further of the employee if it is necessary to have more information about whether FMLA leave is being sought by the employee, and obtain the necessary details of the leave to be taken. In the case of medical conditions, the employer may find it necessary to inquire further to determine if the leave is because of a serious health condition and may request medical certification to support the need for such leave (see § 825.305).

(d) An employer may also require an employee to comply with the employer's usual and customary notice and procedural requirements for requesting leave without pay. For example, an employer may require that written notice set forth the reasons for the requested leave, the anticipated duration of the leave, and the anticipated start of the leave. However, failure to follow such internal employer procedures will not permit an employer to disallow an employee's taking FMLA leave if the employee gives timely verbal or other notice.

(e) When planning medical treatment, the employee should consult with the employer and make a reasonable effort to schedule the leave so as not to disrupt unduly the employer's operations, subject to the approval of the health care provider. Employees are ordinarily expected to consult with their employers prior to the scheduling of treatment in order to work out a treatment schedule which best suits the needs of both the employer and the employee. In any event, when notice is given of the need for leave, an employer may, for justifiable cause, require an employee to attempt to reschedule treatment, subject to the ability of the health care provider to reschedule the treatment and the approval of the health care provider as to any modification of the treatment schedule.

(f) In the case of a request for intermittent leave or leave on a reduced leave schedule which is medically necessary, an employee shall advise the employer, upon request, of the reasons why the intermittent/reduced leave schedule is necessary and of the schedule for treatment, if applicable. The employee and employer shall attempt to work out a schedule which meets the employee's needs without unduly disrupting the employer's operations, subject to the approval of the health care provider.

(g) An employer may waive employees' FMLA notice requirements. In addition, an employer may not require compliance with stricter FMLA notice requirements where the provisions of a collective bargaining agreement, State law, or applicable leave plan allow less advance notice to the employer.

§ 825.303 What are the requirements for an employee to furnish notice to an employer where the need for FMLA leave is not foreseeable?

(a) When the need for leave, or its approximate timing, is not foreseeable, an employee should give notice to the employer of the need for FMLA leave as soon as practicable under the facts and circumstances of the particular case. It is expected that an employee will give notice to the employer within no more than one or two working days of learning of the need for leave, except in extraordinary circumstances. In the case of a medical emergency requiring leave because of an employee's own serious health condition or to care for a family member with a serious health condition, written advance notice pursuant to an employer's internal rules and procedures cannot be required when FMLA leave is involved.

(b) The employee should provide notice to the employer either in person or by telephone, telegraph, facsimile ("fax") machine or other electronic means. Notice may be given by the employee's representative (e.g., a spouse, family member or other responsible party) if the employee is unable to do so personally. The employer will be expected to obtain any additional required information through informal means. The employee or representative will be expected to provide more information when it can readily be accomplished as a practical matter, taking into consideration the exigencies of the situation.

§ 825.304 What recourse do employers have if employees fail to provide the required notice?

(a) An employer may waive employees' FMLA notice obligations or the employer's own internal rules on leave notice requirements.

(b) If an employee fails to give 30 days notice for foreseeable leave with no reasonable excuse for the delay, the employer may deny the taking of FMLA leave until at least 30 days after the date the employee provides notice to the employer of the need for FMLA leave.

(c) In all cases, in order for the onset of an employee's FMLA leave to be delayed due to lack of required notice, it must be clear that the employee had actual notice of the FMLA notice requirements. This condition would be satisfied by the employer's proper posting of the required notice at the worksite where the employee is employed. Furthermore, the need for leave and the approximate date leave would be taken must have been clearly foreseeable to the employee 30 days in advance of the leave. For example, knowledge that an employee would receive a telephone call about the availability of a child for adoption at some unknown point in the future would not be sufficient.

(d) Where the employee elects or the employer requires use of paid leave, or where the employer has a less stringent policy regarding requests for "leave without pay," such as for leave of short duration, the employer's usual policy for notification for such leave shall apply.

(e) If an employer does not waive employees' notice requirements and chooses to take action against an employee for violating these notice requirements, the employer's policies and procedures must be uniformly applied in similar circumstances.

§ 825.305 When must an employee provide medical certification to support a FMLA leave request?

(a) An employer may require that an employee's request for leave to care for the employee's seriously-ill spouse, son, daughter, or parent, or due to the employee's own serious health condition that makes the employee unable to perform the functions of the employee's position, be supported by a certification issued by the health care provider of the employee or the employee's ill family member. An employer must give written notice of a requirement for medical certification (see § 825.301) in a particular case, but an employer's verbal request to an employee to furnish any subsequent medical certification is sufficient. The employee must provide the requested certification to the employer within the time frame requested by the employer (which must allow at least 15 calendar days after the employer's request), unless it is not practicable under the particular circumstances to do so despite the employee's diligent, good faith efforts.

(b) In most cases, the employer should request that an employee furnish certification from a health care provider at the time the employee requests leave or soon after the leave is requested, or,

in the case of unforeseen leave, soon after the leave commences. The employer may request certification at some later date if the employer later has reason to question the appropriateness of the leave or its duration.

(c) At the time the employer requests certification, the employer must also advise an employee of the anticipated consequences of an employee's failure to provide adequate certification. The employer shall advise an employee whenever the employer finds a certification incomplete, and provide the employee a reasonable opportunity to cure any such deficiency.

§ 825.306 How much information may be required in medical certifications of a serious health condition?

(a) DOL has developed an optional form for employees' use in obtaining medical certification from health care providers that meets FMLA's certification requirements. (See Appendix B to these regulations.) This optional form reflects certification requirements so as to permit the health care provider to furnish appropriate medical information within his or her knowledge. This form, or another form containing the same basic information, may be used by the employer; however, no additional information may be required. The form identifies the practitioner and type of medical practice (including pertinent specialization, if any), makes maximum use of checklist entries for ease in completing the form, and contains required entries for:

(1) The date the serious health condition commenced and the health care provider's best medical judgment concerning the probable duration of the condition;

(2) Diagnosis of the serious health condition;

(3) A brief statement of the regimen of treatment prescribed for the condition by the health care provider (including estimated number of visits, nature, frequency and duration of treatment, including treatment by another provider of health services on referral by or order of the health care provider); and

(4) Indication of whether inpatient hospitalization is required.

(b) For medical leave because of the employee's own serious health condition, the health care provider's certification must also include either a statement that the employee is unable to perform work of any kind, or a statement that the employee is unable to perform the essential functions of the employee's position, based on either information provided via a statement from the employer of the essential functions of the employee's position, or, if not provided, discussion with the employee about the employee's job functions. (See § 825.115.)

(c) For family leave to care for a seriously-ill family member, the health care provider's certification must also include a statement that the patient requires assistance for basic medical, hygiene, nutritional needs, safety or transportation, or that the employee's presence would be beneficial or desirable for the care of the family member, which may include psychological comfort. The employee is required to indicate on the form the care he/she will provide and an estimate of the time period. (See § 825.116.)

(d) The treatment regimen and other information in the certification should satisfy the requirement that—if leave must be taken intermittently or on a reduced leave schedule because of the employee's own serious health condition or a seriously-ill family member—the certification include:

(1) A statement of the medical necessity for such leave (see § 825.117); or,

(2) That the leave is necessary to care for the child, parent, or spouse who has a serious health condition, or will assist in the family member's recovery, and (3) The expected duration and schedule of the intermittent or reduced leave schedule. (See § 825.116.)

§ 825.307 What can an employer do if it questions the adequacy of a medical certification?

(a) If an employee submits a complete certification signed by the health care provider, the employer may not request additional information from the employee's health care provider. Rather, an employer who has reason to doubt the validity of a medical certification may require the employee to obtain a second opinion at the employer's expense. The employer is permitted to designate the health care provider to furnish the second opinion, but the selected health care provider cannot be employed on a regular basis by the employer.

(b) The employer may not regularly contract with or otherwise regularly utilize the services of the health care provider furnishing the second opinion unless the employer is located in an area where access to health care is extremely limited (e.g., a rural area where no more than one or two doctors practice in the relevant specialty in the vicinity).

(c) If the opinions of the employee's and the employer's designated health care providers differ, the employer may require the employee to obtain certification from a third health care provider, again at the employer's expense. This third opinion shall be final and binding. The third health care provider be must designated or approved jointly by the employer and the employee. The employer and the employee must each act in good faith to attempt to reach agreement on whom to select for the third opinion provider. If the employer does not attempt in good faith to reach agreement, the employer will be bound by the first certification. If the employee does not attempt in good faith to reach agreement, the employee will be bound by the second certification. For example, an employee who refuses to agree to see a doctor in the specialty in question may be failing to act in good faith. On the other hand, an employer that refuses to agree to any doctor on a list of specialists in the appropriate field provided by the employee and whom the employee has not previously consulted may be failing to act in good faith.

§ 825.308 Under what circumstances can an employer request subsequent recertifications of medical conditions to support leave requests?

An employer may request recertification at any reasonable interval, but not more often than every 30 days, unless:

(a) The employee requests an extension of leave;

(b) Circumstances described by the original certification have changed significantly (*e.g.*, the duration of the illness, the nature of the illness, complications); or

(c) The employer receives information that casts doubt upon the continuing validity of the certification.

(d) When an employee is unable to return to work after FMLA leave because of the continuation, recurrence, or onset of a serious health condition, thereby preventing the employer from recovering its share of health benefit premium payments made on the employee's behalf during a period of unpaid FMLA leave, the employer may require medical certification of the employee's or the family member's serious health condition. (See § 825.213(a)(3).)

§ 825.309 What notice may an employer require regarding an employee's intent to return to work?

(a) An employer may require an employee on FMLA leave to report periodically on the employee's status and intent to return to work. The employer's policy regarding such reports may not be discriminatory and must take into account all of the relevant facts and circumstances related

to the individual employee's leave situation.

(b) If an employee gives unequivocal notice of intent not to return to work, the employer's obligations under FMLA to maintain health benefits (subject to COBRA requirements) and to restore the employee cease. However, these obligations continue if an employee indicates he or she may be unable to return to work but expresses a continuing desire to do so.

§ 825.310 Under what circumstances may an employer require that an employee submit a medical certification that the employee is able (or unable) to return to work (e.g., a "fitness-for-duty" report)?

(a) As a condition of restoring an employee whose FMLA leave was occasioned by the employee's own serious health condition that made the employee unable to perform the employee's job, an employer may have a uniformly-applied policy or practice that requires all employees who take leave for such conditions to obtain and present certification from the health care provider that the employee is able to resume work. This does not mean that the employer's policy or practice must require fitness-for-duty certification from all employees who are absent due to a serious health condition, but an employer requiring any fitness for duty certifications must have a uniformly-applied policy that is based on, for example, the nature of the illness or the duration of the absence.

(b) An employer may seek fitness-for-duty certification only with regard to the particular health condition that caused the employee's need for FMLA leave. The certification itself need only be a simple statement of an employee's ability to return to work. If State or local law or the terms of a collective bargaining agreement govern an employee's return to work, those provisions shall be applied. Similarly, requirements under the Americans with Disabilities Act (ADA) that any return-to-work physical be job-related must be complied with.

(c) The notice that employers are required to give to each employee requesting FMLA leave regarding their FMLA rights and obligations (see § 825.301) shall advise the employee if the employer will require fitness-for-duty certification to return to work. If the employer has a handbook explaining employment policies and benefits, the handbook should explain the employer's general policy regarding any requirement for fitness-for-duty certification to return to work. Specific notice shall also be given to any employee from whom fitness-for-duty certification will be required either at the time leave is requested or immediately after leave commences and the employer is advised of the medical circumstances requiring the leave, unless the employee's condition changes from one that did not previously require certification pursuant to the employer's practice or policy. No second or third fitness-for-duty certification may be required.

(d) An employer may deny restoration to employment until an employee submits a required fitness-for-duty certification unless the employer has failed to provide the notices required in paragraph (c) of this section.

§ 825.311 What happens if an employee fails to satisfy the medical certification requirements?

(a) In the case of foreseeable leave, an employee who fails to provide timely certification after being requested by the employer to furnish such certification (*e.g.*, within 15 calendar days, if practicable), may be denied the taking of leave until the required certification is provided.

(b) When the need for leave is *not* foreseeable, an employee must provide certification within the time frame requested by the employer (which must allow at least 15 days after the employer's request) *or* as soon as reasonably possible under the particular facts and circumstances. In the case of a medical emergency, it may not be practicable for an employee to provide the required certification within 15 calendar days. If an employee fails to provide a medical certification within a reasonable time under the pertinent circumstances, the employer may deny the employee's continuation of leave.

(c) When requested by the employer pursuant to a uniformly applied policy, the employee must provide medical certification at the time the employee seeks reinstatement at the end of FMLA leave taken for the employee's serious health condition, that the employee is fit for duty and able to return to work. The employer may deny restoration until the certification is provided. (See § 825.309.)

§ 825.312 Under what circumstances can a covered employer refuse to provide FMLA leave or reinstatement to eligible employees?

(a) If an employee fails to give timely advance notice when the need for FMLA leave is foreseeable, the employer may deny the taking of FMLA leave until 30 days after the date the employee provides notice to the employer of the need for FMLA leave. (See § 825.302.)

(b) If an employee fails to provide in a timely manner a requested medical certification to substantiate the need for FMLA leave due to a serious health condition, an employer may deny FMLA leave until an employee submits the certificate. (See § 825.305 and 825.310.)

(c) If an employee fails to provide a requested fitness-for-duty certification to return to work, an employer may deny restoration until the employee submits the certificate. (See §§ 825.309 and 825.310.)

(d) An employee has no greater right to reinstatement or to other benefits and conditions of employment than if the employee had been continuously employed during the FMLA leave period. An employer must be able to show, when an employee requests reinstatement, that the employee would not otherwise have been employed if leave had not been taken in order to deny restoration to employment. (See § 825.216.)

(e) If an employee unequivocally advises the employer that the employee does not intend to return to work, the employment relationship is deemed terminated, and the employee's entitlement to reinstatement, continued leave, and health benefits ceases. An employer may require an employee on FMLA leave to report periodically on the employee's status and intention to return to work. (See § 825.309.)

(f) An employer may deny restoration to employment, but not the taking of FMLA leave and the maintenance of health benefits, to an eligible employee only under the terms of the "key employee" exemption. Denial of reinstatement must be necessary to prevent "substantial and grievous economic injury" to the employer's operations. The employer must notify the employee of the employee's status as a "key employee" and of the employer's intent to deny reinstatement on that basis when the employer makes these determinations. If leave has started, the employee must be given a reasonable opportunity to return to work after being so notified. (See § 825.220.)

(g) An employee who fraudulently obtains FMLA leave from an employer is not protected by FMLA's job restoration or maintenance of health benefits provisions.

(h) If the employer has a uniformly-applied policy governing outside or supplemental employment, such a policy may continue to apply to an employee while on FMLA leave. An employer which does not have such a policy may not deny benefits to which an employee is entitled under FMLA on this basis unless the FMLA leave was

fraudulently obtained as in paragraph (g) of this section.

Subpart D—What Enforcement Mechanisms Does FMLA Provide?

§ 825.400 What can employees do who believe that their rights under FMLA have been violated?

(a) The employee has the choice of:

(1) Filing, or having another person file on his or her behalf, a complaint with the Secretary of Labor, or

(2) Filing a private lawsuit pursuant to section 107 of FMLA.

(b) If the employee files a private lawsuit, it must be filed within two years after the last action which the employee contends was in violation of the Act, or three years if the violation was willful.

(c) If an employer has violated one or more provisions of FMLA, and if justified by the facts of a particular case, an employee may receive one or more of the following: wages, employment benefits, or other compensation denied or lost to such employee by reason of the violation; or, where no such tangible loss has occurred, such as when FMLA leave was unlawfully denied, any actual monetary loss sustained by the employee as direct result of the violation, such as the cost of providing care, up to a sum equal to 12 weeks of wages for the employee. In addition, the employee may be entitled to interest on such sum, calculated at the prevailing rate. An amount equalling the preceding sums may also be awarded as liquidated damages unless such amount is reduced by the court because the violation was in good faith and the employer had reasonable grounds for believing the employer had not violated the Act. When appropriate, the employee may also receive employment, reinstatement and promotion, and reimbursement for the cost of the action. Reasonable attorney's and expert witness fees are paid by an employer found in violation.

§ 825.401 Where can an employee file a complaint of FMLA violations with the Federal government?

(a) A complaint may be filed in person, by mail or by telephone, with the Wage and Hour Division, Employment Standards Administration, U.S. Department of Labor. A complaint may be filed at any local office of the Wage and Hour Division; the address and telephone number of local offices may be found in telephone directories.

(b) A complaint filed with the Secretary of Labor should be filed within a reasonable time of when the employee discovers that his or her FMLA rights have been violated. In no event may a complaint be filed more than two years after the action which is alleged to be a violation of FMLA occurred, or three years in the case of a willful violation.

(c) No particular form of complaint is required, except that a complaint must be reduced to writing and should include a full statement of the acts and/or omissions, with pertinent dates, which are believed to constitute the violation.

§ 825.402 How is an employer notified of a violation of the posting requirement?

Section 825.300 describes the requirements for covered employers to post a notice for employees that explains the Act's provisions. If a representative of the Department of Labor determines that an employer has committed a willful violation of this posting requirement, and that the imposition of a civil money penalty for such violation is appropriate, the representative may issue and serve a notice of penalty on such employer in person or by certified mail. Where service by certified mail is not accepted, notice shall be deemed received on the date of attempted delivery. Where service is not accepted, the notice may be served by regular mail.

§ 825.403 How may an employer appeal the assessment of a penalty for willful violation of the posting requirement?

(a) An employer may obtain a review of the assessment of penalty from the Wage and Hour Regional Administrator for the region in which the alleged violation(s) occurred. If the employer does not seek such a review or fails to do so in a timely manner, the notice of the penalty constitutes the final ruling of the Secretary of Labor.

(b) To obtain review, an employer may file a petition with the Wage and Hour Regional Administrator for the region in which the alleged violations occurred. No particular form of petition for review is required, except that the petition must be in writing, should contain the legal and factual bases for the petition, and must be mailed to the Regional Administrator within 15 days of receipt of the notice of penalty. The employer may request an oral hearing which may be conducted by telephone.

(c) The decision of the Regional Administrator constitutes the final order of the Secretary.

§ 825.404 What are the consequences of an employer not paying the penalty assessment after a final order is issued?

The Regional Administrator may seek to recover the unpaid penalty pursuant to the Debt Collection Act (DCA), 31 U.S.C. 3711 *et seq.*, and, in addition to seeking recovery of the unpaid final order, may seek interest and penalties as provided under the DCA. The final order may also be referred to the Solicitor of Labor for collection. The Secretary may file suit in any court of competent jurisdiction to recover the monies due as a result of the unpaid final order, interest, and penalties.

Subpart E—What Records Must Be Kept To Comply With the FMLA?

§ 825.500 What records must an employer keep to comply with the FMLA?

(a) FMLA provides that employers shall make, keep, and preserve records pertaining to their obligations under the Act in accordance with the recordkeeping requirements of section 11(c) of the Fair Labor Standards Act (FLSA) and in accordance with these regulations. FMLA also restricts the authority of the Department of Labor to require any employer or plan, fund or program to submit books or records more than once during any 12-month period unless the Department has reasonable cause to believe a violation of the FMLA exists or the DOL is investigating a complaint. These regulations establish no requirement for the submission of any records unless specifically requested by a Departmental official.

(b) *Form of records.* No particular order or form of records is required. These regulations establish *no* requirement that any employer revise its computerized payroll or personnel records systems to comply. However, employers must keep the records specified by these regulations for no less than three years and make them available for inspection, copying, and transcription by representatives of the Department of Labor upon request. The records may be maintained and preserved on microfilm or other basic source document of an automated data processing memory provided that adequate projection or viewing equipment is available, that the reproductions are clear and identifiable by date or pay period, and that extensions or transcriptions of the information required herein can be and are made available upon request. Records kept in computer form must be made available for transcription or copying.

(c) *Items required.* Records kept in accordance with this part must disclose the following:

(1) Basic payroll and identifying employee data, including name, address, and occupation; rate or basis of pay and terms of compensation; daily and weekly hours worked per pay

period; additions to or deductions from wages; and total compensation paid.

(2) Dates FMLA leave is taken by employees (*e.g.*, available from time records, requests for leave, *etc.*, if so designated). Leave must be designated in records as FMLA leave; leave so designated may *not* include leave provided under State law or an employer plan which is not covered by FMLA.

(3) If FMLA leave is taken in increments of less than one full day, the hours of the leave.

(4) Copies of employee notices of leave furnished to the employer under FMLA, if in writing, and copies of all general and specific notices given to employees as required under FMLA and these regulations (*e.g.*, copies may be maintained in employee personnel files).

(5) Any documents (including written and electronic records) describing employee benefits or employer policies and practices regarding the taking of paid and unpaid leaves.

(6) Premium payments of employee benefits.

(7) Records of any dispute between the employer and an employee regarding designation of leave as FMLA leave, including any written statement from the employer or employee of the reasons for the designation and for the disagreement.

(d) If employees are not subject to FLSA's recordkeeping regulations for purposes of minimum wage or overtime compliance (*i.e.*, not covered by or exempt from FLSA), an employer need not keep a record of actual hours worked (as otherwise required under FLSA, 29 CFR 516.2(a)(7)), provided that:

(1) Eligibility for FMLA leave is presumed for any employee who has been employed for at least 12 months; and

(2) With respect to employees who take FMLA leave intermittently or on a reduced leave schedule, the employer and employee agree on the employee's normal schedule or average hours worked each week and reduce their agreement to a written record maintained in accordance with paragraph (b) of this section.

(e) Records and documents relating to medical certifications, recertifications or medical histories of employees or employees' family members, shall be maintained in separate files/records and be treated as confidential medical records, except that:

(1) Supervisors and managers may be informed regarding necessary restrictions on the work or duties of an employee and necessary accommodations;

(2) First aid and safety personnel may be informed (when appropriate) if the employee's physical or medical condition might require emergency treatment; and

(3) Government officials investigating compliance with FMLA (or other pertinent law) shall be provided relevant information upon request.

Subpart F—What Special Rules Apply to Employees of Schools?

§ 825.600 To whom do the special rules apply?

(a) Certain special rules apply to employees of "local educational agencies," including public school boards and elementary and secondary schools under their jurisdiction, and private elementary and secondary schools. The special rules do not apply to other kinds of educational institutions, such as colleges and universities, trade schools, and pre-schools.

(b) Educational institutions are covered by FMLA (and these special rules) and the Act's 50-employee coverage test does not apply. The usual requirements for employees to be "eligible" do apply, however, including employment at a worksite where at least 50 employees are employed within 75 miles. For example, employees of a rural school would not be eligible for FMLA leave if the school has fewer than 50 employees and there are no other schools under the jurisdiction of the same employer (usually, a school board) within 75 miles.

(c) The special rules affect the taking of intermittent leave or leave on a reduced leave schedule, or leave near the end of an academic term (semester), by instructional employees. "Instructional employees" are those whose principal function is to teach and instruct students in a class, a small group, or an individual setting. This term includes not only teachers, but also athletic coaches, driving instructors, and special education assistants such as signers for the hearing impaired. It does not include, and the special rules do not apply to, teacher assistants or aides who do not have as their principal job actual teaching or instructing, nor does it include auxiliary personnel such as counselors, psychologists, or curriculum specialists. It also does not include cafeteria workers, maintenance workers, or bus drivers.

(d) Special rules which apply to restoration to an equivalent position apply to all employees of local educational agencies.

§ 825.601 What limitations apply to the taking of intermittent leave or leave on a reduced leave schedule?

(a)(1) If an eligible instructional employee requests intermittent leave or leave on a reduced leave schedule to care for a family member, or for the employee's own serious health condition, which is foreseeable based on planned medical treatment, and the employee would be on leave for more than 20 percent of the total number of working days over the period the leave would extend, the employer may require the employee to choose either to:

(i) Take leave for a period or periods of a particular duration, not greater than the duration of the planned treatment; or

(ii) Transfer temporarily to an available alternative position for which the employee is qualified, which has equivalent pay and benefits and which better accommodates recurring periods of leave than does the employee's regular position.

(2) These rules apply only to a leave involving more than 20 percent of the working days during the period over which the leave extends. For example, if an instructional employee who normally works five days each week needs to take two days of FMLA leave per week over a period of several weeks, the special rules would apply. Employees taking leave which constitutes 20 percent or less of the working days during the leave period would be subject to the usual rules for taking intermittent or reduced schedule leave in §§ 825.117 and 825.203. The usual rules would apply, for example, to such an employee who needs only one day of leave per week. "Periods of a particular duration" means a block, or blocks, of time beginning no earlier than the first day for which leave is needed and ending no later than the last day on which leave is needed, and may include one uninterrupted period of leave.

(b) If an instructional employee does not give required notice of foreseeable FMLA leave (see § 825.302) to be taken intermittently or on a reduced leave schedule, the employer may require the employee to take leave of a particular duration, or to transfer temporarily to an alternative position. Alternatively, the employer may require the employee to delay the taking of leave until the notice provision is met. However, an employer may not have stricter FMLA notice requirements than are required for other employees taking paid or unpaid leave, as appropriate.

§ 825.602 What limitations apply to the taking of leave near the end of an academic term?

(a) There are also different rules for instructional employees who begin leave more than five weeks before the end of a term, less than five weeks before the end of a term, and less than three weeks before the end of a term. Regular rules apply except in circumstances when:

(1) An instructional employee begins leave more than five weeks before the end of a term. The employer may require the employee to continue taking leave until the end of the term if—

(i) The leave will last at least three weeks, and

(ii) The employee would return to work during the three-week period before the end of the term.

(2) The employee begins leave for a purpose other than the employee's own serious health condition during the five-week period before the end of a term. The employer may require the employee to continue taking leave until the end of the term if—

(i) The leave will last more than two weeks, and

(ii) The employee would return to work during the two-week period before the end of the term.

(3) The employee begins leave for a purpose other than the employee's own serious health condition during the three-week period before the end of a term, and the leave will last more than five working days. The employer may require the employee to continue taking leave until the end of the term.

(b) For purposes of these provisions, "academic term" means the school semester, which typically ends near the end of the calendar year and the end of spring each school year. In no case may a school have more than two academic terms or semesters each year for purposes of FMLA. An example of leave falling within these provisions would be where an employee plans two weeks of leave to care for a family member which will begin three weeks before the end of the term. In that situation, the employer could require the employee to stay out on leave until the end of the term.

§ 825.603 Is all leave taken during "periods of a particular duration" counted against the FMLA leave entitlement?

(a) If an employee chooses, or is required, to take leave for "periods of a particular duration" in the case of intermittent or reduced schedule leave, or is required to continue taking leave until the end of a school term in the case of leave taken near the end of the term, the entire period of leave taken will count as FMLA leave.

(b) In the case of an employee who is required to take leave until the end of an academic term, if the employee's leave entitlement under FMLA ends before the involuntary leave period is completed, the employer is required to maintain health benefits and must restore the employee and provide other FMLA entitlements when the period of leave ends.

§ 825.604 What special rules apply to restoration to "an equivalent position?"

The determination of how an employee is to be restored to "an equivalent position" upon return from FMLA leave will be made on the basis of "established school board policies and practices, private school policies and practices, and collective bargaining agreements." The "established policies" and collective bargaining agreements used as a basis for restoration must be in writing, must be made known to the employee prior to the taking of FMLA leave, and must clearly explain the employee's restoration rights upon return from leave. Any established policy which is used as the basis for restoration of an employee to "an equivalent position" must provide substantially the same protections as provided in the Act for reinstated employees. In other words, the policy or collective bargaining agreement must provide for restoration to an "equivalent position" with equivalent employment benefits, pay, and other terms and conditions of employment.

Subpart G—How Do Other Laws, Employer Practices, and Collective Bargaining Agreements Affect Employee Rights Under FMLA?

§ 825.700 What if an employer provides more generous benefits than required by FMLA?

(a) An employer must observe any employment benefit program or plan that provides greater family or medical leave rights to employees than the rights established by the FMLA. Conversely, the rights established by the Act may not be diminished by any employment benefit program or plan. For example, provisions of a CBA which, because of seniority or otherwise, provide for reinstatement to a position that is not equivalent (*e.g.*, provides lesser pay) are superseded by FMLA. If an employer provides greater unpaid family leave rights than are afforded by FMLA, the employer is not required to extend additional rights afforded by FMLA, such as maintenance of health benefits (other than through COBRA), to the additional leave period not covered by FMLA. If an employee takes paid leave and neither the employee nor the employer designates the leave as FMLA leave, the leave taken does not count against an employee's FMLA entitlement.

(b) Nothing in this Act prevents an employer from amending existing leave and employee benefit programs, provided they comply with FMLA. However, nothing in the Act is intended to discourage employers from adopting or retaining more generous leave policies.

(c) The Act does not apply to employees under a collective bargaining agreement (CBA) in effect on August 5, 1993, until February 5, 1994, or the date the agreement terminates (*i.e.*, its expiration date), whichever is earlier. Thus, if the CBA contains family or medical leave benefits, whether greater or less than those under the Act, such benefits are not disturbed until the Act's provisions begin to apply to employees under that agreement. A CBA which provides no family or medical leave rights also continues in effect. For CBAs subject to the Railway Labor Act and other CBAs which do not have an expiration date for the general terms, but which may be reopened at specified times, *e.g.*, to amend wages and benefits, the first time the agreement is amended after August 5, 1993, shall be considered the termination date of the CBA, and the effective date for FMLA. It is contemplated that collective bargaining agreements will be amended to conform to FMLA during the extended effective date period.

§ 825.701 Do State laws providing family and medical leave still apply?

(a) Nothing in FMLA supersedes any provision of State or local law that provides greater family or medical leave rights than those provided by FMLA. The Department of Labor will not, however, enforce State family leave laws, and States may not enforce the FMLA. Employees are not required to designate whether the leave they are taking is FMLA leave or leave under State law, and an employer must comply with the appropriate (applicable) provisions of both. An employer covered by one law and not the other has to comply only with the law under which it is covered. Similarly, an employee eligible under only one law must receive benefits in accordance with that law. If leave qualifies for FMLA leave and leave under State law, the leave used counts against the employee's entitlement under both laws. Examples of the interaction between FMLA and State laws include:

(1) If State law provides 16 weeks of leave entitlement over two years, an employee would be entitled to take 16 weeks one year under State law and 12 weeks the next year under FMLA. Health benefits maintenance under FMLA would be applicable only to the first 12 weeks of leave entitlement each year. If the employee took 12 weeks the first year, the employee would be entitled to a maximum of 12 weeks the second year under FMLA (not 16 weeks). An employee would not be entitled to 28 weeks in one year.

(2) If State law provides half-pay for employees temporarily disabled because of pregnancy for six weeks, the employee would be entitled to an additional six weeks of unpaid FMLA leave (or accrued paid leave).

(3) A shorter notice period under State law must be allowed by the employer unless an employer has already provided, or the employee is requesting, more leave than required under State law.

(4) If State law provides for only one medical certification, no additional certifications may be required by the employer unless the employer has already provided, or the employee is requesting, more leave than required under State law.

(5) If State law provides six weeks of leave, which may include leave to care for a seriously-ill grandparent or a "spouse equivalent," and leave was used for that purpose, the employee is still entitled to 12 weeks of FMLA leave, as the leave used was provided for a purpose not covered by FMLA. If FMLA leave is used first for a purpose also provided under State law, and State leave has thereby been exhausted, the employer would not be required to provide additional leave to care for the grandparent or "spouse equivalent."

(6) If State law prohibits mandatory leave beyond the actual period of pregnancy disability, an instructional employee of an educational agency subject to special FMLA rules may not be required to remain on leave until the end of the academic term, as permitted by FMLA under certain circumstances. (See subpart F of this part.)

§ 825.702 How does FMLA affect Federal and State anti-discrimination laws?

(a) Nothing in FMLA modifies or affects any Federal or State law prohibiting discrimination on the basis of race, religion, color, national origin, sex, age, or disability. An employer must therefore comply with whichever statute provides the greater rights to employees. When an employer violates both FMLA and a discrimination law, an employee may be able to recover under either or both statutes.

(b) If an employee is a qualified individual with a disability within the meaning of the Americans with Disabilities Act (ADA), the employer must make reasonable accommodations, *etc.*, in accordance with the ADA. At the same time, the employer must afford an employee his or her FMLA rights. The examples in the following paragraphs of this section demonstrate how the two laws would interact with respect to a disabled employee.

(c) If an employee became disabled, a reasonable accommodation under the ADA might be accomplished by providing the employee with a part-time job with no health benefits. However, FMLA would permit an employee to work a reduced leave schedule until 12 weeks of leave were used, with health benefits maintained during this period. At the end of the FMLA leave entitlement, an employer is required to reinstate the employee in the same or an equivalent position, with equivalent pay and benefits, to that which the employee held when leave commenced. The employer's FMLA obligations would be satisfied if the employer offered the employee an equivalent full-time position. If the employee were unable to perform the equivalent position because of a disability, and the employee had exhausted his or her FMLA entitlement, the ADA may permit or require the employer to make a reasonable accommodation at that time by placing the employee in a part-time job, with only those benefits provided to part-time employees.

(d) If FMLA entitles an employee to leave, an employer may not, in lieu of FMLA leave entitlement, *require* an employee to take a job with a reasonable accommodation. However, ADA may require that an employer offer an employee the opportunity to take such a position.

(e) If an employer requires certifications of an employee's fitness for duty to return to work, as permitted by FMLA under a uniform policy, it must comply with the ADA requirement that a fitness for duty physical be job-related.

(f) For further information on Federal anti-discrimination laws, including the ADA, individuals are encouraged to contact the nearest office of the U.S. Equal Employment Opportunity Commission.

Subpart H—Definitions

§ 825.800 Definitions.

For purposes of this part:

Act or *FMLA* means the Family and Medical Leave Act of 1993, Public Law 103–3 (February 5, 1993), 107 Stat. 6 (29 U.S.C. 2601 *et seq.*)

ADA means the Americans With Disabilities Act (42 USC 12101 *et seq.*)

Administrator means the Administrator of the Wage and Hour Division, Employment Standards Administration, U.S. Department of Labor, and includes any official of the Wage and Hour Division authorized to perform any of the functions of the Administrator under this part.

COBRA means the continuation coverage requirements of Title X of the Consolidated Omnibus Budget Reconciliation Act of 1986, As Amended (Pub. L. 99–272, title X, section 10002; 100 Stat 227; 29 U.S.C. 1161–1168).

Commerce and *industry or activity affecting commerce* means any activity, business, or industry in commerce or in which a labor dispute would hinder or obstruct commerce or the free flow of commerce, and include "commerce" and any "industry affecting commerce" as defined in sections 501(1) and 501(3) of the Labor Management Relations Act of 1947, 29 U.S.C. 142 (1) and (3).

Continuing treatment by a health care provider means one or more of the following:

(1) The employee or family member in question is treated two or more times for the injury or illness by a health care provider. Normally this would require visits to the health care provider or to a nurse or physician's assistant under direct supervision of the health care provider.

(2) The employee or family member is treated for the injury or illness two or more times by a provider of health care services (e.g., physical therapist) under orders of, or on referral by, a health care provider, *or* is treated for the injury or illness by a health care provider on at least one occasion which results in a regimen of continuing treatment under the supervision of the health care provider—for example, a course of medication or therapy—to resolve the health condition.

(3) The employee or family member is under the continuing supervision of, but not necessarily being actively treated by, a health care provider due to a serious long-term or chronic condition or disability which cannot be cured. Examples include persons with Alzheimer's, persons who have suffered a severe stroke, or persons in the terminal stages of a disease who may not be receiving active medical treatment.

Eligible employee means:

(1) An employee who has been employed for a total of at least 12 months by the employer on the date on which any FMLA leave is to commence; and

(2) Who, on the date on which any FMLA leave is to commence, has been employed for at least 1,250 hours of service with such employer during the previous 12-month period; and

(3) Excludes any Federal officer or employee covered under subchapter V of chapter 63 of title 5, United States Code; and

(4) Excludes any employee of the U.S. Senate or the U.S. House of Representatives covered under title V of the FMLA; and

(5) Excludes any employee who is employed at a worksite at which the employer employs fewer than 50 employees if the total number of employees employed by that employer within 75 miles of that worksite is also fewer than 50.

Employ means to suffer or permit to work.

Employee has the meaning given the same term as defined in section 3(e) of the Fair Labor Standards Act, 29 U.S.C. 203(e), as follows:

(1) The term "employee" means any individual employed by an employer;

(2) In the case of an individual employed by a public agency, "employee" means—

(i) Any individual employed by the Government of the United States—

(A) As a civilian in the military departments (as defined in section 102 of title 5, United States Code),

(B) In any executive agency (as defined in section 105 of title 5, United States Code), excluding any Federal officer or employee covered under subchapter V of chapter 63 of title 5, United States Code,

(C) In any unit of the legislative or judicial branch of the Government which has positions in the competitive service, excluding any employee of the U.S. Senate or U.S. House of Representatives who is covered under title V of FMLA,

(D) In a nonappropriated fund instrumentality under the jurisdiction of the Armed Forces, or

(E) In the Library of Congress;

(ii) Any individual employed by the United States Postal Service or the Postal Rate Commission; and

(iii) Any individual employed by a State, political subdivision of a State, or an interstate governmental agency, other than such an individual—

(A) Who is not subject to the civil service laws of the State, political subdivision, or agency which employs the employee; and

(B) who—

(1) Holds a public elective office of that State, political subdivision, or agency,

(2) Is selected by the holder of such an office to be a member of his personal staff,

(3) Is appointed by such an officeholder to serve on a policymaking level,

(4) Is an immediate adviser to such an officeholder with respect to the constitutional or legal powers of the office of such officeholder, or

(5) Is an employee in the legislative branch or legislative body of that State, political subdivision, or agency and is not employed by the legislative library of such State, political subdivision, or agency.

Employee employed in an instructional capacity. See Teacher.

Employer means any person engaged in commerce or in an industry or activity affecting commerce who employs 50 or more employees for each working day during each of 20 or more calendar workweeks in the current or preceding calendar year, and includes——

(1) Any person who acts, directly or indirectly, in the interest of an employer to any of the employees of such employer;

(2) Any successor in interest of an employer; and

(3) Any public agency.

Employment benefits means all benefits provided or made available to employees by an employer, including group life insurance, health insurance, disability insurance, sick leave, annual leave, educational benefits, and pensions, regardless of whether such benefits are provided by a practice or written policy of an employer or through an "employee benefit plan" as defined in section 3(3) of the Employee Retirement Income Security Act of 1974, 29 U.S.C. 1002(3).

FLSA means the Fair Labor Standards Act (29 U.S.C. 201 *et seq.*).

Group health plan means any plan of, or contributed to by, an employer (including a self-insured plan) to provide health care (directly or otherwise) to the employer's employees, former employees, or the families of such employees or former employees.

Health care provider means:

(1) A doctor of medicine or osteopathy who is authorized to practice medicine or surgery by the State in which the doctor practices; or

(2) Podiatrists, dentists, clinical psychologists, optometrists, and chiropractors (limited to treatment consisting of manual manipulation of the spine to correct a subluxation as demonstrated by X-ray to exist) authorized to practice in the State and performing within the scope of their practice as defined under State law; and

(3) Nurse practitioners and nurse-midwives who are authorized to practice under State law and who are performing within the scope of their practice as defined under State law; and

(4) Christian Science practitioners listed with the First Church of Christ, Scientist in Boston, Massachusetts.

Incapable of self-care means that the individual requires active assistance or supervision to provide daily self-care in several of the "activities of daily living" or "ADLs." Activities of daily living include adaptive activities such as caring appropriately for one's grooming and hygiene, bathing, dressing, eating, cooking, cleaning, shopping, taking public transportation, paying bills, maintaining a residence, using telephones and directories, using a post office, etc.

Instructional employee: See *Teacher.*

Intermittent leave means leave taken in separate periods of time due to a single illness or injury, rather than for one continuous period of time, and may include leave of periods from an hour or more to several weeks. Examples of intermittent leave would include leave taken on an occasional basis for medical appointments, or leave taken several days at a time spread over a period of six months, such as for chemotherapy.

Mental disability: See *Physical or mental disability.*

Parent means the biological parent of an employee or an individual who stands or stood in loco parentis to an employee when the employee was a child. This term does *not* include parents "in law."

Person means an individual, partnership, association, corporation, business trust, legal representative, or any organized group of persons, and includes a public agency for purposes of this part.

Physical or mental disability means a physical or mental impairment that substantially limits one or more of the major life activities of an individual. Regulations at 29 CFR part 1630, issued by the Equal Employment Opportunity Commission under the Americans with Disabilities Act (ADA), 42 U.S.C. 12101 *et seq.*, define these terms.

Public agency means the government of the United States; the government of a State or political subdivision thereof; any agency of the United States (including the United States Postal Service and Postal Rate Commission), a State, or a political subdivision of a State, or any interstate governmental agency. Under section 101(5)(B) of the

Act, a public agency is considered to be a "person" engaged in commerce or in an industry or activity affecting commerce within the meaning of the Act.

Reduced leave schedule means a leave schedule that reduces the usual number of hours per workweek, or hours per workday, of an employee.

Secretary means the Secretary of Labor or authorized representative.

Serious health condition means an illness, injury, impairment, or physical or mental condition that involves:

(1) Any period of incapacity or treatment in connection with or consequent to inpatient care (*i.e.*, an overnight stay) in a hospital, hospice, or residential medical care facility;

(2) Any period of incapacity requiring absence from work, school, or other regular daily activities, of more than three calendar days, that also involves continuing treatment by (or under the supervision of) a health care provider; or

(3) Continuing treatment by (or under the supervision of) a health care provider for a chronic or long-term health condition that is incurable or so serious that, if not treated, would likely result in a period of incapacity of more than three calendar days; and for prenatal care.

(4) Voluntary or cosmetic treatments (such as most treatments for orthodontia or acne) which are not medically necessary are not "serious health conditions," unless inpatient hospital care is required. Restorative dental surgery after an accident, or removal of cancerous growths are serious health conditions provided all the other conditions of this regulation are met. Treatments for allergies or stress, or for substance abuse, are serious health conditions if all the conditions of the regulation are met. Prenatal care is included as a serious health condition. Routine preventive physical examinations are excluded.

Son or daughter means a biological, adopted, or foster child, a stepchild, a legal ward, or a child of a person standing *in loco parentis*, who is under 18 years of age or 18 years of age or older and incapable of self-care because of a mental or physical disability.

Spouse means a husband or wife as defined or recognized under State law for purposes of marriage, including common law marriage in States where it is recognized.

State means any State of the United States or the District of Columbia or any Territory or possession of the United States.

Teacher (or *employee employed in an instructional capacity*, or *instructional employee*) means an employee employed principally in an instructional capacity by an educational agency or school whose principal function is to teach and instruct students in a class, a small group, or an individual setting, and includes athletic coaches, driving instructors, and special education assistants such as signers for the hearing impaired. The term does not include teacher assistants or aides who do not have as their principal function actual teaching or instructing, nor auxiliary personnel such as counselors, psychologists, curriculum specialists, cafeteria workers, maintenance workers, bus drivers, or other primarily noninstructional employees.

Appendix A to Part 825—Index

The citations listed in this Appendix are to sections in 29 CFR Part 825.

1,250 hours of service 825.110, 825.800
12 workweeks of leave 825.200, 825.202, 825.205
12-month period 825.110, 825.200, 825.201, 825.202, 825.500, 825.800
20 or more calendar workweeks 825.104(a), 825.105, 825.108(d), 825.800
50 or more employees 825.102, 825.105, 825.106(f), 825.108(d), 825.109(e), 825.111(d), 825.600(b)
75 miles of worksite/radius 825.108(d), 825.109(e), 825.110, 825.111, 825.202(b), 825.213(a), 825.217, 825.600(b), 825.800
Academic term 825.600(c), 825.602, 825.603, 825.701(a)
Adoption 825.100(a), 825.101(a), 825.112, 825.200(a), 825.201, 825.202(a), 825.203, 825.207(b), 825.302, 825.304(c)
Alternative position 825.117, 825.204, 825.601
Americans with Disabilities Act 825.113(c), 825.115, 825.204(b), 825.215(b), 825.310(b), 825.702(b), 825.800
As soon as practicable 825.219(a), 825.302, 825.303
Birth/birth of a child 825.100(a), 825.101(a), 825.103(c), 825.112, 825.200(a), 825.201, 825.202, 825.203, 825.207, 825.209(d), 825.302(a), 825.302(c)
Certification requirements 825.207(g), 825.305, 825.306, 825.310, 825.311
Christian science practitioners 825.118(b), 825.800
COBRA 825.209(f), 825.210(c), 825.213(d), 825.309(b), 825.700(a), 825.800
Collective bargaining agreements 825.102(a), 825.211(a), 825.604, 825.700
Commerce 825.104, 825.800
Complaint 825.220, 825.400, 825.401, 825.500(a)
Continuing treatment by a health care provider 825.114, 825.800
Definitions 825.800
Designate paid leave as FMLA 825.208
Disability insurance 825.213(f), 825.215(d)
Discharging 825.106(f), 825.220
Discriminating 825.106(f), 825.220
Educational institutions 825.111(c), 825.600
Effective date 825.102, 825.103, 825.110(e), 825.700(c)
Eligible employee 825.100, 825.110, 825.111, 825.112, 825.200, 825.202, 825.206(b), 825.207, 825.216(c), 825.217, 825.312, 825.600(b), 825.601, 825.800
Employer 825.104, 825.105, 825.106, 825.107, 825.108, 825.109, 825.111, 825.800
Enforcement 825.400–825.404
Equivalent benefits 825.213(f), 825.214, 825.215(d)
Equivalent pay 825.100(c), 825.117, 825.204(c), 825.215, 825.601(a), 825.702(c)
Equivalent position 825.100(c), 825.214, 825.215, 825.218(b), 825.604, 825.702(c)
Farm Credit Administration 825.109(b)
Fitness for duty 825.216(c), 825.310, 825.702(e)
Foster care 825.100(a), 825.112, 825.200(a), 825.201, 825.202(a), 825.203(a), 825.207(b), 825.302(a)
Government Printing Office 825.109(d)
Group health plan 825.209, 825.213, 825.800
Health benefits 825.100(b), 825.106(e), 825.209, 825.210, 825.211, 825.212, 825.215(d), 825.219, 825.220(c), 825.301(c), 825.309, 825.312, 825.603, 825.700, 825.702(c)
Health care provider 825.100(d), 825.114, 825.115, 825.118, 825.302, 825.305, 825.306, 825.307, 825.310(a), 825.800
Health plan premiums 825.210, 825.213(a)
Husband and wife 825.202
In loco parentis 825.113, 825.800
Incapable of self-care 825.113(c), 825.800
Industry affecting commerce 825.104, 825.800
Instructional employee 825.601, 825.602, 825.604, 825.701(f), 825.800
Integrated employer 825.104(c)
Intermittent leave 825.116(c), 825.117, 825.203, 825.302(f), 825.600(c), 825.601, 825.800
Joint employment 825.104(c), 825.105, 825.106
Key employee 825.209(g), 825.213(a), 825.217, 825.218, 825.219, 825.301(c), 825.312(f)
Library of Congress 825.109(b), 825.800
Life insurance 825.213(f), 825.215(d), 825.800
Maintain health benefits 825.209, 825.212, 825.215(d), 825.301(c), 825.309, 825.603
Medical certification 825.116, 825.213(a), 825.301(c), 825.302(c), 825.305, 825.306, 825.307, 825.308, 825.310, 825.311, 825.312(b), 825.701(d)
Medical necessity 825.114(d), 825.117, 825.306(d)
Multi-employer health plans 825.211
Needed to care for 825.100(a), 825.114(d), 825.116, 825.207(c)
Not foreseeable 825.303, 825.311(b)
Notice 825.100(d), 825.103(b), 825.110(d), 825.200(d), 825.207(g), 825.208(a), 825.208(c), 825.209(d), 825.210(e), 825.219(a), 825.219(b), 825.220(c), 825.300, 825.301(c), 825.302, 825.303, 825.304, 825.309, 825.310(c), 825.310(d), 825.312(a), 825.402, 825.403(b), 825.601(b), 825.701(a)
Notice requirements 825.110(d), 825.301(c), 825.302(g), 825.304(a), 825.304(e), 825.601(b)
Paid leave 825.100(a), 825.207, 825.208, 825.210, 825.213(c), 825.217(c), 825.219(c), 825.301(c), 825.304(d), 825.700(a), 825.701(a)
Parent 825.100(a), 825.101(a), 825.112, 825.113, 825.116(a), 825.200(a), 825.202(a),

825.207(b), 825.213(a), 825.305(a), 825.306(d), 825.800
Physical or mental disability 825.113(c), 825.114, 825.215(b), 825.500(e), 825.800
Placement of a child 825.100(a), 825.201, 825.203(a), 825.207(b)
Postal Rate Commission 825.109(b), 825.800
Posting requirement 825.300, 825.402
Premium payments 825.100(b), 825.210, 825.212, 825.213(f), 825.301(c), 825.308(d), 825.500(c)
Private employer 825.105, 825.108(b)
Public agency 825.104(a), 825.108, 825.109, 825.800
Recertification 825.301(c), 825.308
Records 825.110(c), 825.206(a), 825.500
Reduced leave schedule 825.111(d), 825.114(d), 825.116(c), 825.117, 825.203, 825.205, 825.302(f), 825.306(d), 825.500(c), 825.601, 825.702(c), 825.800
Restoration 825.100(d), 825.106(e), 825.209(g), 825.213(a), 825.216, 825.218, 825.219, 825.301(c), 825.311(c), 825.312
Returning to work 825.214
Right to reinstatement 825.100(c), 825.209(g), 825.214(b), 825.216(a), 825.219, 825.301(c), 825.311(c), 825.312, 825.400, 825.700
Secondary employer 825.106(f)
Serious health condition 825.100, 825.101(a), 825.112(a), 825.114, 825.116(a), 825.200(a), 825.202(a), 825.203, 825.204(a), 825.206(b), 825.207, 825.213, 825.215(b), 825.301(c), 825.302, 825.303, 825.305, 825.306, 825.308(d), 825.310(a), 825.311(c), 825.312(b), 825.601(a), 825.602(a), 825.800
Son or daughter 825.112(a), 825.113(c), 825.202(a), 825.800
Spouse 825.100(a), 825.101(a), 825.112(a), 825.113(a), 825.200(a), 825.202, 825.213(a), 825.303(b), 825.305(a), 825.306(d), 825.701(a), 825.800
State laws 825.701
Substantial and grievous economic injury 825.213(a), 825.216(c), 825.218, 825.219, 825.312(f)
Successor in interest 825.104(a), 825.107, 825.800
Teacher(s) 825.110(c), 825.600(c), 825.800
U.S. Tax Court 825.109(b)
Unpaid leave 825.100, 825.101(a), 825.105(b), 825.206, 825.208, 825.601(b)
Waive rights 825.220(d)
Worksite 825.108(d), 825.110(a), 825.111, 825.213(a), 825.214(e), 825.217, 825.220(b), 825.304(c), 825.800

BILLING CODE 4510-27-P

Appendix B to Part 825—Certification of Physician or Practitioner

U.S. Department of Labor
Employment Standards Administration
Wage and Hour Division

CERTIFICATION OF PHYSICIAN OR PRACTITIONER
(Family and Medical Leave Act of 1993)

1. Employee's Name:

2. Patient's Name (If other than employee):

3. Diagnosis:

4. Date condition commenced:

5. Probable duration of condition:

6. Regimen of treatment to be prescribed (Indicate number of visits, general nature and duration of treatment, including referral to other provider of health services. Include schedule of visits or treatment if it is medically necessary for the employee to be off work on an intermittent basis or to work less than the employee's normal schedule of hours per day or days per week.):

   a. By Physician or Practitioner:

   b. By another provider of health services, if referred by Physician or Practitioner:

IF THIS CERTIFICATION RELATES TO CARE FOR THE EMPLOYEE'S SERIOUSLY-ILL FAMILY MEMBER, SKIP ITEMS 7, 8 AND 9 AND PROCEED TO ITEMS 10 THRU 14 ON REVERSE SIDE. OTHERWISE, CONTINUE BELOW.

Check Yes or No in the boxes below, as appropriate.

	Yes	No	
7.	☐	☐	Is inpatient hospitalization of the employee required?
8.	☐	☐	Is employee able to perform work of any kind? (If "No", skip Item 9.)
9.	☐	☐	Is employee able to perform the functions of employee's position? (Answer after reviewing statement from employer of essential functions of employee's position, or, if none provided, after discussing with employee.)

15. Signature of Physician or Practitioner:

16. Date:

17. Type of Practice (Field of Specialization, if any):

FOR CERTIFICATION RELATING TO CARE FOR THE EMPLOYEE'S SERIOUSLY-ILL FAMILY MEMBER, COMPLETE ITEMS 10 THRU 14 BELOW AS THEY APPLY TO THE FAMILY MEMBER AND PROCEED TO ITEM 15 ON REVERSE SIDE.

	Yes	No	
10.	☐	☐	Is inpatient hospitalization of the family member (patient) required?
11.	☐	☐	Does (or will) the patient require assistance for basic medical, hygiene, nutritional needs, safety or transportation?
12.	☐	☐	After review of the employee's signed statement (See Item 14 below), is the employee's presence necessary or would it be beneficial for the care of the patient? (This may include psychological comfort.)

13. Estimate the period of time care is needed or the employee's presence would be beneficial:

ITEM 14 IS TO BE COMPLETED BY THE EMPLOYEE NEEDING FAMILY LEAVE.

14. When Family Leave is needed to care for a seriously-ill family member, the employee shall state the care he or she will provide and an estimate of the time period during which this care will be provided, including a schedule if leave is to be taken intermittently or on a reduced leave schedule:

Employee signature:

Date:

Appendix C to Part 825—Notice to Employees of Rights Under FMLA

YOUR RIGHTS
under the
FAMILY AND MEDICAL LEAVE ACT OF 1993

FMLA requires covered employers to provide up to 12 weeks of unpaid, job-protected leave to "eligible" employees for certain family and medical reasons. Employees are eligible if they have worked for a covered employer for at least one year, and for 1,250 hours over the previous 12 months, and if there are at least 50 employees within 75 miles.

REASONS FOR TAKING LEAVE: Unpaid leave must be granted for any of the following reasons:

- to care for the employee's child after birth, or placement for adoption or foster care;
- to care for the employee's spouse, son or daughter, or parent, who has a serious health condition; or
- for a serious health condition that makes the employee unable to perform the employee's job.

At the employee's or employer's option, certain kinds of paid leave may be substituted for unpaid leave.

ADVANCE NOTICE AND MEDICAL CERTIFICATION: The employee may be required to provide advance leave notice and medical certification. Taking of leave may be denied if requirements are not met.

- The employee ordinarily must provide 30 days advance notice when the leave is "foreseeable."
- An employer may require medical certification to support a request for leave because of a serious health condition, and may require second or third opinions (at the employer's expense) and a fitness for duty report to return to work.

JOB BENEFITS AND PROTECTION:

- For the duration of FMLA leave, the employer must maintain the employee's health coverage under any "group health plan."
- Upon return from FMLA leave, most employees must be restored to their original or equivalent positions with equivalent pay, benefits, and other employment terms.
- The use of FMLA leave cannot result in the loss of any employment benefit that accrued prior to the start of an employee's leave.

UNLAWFUL ACTS BY EMPLOYERS: FMLA makes it unlawful for any employer to:

- interfere with, restrain, or deny the exercise of any right provided under FMLA;
- discharge or discriminate against any person for opposing any practice made unlawful by FMLA or for involvement in any proceeding under or relating to FMLA.

ENFORCEMENT:

- The U.S. Department of Labor is authorized to investigate and resolve complaints of violations.
- An eligible employee may bring a civil action against an employer for violations.

FMLA does not affect any Federal or State law prohibiting discrimination, or supersede any State or local law or collective bargaining agreement which provides greater family or medical leave rights.

FOR ADDITIONAL INFORMATION: **Contact the nearest office of the Wage and Hour Division, listed in most telephone directories under U.S. Government, Department of Labor.**

U.S. Department of Labor, Employment Standards Administration
Wage and Hour Division, Washington, D.C. 20210

WH Publication 1420
June 1993

[FR Doc. 93–13028 Filed 6–3–93; 8:45 am]

federal register

Friday
June 4, 1993

Part III

Department of Housing and Urban Development

Office of the Assistant Secretary

NOFA for Lead-Based Paint (LBP) Risk Assessments

DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT

Office of the Assistant Secretary for Public and Indian Housing

[Docket No. N-93-3623; FR 3437-N-01]

NOFA for Lead-Based Paint (LBP) Risk Assessments

AGENCY: Office of the Assistant Secretary for Public and Indian Housing, HUD.

ACTION: Notice of funding availability for FY 1993.

SUMMARY: This NOFA informs Public Housing Agencies and Indian Housing Authorities (referred to jointly as "HAs") that have pre-1980 family developments in their inventories of the availability of $14,797,634 in funding for lead-based paint (LBP) risk assessments. The NOFA contains information on the following:

(a) The purpose of the NOFA, available amounts and eligibility;

(b) Application processing, including how to apply and how selections will be made;

(c) A schedule of steps involved in the application process; and,

(d) Notice of the requirement that the Department's risk assessment protocol be used by HAs in conducting a LBP risk assessment and developing recommendations regarding in-place management.

DATES: An application may be submitted immediately after publication of this NOFA, and must be submitted by 3 p.m. local time (i.e., the time in the HUD Field Office where the application is submitted) on August 3, 1993; (see appendix 1 for a list of HUD Regional and Field Offices). Applications will be funded on a first-come, first-served basis. In cases where additional time is allowed under this NOFA to correct technical deficiencies in an application, the initial date and time of receipt will determine first-come, first-served eligibility. Every effort should be made to submit applications as soon as possible after the publication of this NOFA; furthermore, the above-stated deadline is firm as to date and hour. In the interest of fairness to all applicants, the Department will treat as ineligible for consideration any application that is received after the deadline. Applicants should take this practice into account and make early submission of their application to avoid any risk of loss of eligibility brought about by unanticipated delays or other delivery-related problems.

ADDRESSES: Application forms may be requested from HUD Field Offices listed in appendix 1 of this NOFA. Completed applications are to be submitted to the Field Office that has jurisdiction over the HA submitting the request for funding. Copies of the Department's risk assessment protocol, which at a minimum must be used by HAs funded under this NOFA, are available at cost by calling HUD USER on 1-800-245-2691 or (301) 251-5154. The risk assessment protocol was previously published in the **Federal Register** on June 29, 1992 (57 FR 28914) and was distributed through HUD Notice PIH 92-44 (PHA).

FOR FURTHER INFORMATION CONTACT: Janice D. Rattley, Director, Office of Construction, Rehabilitation and Maintenance, Department of Housing and Urban Development, 451 Seventh Street, SW., room 4138, Washington, DC 20410, telephone (202) 708-1800. Indian Housing Authorities may contact: Dom Nessi, Director, Office of Indian Housing, Department of Housing and Urban Development, 451 Seventh Street, SW., room 4140, Washington, DC 20410, telephone (202) 708-1015, or (202) 708-0850 (voice/TDD). (These are not toll-free telephone numbers.)

SUPPLEMENTARY INFORMATION:

Paperwork Reduction Act Statement

The information collection requirements contained in this NOFA have been approved by the Office of Management and Budget (OMB), under section 3504(h) of the Paperwork Reduction Act of 1980 (44 U.S.C. 3501-3520), and assigned OMB control numbers 0348-0043, 2577-0044, and 0348-0046.

I. Purpose and Substantive Description

A. Allocation Amounts

(1) *Total amount available.* Under the FY 1992 NOFA, published June 29, 1992 (57 FR 28910), the amount of funds available for LBP risk assessment was $23,853,455, of which the Department awarded $9,055,821. The remaining funds, in the amount of $14,797,634, are available for LBP risk assessment funding under this FY 1993 NOFA. This NOFA establishes a maximum of $250,000 for an initial award to any single HA, but also establishes a mechanism for possible additional funding (see section I.D.(3) of this NOFA).

(2) *Per-unit cost.* The Department has determined that the maximum amount that can be awarded to an HA under this NOFA will be based on the amount requested in the HA's application and the availability of funding. An HA shall base its funding request on a per-unit-to-be-sampled-per-development cost. The Department has estimated a cost of $495 per-sampled-unit as a guide that may be used for developing HA funding requests. The per-unit cost guide includes costs for collected of dust and soil samples, laboratory analysis of collection dust and soil samples, interpretation of laboratory results on samples collected, review of maintenance and management practices, and the development (not the implementation) of recommendations for in-place management. Where the estimated cost-per-unit-to-be-sampled exceeds the guidance amount of $495, HUD may examine the cost reasonableness of the request.

The method to be used to determine the number of units to be sampled is set forth below and in the risk assessment protocol which, at a minimum, must be used by HAs funded under this NOFA:

Number of units in development	Number of units for Inspecting & testing (collecting samples)
1-4	All.
5-74	5.
75-124	6.
125-174	7.
175-224	10.
225-299	12.
300-399	15.
400-499	18.
500+	20 per 500 units, plus 1 for each additional increment of 50 units.

As stated in section III.A, Application Content, of this NOFA, an application must state each development number and specify the number of units to be sampled, the amount requested for each development, and the total amount the HA is requesting.

(3) *Assignment of funds to Regional Offices.* Funds will be assigned to the HUD Regional Offices based on the estimated sample size of pre-1980 family units within each Region. The Department has determined that there are approximately 109,000 units to be sampled using the protocol. The following chart reflects that estimated percentage of these units within each Region. These percentages will be used to assign available funds to the Regions:

Region	Estimated sample Size: pre-1980 family Units	Percent of national sample of pre-1980 units
I	3,677	3
II	16,603	15
III	18,307	17
IV	19,213	18
V	20,247	19
VI	12,774	12
VII	1,857	2
VIII	4,077	4

Region	Estimated sample Size: pre-1980 family Units	Percent of national sample of pre-1980 units
IX	8,075	7
X	3,712	3
Total	108,542	100

As many eligible applications as possible will be funded within the Regional allocation of funds. A Region may conduct more than one round of funding, as provided in section I.D(3) of this NOFA, with its original allocation of the total funds. If after fully funding all eligible applications within its jurisdiction, a Regional Office has funds remaining from its original allocation, the Regional Office will notify Headquarters of the amounts remaining. Headquarters will redistribute funds from Regions that do not have enough fundable applications, to other Regions that have insufficient funds for fundable applications. Funds will be redistributed according to the proportions for the original distribution (see above distribution chart), excluding those Regions that do not need additional funds. This process will be repeated until all fundable applications have been fully funded, within the total amount available.

(4) *Subassignment of funds to non-Indian and Indian Field Offices.* Regional Offices shall subassign funds to each non-Indian and Indian Field Office based on funding decisions made pursuant to this NOFA.

(5) *Remaining funds.* The Departments of Veterans Affairs and Housing and Urban Development, and Independent Agencies Appropriations Act, 1992 (Pub. L. 102–139, approved October 28, 1991; at 105 Stat. 744) (Appropriations Act) targeted these funds for the assessment of risks associated with lead-based paint. Therefore, in the event that the funds awarded under this NOFA total less than the amount available, the remaining amount will be carried over to FY 1994. If funds are carried over to FY 1994, a subsequent NOFA for these remaining set-aside funds will be published.

B. Eligibility and Requirements

(1) All HAs with pre-1980 family developments are eligible (i.e., both large HAs funded under the Comprehensive Grant Program (CGP) and small HAs funded under the Comprehensive Improvement Assistance Program (CIAP)). HAs, especially smaller ones, are encouraged to form a consortium for purposes of having risk assessments conducted. Such a consortium would enable a number of HAs to obtain coordinated services for those risk assessments.

(2) In accordance with section 14(a)(3) of the U.S. Housing Act of 1937 (1937 Act) (added by the Appropriations Act, 105 Stat. 759), all pre-1980 family developments within a HA's inventory may be the subject of a LBP risk assessment, whether or not the units have been previously tested or abated. As stated in section 14(a)(3), risk assessments are intended "to assess the risks of lead-based paint poisoning * * * in all projects constructed before 1980 that are, or will be, occupied by families."

Risk assessments are not mandatory; however, HAs are strongly encouraged to conduct them. In undertaking a risk assessment, a HA shall use a risk assessment protocol that, at a minimum, follows the Department's protocol. While the scope of the risk assessment may exceed the contents of the Department's protocol, funding shall be requested based on this protocol. The goal of the protocol is to enable a HA to identify lead hazards so that appropriate in-place management can be implemented until testing and abatement can be fully undertaken. HAs are expected to implement the in-place management recommendations resulting from the completed risk assessment, especially in cases where abatement will not be undertaken within a reasonable time frame (one year).

Section 14(a)(3) of the 1937 Act requires that professional risk assessments include dust and soil sampling and laboratory analysis. The risk assessment protocol has been developed by the Department to ensure compliance with this provision and with certain requirements of the Lead-Based Paint Poisoning Prevention Act. In no instance shall conducting a risk assessment satisfy the HA's obligation under the Lead-Based Paint Poisoning Prevention Act to test for and abate lead-based paint hazards.

Upon completion of the risk assessment, the HA must provide a copy of the results of the risk assessment to the appropriate Field Office. The risk assessment must be completed within eighteen (18) months of the fund reservation notification to the HA.

(3) CIAP implementation requirements, as set forth in 24 CFR part 968, subpart B, and the CIAP Handbook, 7485.1 REV–4, are applicable to the HAs funded under this NOFA. These requirements encompass fund requisitions, implementation schedules, quarterly progress reports, budget revisions, etc.

(4) In accepting funding to perform a risk assessment, HAs must agree to participate, if requested by HUD, in a subsequent evaluation of the risk assessment protocol. This evaluation will entail a review of collected sampling data and the effectiveness of recommended in-place management procedures.

C. Ineligible Costs and Activities

(1) Risk assessment costs from FY 1991 will not be eligible for funding or reimbursement under this NOFA. The Appropriations Act amended section 14(a) of the 1937 Act (see 105 Stat. 759) by adding clause (5), which states that risk assessment costs incurred or disbursed in FY 1991 from other accounts are to be paid or reimbursed from modernization funds in FY 1992. Therefore, while not eligible costs under this NOFA, HAs may seek reimbursement of these FY 1991 costs through CIAP or CGP funds. (Risk assessments are an eligible item for funding under CIAP and CGP, whether or not they are incurred in connection with insurance. A HA that needs additional funds for activities funded under this NOFA may reprogram CIAP funds or use its CGP allocation.)

(2) Actual implementation of recommendations that result from the risk assessment conducted is not eligible for funding under this NOFA. The implementation of resulting recommendations (*e.g.*, comprehensive or random testing, abatement of lead, in-place management measures, and work order modifications) may be funded from other HA sources (i.e., CIAP, CGP, operating subsidy, or operating reserves). HAs are expected to implement these recommendations, especially those related to in-place management measures where abatement of lead hazards will not take place within a reasonable time (one year). In no instance shall the implementation of in-place management measures satisfy the HA's obligation under the Lead-Based Paint Poisoning Prevention Act to abate lead-based paint hazards.

D. Selection of Applications for Funding

(1) In order to be considered for funding, an application must be complete and must meet the threshold criterion that the proposed risk assessment be for pre-1980 family developments. Eligible applications will be fully funded, up to a maximum of $250,000 in the first round of funding, on a first-come, first-served basis, as long as funds remain available. To the extent that funds remain available after the first round, HAs requesting additional funding above the $250,000

limit may be considered for additional funds in a second or subsequent round (up to $100,000 in each additional round), as explained below in section I.D(3) of this NOFA. All awards in a second or subsequent round will also be made on a first-come, first-served basis.

(2) Field Offices will ensure that all applications (including copies) are date- and time-stamped immediately upon receipt, and will forward a stamped copy of each application, in chronological order, to the appropriate Regional Office Director of Public Housing as soon as the application is considered eligible for funding. The Field Office will be responsible for identifying, notifying applicants of, and receiving corrections of any technical deficiencies in the application, as discussed in part IV of this NOFA.

(3) Each Regional Office will sort applications received from the Field Offices in its jurisdiction in chronological order according to the date and time stamp placed on the application by the Field Office (and taking into consideration any time zone differences). (For those Indian Offices that are collocated within a Regional Office, the Regional Administrator will designate which program office (Public or Indian) will review and sort applications from the Field Office.) From the amounts assigned to each Region, the Regional Administrator shall make final funding decisions for each round of funding on a first-come, first-served basis. As many applications as possible will be funded within the Regional allocation or any redistribution of funds. Funding will take place in rounds until either all funds have been awarded or there are no more fundable applications.

In this round of funding, each HA will be limited to a maximum award of $250,000, although the HA is permitted to request a higher level of funding. Setting a maximum amount that can be funded will ensure an optimum number of HAs that can be accommodated within the available funding. Developments that have been funded previously for risk assessments are not eligible for additional funding under this NOFA. An HA that has applied for more than the $250,000 limit (e.g., an HA with a large multifamily or scattered site unit inventory that requires more than the maximum of $250,000 to conduct the risk assessment) may receive additional funds in excess of the $250,000 maximum in any subsequent round of funding, if funds remain after all eligible applications have been identified and funded in previous rounds or additional funds become available because of a redistribution of funds to the Region in accordance with section I.A(3) of this NOFA.

In any funding round subsequent to the first round in which the HA was awarded funding, each eligible HA may be awarded up to an additional $100,000 per round, until all of the funds are awarded or all eligible applications are funded. Awards in this second or subsequent round will also be made on a first-come, first-served basis, using the application (date and time stamped).

Each Region will advise Headquarters, by the date specified in the Processing Schedule in section III.B of this NOFA, as to whether there are sufficient eligible applications within its jurisdiction to require all of the funds assigned to that Region. In cases where all assigned funds cannot be used within a Regional Office's jurisdiction, Headquarters will reassign the funds to other Regions that have identified a need for additional funds, as described in section I.A(3) of this NOFA.

E. Notification of Awards

Once all rounds of funding are complete, each Regional Office will notify its Field Offices of the amounts awarded to each funded HA within a Field Office's jurisdiction. The Field Office will notify the HA of HUD's funding decision after congressional notification is completed. Reservation and congressional notification documents will be prepared by the Field Office.

II. Application Process

A. General requirements

Applications are available from HUD Field Offices listed in appendix 1 of this NOFA. To be considered for funding, an original and 2 copies of the application must be submitted to the HUD Field Office that has jurisdiction over the applicant HA. An application may be submitted immediately upon publication of this NOFA, and must be submitted before 3 p.m., local time, on August 3, 1993, to the HUD Field Office that has jurisdiction over the applicant HA. The contents of the application are listed below, in section III.A of this NOFA.

The above-stated deadline is firm as to date and hour. In the interest of fairness to all applicants, the Department will treat as ineligible for consideration any application that is received after the deadline. Applicants should take this practice into account and make early submission of their materials to avoid any risk of loss of eligibility brought about by unanticipated delays or other delivery-related problems.

B. Threshold Requirement

A HA must propose to conduct risk assessments for pre-1980 family developments to be considered eligible for funding. Developments that have been funded previously for risk assessments are not eligible for additional funding under this NOFA.

III. Checklist of Application Submission Requirements

A. Application Content

The following documents comprise the application:

(1) OMB Standard Form SF–424, Application for Federal Assistance, including SF–424B, Assurances—Non-Construction Programs. On the SF–424, HAs shall only complete items 2, 5, 12, 13, 14, 15, 17 and 18;

(2) Form HUD–52825, Comprehensive Assessment/Program Budget, Part I—Summary. The total amount requested for funding will be identified on this form under either account 1410.1, Administration (where HA staff will be used and the HA certifies that it has the capability of, and will be conducting the professional risk assessment), or account 1430.2, Consultant Fees (where the HA will be contracting for the professional risk assessment).

(3) Form HUD-52825, Comprehensive Assessment/Program Budget, Part II—Supporting Pages. Developments proposed to be the subject of a risk assessment are to be identified on this form. The applicant must provide the name; address; project number; total number of units; number of units to be sampled, in accordance with the requirements set forth in section I.A(2) of this NOFA and in the attached protocol; and amount requested for each development (see section I.A(2) of this NOFA for information on unit-cost guidance).

(4) Certification signed by the HA Executive Director that, at a minimum, the risk assessment protocol to be used will be equivalent to the Department's protocol.

(5) Certification signed by the HA Executive Director that the proposed risk assessment will be completed within eighteen (18) months of the date that funds are awarded and that the HA agrees to participate, if requested by HUD, in a subsequent evaluation of the risk assessment protocol, to assess its validity for the identification of lead paint hazards and effectiveness in addressing those hazards.

(6) Certification signed by the HA Executive Director that a copy of the

completed risk assessment will be provided to the appropriate HUD Field Office upon completion of the assessment.

(7) Certification that HA staff is qualified to conduct LBP risk assessments, if applicable.

(8) Form HUD–50070, Certification for Drug-Free Workplace.

(9) Certification for Contracts, Grants, Loans and Cooperative Agreements, required of HAs established under State law that are applying for grants exceeding $100,000.

(10) SF–LLL, Disclosure of Lobbying Activities, required of HAs established under State law only where any funds, other than federally appropriated funds, will be or have been used to influence Federal workers or Members of Congress or their staffs regarding specific grants or contracts.

(11) Form HUD–2880, Applicant/Recipient Disclosure/Update Report.

B. Processing Schedule

The following schedule is expected to be followed, and is designed to complete the funding process during FY 1993.

(1) HAs send applications to Field Office—from date of publication of NOFA but not later than August 3, 1993.

(2) Field Offices review applications for completeness and advise HAs of any technical deficiencies—by August 10, 1993.

(3) Technical deficiencies due—at least by August 24, 1993.

(4) Field Offices complete reviews and forward applications, in chronological order to Regional Office—by August 31, 1993.

(5) Regional Offices make funding decisions based on available funds and advise Headquarters of unused funds or need for additional funds—by September 7, 1993.

(6) Headquarters redistributes unused funds—by September 21, 1993.

(7) Regional Offices subassign funds to Field Offices—September 28, 1993.

(8) Field Offices reserve funds and forward congressional notifications to Headquarters—not later than October 5, 1993.

(8) Congressional and HA notifications of funding decisions are to be completed in accordance with the procedures set forth in the CIAP NOFA published in the **Federal Register** on March 15, 1993 (58 FR 13939).

IV. Corrections to Deficient Applications

Immediately after the submission of an application, the appropriate Field Office will screen the application to determine whether all items were submitted. If items 1, 2, and 3 listed in part III.A, Application Content, of this NOFA are missing, the application will be considered substantially incomplete and, therefore, ineligible for processing.

If the HA fails to submit any of items 4–11 listed in part III.A of this NOFA, or the application contains a technical mistake such as an incorrect signatory, the Filed Office will immediately notify the HA that it has 14 calendar days from the date of HUD's written notification to submit or correct the specified items. If any of items 4–11 are missing and the HA does not submit them within the 14-day cure period, the application will be ineligible for further processing.

HUD notes that the initial date and time of receipt will be used to determine funding under the first-come, first-served criterion; the determination of technical deficiencies will not impact upon the initial date and time of receipt.

V. Other Matters

A. Environmental Review

A finding of no significant impact with respect to the environment has been made in accordance with HUD regulations at 24 CFR part 50, which implement section 102(2)(C) of the National Environmental Policy Act of 1969. The finding of no significant impact is available for public inspection between 7:30 a.m. and 5:30 p.m. weekdays in the Office of the Rules Docket Clerk, Office of the General Counsel, room 10276, Department of Housing and Urban Development, 451 Seventh Street, SW., Washington, DC 20410–0500.

B. Federalism Executive Order

The General Counsel, as the Designated Official under section 6(a) of Executive Order 12612, Federalism, has determined that the policies contained in this notice will not have substantial direct effects on States or their political subdivisions, or the relationship between the federal government and the States, or on the distribution of power and responsibilities among the various levels of government. As a result, the notice is not subject to review under the Order. The NOFA merely sets forth funding availability for HAs to conduct, at their discretion, risk assessments for lead paint hazards.

C. Family Executive Order

The General Counsel, as the Designated Official under Executive Order 12606, The Family, has determined that this notice will likely have a beneficial impact on family formation, maintenance, and general well-being. Families could benefit from this funding action as a result of the identification of immediate and potential lead-based pain hazards; that identification will ultimately lead to a safer environment. Accordingly, since the impact on the family is beneficial, no further review is considered necessary.

D. Section 102 of the HUD Reform Act; Documentation and Public Access Requirements; Applicant/Recipient Disclosures

Disclosures

HUD will make available to the public for five years all applicant disclosure reports (HUD Form 2880) submitted in connection with this NOFA. Update reports (also Form 2880) will be made available along with the applicant disclosure reports, but in no case for a period less than three years. All reports—both applicant disclosures and updates—will be made available in accordance with the Freedom of Information Act (5 U.S.C. 552) and HUD's implementing regulations at 24 CFR part 15. (See 24 CFR part 12, subpart C, and the notice published in the **Federal Register** on January 16, 1992 (57 FR 1942), for further information on these disclosure requirements.)

Public Notice

HUD will include recipients that receive assistance pursuant to this NOFA in its quarterly **Federal Register** notice of recipients of all HUD assistance awarded on a competitive basis. (See 24 CFR 12.16(b), and the notice published in the **Federal Register** on January 16, 1992 (57 FR 1942), for further information on these requirements.)

E. Section 103 of the HUD Reform Act

HUD's regulation implementing section 103 of the Department of Housing and Urban Development Reform Act of 1989 (42 U.S.C. 3537a) was published on May 13, 1991 (56 FR 22088) and became effective on June 12, 1991. That regulation, codified as 24 CFR part 4, applies to the funding competition announced today. The requirements of the rule continue to apply until the announcement of the selection of successful applicants.

HUD employees involved in the review of applications and in the making of funding decisions are restrained by part 4 from providing advance information to any person (other than an authorized employee of HUD) concerning funding decisions, or from otherwise giving any applicant an unfair competitive advantage. Persons

who apply for assistance in this competition should confine their inquiries to the subject areas permitted under 24 CFR part 4.

Applicants who have questions should contact the HUD Office of Ethics (202) 708–3815. (This is not a toll-free number.) The Office of Ethics can provide information of a general nature to HUD employees, as well. However, a HUD employee who has specific program questions, such as whether particular subject matter can be discussed with persons outside the Department, should contact his or her Regional or Field Office Counsel, or Headquarters Counsel for the program to which the question pertains.

F. Section 112 of the Reform Act

Section 13 of the Department of Housing and Urban Development Act (42 U.S.C. 3537b), added by section 112 of the Reform Act, contains two provisions dealing with efforts to influence HUD's decisions with respect to financial assistance. The first imposes disclosure requirements on those who are typically involved in these efforts—those who pay others to influence the award of assistance or the taking of a management action by the Department *and* those who are paid to provide the influence. The second restricts the payment of fees to those who are paid to influence the award of HUD assistance, if the fees are tied to the number of housing units received or are based on the amount of assistance received, or if they are contingent upon the receipt of assistance.

Section 13 was implemented by final rule published in the **Federal Register** on May 17, 1991 (56 FR 22912). If readers are involved in any efforts to influence the Department in these ways, they are urged to read the final rule, particularly the examples contained in appendix A of the rule.

Any questions about the rule should be directed to the Office of Ethics, room 2158, Department of Housing and Urban Development, 451 Seventh Street, SW., Washington, DC 20410–3000. Telephone: (202) 708–3815 (voice/TDD). (This is not a toll-free number.) Forms necessary for compliance with the rule may be obtained from the local HUD office.

G. Prohibition Against Lobbying Activities

The use of funds awarded under this NOFA is subject to the disclosure requirements and prohibitions of section 319 of the Department of Interior and Related Agencies Appropriations Act for Fiscal Year 1990 (31 U.S.C. 1352) (the "Byrd Amendment") and the implementing regulations at 24 CFR part 87. These authorities prohibit recipients of federal contracts, grants, or loans from using appropriated funds for lobbying the Executive or Legislative branches of the Federal government in connection with a specific contract, grant, or loan. The prohibition also covers the awarding of contracts, grants, cooperative agreements, or loans unless the recipient has made an acceptable certification regarding lobbying. Under 24 CFR part 87, applicants, recipients, and subrecipients of assistance exceeding $100,000 must certify that no federal funds have been or will be spent on lobbying activities in connection with the assistance. The Department has determined that an IHA established by an Indian Tribe as a result of the exercise of its sovereign power is not subject to the Byrd Amendment, but an IHA established under State law is subject to those requirements and prohibitions.

Authority: 42 U.S.C. 14371; Pub. L. 102–139 (105 Stat. 744).

Dated: May 12, 1993.

Arthur S. Newburg,

Director, Office of Lead-Based Paint Abatement and Poisoning Prevention.

Michael B. Janis,

General Deputy Assistant Secretary, Office of Public and Indian Housing.

Appendix 1—Hours of Operation for HUD Regional and Field Offices

Name of Office and Hours of Operation

Region I

Boston Regional Office—8:30 a.m.–5:00 p.m.
Hartford Office—8:00 a.m.–4:30 p.m.
Manchester Office—8:00 a.m.–4:30 p.m.
Providence Office—8:00 a.m.–4:30 p.m.

Region II

New York Regional Office—8:30 a.m.–5:00 p.m.
Albany Office—7:30 a.m.–4:00 p.m.
Buffalo Office—8:00 a.m.–4:30 p.m.
Newark Office—8:30 a.m.–5:00 p.m.

Region III

Philadelphia Regional Office—8:00 a.m.–4:30 p.m.
Baltimore Office—8:00 a.m.–4:30 p.m.
Charleston Office—8:00 a.m.–4:30 p.m.
Pittsburgh Office—8:00 a.m.–4:30 p.m.
Richmond Office—8:00 a.m.–4:30 p.m.
Washington, D.C. Office—8:00 a.m.–4:30 p.m.

Region IV

Atlanta Regional Office—8:00 a.m.–4:30 p.m.
Birmingham Office—7:45 a.m.–4:30 p.m.
Caribbean Office—8:00 a.m.–4:30 p.m.
Columbia Office—8:00 a.m.–4:45 p.m.
Greensboro Office—8:00 a.m.–4:30 p.m.
Jackson Office—8:00 a.m.–4:30 p.m.
Jacksonville Office—7:45 a.m.–4:30 p.m.
Knoxville Office—7:45 a.m.–4:30 p.m.
Louisville Office—8:00 a.m.–4:30 p.m.
Nashville Office—7:45 a.m.–4:15 p.m.

Region V

Chicago Regional Office—8:15 a.m.–4:45 p.m.
Cincinnati Office—8:00 a.m.–4:45 p.m.
Cleveland Office—8:00 a.m.–4:45 p.m.
Columbus Office—8:30 a.m.–4:45 p.m.
Detroit Office—8:00 a.m.–4:30 p.m.
Grand Rapids Office—8:00 a.m.–4:30 p.m.
Indianapolis Office—8:00 a.m.–4:45 p.m.
Milwaukee Office—8:00 a.m.–4:30 p.m.
Minneapolis-St. Paul Office—8:00 a.m.–4:30 p.m.
Chicago Indian Office—8:15 a.m.–4:45 p.m.

Region VI

Fort Worth Regional Office—8:00 a.m.–4:30 p.m.
Albuquerque Office—7:45 a.m.–4:30 p.m.
Houston Office—7:45 a.m.–4:30 p.m.
Little Rock Office—8:00 a.m.–4:30 p.m.
New Orleans Office—8:00 a.m.–4:30 p.m.
Oklahoma City Office—8:00 a.m.–4:30 p.m.
Oklahoma City Indian Office—8:00 a.m.–4:30 p.m.
San Antonio Office—8:00 a.m.–4:30 p.m.

Region VII

Kansas City Regional Office—8:00 a.m.–4:30 p.m.
Des Moines Office—8:00 a.m.–4:30 p.m.
Omaha Office—8:00 a.m.–4:30 p.m.
St. Louis Office—8:00 a.m.–4:30 p.m.

Region VIII

Denver Regional Office—8:00 a.m.–4:30 p.m.
Denver Indian Office—8:00 a.m.–4:30 p.m.

Region IX

San Francisco Regional Office—8:15 a.m.–4:45 p.m.
Honolulu Office—7:45 a.m.–4:15 p.m.
Los Angeles Office—8:00 a.m.–4:30 p.m.
Phoenix Office—8:00 a.m.–4:30 p.m.
Phoenix Indian Office—8:15 a.m.–4:45 p.m.
Sacramento Office—8:00 a.m.–4:30 p.m.

Region X

Seattle Regional Office—8:00 a.m.–4:30 p.m.
Seattle Indian Office—8:00 a.m.–4:30 p.m.
Anchorage Office—8:00 a.m.–4:30 p.m.
Anchorage Indian Office—8:00 a.m.–4:30 p.m.
Portland Office—8:00 a.m.–4:30 p.m.

[FR Doc. 93–13100 Filed 6–3–93; 8:45 am]

BILLING CODE 4210–33–M

federal register

Friday
June 4, 1993

Part IV

Department of Housing and Urban Development

Office of the Secretary

NOFA for Lead-Based Paint Hazard Reduction in Priority Housing; Notice

DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT

Office of the Secretary—Office of Lead-Based Paint Abatement and Poisoning Prevention

[Docket No. N–93–3617; FR–3444–N–01]

NOFA for Lead-Based Paint Hazard Reduction in Priority Housing: Category I and Category II Grants

AGENCY: Office of the Secretary—Office of Lead-Based Paint Abatement and Poisoning Prevention, HUD.

ACTION: Notice of funding availability.

SUMMARY: This notice announces the availability of two categories of grant funding: Category I, for approximately $90,000,000, for a grant program for States and local governments to undertake lead-based paint hazard reduction in priority housing; and Category II, for up to $3,000,000, for grants to States for assistance in implementing a State certification program after passing enabling legislation. Approximately 20–25 grants of $1 million–$6 million each will be awarded under Category I; approximately 15 to 18 grants of up to $200,000 each will be awarded under Category II in FY 1993. The grant sum requested by applicants in either category should be based on the total for all years of the proposed project. This document includes information concerning the following:

(1) The purpose of the NOFA, eligibility, available amounts, and selection criteria;

(2) Application processing, including how to apply and how selections will be made; and

(3) A checklist of steps and exhibits involved in the application process.

Appendices to the NOFA identify relevant regulations and guidelines referenced throughout the NOFA, define "administrative costs", provide a sample diagram for showing an applicant's sources and uses of the grant funds, set forth requirements for a State certification program, list eligible HUD housing programs, and provide requirements for the Comprehensive Housing Affordability Strategy (CHAS).

DATES: An original and two copies of the completed application must be submitted as follows:

Category I: No later than 3 p.m. (Eastern Time) on Wednesday, August 18, 1993; and

Category II: Applicants may file a Stage One grant application at any time after 9 a.m. (Eastern time) Tuesday, September 21, 1993. The final half of the grant sum (Stage Two) may be requested at any time after April 28, 1994. Category II funds will be awarded on a first-come-first-served basis, so there is no deadline for application (see Section 8.5 of this NOFA for further application information).

The application deadlines are firm as to date and hour. In the interest of fairness to all competing applicants, the Department will treat as ineligible for consideration any application that is received after its deadline. Applicants should take this factor into account and make early submission of their materials to avoid loss of eligibility brought about by unanticipated delays or other delivery-related problems. Section 5 of this NOFA (for Category I grants) and Section 8 (for Category II grants) provide further information on what constitutes proper submission of an application.

ADDRESSES: Application kits may be obtained from the Office of Lead-Based Paint Abatement and Poisoning Prevention, Department of Housing and Urban Development, room B–133, 451 Seventh Street SW., Washington, DC 20410, or by phoning 1–800–RID–LEAD (1–800–743–5323). Completed applications should be submitted to this same address, and may not be faxed.

FOR FURTHER INFORMATION CONTACT: Ellis G. Goldman, Director, Program Management Division, Office of Lead-Based Paint Abatement and Poisoning Prevention, room B–133, 451 Seventh Street SW., Washington, DC 20410, telephone 1–800–RID–LEAD (1–800–743–5323). TDD numbers for the hearing-impaired are: (202) 708–9300 (not a toll-free number), or 1–800–877–8339.

SUPPLEMENTARY INFORMATION:

Table of Contents

Section 1. Paperwork Reduction Act Statement
Section 2. Definitions
NOFA for Category I Grants
Section 3. Category I: Purpose and Description
- 3.1 Purpose and Authority
- 3.2 Background
- 3.3 Allocation Amounts
- 3.4 Eligibility
- 3.5 Objectives and Requirements
- 3.6 Environmental Review
- 3.7 Rating Factors

Section 4. Category I: Application Process
- 4.1 Submitting Applications
- 4.2 Threshold Requirements

Section 5. Category I: Checklist of Application Submission Requirements
- 5.1 Applicant Data
- 5.2 Proposed Activities
- 5.3 Certifications and Assurances

Section 6. Category I: Corrections to Deficient Applications
Section 7. Category I: Administrative Provisions
- 7.1 Obligation of Funds
- 7.2 Increases of Awards
- 7.3 Deobligation
- 7.4 Reports

NOFA for Category II Grants
Section 8. Category II: Purpose and Substantive Description
- 8.1 Purpose and Authority
- 8.2 Background
- 8.3 Allocation Amounts
- 8.4 Eligibility
- 8.5 Selection Criteria and Process
- 8.6 HUD and EPA Review of Applications
- 8.7 Application Requirements
- 8.8 Reports

Section 9. Other Matters: Category I and Category II Grants
APPENDIX A. Relevant Federal Regulations and Guidelines
APPENDIX B. Explanation of "Administrative Costs"
APPENDIX C. Source and Use of Funds (Sample)
APPENDIX D. Eligibility of HUD-Associated Housing Units
APPENDIX E. Elements of a State Certification Program
APPENDIX F. CHAS: Statement of Requirements

Section 1. Paperwork Reduction Act Statement

The information collection requirements contained in this notice have been approved by the Office of Management and Budget (OMB), under section 3504(h) of the Paperwork Reduction Act of 1980 (44 U.S.C. 3501–3520), and assigned OMB control number 2529–0002.

Section 2. Definitions

The following definitions apply to this grant program:

Abatement—Any set of measures designed to eliminate lead-based paint hazards permanently in accordance with standards established by appropriate Federal agencies. The term includes:

(a) The removal of lead-based paint and lead-contaminated dust, the permanent containment or encapsulation of lead-based paint, the replacement of lead-based painted surfaces or fixtures, and the removal or covering of lead contaminated soil; and

(b) All preparation, cleanup, worker protection, disposal, and post-abatement clearance testing activities associated with such measures.

Administrative Costs—(See Appendix B of this NOFA for a detailed definition.)

Applicant—A State or a unit of general local government with an approved comprehensive Housing Affordability Strategy (CHAS) that applies for funding under this NOFA.

Certified Contractor—A contractor, inspector, or supervisor who has

successfully completed a training program certified by the appropriate Federal agency and has met any other requirements for certification or licensure established by such agency or who has been certified by any State through a program which has been found by such Federal agency to be at least as rigorous as the Federal certification program outlined in Appendix E. All lead-hazard detection or reduction work shall be performed by workers and supervisors who have passed a Federal training program or a State training program found by such Federal agency to be at least as rigorous as the Federal program.

Certified Inspector—Included in the definition of "certified contractor," above.

Clearance Testing—A HUD-required testing procedure that must be passed before a dwelling unit may be reoccupied. The unit must undergo a wipe test showing that it has lead dust levels below HUD's maximum allowable standards for floors (200 µg/sq. ft. (micrograms/square foot)), window sills (500 µg/sq. ft.), and window wells (800 µg/sq ft.).

Encapsulation—A method of abatement that involves the coating and sealing of surfaces with durable surface coatings specifically formulated to be elastic, able to withstand sharp and blunt impacts, long-lasting, and resilient, while also resistant to cracking, peeling, algae, fungus, and ultraviolet light, so as to prevent any part of lead-containing paint from becoming part of house dust or otherwise accessible to children. Paint is not an encapsulant.

Enclosure—The resurfacing or covering of surfaces with durable materials such as gypsum board or paneling, and sealing or caulking the edges and joints so as to prevent or control chalking, flaking, peeling, scaling, or loose lead-containing substances from becoming part of house dust or otherwise accessible to children.

Hazardous Waste—Liquid or solid waste, or combination of solid wastes, which because of its quantity; concentration; or physical, chemical, or infectious characteristics may:

(a) Cause, or significantly contribute to, an increase in mortality or in serious, irreversible, or incapacitating illness; or

(b) Pose a substantial current or potential hazard to human health or the environment, when improperly treated, stored, transported, disposed of, or otherwise managed.

HEPA—(High efficiency particulate accumulator)—A vacuum cleaner fitted with a filter capable of filtering out particles of 0.3 microns or greater from a body of air at 99.97 percent efficiency or more.

Interim Controls—A set of measures designed to reduce temporarily human exposure or likely exposure to lead-based paint hazards, including specialized cleaning, repairs, maintenance, painting, temporary containment, ongoing monitoring of lead-based paint hazards or potential hazards, and the establishment and operation of management and resident education programs.

Interim Guidelines—HUD's manual of lead-hazard reduction practices: "Lead-Based Paint: Interim Guidelines for Hazard Identification and Abatement in Public and Indian Housing," published 55 FR 14556 (April 18, 1990), and revised 55 FR 39874 (September 28, 1990) and 56 FR 21556 (May 9, 1991).

Laboratory Accreditation—A laboratory that has been approved by a State or other accrediting agency to perform analyses of lead in paint and dust and whose approval is consistent with any criteria established by the Environmental Protection Agency.

Lead-Based Paint Hazard—Any condition that causes exposure to lead from lead-contaminated dust, lead-contaminated soil, or lead-contaminated paint that is deteriorated or present in accessible surfaces, friction surfaces, or impact surfaces, that would result in adverse human health effects as established by the appropriate Federal agency.

Lead-Contaminated Soil—Bare soil on residential real property that contains lead at or in excess of the level determined to be hazardous to human health by the appropriate Federal agency.

Lead-in-Dust—Interior house surface dust that contains an area concentration of lead that may pose a threat of adverse health effects in pregnant women or young children. A hazard exists if concentrations exceed the maximum acceptable standards: 200 µg/sq. ft. on floors, 500 µg/sq. ft. on window sills, and 800 µg/sq. ft. on window wells.

Priority Housing—Target housing that qualifies as affordable housing under section 215 of the Cranston-Gonzalez National Affordable Housing Act (42 U.S.C. 12745). (See Appendix D for a list of HUD's programs and their eligibility or ineligibility as priority housing.) The term does not include any public housing (whether Federal or locally supported), any federally owned housing, or any federally assisted housing except tenant-based housing that receives assistance under sections 8(b) or 8(o) of the United States Housing Act of 1937 (42 U.S.C. 1437f (b) or (o)).

Replacement—A strategy of abatement that removes components such as windows, doors, and trim that have lead-based painted surfaces, and installs new or de-leaded components free of lead-based paint.

Residential Dwelling—(a) A single-family dwelling, including attached structures, such as porches and stoops; or

(b) A single-family dwelling unit in a structure that contains more than 1 separate residential dwelling unit, and in which each unit is, or is intended to be, used or occupied, in whole or in part, as the home or residence of one or more persons.

Risk Assessment—An on-site investigation to determine and report the existence, nature, severity, and location of lead-based paint hazards in residential dwellings, including:

(a) Information gathering regarding the age and history of the housing and occupancy by children under age 6;

(b) Visual inspection;

(c) Limited wipe sampling or other environmental sampling techniques;

(d) Other activity as may be appropriate; and

(e) Provision of a report explaining the results of the investigation.

State Certification Program—(See Appendix E for extended discussion.)

Substrate—The material to which a coating such as paint is applied. Residential substrates are usually wood, plaster, masonry, gypsum board, or metal, including components such as doors and door frames, windows and window trim, other trim, walls, ceilings, cabinets, and other built-in storage.

Surface—The outer or topmost boundary of a substrate.

Target Housing—Any housing constructed prior to 1978, except housing for the elderly or persons with disabilities (unless any child who is less than 6 years of age resides or is expected to reside in the housing for the elderly or persons with disabilities) or any o-bedroom dwelling. In the case of jurisdictions that banned the sale or use of lead-based prior to 1978, the Secretary, at the Secretary's discretion, may designate an earlier date.

Testing—The measurement of lead in painted surfaces by Federal- or State-certified personnel using a portable X-ray fluorescence analyzer, laboratory analysis of paint samples, or other method approved by HUD.

Title X—The Residential Lead-Based Hazard Reduction Act of 1992 (title X of Pub. L. 102–550, approved October 28, 1992.)

Trained Worker—A worker who has successfully completed a Federal or State-accredited lead-based paint

training program that is at least as protective as the Federal Certification Program Standards outlined in Appendix E.

Wipe Test—The testing of a surface for the presence of lead dust by the patterned wiping of the surface, followed by analysis of the wipe by atomic absorption spectroscopy, giving the result in micrograms of lead per square foot of surface. For clearance purposes, a sample of floors, window sills and window wells shall be tested in accordance with HUD's Interim Guidelines. The guidelines also require that for clearance all surfaces shall have less than the maximum allowable concentration standard of 200 µg/sq. ft on floors, 500 µg/sq. ft on window sills, and 800 µg/sq. ft on window wells. Also see the definition for "Clearance Testing".

XRF Analyzer—A portable instrument that determines lead concentration in milligrams per square centimeter (mg/cm2) using the principle of x-ray fluorescence. The instrument may measure mean lead content or lead content plus a spectrum of other elements. The instrument shall be used in accordance with the rules for interpretation of the XRF sampling data for multi-family or scattered-site housing, as provided in the HUD Interim Guidelines.

NOFA for Category I Grants

Section 3. Category I Grants: Purpose and Description

3.1 Category I Grants: Purpose and Authority

Category I grants are to assist States and local governments in undertaking programs for the evaluation and reduction of lead-based paint hazards in private, priority housing for rental occupants and owner occupants. (Appendix D lists HUD-associated housing programs that may have dwellings that meet the definition of priority housing.) Up to $90,000,000 will be available to fund 20–25 grants of $1 million to $6 million each. The amounts are for the total, multi-year work of a proposed project. Category I grants are authorized under section 1011(a–f) of Title X.

The purposes of this program include:

(a) Implementation of a national strategy, as defined in Title X, to build the infrastructure necessary to eliminate lead-based paint hazards in all housing, as widely and expeditiously as possible;

(b) Encouragement of effective action to prevent childhood lead poisoning by establishing a workable framework for lead-based paint hazard evaluation and reduction; and

(c) Expeditious mobilization of national resources, involving cooperation among all levels of government and the private sector, to develop the most promising, cost-effective methods for evaluating and reducing lead-based paint hazards;

3.2 Background

Lead is a powerful toxicant that attacks the central nervous system and is particularly damaging to the neurological development of young children. Pregnant women can transfer lead through the placenta to the fetus. Lead-based paint (LBP) is one of the major sources of lead in the environment. In addition to paint, lead may be found in dust, soil, drinking water, food, emissions from leaded gasoline combustion, and industrial emissions. Human exposure to lead is found by testing blood for the presence of lead.

Based upon a national survey conducted in 1990 for HUD's *Comprehensive and Workable Plan for the Abatement of Lead-Based Paint in Privately Owned Housing* report (see Appendix A), approximately 57 million privately owned and occupied housing units built before 1980 have some lead-based paint inside or outside the dwelling. The 57 million units represent just over half of the nation's existing housing stock, and 74 percent of the dwellings built before 1980. The figures for dwellings have lead-based paint rise to 80 percent of dwellings built before 1960, and to 90 percent of those built before 1940. In addition, the older homes show both a greater concentration of lead in the paint and more areas with lead-based paint.

An estimated 9.9 million of the 57 million units are occupied by families with children under the age of six, who are most at risk. Of these, about 3.8 million units have hazards requiring prompt attention, such as peeling lead-based paint, excessive amounts of lead dust, or both. Approximately half of these units are occupied by families with incomes lower than the national median.

HUD has been actively engaged in a number of activities relating to lead-based paint as a result of the Lead-Based Paint Poisoning Prevention Act, 42 U.S.C. 4801–4846 (LBPPPA). The recently enacted Title X provides major new initiatives and more detailed requirements for this NOFA. (Appendix A identifies relevant Federal regulations and guidelines referred to in this NOFA.)

The *Comprehensive and Workable Plan* described the magnitude of the problem of lead hazards in private housing and set forth a comprehensive strategy for reducing this threat. Also in 1990, HUD developed the first set of guidelines to be used nationally for abating lead paint in public housing (see Interim Guidelines, Appendix A). The guidelines are now being used in the Department's public housing modernization program, and an update to account for new knowledge and technology is underway.

In April 1989, HUD and the Environmental Protection Agency (EPA) executed a Memorandum of Understanding (MOU) on Lead-Based Paint. This MOU has become the basis for interagency cooperation, including a HUD–EPA Interagency Task Force on Lead-Based Paint. As another result of interagency cooperation, EPA, with assistance from HUD and the Centers for Disease Control (CDC), recently began operating a National Clearinghouse and Tollfree Hotline on lead poisoning 1–800–LEADFYI (1–800–532–3394).

3.3. Allocation Amounts

Under the Departments of Veterans Affairs and Housing and Urban Development, and Independent Agencies Appropriations Act of 1993 (Pub. L. 102–389, approved October 6, 1992) (Appropriations Act), $100 million was appropriated for this program.The total available for Category I grants results from application of set-asides under the Appropriations Act, in the amounts of $2 million for evaluation and technical assistance activities, $3 million for assistance to State Certification Programs (Category II grants; see Section 8 of this NOFA), and $5 million for research and development, leaving $90,000,000 for Category I grants.

Because lead-based paint is a national problem, it is critical that these funds be used in a manner that maximizes the number of housing units in which lead-hazard reduction occurs, that stimulates cost-effective State and local approaches that can be replicated in as many settings as possible, and that disperses the grants as widely as possible across the nation. HUD expects to award 20 to 25 grants of $1 million to $6 million each. Grantees shall be reimbursed, in accordance with a schedule to be included with the applicant's proposal and approved by HUD.

3.4 Eligibility

Title X specifies the following eligibility requirements for participation in Category I grants to evaluate and reduce lead-based paint hazards in priority housing:

(a) *Eligible Applicants.* A State or unit of local government that has an

approved Comprehensive Housing Affordability Strategy (CHAS) under section 105 (42 U.S.C. 12705) of the Cranston-Gonzalez National Affordable Housing Act (NAHA) is eligible to apply for a grant under Category I (see Appendix F).

However, applicants are advised that in selecting grantees under this NOFA, the Secretary is unlikely to select applicants that were previously funded under the FY 1992 NOFA, issued July 6, 1992 (57 FR 29774). This selection decision will be pursuant to the Secretary's authority to ensure geographic distribution, to ensure available funds are used effectively to promote the purposes of Title X. (See Section 3.7, Rating Factors (Category I), for additional discussion of this consideration for selection.) Because Category II grants cover new activities different from grants previously funded, this authority would not provide the sole basis for nonselection of a Category II applicant; therefore, States that received grants under the FY 1992 NOFA are encouraged to apply for Category II grants under this NOFA.

(b) *Capability.* Applicants shall demonstrate the capability to identify housing units with significant lead-based paint hazards, oversee the safe and effective conduct of the hazard reduction, and assure the future availability of hazard-reduced units to low- and moderate-income persons.

(c) *Eligible Housing Units.* See the definition for priority housing and Appendix D for the enumeration of HUD housing programs that may include eligible priority housing units.

(d) *Certified Performers.* Funds shall be available only for projects conducted by contractors and inspectors who are certified, and workers who are trained, through a federally or State-accredited program that is at least as protective as the Federal certification program standards outlined in Appendix E to this NOFA.

(e) *Eligible Activities.* The following direct and support activities are eligible under this grant program:

(1) *Direct Project Elements* (whether activities of the grantee or subgrantees or other subrecipients):

- Inspection and testing of housing constructed prior to 1978 to determine the presence of lead-based paint, lead dust, or leaded soil through the use of portable X-ray fluorescence analyzers or approved laboratory analyses and lead dust through wipe testing.
- Abatement of lead-based paint hazards by means of removal, enclosure, encapsulation, or replacement methods.
- Less-than-full-abatement techniques for programs that apply a differentiated set of resources to each unit, dependent upon conditions of the unit and the extent of hazards.
- Temporary relocation of families and individuals during the period in which hazard reduction is conducted and until the time the affected unit receives clearance for reoccupancy.
- Blood testing of children under the age of six residing in units undergoing inspection or hazard reduction.
- Blood testing and air sampling to protect the health of the hazard-reduction workers, supervisors, and contractors.
- Other housing rehabilitation activities under this program that are specifically required to carry out effective abatement and without which the abatement could not be effected. Grant funds from this program may also be used for the lead-based paint hazard-reduction component in conjunction with other housing rehabilitation programs.
- Pre- and post-hazard reduction wipe testing.
- Engineering and architectural costs that are necessary to, and in direct support of, abatement.
- Interim control of lead-based paint hazards priority housing.
- Establishment of a community education program on lead hazards.
- Liability insurance for lead-hazard reduction activities.
- Data collection, analysis, evaluation, and preparation of a case study at the conclusion of grant activities. This direct project activity includes compiling and delivering such data as may be required by HUD's independent evaluation and research program. For estimating purposes, an applicant shall devote 3 percent of the total grant sum for this purpose. Note that this function is *not* included in administrative costs, for which there is a separate 10 percent limit.
- Performing risk assessments and inspections in priority housing.
- Pre- and post-hazard reduction soil testing.

(2) *Support Elements:*

- Administrative costs of the grantee (maximum of 10%) (see Appendix B for definition).
- Program planning and management costs of subgrantees and other subrecipients.
- For Local Governments only (for States, the following activities may be undertaken as direct project elements):

(i) Contributions to the State for the establishment of State data-collection mechanisms to collect and publish data on the extent of all public and private lead-hazard reduction activities in the State, including numbers and dollar volume of activities and number and kinds of certified performers;

(ii) Contributions to the State for the establishment of State funding mechanisms to assist testing and abatement efforts, with particular emphasis on assistance to priority housing; and

(iii) Contributions to the State and/or County for the State and/or County Government to design and develop standard land-record mechanisms to be used by county governments to record permanently, property by property, the completion and approval of lead-hazard testing and reduction activities, so that future occupants or purchasers may have certain knowledge of the lead-hazard condition of the property. The land-record mechanism should include an identification of the lead-hazard reduction method: permanent abatement, partial abatement, or interim control, and should trigger a notice to housing inspection officials upon the occurrence of the expected expiration of the effectiveness of a less-than-permanent abatement method.

(f) *Ineligible Activities.* Grant funds shall not be used:

(1) To purchase capital equipment, except for XRF analyzers when it can be demonstrated that there are no XRF analyzers available locally. If purchased, the XRF analyzers shall remain the property of the grantee at the conclusion of the project. Funds may be used, however, to rent equipment specifically for the abatement project. If leased equipment, other than XRF analyzers, becomes the property of the grantee as the result of a lease arrangement, the leased equipment becomes the property of the Federal government at the end of the grant period. However, that form of lease arrangement should be avoided whenever less expensive, straight-lease arrangement is possible; or

(2) For chelation or other medical treatment costs. Funds used to cover these costs may be counted as part of the required local matching contribution, but must be obtained from other sources.

(g) *Limitations on the use of assistance.* (1) Category I grant funds are to be used to evaluate and reduce the hazards of lead-based paint in residential units constructed prior to 1978. However, if the jurisdiction has banned the sale or use of lead-based paint prior to 1978, the applicant jurisdiction may request the Department to designate an earlier date. These units must be priority housing, as defined in this NOFA.

(2) Pursuant to the Coastal Barrier Resources Act (16 U.S.C. 3501), grant funds may not be used for properties

located in the Coastal Barrier Resources System.

(3) Under the Flood Disaster Protection Act of 1973 (42 U.S.C. 4001–4128), grant funds may not be used for construction, reconstruction, repair or improvement of a building or mobile home, including lead-based paint abatement that involves permanent containment or encapsulation of lead-based paint or replacement of lead-painted surfaces or fixtures or interim control measures that involve repairs, on properties located in an area identified by the Federal Emergency Management Agency (FEMA) as having special flood hazards unless:

(A) The community in which the area is situated is participating in the National Flood Insurance Program in accordance with the applicable regulations (44 CFR parts 59–79), or less than a year has passed since FEMA notification regarding these hazards; and

(B) Flood insurance on the property is obtained in accordance with section 102(a) of the Flood Disaster Protection Act (42 U.S.C. 4012a(a)). Applicants are responsible for assuring that flood insurance is obtained and maintained for the appropriate amount and term.

(4) The National Historic Preservation Act of 1966 (16 U.S.C. 470) (NHPA) and the regulations at 36 CFR part 800 apply to the abatement activities that are to be undertaken pursuant to this NOFA. HUD is responsible for satisfying the obligation to make a historic preservation finding under section 106 of the NHPA and the regulations. Recipients are to assist HUD in making the required findings by providing information to document the determination. This information includes the address of the property, and either a complete description of the activities to be carried out or an indication that no external changes are proposed and the property is not listed on the National Register of Historic Places or eligible for inclusion on the National Register (as required by section 106 of the NHPA). In the alternative, the recipients may provide evidence of consultation with the State Historic Preservation Officer (SHPO).

(5) The applicant shall comply with the requirements of the Uniform Relocation Assistance and Real Property Acquisition Policies Act of 1970 (URA) (42 U.S.C. 4201–4655). These policies are described in HUD Handbook 1378, Tenant Assistance, Relocation and Real Property Acquisition. No displacement (a permanent, involuntary move) is anticipated. However, to preclude avoidable claims for relocation assistance, all occupants (owner and tenants) shall, as soon as feasible, be notified in writing that they will not be displaced by the lead-based paint abatement program. Tenants and owners-occupants will be required to relocate *temporarily* to permit the lead-based paint abatement program to be carried out. All conditions of the temporary relocation must be reasonable. The policy regarding temporary relocation costs for owner-occupants who elect to participate in abatement is a matter of grantee discretion. With respect to tenants required to relocate temporarily, at a minimum the tenant shall be provided:

(A) Reimbursement for all reasonable out-of-pocket expenses incurred in connection with the temporary relocation, including the cost of moving to and from the temporarily occupied housing and any increase in monthly rent/utility costs at that housing; and

(B) Appropriate advisory services, including reasonable advance written notice of the date and approximate duration of the temporary relocation; the address of the suitable, decent, safe, and sanitary dwelling to be made available for the temporary period; and the reimbursement provisions of paragraph g(5)(A) of this section.

(6) The Resource Conservation and Recovery Act of 1976 (42 U.S.C. 6901 et seq.) (RCRA), administered by the EPA, shall govern all waste disposal resulting from abatement.

(7) The applicant shall observe the procedures for worker protection established in Chapter Eight of the Interim Guidelines. To the extent that the Occupational Health and Safety Administration (OSHA) requirements at 58 FR 26590 (May 4, 1993), or any other OSHA requirements published prior to the start of actual abatement work at any individual project site, are more stringent than the Interim Guidelines, those more stringent OSHA standards shall govern.

(8) Grantees shall be required to meet the post-abatement wipe-test clearance thresholds contained in the HUD Interim Guidelines (see Appendix A). Wipe tests shall be conducted by a certified inspector who is independent of the abatement contractor. Dust wipe samples will be analyzed by an accredited laboratory. Units shall not be reoccupied until acceptable clearance levels are achieved.

(9) Abatement methods that will not be allowed are: open-flame burning, dry scraping, uncontrolled abrasive blasting, or machine sanding without HEPA attachments. The applicant is cautioned that methods that generate high levels of lead dust, such as abrasive sanding, shall be undertaken only with requisite worker protection, containment of dust and debris, and suitable clean-up.

3.5 Objectives and Requirements

(a) *Generally.* Grantees will be afforded considerable latitude in designing and implementing the methods of lead-based paint hazard reduction to be employed in their jurisdictions. HUD is interested in promoting innovative and creative approaches that result in the reduction of this health threat for the maximum number of low- and moderate-income residents, and that demonstrate replicable techniques that are better, faster, less expensive, or more effective than current practices. Flexibility will be allowed within the parameters established below. It is critical that procedures for all phases of testing and abatement be clearly established in writing in the planning stage, and then adhered to by all applicants, recipients, and their contractors. It is only in this manner that research and evaluation of the safety and cost-effectiveness of the methods employed can be undertaken.

Proposed methods requiring a variance from the standards of procedures cited below will be considered on their merits in a separate HUD review and approval process after the grant award is made and a specific justification has been presented. If a grant application is dependent on a variation from the procedures cited below, but otherwise is of award quality, it will be made as a conditional grant, subject to approval of the request for variation. When such a request is made, either in the application or during the planning phase, HUD intends to consult with experts from both the public and private sector as part of its final determinations and will document its findings in an environmental assessment. Approval of any proposed modifications will not involve a lowering of standards that would have a potential to affect adversely the health of residents or workers.

(b) *Testing—data collection.* Grantees will be required to collect the data necessary to document the various methods employed in order to determine the relative cost and effectiveness of these methods in reducing lead-based paint hazards. Pre- and post-abatement environmental sampling and blood testing of children under the age of six shall be a major determinant of effectiveness.

(c) *Testing—schedule.* In developing the application cost proposal, applicants shall include costs for the testing cycle for each dwelling that will undergo lead-based paint detection and hazard reduction, as follows:

(1) *XRF on-site (or supplementary laboratory) testing:* Pretest every room or area in each dwelling unit planned for hazard abatement;

(2) *Blood testing:* Of each occupant who is a child under six years old, according to the following schedule:

(A) Pretest before abatement work begins; and

(B) Test within 4 weeks of reoccupancy after completion of work, and at 6- and 12-months after reoccupancy.

(3) *Dust testing:* Of every room or area in each unit, according to the following schedule:

(A) Pretest before abatement work begins;

(B) Clearance testing before reoccupying an abated unit; and

(C) Test at 6- and 12-months after the unit is reoccupied.

(d) *Testing—guidance.* (1) *Generally.* All testing and sampling shall conform to the HUD Interim Guidelines. Note that it is particularly important to provide this full cycle of testing for less-than-full-abatement hazard reduction, even though the testing itself may become a substantial part of the cost per unit. It will be from this testing that the Department will be able to establish standards and expectations for the effective period of lead-safe conditions before the potential recurrence of any active lead hazard.

(2) *Required Thresholds for Hazard Reduction.* While the Department's Interim Guidelines (see Appendix A) employ two hazard-reduction thresholds, one milligram per square centimeter (1.0 mg/cm^2) or 0.5 percent by weight, applicants may utilize other thresholds, provided that the alternative threshold is justified adequately and is accepted by HUD. The justification must state why the applicant believes the proposed approach will provide satisfactory health protection for occupants, and must discuss cost savings and benefits expected to result from using the proposed approach.

(3) *Surfaces to be abated.* HUD's Interim Guidelines currently require the abatement of all interior and exterior painted or varnished surfaces having a lead content above the permitted threshold. However, in accordance with the new guidance from Title X, the applicant may choose to abate fewer surfaces or apply any other partial-abatement or hazard-reduction techniques, provided that an adequate rationale is presented to and accepted by HUD. The rationale must state why the applicant believes the proposed approach will provide satisfactory health protection for occupants and at the same time, provide cost savings or other benefits, and therefore would support the new Title X concept.

(4) *Clean-up.* The applicant may employ post-abatement clean-up procedures that differ from the procedures in the HUD Interim Guidelines, provided that an adequate justification is established and accepted by HUD. The justification must state why the applicant believes the proposed approach will provide satisfactory health protection for occupants, and must discuss cost savings and benefits expected to result from using the proposed approach.

3.6 Environmental Review

Because it is likely for many applicants that at the time of application submission, only neighborhoods or other locators of the housing to be abated will be known, rather than specific properties, the Department has determined that it will perform an environmental review in accordance with 24 CFR part 50 at the time each property is proposed for abatement under the grant, rather than before HUD approval of the grant.

HUD's environmental review will be limited to satisfying its obligation to make an historic preservation finding under section 106 of the NHPA and the implementing regulations. HUD has determined that lead-based paint abatement falls within a categorical exclusion (see 24 CFR 50.20(c)) from review under the National Environmental Policy Act and is not subject to the remaining authorities listed in 24 CFR 50.4, with the exception of the funding limitations under the Coastal Barrier Resources Act and the flood insurance purchase requirements of the Flood Disaster Protection Act of 1973. The applicant is responsible for compliance with these funding limitations and flood insurance purchase requirements.

3.7 Rating Factors

HUD will use the following technical and financial criteria, subject to the qualification discussed in the second paragraph of this section, to rate and rank applications received in response to this NOFA. The technical quality of an application will be rated, and then the strength, quality, and completeness of the financial and resources plan will be used to assess how well the technical plan is likely to be carried out using the available resources. The total number possible for the rating factors is 115 points.

Applicants are advised, however, that in selecting grantees under this NOFA, the Secretary is unlikely to select applicants who were previously funded under the FY 1992 NOFA, issued July 6, 1992 (57 FR 29774). This selection prerogative will be exercised under the Secretary's authority to ensure that available funds are used effectively and to promote the purposes of Title X. See, section 1011(d)(5) of Title X (42 U.S.C. 4852(d)(5)). (Because Category II grants cover new activities different from grants previously funded, this authority would not provide the sole basis for nonselection of a Category II applicant; therefore, States that received grants under the FY 1992 NOFA are encouraged to apply for Category II grants under this NOFA.)

(a) *Strategy. (55 points)*—The quality of the proposed lead-based paint hazard reduction strategy. Strategies that promote new or innovative, cost-effective methods will be awarded a higher number of quality rating points than those of otherwise equal quality that propose only conventional testing and hazard-reduction techniques. The strategy should include:

(1) The hazard-reduction program, including selection of subgrantees and other subrecipients, abatement/hazard reduction methods, financing, community education, temporary relocation, and the degree to which the strategy focuses on households in priority housing with children under the age of 6 (15 points);

(2) A management and budget plan for the whole grant and for each major component funded directly from the grant. The plan shall include a year-by-year spreadsheet budget for the total grant, a task-by-task spreadsheet budget for the total grant, and an overall source and use of funds diagram (see Appendix C for a sample; no form is provided because programs vary too widely. Provide a year-by-year budget for each major subtask shown on the diagram.) The plan shall include a narrative describing how the parts of the grant program will be coordinated and managed (14 points);

(3) A rationale as to why the testing and hazard-reduction methods proposed for the housing units selected in this project are more cost-effective when compared with other available methods (relate treatment to level of hazard) (10 points);

(4) The identification, inspection and testing of priority housing to be treated. Housing recently inspected (within 12 months of grant) and identified prior to the date of the grant as having lead-based paint may be included (9 points); and

(5) A program for blood screening of young children and, if necessary, referral for medical treatment (7 points).

(b) *Applicant Capacity and Commitment to Hazard Reduction. (40 points)*—The capacity of the applicant to initiate and carry out the lead-based paint testing and hazard-reduction program successfully within the time frames set forth in Table 1, Category I Grants: Program Deadlines, in this NOFA. Show that the proposed staff skills match the proposed program of work described. Elements to be considered include:

(1) Demonstrated knowledge and experience of the proposed project manager in planning and managing large and complex interdisciplinary programs involving housing rehabilitation, public health, and environmental management. The percentage of time of the project manager to be devoted to this project is a significant factor, and must be disclosed in the application. (15 points);

(2) Demonstrated knowledge and experience of the staff assigned to this project in carrying out these undertakings, including the percentage of time each person will devote to the project (15 points); and

(3) Institutional capacity, demonstrated by the experience and continuing capacity of the jurisdiction to initiate and implement similar environmental and housing projects. Applicant should describe previous related efforts and the current capacity of its agencies (10 points).

TABLE 1.—CATEGORY I GRANTS: PROGRAM DEADLINES

Status of state certification program	Time allowed—in months				
	Legislation enacted	Grace period	Planning period	Conduct testing and hazard reduction	Total time for program
Legislation already exists	n/a	n/a	6	18	24
Enact legislation	12	n/a	6	18	36
Fail to enact legislation	12	6	6	18	42
Enact, but fail to implement legislation	12	6	6	18	42

(c) *Applicant's Matching Contribution and Other Resources (10 points)*—At a minimum, the applicant shall provide a matching contribution of at least 10 percent of the requested grant sum. That contribution may be in cash or in kind. In-kind contributions shall be given a monetary value. Community Development Block Grant funds may be considered part of the matching contribution, but only when they are specifically dedicated to an integral part of the project. This rating factor provides points only for additional resources that exceed the minimum required 10% match. Each source of contributions, both for the required minimum and additional amounts, shall be made in a letter of commitment from the funding entity, whether a public or private source, and shall describe the contributed resources that will be used in the program. Absence of required letters offering specific details will result in a reduced rating under this factor.

(d) *Community and Private Sector Participation (10 points)*—The extent to which the applicant has enlisted the broad participation of neighborhood, community, and nongovernmental organizations; the private sector; and other governmental units, through consultation, employment, or other activities, as evidenced by the names and proposed roles of these participants and letters of commitment. Absence of letters of participation will result in a reduced rating under this factor.

Section 4. Category I Grants: Application Process

4.1 Submitting Applications For Category I Grants

To be considered for funding under a Category I Grant, an original and two copies of the application must be physically received in the Office of Lead-Based Paint Abatement and Poisoning Prevention (OLBPAPP), Department of Housing and Urban Development, room B–133, 451 Seventh Street, SW., Washington, DC 20410, no later than 3 p.m. (Eastern Time) on Wednesday, August 18, 1993. Electronic (FAX or equivalent transmittal) application is *not* an acceptable transmittal mode.

The above-stated application deadline is firm as to date and hour. In the interest of fairness to all competing applicants, the Department will treat as ineligible for consideration any application that is received after the deadline. Applicants should take this factor into account and make early submission of their materials to avoid any risk of loss of eligibility brought about by unanticipated delays, equipment breakdown, or delivery-related problems.

HUD will review each Category I application to determine whether it meets all of the threshold criteria established under Section 4.2 of this NOFA. Nonresponsive applications will be declared ineligible for further consideration. Applications that meet all of the threshold criteria will be eligible to be scored and ranked, based on the total number of points allocated for each of the rating factors in Section 3.7 of this NOFA.

HUD intends to fund the highest ranked applications within the limits of funding availability, but reserves the right to advance other eligible applicants in funding rank, if necessary, to assure geographic diversity, to promote the purposes of Title X, broaden the range of hazard-reduction alternatives to be tested, or enhance data reliability.

4.2 Threshold Requirements for Category I Grants

(a) *Purpose.* The application must be for funds to evaluate and reduce lead hazards in priority housing (see Appendix D for program-by-program listing of eligible HUD-associated housing programs).

(b) *Eligible Applicants.* An applicant must be a State or unit of local government that has an approved Comprehensive Housing Affordability Strategy (CHAS) under section 105 of the NAHA (42 U.S.C. 12705) that includes a lead-hazard reduction element (instructions for preparing a lead-hazard reduction element are included in Appendix F. Current CHAS regulations were published in the **Federal Register** on September 1, 1992, at 57 FR 40038, as amended, in part, on March 12, 1993 at 58 FR 13686. Applicants under this NOFA are permitted to use an abbreviated housing strategy, as set forth in § 91.25 of the

CHAS regulations). The applicant must submit a certification that the application is consistent with the CHAS that has been submitted to HUD and a copy of the lead-hazard reduction element. Prior to or concurrently with the application deadline, the applicant must amend its CHAS in accordance with 24 CFR 91.63 by submitting a copy of the lead-hazard element to the Community Planning and Development Division of the appropriate HUD Regional or Field Office and informing the public of the change through publication of a description of the element.

(c) *Matching Contribution.* Each applicant shall provide a matching contribution of at least 10 percent of the requested grant sum.

(d) *Financial responsibility.* For purposes of this program, HUD has determined that all eligible governmental entities are deemed to meet the requirements for accounting and financial responsibility. The applicant shall be responsible for the performance of all consortium members, partners, contractors, joint venture participants, subgrantees, and other subrecipients.

(e) *Identification of significant hazard housing.* The applicant must demonstrate a commitment to focus its efforts on the identification of housing units with significant lead-based paint hazards, particularly among dwellings for lower income families, so as to concentrate its resources on the greatest needs first.

(f) *Safe and effective conduct of the abatement.* The applicant must demonstrate willingness and readiness to oversee the safe and effective conduct of the hazard-reduction work, as provided in the application kit.

(g) *Contractor certification program requirement.* Each applicant must carry out its hazard reduction program under an operational State-accredited or Federal certification/training program that is at least as protective as the Federal Certification Program standards outlined in Appendix E. The Department suggests that any State applicant or the State government of any local government applicant examine the support that will be available under Category II grants (see Section 8 and Appendix E of this NOFA). The following additional provisions apply to this requirement:

(1) To receive a grant an applicant must use contractors certified and workers trained within a State that currently has a lead-based paint certification/training program acceptable to HUD and the EPA. If the State in which the applicant is located has such a program, the applicant should furnish copies of the enabling statutes and regulations, as well as other appropriate documentation (e.g., certificates and licenses), as proof of the program.

(2) Other applicants may be approved for a grant with the following provisions:

(A) An applicant shall furnish at the time of application, letters of intent to establish and implement a certification program. The enabling legislation shall be enacted within 12 months of the Category I application deadline date, and the designated agency implementing the program shall have completed initial training sessions within 18 months from the deadline date of the Category I application date. Letters of intent shall be from the Governor of the State and an authorized representative of the legislative body in the State. The letters shall set forth their plans to make a good faith effort to enact, within 12 months of the Category I application deadline date, enabling legislation that would establish or designate an appropriate department or office; to put an operating staff in place; and to promulgate appropriate regulations and complete the initial training sessions within 18 months of the Category I application date. These letters of intent shall be carried over to the grant agreement and become part of the grantee's assurances under it. (Note that the 12-month and 18-month implementation periods for this NOFA have a start date that is earlier than for the previous NOFA funding round. The shorter compliance period conforms to Title X, which sets an April 28, 1994, deadline for publication of Federal certification program requirements.)

(B) There may be local government applicants in States that have furnished letters of intent and have made a good faith effort to carry out that intent, but whose State governments have been unable to comply with the 12-month or 18-month time table. These local governments may, with HUD approval, choose to use workers and contractors certified or licensed under accredited programs of other States. After the 12- or 18-month deadline has been missed, the local government applicant shall have an additional 6-month grace period to arrange for the use of qualified workers/contractors and to commence the actual on-site testing and abatement activities.

(C) Except as provided in paragraph (g)(2)(B) of this section, if the commitment to establish a certification/training program is not fulfilled within the stated time, the conditional grant agreement shall immediately terminate.

(D) Any unsuccessful applicant under the July 6, 1992 NOFA (57 FR 29774) may include copies of the gubernatorial and legislative letters of intent that were submitted with its previous application (if the signatories are still in office), along with a report on the progress made after the execution of those letters of intent.

(h) *Continued Availability of Hazard Reduced Housing to Lower Income Families.* Units in which lead hazards have been treated under this program shall then be occupied by and continue to be available to low- and moderate-income residents as defined under section 215 of the NAHA.

(i) *Cooperation With Related Research and Evaluation.* Applicants shall cooperate fully with any research or evaluation sponsored by HUD and associated with this grant program, including preservation of the data and records of the project and compiling requested information in formats provided by the researchers or evaluators. This cooperation may also include the compiling of certain relevant local demographic, dwelling unit, and participant data not contemplated in applicant's original proposal. Participant data shall be subject to Privacy Act protections. For estimating purposes, an applicant shall devote three percent of the total grant sum for data collection and evaluation purposes, as discussed in the Section 3.4, Eligibility, of this NOFA.

Section 5. Category I Grants: Checklist of Application Submission Requirements

5.1 Applicant Data

Applicants must complete and submit applications in accordance with the instructions contained in the application kit. The following is a checklist of the application contents that will be specified in the application kit:

(a) The name, mailing address, telephone number, and principal contact person of the applicant. If the applicant has consortium associates, partners, major subcontractors, or joint venture participants contributing resources to the project, similar information shall also be provided for each of them.

(b) Proof of State accreditation requirements for lead-based paint certification/training programs applicable to the contractors, inspectors, and workers that will be used by the applicant, or letters of intent from both the Governor and an authorized representative of the legislative body stating that a good faith effort will be

made to have a certification/training program authorized within 12 months, and operational within 18 months, of the Category I Grant application deadline date (see section 4.2(g) of this NOFA regarding this requirement).

(c) Evidence of the applicant's commitment to eliminating or reducing significant lead-based paint hazards in housing as detailed in the applicant's strategy for lead-based paint hazard reduction (see the first rating factor, Strategy in Section 3.7 of this NOFA).

(d) A detailed description of the funding mechanism, selection process, and other proposed activities that the applicant plans to use to assist the direct performers of hazard reduction activities under this grant.

(e) The management and task budget plan that includes a summary diagram (see Appendix C) showing the source and use of all grant funds. The plan shall detail the proposed costs and schedules for starting and completing each task or major subset of project activities. The budget shall provide for each task and major subtask that is funded by the grant. All major tasks and subtasks, including data collection (allow 3% of the total grant sum requested), should be estimated (even though not precisely known). There shall be a separate estimate for the overall grant management element, "Administrative Costs," which are more fully defined in Appendix B. The budget shall include not more than 10 percent for administrative costs and not less than 90 percent for direct project elements (including data collection; see paragraph (e), Eligible Activities, in Section 3.4 of this NOFA). Estimates are not required for activities fully funded by local matching funds, but those funding sources should be shown as lump-sum amounts in the Source and Use diagram (see Appendix C).

(f) Evidence of a continuing capacity of the applicant to undertake a lead-based paint testing and abatement program safely and effectively.

(g) Information itemizing what constitutes the applicant's matching contribution, including values placed on donated in-kind services; letters or other evidence of commitment from donors; and the amounts and sources of coordinated resources.

(h) Information on the names and proposed roles of local participating community- or neighborhood-based groups or organizations, including local businesses.

(i) Completed Forms HUD–2880, Applicant/Recipient Disclosure/Update Report, and SF–LLL, Disclosure of Lobbying Activities, where applicable (see section on Other Matters in this NOFA).

(j) Standard Forms SF–424 and 424–B, and other certifications and assurances listed in section 5.3 of this NOFA.

(k) A copy of the applicant's lead-hazard reduction element for its Comprehensive Housing Affordability Strategy (CHAS).

5.2 Proposed Activities

(a) *Affected population to be served.* The applicant shall describe the size and general characteristics of the target housing within its jurisdiction, including a description of the housing's location, condition, and occupants, and a current estimate of the number of children under the age of six in these units. Maps should be included. First preference shall be given to priority housing units. Vacant housing that subsequently will be occupied by low-income renters should also be included in this description. In addition, as a measure of its ongoing commitment to lead-based paint programs, the applicant shall provide information on the number of children diagnosed as being lead poisoned within the previous five years and the remedial measures that were taken to respond to these diagnoses.

(b) *Discussion of lead-based paint activities.* The applicant shall provide a reasoned discussion of the proposed hazard reduction activities, including, but not limited to, information on the following:

- Overall hazard reduction strategy, including priority setting;
- Specific neighborhoods, census tracts or other locators of the housing units targeted for abatement (area and local maps shall be included);
- Inspection and testing of all lead-based paint-hazard housing to be treated as part of this project;
- Blood testing of children under the age of six, and medical referral for children found to have elevated blood-lead levels;
- Hazard-reduction methods, including interim controls, in-place-management, less than full abatement and full abatement. Include lead-based paint hazard reductions in housing undergoing renovation funded by other sources, but included as part of this project;
- Community education;
- Relocation;
- Coordination and integration with public health and housing programs to effect lead-based paint hazard reduction;
- Data collection, documentation, and evaluation;
- Mechanisms that the applicant proposes to employ to provide financial assistance to low- and moderate-income owners and low-income renters under this grant program for abatement. The applicant may provide the services through a variety of programs, including grants, equity, loans, investment or seed money for non-profit performers' revolving loan funds, loan funds, loan guarantees, interest write-downs, or other forms of assistance that may be approved by the Department. Program income from loan repayments may be used only for hazard-reduction related activities; and
- Management and staffing of the project, including the extent of time commitments and areas of specialization and expertise.

5.3 Certifications and Assurances

The following certifications and assurances apply to applications for Category I grants:

(a) The application shall contain an assurance that the applicant will comply with the environmental laws and authorities at 24 CFR 50.4, and that it will:

(1) Supply information necessary for HUD to perform any required environmental review of each property;

(2) Carry out mitigating measures required by HUD or select alternate eligible property; and

(3) Not commit HUD or local funds to, or carry out, any program activities for any property until HUD approval is received.

(b) The application shall contain a certification that the applicant will comply with the Uniform Relocation Assistance and Real Property Acquisition Policies Act of 1970; implementing regulations at 49 CFR part 24; and HUD Handbook 1378, Tenant Assistance, Relocation and Real Property Acquisition.

(c) The application shall be in compliance with Federal civil rights laws and requirements.

(d) The application shall contain assurances that the applicant will comply with the requirements of the Fair Housing Act (42 U.S.C. 3601–19); Executive Order 11063; Title VI of the Civil Rights Act of 1964, pertaining to equal opportunity and nondiscrimination in housing; and all regulations issued in accordance with these authorities.

(e) The application shall include assurances of nondiscrimination on the basis of age or handicap, in compliance with the Age Discrimination Act of 1975, section 504 of the Rehabilitation Act of 1973, and all regulations issued pursuant to these authorities.

(f) The application shall contain a certification that the applicant will comply with the requirements of section 3 of the Housing and Urban Development Act of 1968, pertaining to the provision of economic opportunities for low- and very low-income persons, and implementing regulations at 24 CFR part 135.

(g) The applicant shall assure that it will conduct dust-wipe testing in all units in which lead-hazard reduction occurs, both prior to and immediately after the hazard-reduction treatment and cleanup, and that the applicant will conduct dust-wipe testing at 6- and 12-months after abatement.

(h) The applicant shall assure that it will test and record the blood-lead level of all children under the age of six occupying affected units prior to abatement. The applicant shall also assure that it will test and record blood-lead levels of affected children at six months and at one year after abatement is completed. Abatement of a unit shall not commence until blood-lead tests have been administered to children under the age of six occupying the unit. Children determined to have elevated blood-lead levels, using the CDC, October 1991 Guidelines (see Appendix A to this NOFA), shall be provided appropriate medical treatment, as set forth by the CDC. If there is an existing, funded program, the costs of blood testing and medical follow-up are eligible for inclusion in the computation of the other resources contribution.

(i) The applicant shall assure that it will cooperate with any federally sponsored or endorsed monitoring or evaluation efforts carried out in conjunction with the applicant's lead-based paint activities under this program. This includes providing documentation in the formats requested of the practices and costs of all testing, inspection, and hazard-reduction work, as well as comparative costs and cost-effectiveness, where a claim for an innovative or improved method has been made. This may also include compiling certain relevant local demographic, dwelling unit, and participant data that may not have been contemplated in applicant's project activities, in order to meet HUD's research and evaluation needs. Participant data shall be subject to Privacy Act protection.

(j) The applicant shall assure that this application represents an expansion of the delivery of testing and abatement services and does not replace existing resources dedicated to any ongoing project.

(k) The application shall contain any other assurances that HUD has included in the application kit under this NOFA.

Section 6. Category I Grants: Corrections to Deficient Applications

HUD will notify an applicant, in writing, shortly after the expiration of the NOFA response deadline, of any minor deficiencies in the application that are not of a substantive nature, such as an omitted certification or illegible signature. The applicant shall submit corrections, which must be received at the Office of Lead-Based Paint Abatement and Poisoning Prevention within 21 calendar days from the date of HUD's letter notifying the applicant of any minor deficiencies. Electronic (FAX) transmittal is not an acceptable transmittal mode. Corrections to minor deficiencies will be accepted within the 21-day time limit. Applicants that do not make timely response to requests for deficiency corrections shall be removed from further consideration for an award.

Applicants shall only be permitted to correct those deficiencies determined by HUD to be minor. Deficiencies determined by HUD to be substantive may not be corrected.

Section 7. Category I Grants: Administrative Provisions

7.1 Obligation of Funds

(a) *Provision of funds.* Funding shall be provided on a cost-reimbursable basis not to exceed the amount of the grant, except as otherwise provided in Sections 7.2 and 7.3 of this NOFA. There shall be set aside from the final grant payment sufficient funds to pay for the 6-month and 12-month post-abatement testing for blood-lead levels and dust-wipe levels in the dwelling, as provided in paragraph (c) of this section.

(b) *Advance funds.* After a grant agreement has been executed with a grantee that has an acceptable, existing State certification program (in compliance with Appendix E requirements), HUD may, upon written request, provide to the grantee a cash advance that shall not exceed 10 percent of the grant amount and shall be limited to the minimum amount needed for the actual, immediate cash requirements of the grantee in carrying out the purposes of this NOFA. Similarly, those grantees whose awards are conditioned upon proof of newly executed executive or legislative authority to carry out the requirements of this NOFA may request advances of funds, not to exceed 5 percent of the total grant amount, for purposes of implementing certification or licensing requirements and preparing certain planning documents for HUD review and approval. Advance funds may be divided between administrative costs and direct project costs. The applicant shall provide justification for the division, and HUD may accept or modify the applicant's proposed division.

(c) *Availability of remaining funds.* HUD will not make additional payments, beyond the advance funds described in paragraph (b) of this section, from the amount awarded to a grantee until the grantee's proposed contractors and workers have met the certification and training requirements of a State-accredited program. All additional payments will be made on a cost-reimbursable basis, except that a 10 percent final payment shall be made upon completion of all tasks and delivery of an acceptable final report, subject to the set-aside for post-testing described in paragraph (a) of this section. The grantee shall specify in its request for final payment the amount of funds to be set aside from the final 10 percent for the 6- and 12-month post-abatement dust-wipe and blood tests. When results of these tests are forwarded to HUD, the testing set-aside funds will be released by HUD to the grantee.

7.2 Increases of Awards

After the signing of the grant agreement and initial obligation of funds, HUD will not increase the grant sum or the total amount to be obligated based upon the original scope of work. Amounts awarded may only be increased as provided in section 7.3, Deobligation, of this NOFA.

7.3 Deobligation

(a) *Reasons for deobligation.* HUD may deobligate amounts for the advance or grant if proposed activities are not initiated or completed within the required time after selection. The grant agreement will set forth in detail other circumstances under which funds may be deobligated and other sanctions imposed.

(b) *Treatment of deobligated funds.* HUD may undertake any one, or a combination, of the following actions, with respect to deobligated funds:

(1) Readvertise the availability of funds that have been deobligated under this section in a new NOFA;

(2) Reconsider applications that were submitted in response to the most recently published NOFA, and select additional applications for funding with deobligated funds. These selections will be made in accordance with the selection process described in the applicable NOFA;

(3) Fund supplemental applications from existing grantees for the performance of expanded scopes of work that may be of benefit to the overall program; and

(4) For deobligated funds that total less than a minimum grant amount ($1 million), issue a solicitation to provide technical assistance or other program support services.

7.4 Reports

The grantee shall submit the following types of reports (this requirement is also applicable to Category II grantees, in section 8.8 of this NOFA):

(a) *Annual reports.* The grantee shall submit to HUD a report for any fiscal year in which the grantee expends grant funds. Each report shall be due six weeks after the end of the Federal Fiscal Year (September 30). The report shall:

(1) Describe the use of the amounts received;

(2) State the number of risk assessments and the number of inspections conducted in residential dwellings;

(3) State the number of residential dwellings in which lead-based paint hazards have been abated, organized by method of abatement used;

(4) State the number of residential dwellings in which lead-based paint hazards have been reduced through interim controls; and

(5) Provide any other information that the Secretary determines to be appropriate.

(b) *Progress Reports.* The grantee shall submit regular progress reports in accordance with HUD's Management Reporting System. These progress reports shall consist of graphic reports showing expenditures and technical progress to date, compared with the original plan, and a narrative describing important events and problems encountered during the period. The progress reports:

(1) Shall be filed quarterly during the planning period (and during the waiting period for the establishment of a State Certification Program);

(2) Shall be filed monthly during the active abatement-work period; and

(3) May revert to being filed quarterly after completion of active abatement work.

(c) *Final Report/Case Study.* The grantee shall submit a final report/case study in accordance with the procedures of HUD's Management Reporting System. The report shall summarize the applicant's plans, execution of the plans, and lessons learned. The report need not be lengthy, but should be of a quality and detail to provide a free-standing description to any outside reader of all of the applicant's work and achievements under the grant.

Category II NOFA

Section 8. Category II Grants: Purpose and Substantive Description

(Category II grants are restricted to State applicants seeking assistance in establishing and implementing a State Certification Program. State applicants may apply either under Category I or Category II, or under both categories. Because Category II grants cover new activities different from grants previously funded, unlike for Category I grants, receipt of funding under the FY 1992 NOFA would not provide the sole basis for nonselection of a Category II applicant. States that received grants under the FY 1992 NOFA are encouraged to apply for Category II grants under this NOFA.)

8.1 Category II Grants: Purpose and Authority

Category II grants are assist applicant State governments (and the Virgin Islands, Puerto Rico, and the District of Columbia) in establishing and implementing State Certification Programs, once they have enacted enabling legislation acceptable to HUD. The enabling legislation must be consistent with the currently identified elements of the EPA's Model State Plan (as listed in Appendix E of this NOFA, and as being developed under sections 402 and 404 of the Toxic Substances Control Act (TSCA) (added by section 1021 of Title X); Appendix E contains an extended discussion of program elements). Category II grants are authorized under section 1011(g) of Title X. Up to $3,000,000 will be available in FY 1993; approximately 15 to 18 grants, not to exceed $200,000 each, are expected to be awarded in FY 1993.

Just as many building inspection departments are wholly or partially self-supporting from permits and license fees, it is expected that State lead-based paint certification programs can become at least partially self-supporting. During the startup of such efforts, however, there may be a period before potential revenues achieve expected levels. The Category II grants are intended to help States bridge that gap, by providing the initial seed money for the implementation and staffing of certification programs.

8.2 Background

(a) *Policy.* The purpose of this program is to implement a national strategy, as defined in Title X, to build the infrastructure necessary to eliminate lead-based paint hazards in all housing as widely and expeditiously as possible. Lead-based paint hazard-reduction activities present potentially substantial hazards to workers and supervisors, occupants and neighboring residents (particularly children under age six and pregnant women), and inspectors and others who must visit the site during the course of the work. If improperly carried out, the work may result in substantially greater hazards than previously existed; therefore, this work should be performed only by thoroughly trained and licensed or certified workers, supervisors, contractors, inspectors, and others. This underscores the need for the early establishment of certification programs.

Traditionally, States and local governments have provided oversight and protection for the public against the general hazards of construction, and it is HUD's policy to draw upon this source of knowledge and expertise in providing the needed oversight and protection for the public against the hazards of lead-based paint and the work of reducing those hazards. In cooperation with HUD, the EPA has been assigned by Congress the responsibility for promulgating rules and standards governing protection against lead hazards in both residential and commercial property.

Accordingly, it is HUD policy to encourage and assist States planning to develop a certification program that will assure proper oversight and supervision of providers of lead-based paint hazard reduction services.

(b) *Development of EPA requirements.* To assure safe and effective performance of the work, Congress has required that performance of lead-hazard testing and lead-hazard reduction activities under this grant program shall be performed by certified contractors, supervisors, workers, and inspectors. Sections 402 and 404 of the TSCA set April 28, 1994, as the deadline for the promulgation of a Model State Program that contains certification and accreditation standards, and final regulations on certification. Under section 1011(n) of Title X, two years after promulgation of these final regulations, any funding available to a State through Title X (including these grants) is cut off if the State does not have an EPA-approved certification program.

Appendix E, Elements of a State Certification Program, in this NOFA provides a description of the currently identified minimum basic elements that should be included in State legislation. Nevertheless, HUD advises States that

are establishing or revising their programs that EPA is actively developing regulations that will define in detail that requirements for an acceptable State program. States should be aware that EPA may add additional basic legislative requirements to the final Model State Program. In addition, EPA's regulations will contain detailed requirements for certification/accreditation training, as well as work practice standards for conducting lead-based paint activities as mandated by Title X.

HUD urges States to watch for EPA's initial guidance on this subject in late 1993. HUD funding of lead-based paint hazard reduction activities beyond this current round for Category I grants will likely be conditioned on State conformance to EPA regulations concerning certification, rather than on the outline in Appendix E.

(c) *State enabling legislation.* Because the technology and research findings in the lead-hazard field are evolving so swiftly, and because both HUD and EPA seek to aid States in achieving an acceptable program without time-consuming reworking of legislation, HUD and EPA urge States to draft enabling legislation that avoids detailed standard setting or other overly prescriptive provisions. The legislation should permit these detailed requirements to be developed and promulgated at the regulatory level, with suitable legislative oversight.

For further information on this subject, including technical assistance, interested States may contact EPA's Chemical Management Division, Attention Ms. Gina Bushong, at (202) 260–3790, or HUD's Office of Lead-Based Paint Abatement and Poisoning Prevention, Attention Ellis Goldman, at (202) 755–1822 (these are not toll-free numbers).

(d) *Deadline for State enabling legislation.* State certification programs that are at least as protective as the Federal requirements established in EPA's regulations will continue to be accepted after April 28, 1994. By 1996, in the absence of an EPA-approved State program, lead-based paint-related Federal funding, such as this grant program, will be terminated until an EPA-approved certification program can be implemented in such States. Category II grants are intended to help States achieve that safe-performance goal, and to help avoid any period of ineligibility for this program.

8.3 Allocation Amounts

For Fiscal Year 1993, up to $3,000,000 will be available for approximately 15 to 18 grants, not to exceed $200,000 each.

8.4 Eligibility

(a) *Eligible applicants.* Eligible applicants are the governments of the 50 States, the Virgin Islands, Puerto Rico, and the District of Columbia, that have passed satisfactory enabling legislation for a State certification program, and that have an approved Comprehensive Housing Affordability Strategy (CHAS) (see appendix F). States will become eligible to apply for Stage One of Category II grants upon enactment of State certification legislation satisfactory to HUD and EPA (see appendix E for discussion of currently identified elements). This also includes States that may already have enacted legislation by the time of this NOFA.

Awards shall be made on a first-come, first-served basis in the order of the date an acceptable application is received by HUD, and, in the event of a tie, the date on which acceptable State legislation is signed into law, until the Category II funds under this NOFA are exhausted.

(b) *Eligible activities.* (1) All reasonable costs that directly support the purpose of a Category II grant will be considered by HUD in the applicant's Stage-One proposed plan and budget. Funds may be used for start-up expenses such as salaries, renting space, and supplies. The funds may also be used for start-up capital expenditures such as XRF testing and office equipment. However, purchase or rehabilitation of real property is not an eligible activity. Capital acquisitions occurring under a Category II Grant shall become and remain the property of the grantee.

(2) At least 90 percent of the Category II grant sum shall be for the use of the State agency established or designated to implement the State certification program. The remainder may be used by any other part of the applicant State government for the administrative costs of the Category II grant (see appendix B for full definition of administrative costs).

(3) HUD reserves the right, in negotiating the grant agreement, to delete budget items that, in its judgment, are not necessary for the direct support of program purposes, and to request the grantee to redirect the deleted sums to other acceptable purposes or make a corresponding reduction in the grant request.

(c) *Limitations on use of assistance.* The grant shall be used solely for the purposes described in the applicant's implementation plan and budget, including any changes that may be negotiated and adopted in the grant agreement.

8.5 Selection Criteria and Process

(a) *Generally.* For many States, the enactment of an acceptable certification program and the implementation of an acceptable agency plan will be several months to a year or more after the publication of this NOFA. Publication of detailed regulations applicable to the State program are likely to take up to an additional six months. For these reasons, and because funding for Fiscal Year 1994 has been authorized but not yet appropriated, the application cycle for Category II grants has been separated from the Category I application date and divided into two stages, to ease the application burden on interested States. Stage One, described in paragraph (b) of this section, will be the initial application for a grant, after satisfactory enabling legislation has been signed into law. That application will include the text of the State legislation, a program implementation plan, a budget, and a request for one-half of the total grant sum shown in the budget. Stage Two, described in paragraph (c) of this section, will be a supplemental application that includes the text of promulgated regulations, detailing the functions of the agency, and an application for the balance of the grant sum. If requested, HUD and EPA will provide technical assistance to an applicant on legislation, regulations, the implementation plan, or budget elements, before funding either Stage One or Stage Two.

(b) *Stage One.* A State that does not have a statute or that has existing legislation that is not consistent with the currently identified elements of a State certification program may file a formal grant application at any time after an enabling statute, or amendment to existing legislation, is signed into law, but not sooner than 9 a.m. (Eastern time), Tuesday, August 16, 1993. States that have existing enabling legislation that is consistent with the currently identified elements of a satisfactory State program may file a formal Stage One grant application at any time after 9 a.m. (Eastern time) Tuesday, September 21, 1993. Upon acceptance by HUD and EPA of the statute, the implementation plan, and the budget, the State may apply for one-half its total grant sum.

The application shall include:

(1) The text of the statute;

(2) An implementation plan that establishes or designates an agency, or agencies, to carry out the training and certification functions, and to promulgate or revise the detailed regulations, if necessary, including:

(A) A proposed schedule for regulation development, if applicable;

(B) The plan to address potential conflicts in overall State program design if enabling statutes are significantly prescriptive;

(C) Delineation of agency responsibilities; and

(D) Key contacts; and

(3) A proposed budget.

(c) *Stage Two.* States that have filed an acceptable application under Stage One may file either the enabling regulations (new legislation) or the amended regulations (amended legislation), and may request the final half of the grant sum at any time after April 28, 1994.

8.6 HUD and EPA Review of Applications

HUD and EPA will provide prompt response to the State applicant at each stage of the application cycle. If the grant is disapproved, HUD and EPA will provide comments on why the application is not acceptable. The State may then resubmit an amended application for reconsideration.

Upon completion of the review and acceptance of a Stage One application, HUD will schedule an appointment for negotiation and signing of the grant agreement. Upon completion of the review and acceptance of a Stage Two application, HUD will make the balance of the grant sum available to the grantee. Approval of a State's Stage One or Stage Two application under this program does *not* equate to Federal approval of the States's Certification Program; approval only constitutes approval for funding for Category I and Category II grants. EPA, as required by section 404 of title X, will develop special procedures for the approval of State programs.

8.7 Application Requirements

(a) *Contents.* A Stage One application shall include a copy of the enacted or amended State legislation, together with a detailed implementation plan described in this NOFA and budget and staffing plans for carrying out the implementation. Staffing plans may be in a format suitable to the applicant; no Federal form is required. The budget shall be by task and subtask. The following requirements also apply to the application:

(1) The application shall be in compliance with Federal civil rights laws and requirements;

(2) The application shall contain assurances that the applicant will comply with the requirements of the Fair Housing Act (42 U.S.C. 3601–19); Executive Order 11063; Title VI of the Civil Rights Act of 1964, pertaining to equal opportunity and nondiscrimination in housing; and all regulations issued in accordance with these authorities;

(3) The application shall include assurances of nondiscrimination on the basis of age or handicap, in compliance with the Age Discrimination Act of 1975, section 504 of the Rehabilitation Act of 1973, and all regulations issued pursuant to these authorities; and

(4) The application shall contain any other assurances that HUD has included in the application kit.

(b) *Environmental Review.* The activities to be supported under Category II grants do not involve physical intervention at any real properties, and therefore do not require an environmental review. However, the use of Category II assistance for the purchase of equipment for use in a building in a special flood hazard area can only be undertaken where the community participates in the National Flood Insurance Program and flood insurance is purchased in accordance with section 3.4(g)(3)(A,B) of this NOFA, unless the property is covered by a FEMA-approved State policy of self-insurance.

8.8 Reports

Category II grantees shall comply with the requirements of section 7.4 of this NOFA (Reports) for Category I Grants. If a grantee has both a Category I and a Category II grant, a copy of the Category I grant report may be filed in satisfaction of the Category II grant requirement.

Section 9. Other Matters: For Category I and Category II Grants

Environmental Review

A Finding of No Significant Impact with respect to the environment has been made in accordance with HUD regulations in 24 CFR part 50, which implements section 102(2)(C) of the National Environmental Policy Act of 1969, 42 U.S.C. 4332. The Finding of No Significant Impact is available for public inspection during regular business hours in the Office of the General Counsel, Rules Docket Clerk, Department of Housing and Urban Development, 451 Seventh Street, SW., room 10276, Washington, DC 20410.

Federalism Executive Order

The General Counsel, as the Designated Official under section 8(a) of Executive Order 12612, *Federalism*, has determined that the policies and procedures contained in this NOFA will not have substantial direct effects on States or their political subdivisions, or the relationship between the Federal Government and the States, or the distribution of power and responsibilities among the various levels of government. Under this NOFA, grants will be made for the abatement of significant lead-based paint and lead-dust hazards in low- and moderate-income owner-occupied units and privately owned low-income rental units. Although the Department encourages States and local governments to initiate or expand lead-based paint certification, testing, abatement, and financing programs, any action by a State or local government in these areas is voluntary. Because action is not mandatory, the NOFA does not impinge upon the relationships between the Federal Government and State and local governments, and the notice is not subject to review under the Order.

Family Executive Order

The General Counsel, as the Designated Official under Executive Order 12606, *The Family*, has determined that this document will likely have a beneficial impact on family formation, maintenance and general well-being. This NOFA, insofar as it funds repairs to privately owned housing, will assist in preserving decent housing stock for resident families. Accordingly, since the impact on the family is beneficial, no further review is considered necessary.

Section 102 of the HUD Reform Act—Documentation and Public Access Requirements—Applicant/Recipient Disclosures

Documentation and Public Access Requirements

HUD will ensure that documentation and other information regarding each application submitted pursuant to this NOFA are sufficient to indicate the basis upon which assistance was provided or denied. This material, including any letters of support, will be made available for public inspection for a five-year period beginning not less than 30 days after the award of the assistance. Material will be made available in accordance with the Freedom of Information Act (5 U.S.C. 552) and HUD's implementing regulations at 24 CFR part 15. In addition, HUD will include the recipients of assistance pursuant to this NOFA in its quarterly Federal Register notice of all recipients of HUD assistance awarded on a competitive basis. (See 24 CFR 12.14(a) and 12.16(b), and the notice published in the Federal Register on January 16, 1992 (57 FR 1942), for further

information on these documentation and public access requirements.)

Disclosures

HUD will make available to the public for five years all applicant disclosure reports (HUD Form 2880) submitted in connection with this NOFA. Update reports (also Form 2880) will be made available along with the applicant disclosure reports, but in no case for a period less than three years. All reports—both applicant disclosures and updates—will be made available in accordance with the Freedom of Information Act (5 U.S.C. 552) and HUD's implementing regulations at 24 CFR part 15. (See 24 CFR part 12, subpart C, and the notice published in the **Federal Register** on January 16, 1992 (57 FR 1942), for further information on these disclosure requirements.)

Prohibition Against Lobbying Activities

The use of funds awarded under this NOFA is subject to the disclosure requirements and prohibitions of Section 319 of the Department of the Interior and Related Agencies Appropriations Act for Fiscal Year 1990 (31 U.S.C. 1352) and the implementing regulations at 24 CFR part 87. These authorities prohibit recipients of Federal contracts, grants, or loans from using appropriated funds for lobbying the Executive or Legislative Branches of the Federal Government in connection with a specific contract, grant, or loan. The prohibition also covers the awarding of contracts, grants, cooperative agreements, or loans unless the recipient has made an acceptable certification regarding lobbying. Under 24 CFR part 87, applicants, recipients and subrecipients of assistance exceeding $100,000 must certify that no Federal funds have been or will be spent on lobbying activities in connection with the assistance.

Procurement Standards

All grantees are governed by and should consult 24 CFR 85.36 and 85.37, which detail procedures for subcontracts and subgrants by States and local governments. Under § 85.36, which pertains to subcontracts, small purchase procedures can be used for contracts up to $25,000, and require price or rate quotations from several sources (three is acceptable); above that threshold, more formal procedures are required (note that § 85.36 treats States differently than local governments). Section 85.37 procedures apply to subgrants, and are not as restrictive. If States have more restrictive standards for contracts and grants, the State standards can be applied. All grantees should consult and become familiar with §§ 85.36 and 85.37 before issuing subcontracts or subgrants.

Davis-Bacon Act

The Davis-Bacon Act does not apply to this program. However, if grant funds are used in conjunction with other Federal programs in which the provisions of Davis-Bacon apply, then Davis-Bacon provisions would apply to the extent required under the other Federal programs.

Prohibition Against Lobbying of HUD Personnel

Section 112 of the Housing and Urban Development Reform Act of 1989 (Pub. L. 101–235, approved December 15, 1989) (Reform Act) added a new section 13 to the Department of Housing and Urban Development Act (42 U.S.C. 3531 et seq.). Section 13 contains two provisions concerning efforts to influence HUD's decisions with respect to financial assistance. The first imposes disclosure requirements on those who are typically involved in these efforts—those who pay others to influence the award of assistance or the taking of a management action by the Department, and those who are paid to provide the influence. The second restricts the payment of fees to those who are paid to influence the award of HUD assistance, if the fees are tied to the number of housing units received or are based on the amount of assistance received, or if they are contingent upon the receipt of assistance.

Section 13 was implemented by final rule published in the **Federal Register** on May 17, 1991 (56 FR 29912). If readers are involved in any efforts to influence the Department in these ways, they are urged to read the final rule, particularly the examples contained in Appendix A of that rule. (Section 926 of the Housing and Community Development Act of 1992 (Pub. L. 102–550, approved October 28, 1992) amended section 13(f)(1) to exempt a State or local government or the officer or employee of a State or local government or housing finance agency engaged in official State or local government business.)

Any questions concerning the rule should be directed to the Office of Ethics, room 2158, Department of Housing and Urban Development, 451 Seventh Street SW., Washington DC 20410. Telephone: (202) 708–3815 (TDD/Voice). (This is not a toll-free number.) Forms necessary for compliance with the rule may be obtained from the local HUD office.

Prohibition Against Advance Information on Funding Decisions

Section 103 of the Reform Act proscribes the communication of certain information by HUD employees to persons not authorized to receive that information during the selection process for the award of assistance. HUD's regulation implementing Section 103 is codified at 24 CFR part 4 (see 56 FR 22088, May 13, 1991). In accordance with the requirements of Section 103, HUD employees involved in the review of applications and in the making of funding decisions are restrained by 24 CFR part 4 from providing advance information to any person (other than an authorized employee of HUD) concerning funding decisions, or from otherwise giving any applicant an unfair competitive advantage. Persons who apply for assistance in this competition should confine their inquiries to the subject areas permitted by 24 CFR part 4. Applicants who have questions should contact the HUD Office of Ethics: (202) 708–3815 (TDD/Voice). (This is not a toll-free number.)

The Office of Ethics can provide information of a general nature to HUD employees, as well. However, a HUD employee who has specific program questions, such as whether particular subject matter can be discussed with persons outside the Department, should contact his or her Regional or Field Office Counsel, or Headquarters Counsel for the program to which the question pertains.

Authority: 42 U.S.C. 4821–4846; 42 U.S.C. 3535(d)

Dated: May 12, 1993.

Arthur S. Newburg,

Director, Office of Lead-Based Paint Abatement and Poisoning Prevention.

Appendix A—Relevant Federal Regulations and Guidelines

To Secure Any of the Documents Listed, Call the Listed Telephone Number (generally not toll-free).

Regulations:

1. Worker Protection: OSHA regulations (phone (202) 755–1822):
   —General Industry Lead Standard, 29 CFR 1910. 1025;
   —Lead Exposure in Construction, 29 CFR 1926.62, and appendices A, B, C, and D; published 58 FR 26590 (May 4, 1993).
2. Waste Disposal: 40 CFR parts 260–268 (EPA regulations); phone 1–800–424–9346.

Guidelines:

1. Lead-Based Paint: Interim Guidelines for Hazard Identification and Abatement in Public and Indian Housing; HUD, revised May, 1991 (available for a charge; phone 800–245–2691):

Post Abatement Clearance, No More Than:

200 Micrograms/Sq. Ft. (Floors)
500 Micrograms/Sq. Ft. (Window Sills)
800 Micrograms/Sq. Ft. (Window Wells)

2. HUD Handbook 1378, Tenant Assistance, Relocation and Real Property Acquisition; phone (202) 708–0336.
3. Preventing Lead Poisoning In Young Children; Centers for Disease Control, October 1991 (phone (404) 488–4880.

Reports:

1. Comprehensive and Workable Plan for the Abatement of Lead-Based Paint in Privately Owned Housing: Report to Congress (HUD, December 7, 1990) (available for a charge; phone 800–245–2691).

Informaton on Content of State-Accredited Contractor Certification and Worker Training Programs:

Contact: EPA Office of Pollution Prevention and Toxics, Division of Environmental Assistance; phone (202) 260–3790.

CDC classes of blood lead levels in children

Class	Concentration (µg/dL)	Comment
I	<9	Child is not considered to be lead-poisoned.
IIA	10–14	Large number or proportion of children with blood lead levels in this range should trigger community-wide childhood lead poisoning prevention activities. Children in this range may need to be rescreened more frequently.
IIB	15–19	Child should receive nutritional and educational interventions and more frequent screening. If the blood lead level persists, environmental investigation and intervention should be done.
III	20–44	Child should receive environmental evaluation and remediation and a medical evaluation; may need pharmacologic treatment of lead poisoning.
IV	45–69	Child will need both medical and environmental interventions, including chelation therapy.
V	>70	Child is a medical emergency. Medical and environmental management must begin immediately.

Appendix B—Explanation of "Administrative Costs"

I. Purpose

The intent of this HUD grant program is to allow the grantee to be reimbursed for the reasonable direct and indirect costs, subject to a top limit, for overall management of the grant. In most circumstances the grantee, whether a State or a local government, is expected to serve principally as a conduit to pass funding to subgrantees, which are to be responsible for performance of the lead-hazard reduction work. Congress set a top limit of ten (10) percent of the total grant sum for the grantee to perform the function of overall management of the grant program, including passing on funding to subgrantees. The cost of that function, for the purpose of this grant, is defined as the "administrative cost" of the grant, and is limited to ten (10) percent of the total grant amount. The balance of ninety (90) percent or more of the total grant sum is reserved for the subgrantee/direct-performers of the lead-hazard reduction work.

II. Administrative Costs: What They Are Not

For the purposes of this HUD grant program for States and local governments to provide support for the evaluation and reduction of lead-hazards in low and moderate-income, private target housing: the term "administrative costs" should not be confused with the terms "general and administrative costs", "indirect costs", "overhead", and "burden rate". These are accounting terms, usually represented by a government-accepted standard percentage rate. The percentage rate allocates a fair share of an organization's costs that cannot be attributed to a particular project or department (such as the chief executive's salary or the costs of the organization's headquarters building) to all projects and operating departments (such as the Fire Department; the Police Department; the Community Development Department, the Health Department or this program). Such allocated costs are added to those projects' or departments' direct costs to determine their total costs to the organization.

III. Administrative Costs: What They Are

For the purposes of this HUD grant program, "Administrative Costs" are the grantee's allowable direct costs for the overall management of the grant program plus the allocable indirect costs. The allowable limit of such costs that can be reimbursed under this program is ten (10) percent of the total grant sum. Should the grantee's actual costs for overall management of the grant program exceed ten (10) percent of the total grant sum, those excess costs shall be paid for by the grantee. However, excess costs paid for by the grantee may be shown as part of the requirement for cost-sharing funds to support the grant.

IV. Administrative Costs: Definition

A. General

Administrative costs are the allowable, reasonable, and allocable direct and indirect costs related to the overall management of the HUD grant for lead-hazard reduction activities. Those costs shall be segregated in a separate cost center within the grantee's accounting system, and are eligible for reimbursement as part of the grant, subject to the ten (10) percent limit. Administrative costs do not include any of the staff and overhead costs directly arising from specific subgrantee program activities eligible under FY 1992 NOFA Sections II.E(5) (a) and (b)(ii) through (b)(vi), because those costs are eligible for reimbursement under a separate cost center as a direct part of project activities.

The grantee may elect to serve solely as a conduit to subgrantees, who will in turn perform the direct program activities eligible under NOFA Section II.E(5) (a) and (b)(ii) through (vi), or the grantee may elect to perform all or a part of the direct program activities in other parts of its own organization, which shall have their own segregated cost centers for those direct program activities. In either case, not more than 10 percent of the total HUD grant sum may be devoted to administrative costs, and not less than 90% of the total grant sum shall be devoted to direct program activities. The grantee shall take care not to mix or attribute administrative costs to the direct project cost centers.

B. Specific

Reasonable costs for the grantee's overall grant management, coordination, monitoring, and evaluation are eligible administrative costs. Subject to the (10) percent limit, such costs include, but are not limited to, necessary expenditures for the following, goods, activities and services:

(1) Salaries, wages, and related costs of the grantee's staff, the staff of affiliated public agencies, or other staff engaged in grantee's overall grant management activities. In charging costs to this category the recipient may either include the entire salary, wages, and related costs allocable to the program for each person *whose primary responsibilities* (more than 65% of their time) with regard to the grant program involve direct overall grant management assignments, or the pro rata share of the salary, wages, and related costs of each person whose job includes *any overall grant management assignments.* The grantee may use only one of these two

methods during this program. Overall grant management includes the following kinds of activities:

(a) Preparing grantee program budgets and schedules, and amendments thereto;

(b) Developing systems for the selection and award of funding to subgrantees and other subrecipients;

(c) Developing suitable agreements for use with subgrantees and other subrecipients to carry out grant activities;

(d) Developing systems for assuring compliance with program requirements;

(e) Monitoring subgrantee and subrecipient activities for progress and compliance with program requirements;

(f) Preparing presentations, reports, and other documents related to the program for submission to HUD;

(g) Evaluating program results against stated objectives; and

(h) Providing local officials and citizens with information about the overall grant program. (However, a more general education program—helping the public understand the nature of lead hazards, lead hazard reduction, blood-lead screening, and the health consequences of lead poisoning—is a direct project support activity, under NOFA Section II.E(5)(b), and should not be attributed to administrative costs, but to its own cost center.)

(i) Coordinating the resolution of overall grant audit and monitoring findings;

(j) Managing or supervising persons whose responsibilities with regard to the program include such assignments as those described in paragraphs (a) through (i) of Section IV.B(1) of this Appendix.

(2) Travel costs incurred for official business in carrying out the overall grant management;

(3) Administrative services performed under third party contracts or agreements, for services directly allocable to overall grant management such as overall-grant legal services, overall-grant accounting services, and overall-grant audit services;

(4) Other costs for goods and services required for and directly related to the overall management of the grant program, including such goods and services as telephone, postage, rental of equipment, renter's insurance for the program management space, utilities, office supplies, and rental and maintenance (but not purchase) of office space for the program.

(5) The fair and allocable share of grantee's general costs that are not directly attributable to specific projects or operating departments such as: the Mayor's and City Council's salaries and related costs; the costs of the City's General Counsel's office, not charged off to particular projects or operating departments; and the costs of the City's Accounting Department not charged back to specific projects or operating departments. (If the grantee has an established burden rate, it should be used; if not, the grantee shall be assigned a negotiated provisional burden rate, subject to final audit.)

To repeat, all of the above activities goods and services (items 1 (a–j), 2, 3, 4, and 5 in Section IV.B of this Appendix) are subject to the ten (10) percent limit.

BILLING CODE 4210-32-M

APPENDIX C

HUD GRANT PROGRAM FOR LEAD-HAZARD REDUCTION
Sample Diagram: SOURCE AND USE OF FUNDS
$4,000,000 GRANT TO ANYTOWN, USA

SOURCE OF FUNDS				USE OF FUNDS			
SOURCE	AMOUNT	SUB SOURCE	AMOUNT	USER	USED FOR		AMOUNT USED
FEDERAL GRANT	$4,000,000	ADMINISTRATIVE COSTS (MAX. 10%)	NOT TO EXCEED $400,000	ANYTOWN, USA GRANT MANAGEMENT TASK FORCE	OVERALL GRANT MANAGEMENT	SALARIES, FRINGE BEN. OTHER DIRECT COSTS, INDIRECT COSTS	NOT TO EXCEED $400,000
		DIRECT PROJECT COSTS (MIN. 90%)	NOT LESS THAN $3,600,000	SOUTHSIDE INC., LEAD HAZARD PREVENTION GRANT PROGRAM	GRANTS TO LOW-INCOME HOMEOWNERS FOR LEAD-HAZARD REDUCTION PROJECTS	GRANT MANAGEMENT STAFF EXPENSES GRANT OUTLAYS	$800,000
				APARTMENT MANAGERS ASSOCIATION - LEAD-HAZARD REDUCTION REVOLVING LOAN PROGRAM	3% LOANS TO LOW-INCOME APARTMENT LANDLORDS FOR LEAD-HAZARD REDUCTION PROJECTS	LOAN MANAGEMENT STAFF EXPENSES PRINCIPAL FOR LOANS	$1,000,000
				ROW HOUSE, LOW-INCOME HOUSING IMPROVEMENT GROUP, INC.	LEAD REDUCTION SEGMENTS OF WORK ONLY- PROJECT TO BUY AND FIX UP ROW HOUSING FOR LOW-INCOME RENT	PROJECT MANAGEMENT STAFF, A&E CONTR., DETECT CONTRACTOR, GENERAL CONTRACTOR	$930,000
				ANYTOWN, USA COMMUNITY DEVELOPMENT DEPARTMENT	REMOVE LEAD HAZARDS FROM SHELTER #3 FOR HOMELESS FAMILIES WITH CHILDREN (PART OF A SCHOOL CONVERSION PROJECT)	LEAD PAINT SHARE OF PROJECT INCLUDING PROJECT MANAGEMENT	$750,000
				TO BE SELECTED	DATA COLLECTION, ANALYSIS CASE STUDY OF GRANT WORK	ANYTOWN SALARY OR CONTRACTOR	UP TO $120,000
MATCHING CONTRIBUTION	$1,250,000	CASH ANYTOWN COUNCIL APPROPRIATION	$ 50,000	ANYSTATE, USA	LOCAL CONTRIBUTION TO ITS CERTIFICATION PROGRAM	CASH PAYMENT	$ 50,000
		ANYTOWN COUNCIL APPROPRIATION	$150,000	COMMUNITY DEVELOPMENT DEPARTMENT SHELTER #3 PROJECT	SHELTER #3 NON-LEAD REPAIRS	SUBCONTRACT PAYMENTS	$150,000
		ANYTOWN CDBG ALLOCATION	$100,000	COMMUNITY DEVELOPMENT DEPARTMENT SHELTER #3 PROJECT	SHELTER #3 WINDOW REPLACEMENT COST	PAYMENT TO WINDOW MANUFACTURER	$100,000
		ANYTOWN PUBLIC AFFAIRS DEPARTMENT	$200,000	ANYTOWN PUBLIC AFFAIRS DEPARTMENT	LEAD-HAZARDS PUBLIC EDUCATION PROGRAM	DEPARTMENT SALARIES	$200,000
		ANYTOWN MEDIA COMP.	$ 50,000	ANYTOWN PUBLIC AFFAIRS DEPARTMENT	FREE RADIO, TV SPOTS FOR PUBLIC EDUCATION PROGRAM	FREE AIR TIME	$ 50,000
		ANYTOWN PUBLIC HEALTH DEPARTMENT	$250,000	ANYTOWN PUBLIC HEALTH DEPARTMENT	BLOOD-LEAD SCREENING PROGRAM CHILDREN UNDER 6	DEPARTMENT SALARIES	$250,000
		ANYTOWN MEDICAL FOUNDATION	$200,000	ANYTOWN PUBLIC HEALTH DEPARTMENT	CHELLATION TREATMENT PROGRAM CHILDREN UNDER 6	MEDICAL CARE AND SERVICE	$200,000
		ANYTOWN COMMUNITY DEVELOPMENT DEPARTMENT	$100,000	ANYTOWN COMMUNITY DEVELOPMENT DEPARTMENT	SHELTER #3 A&E SERVICES	STAFF SALARIES	$100,000
		ANYTOWN BUILDING INSPECTION DEPARTMENT	$ 50,000	ANYSTATE USA	TRAIN ANYTOWN BUILDING INSPECTORS	DEPARTMENT TRAVEL AND SALARIES	$ 50,000
		ANYTOWN BUILDING INSPECTION DEPARTMENT	$100,000	ANYSTATE USA BUILDING INSPECTION DEPARTMENT	1. LEAD-HAZARD DETECTION SERVICES 2. LEAD-HAZARD REMOVAL INSPECTIONS	DEPARTMENT SALARIES	$100,000
TOTALS:	$5,250,000		$5,250,000			TOTAL:	$5,250,000

NOFA II

ELIGIBILITY OF HUD-ASSOCIATED "PRIORITY" HOUSING UNITS TO PARTICIPATE UNDER HUD'S LEAD-HAZARD-REDUCTION GRANTS PROGRAM

APPENDIX D

Program	Eligibility		Program	Eligibility	
	Yes	No		Yes	No
Housing Components of Community Planning & Development Programs			**Housing**		
Community Development Block Grants (Entitlement)	X		**Multifamily Programs**		
Community Development Block Grants (Non-Entitlement) for States and Small Cities	X		Rent Supplements (Section 101)		X
Community Development Block Grants (Section 108 Loan Guarantee)	X		Multifamily Rental Housing (Section 207)	X	
Special Purpose Grants	X		Cooperative Housing (Section 213)	X	
The Home Program: HOME Investment Partnerships	X		Mortgage and Major Home Improvement Loan Insurance for Urban Renewal Areas (Section 220)	X	
HOPE for Homeownership of Single Family Homes	X		Multifamily Rental Housing for Moderate-Income Families Section 221(d)(3)		X
Shelter Plus Care (S+C)		X	Section 221(d)(4)	X	
Emergency Shelter Grants Program		X	Existing Multifamily Rental Housing (Section 223(f))	X	
Surplus Property for Use to Assist the Homeless		X	Supplemental Loans for Multifamily Projects (Section 241)	X	
Indian Community Development Block Grant Program	X		Supportive Housing for Persons with Disabilities (Section 811)		X
Supportive Housing Demonstration Program -- Transitional Housing Component	X		**HOPE 2:** Homeownership of Multifamily Units (Title IV)		X
Supportive Housing Demonstration Program -- Permanent Housing Component	X		Low-Income Housing Preservation and Resident Homeownership (Title VI)		X
Supplemental Assistance for Facilities to Assist the Homeless (SAFAH)	X		Emergency Low-Income Housing Preservation (Title II)		X
			Flexible Subsidy (Section 201)		X
Housing					
Single Family Programs			**Public and Indian Housing**		
One- to Four-Family Home Mortgage Insurance (Section 203(b) and (i))	X		Lower-Income Rental Assistance (Section 8)		X
Rehabilitation Mortgage Insurance (Section 203(k))	X		Section 8 Rental Voucher Program	X	
Homeownership Assistance for Low- and Moderate-Income Families (Section 221(d)(2))		X	Section 8 Rental Certificate Program	X	
Homes for Service Member (Section 222)	X		Section 8 Moderate Rehabilitation Program		X
Housing in Declining Neighborhoods (Section 223(e))	X		Public Housing Development		X
Condominium Housing (Section 234)	X		Public Housing Operating Subsidy		X
Housing in Military Impacted Areas (Section 238)	X		Public Housing Modernization (Comprehensive Grant Program)		X
Single Family Home Mortgage Coinsurance (Section 244)	X		Public Housing Modernization (Comprehensive Improvement Assistance Program)		X
Graduated Payment Mortgages (Section 245)	X				
Adjustable Rate Mortgages 9ARMs)(Section 251)	X				
Manufactured Homes (Title I)	X				

BILLING CODE 4210-32-C

Appendix E—Elements of a State Certification Program

Congress has assigned Federal responsibility to the Environmental Protection Agency (EPA) for the definition, implementation, and oversight of State Certification Programs for workers, contractors, and inspectors engaged in the detection and reduction of lead-based paint hazards. The Department of Housing and Urban Development (HUD) has a strong interest in the strength and rigor of the EPA program, because HUD must rely on the effectiveness of the EPA program to assure the safe detection and reduction of those lead-based paint hazards.

In October 1992, Congress passed the Residential Lead-Based Paint Hazard Reduction Act. This legislation requires EPA to promulgate regulations governing the accreditation of training programs, the certification of contractors and the training of workers engaged in lead-based paint activities. These regulations must contain work practice standards. Finally, EPA must develop a model State program containing procedures for States to gain EPA approval of their programs.

Under the statute, lead-based paint activities are defined as:

(a) In the case of target housing: risk assessment, inspection, and abatement; and

(b) In the case of any public building constructed before 1978, commercial building, bridge, or other structure or superstructure: identification of lead-based paint and materials containing lead-based paint, deleading, removal of lead from bridges, and demolition.

EPA is currently developing the regulations required under this new legislation. However, since EPA's regulations are not currently available, States that commit to develop appropriate accreditation and certification programs as required by this NOFA are encouraged to enact broad enabling statutes. Legislation that is overly prescriptive may need to be modified in order to be acceptable under EPA's upcoming regulations.

HUD and EPA can, however, at this time define a minimum set of basic elements that *must* be contained in the enabling legislation. They are enumerated in #1 below. HUD and EPA also believe that additional elements should be included in legislation. These are identified in #2 below.

1. The enabling statute, at a minimum, shall contain the following elements:

a. *Agency.* Establish an agency, or agencies, or designate an existing State agency, or agencies, to implement the State program.

b. *Certification.* Authorize and direct the agency, or agencies, to promulgate regulations requiring the certification of contractors who offer to perform lead-hazard detection or lead-hazard reduction services.

c. *Worker Training.* Authorize and direct the agency, or agencies, to promulgate regulations setting training requirements for workers, inspectors, and other persons directly and substantially involved in the performance of lead-based paint activities. Such regulations shall establish minimum acceptable levels of training, and periodic refresher training for each class of workers, and shall require that training shall be provided by accredited training providers.

d. *Accreditation of Training Providers.* Authorize and direct the agency, or agencies, to promulgate regulations to establish the accreditation of training programs. The legislation shall require that the regulation cover the following: (1) Minimum requirements for the accreditation of training providers; (ii) minimum training curriculum requirements; (iii) minimum training hour requirements; (iv) minimum hands-on training requirements; (v) minimum trainee competency and proficiency requirements; and (vi) minimum requirements for training program quality control.

e. *Standards.* Authorize and direct the agency, or agencies, to promulgate regulations establishing standards for performing lead-based paint activities, taking into account reliability, effectiveness, and safety.

f. *Compliance.* Authorize and direct the agency, or agencies, to promulgate regulations that will require any activity, involving lead-hazard detection or lead-hazard reduction procedures, to comply with agency regulations and to use certified and accredited personnel.

g. *Enforcement.* Authorize and direct the agency, or agencies, to promulgate regulations that provide for the enforcement of the State Certification Program, and that establish suitable sanctions for those who fail to comply with program requirements. The regulations shall include provisions for the decertification and deaccreditation of programs and personnel.

h. *Federal Funding Eligibility.* Authorize and direct the agency, or agencies, to revise its regulations and procedures from time to time to assure that State lead-hazard activities continue to be eligible for Federal funding, by meeting the State certification program standards and other requirements that may from time to time be promulgated by EPA, HUD, and such other Federal agencies as may have jurisdiction over lead hazards;

i. *Reciprocity.* Authorize the agency, or agencies, to establish liaison with the other states having a State Certification Program to assure the maximum consistency of program requirements, in order to facilitate reciprocity of certification and accreditation among the several States:

2. In addition to the mandatory elements present in #1 above, HUD and EPA strongly recommend that the enabling legislation include:

a. *Staffing.* Authorize and direct the agency, or agencies to dedicate suitable staff and to acquire suitable space, equipment, supplies and other items necessary for the operations of the program.

b. *Fees.* Authorize the agency, or agencies, to collect such fees for certification, accreditation, and other reviews as State policy may determine to be necessary to help support the activities of the agency or agencies.

c. *Laboratory Oversight.* Authorize and direct the agency, or agencies, to cooperate with EPA in any joint oversight procedures EPA may propose for laboratories accredited under the EPA laboratory accreditation program for laboratories that offer to provide lead analysis services.

d. *Data Collection.* Authorize the agency, or agencies, to establish a unit for the collection and analysis of data on lead-hazard detection and lead-hazard reduction activities in the State, and on the certification, accreditation, and enforcement activities of the agency.

e. *Public Education.* Authorize the agency, or agencies, in cooperation with other relevant agencies of the State, to conduct programs of public education on the nature and consequences of lead hazards and on the need for lead-hazard reduction activities to be conducted under careful supervision and by certified and accredited personnel in order to assure the public safety.

Appendix F—Statement of Requirements: Lead-Based Paint Element for Comprehensive Housing Affordability Strategy

Section 1024 of the Housing and Community Development Act of 1992 established the requirement that, to be considered an eligible applicant for Lead-Based Paint Grant Program funds, a State or unit of general local government must have a Comprehensive Housing Affordability Strategy (CHAS) that has been approved by HUD. Current CHAS regulations were published in the **Federal Register** on September 1, 1992, at 57 FR 40038, as amended, in part, on March 12, 1993 at 58 FR 13686 (CHAS final rule).

States and units of local governments that receive direct allocations of HOME Program or Community Development Block Grant Program funds are already required to submit a full CHAS. The instructions for developing a five-year CHAS or annual update for Fiscal Year 1993 were set out in CPD Notices 92–25, 92–28, and 92–36.

Any otherwise eligible jurisdiction that wishes to apply for funds pursuant to this NOFA, but does not have an approved Fiscal Year 1993 CHAS for the purposes of HOME, CDBG, or other funding sources, may develop an abbreviated strategy for the purposes of meeting the CHAS requirement, in accordance with § 91.25 of the CHAS final rule and instructions to be issued by HUD. Applicants are advised to begin preparation of the abbreviated strategy at the earliest possible time in order to have sufficient time to fulfill the applicable citizen participation requirements, which provide that the strategy must be available to the public for at least thirty days before its submission to HUD.

Section 1014 of the Housing and Community Development Act of 1992 also established the requirement that each Comprehensive Housing Affordability Strategy (CHAS) contain a lead-based paint

element. For most jurisdictions, this requirement will be implemented beginning with the new five-year CHASs to be submitted for Fiscal Year 1994. However, to be considered an eligible applicant, States and units of local government that wish to apply for Fiscal Year 1993 Lead-Based Paint Grant Program funds pursuant to this NOFA must amend their existing CHASs to include a lead-based paint element. The amendment must be submitted to HUD prior to or concurrently with the submission of its grant application. While HUD approval of the amendment is not required, failure to submit this amendment to HUD in a timely manner will result in disqualification of a jurisdiction's application. A separate copy of this amendment must be included in the grant application.

A jurisdiction that wishes to apply for funds pursuant to this NOFA must amend its CHAS as follows:

Market and Inventory Conditions—The jurisdiction must estimate the number of housing units within the jurisdiction that are occupied by low-income and very low-income households and that contain lead-based paint hazards as defined in section 1004 of the Residential Lead-Based Paint Hazard Reduction Act of 1992. Among the sources of information for the lead-based paint assessment are State or community health organizations, and census data on pre-1980 housing stock, which constitutes a satisfactory indicator of the lead-based paint hazard. When preparing this amendment, the jurisdiction shall consult with State or local health and child welfare agencies and examine existing data related to lead-based paint hazards and poisonings, including health department data on the addresses of housing units in which children have been identified as lead-poisoned. No special surveys are required.

Five-Year Strategy—The jurisdiction shall outline the actions proposed to be undertaken over the coming five years to evaluate and reduce lead-based paint hazard, and describe how lead-based paint hazard reduction will be integrated into housing policies and programs.

Annual Plan—Based on the strategy outlined in the five-year strategy section of its CHAS, the jurisdiction shall outline the actions to be undertaken over the coming year to evaluate and reduce lead-based paint hazards.

The Department has determined that an amendment that adds a lead-based paint element to an existing CHAS does *not* constitute a substantial amendment, as defined at § 91.5 of the CHAS final rule. Consequently, a jurisdiction is not required to comply with the CHAS citizen participation requirement for a public comment period. However, the jurisdiction must inform the public of the change by publication of a description of the change concurrently with its submission to HUD. The jurisdiction is not required to solicit comment on the change.

Reference: For communities that wish further guidance on what classes of activities should be considered for inclusion in the lead-based paint element, you may wish to obtain a copy of a HUD's *Comprehensive and Workable Plan for the Abatement of Lead-Based Paint in Privately Owned Housing—A Report to Congress*, December, 1990, particularly the Executive Summary. A copy may be purchased from HUD USER, 1–800–245–2691, document # ACCN–5716 for a reproduction cost of about $5.00. HUD USER will accept credit card orders.

[FR Doc. 93–13101 Filed 6–3–93; 8:45 am]

BILLING CODE 4210–32–M

federal register

Friday
June 4, 1993

Part V

Department of Housing and Urban Development

Office of the Assistant Secretary

Public Housing Drug Elimination Technical Assistance Program; Notice of Funding Availability

DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT

Office of the Assistant Secretary for Public and Indian Housing

[Docket No. N-93-3619; FR-3508-N-01]

Public Housing Drug Elimination, Technical Assistance Program; Notice of Funding Availability (FY 1993)

AGENCY: Office of the Assistant Secretary for Public and Indian Housing, HUD.

ACTION: Notice of Funding Availability (NOFA) for Fiscal Year (FY) 1993.

SUMMARY: This NOFA announces the availability of $600,000 in funds to provide short-term technical assistance to public housing agencies (PHAs), Indian housing authorities (IHAs), resident management corporations (RMCs), and incorporated resident councils (RCs) that are combating abuse of controlled substances in public housing communities. These funds reimburse consultants who provide expert advice and work with housing authorities or resident councils to assist them in gaining skills and training to eliminate drug abuse and related problems from public housing communities. In the body of this document is information concerning the purpose of the NOFA, applicant eligibility, selection criteria, eligible and ineligible activities, application processing, consultant eligibility, and consultant application processing.

DATES: This NOFA is effective upon publication. Technical assistance applications and consultant application kits may be immediately submitted to the address specified in the Application Kit. There is no application submission deadline for short-term technical assistance funds available under this NOFA. Technical assistance applications will be reviewed on a continuing basis, until funds available under this NOFA are expended.

ADDRESSES: (a) An application kit may be obtained from the local HUD Field Office with jurisdiction or by calling HUD's Resident Initiative Clearinghouse on 1-800-955-2232. The application kit contains information on all exhibits and requirements of this NOFA.

(b) An applicant must submit the application to the address specified in the application kit.

(c) In addition, applicants must simultaneously forward a copy of these documents to the HUD Field Office or Office of Indian Programs (OIP) with jurisdiction over the relevant housing authority. The HUD Field Office copy must be addressed to Director, Division of Public Housing or Office of Indian Programs.

FOR FURTHER INFORMATION CONTACT: Elizabeth Cocke, Drug Free Neighborhoods Division (DFND), Department of Housing and Urban Development, 451 Seventh Street, SW., room 4118, Washington, DC 20410, telephone (202) 708-1197. A telecommunications device for hearing or speech impaired persons (TDD) is available at (202) 708-0850. (These are not toll-free numbers.)

SUPPLEMENTARY INFORMATION:

Paperwork Reduction Act Statement

The information collection requirements contained in this notice have been submitted to the Office of Management and Budget for review under the provisions of the Paperwork Reduction Act (44 U.S.C. 3501-3520). No person may be subjected to a penalty for failure to comply with these information collection requirements until they have been approved and assigned an OMB control number. The OMB control number, when assigned, will be announced by separate notice in the **Federal Register**. Information on the estimated public reporting burden is provided as follows:

Section of NOFA affected	Number of respondents	Number of respondents per response	Total annual responses	Hours per response	Total hours
3.1	400	1	400	24	9,600
4.1(b)	400	1	400	16	6,400
4.2	400	1	400	1	400
5.3	300	1	300	16	4,800
Total annual reporting burden in hours					21,200

I. Purpose and Substantive Description

(a) Authority

Funds for both training and this technical assistance (TA) program have been appropriated by the Departments of Veterans Affairs and Housing and Urban Development, and Independent Agencies Appropriations Act, 1993 (Pub. L. 102-369, approved October 6, 1992) (93 App. Act).

The TA program is intended to provide immediate, short-term (90 days for completion) training, recommendations and assistance to assess needs, train staff and residents, identify and design appropriate anti-drug strategies, and generally prepare and educate public housing and resident organization staff and residents to address problems related to the abuse of controlled substances in public housing communities. Housing authorities and eligible resident organizations with or without a drug elimination grant in their communities are encouraged to use this resource. Technical assistance is not intended for program implementation or the financial support of existing programs.

(b) Allocation Amounts

A total of $600,000 in FY 1993 funds is being made available under this NOFA. Applications for short-term technical assistance may be funded up to $10,000 per request.

(c) Eligibility

The following is a listing of eligible applicants, eligible consultants, eligible activities, ineligible activities, and general program requirements under this NOFA.

(1) Eligible Applicants.

(i) Public housing agencies (PHAs), Indian housing authorities (IHAs), incorporated resident councils (RCs) resident organizations (ROs) in the case of IHAs, and resident management corporations (RMCs) are eligible to receive short-term technical assistance services under this NOFA.

(ii) An eligible RC or RO must be an incorporated nonprofit organization or association that meets each of the following requirements:

(A) It must be representative of the residents it purports to represent.

(B) It may represent residents in more than one development or in all of the developments of a PHA or IHA, but it must fairly represent residents from each development that it represents.

(C) It must adopt written procedures providing for the election of specific

officers on a regular basis (but at least once every three years).

(D) It must have a democratically elected governing board. The voting membership of the board must consist of residents of the development or developments that the resident organization or resident council represents.

(iii) An eligible RMC must be an entity that proposes to enter into, or that enters into, a management contract with a PHA under 124 CFR part 964, or a management contract with an IHA. An RMC must have each of the following characteristics:

(A) It must be a nonprofit organization that is incorporated under the laws of the State or Indian tribe in which it is located.

(B) It may be established by more than one resident organization or resident council, so long as each such organization or council:

(*1*) Approves the establishment of the corporation; and

(*2*) Has representation on the Board of Directors of the corporation.

(C) It must have an elected Board of Directors.

(D) Its by-laws must require the Board of Directors to include representatives of each resident organization or resident council involved in establishing the corporation.

(E) Its voting members must be residents of the development or developments it manages.

(F) It must be approved by the resident council. If there is no council, a majority of the households of the development must approve the establishment of such an organization to determine the feasibility of establishing a corporation to manage the development.

(G) It may serve as both the resident management corporation and the resident council, so long as the corporation meets the requirements of 24 CFR part 964 for a resident council. (In the case of a resident management corporation for an Indian Housing Authority, it may serve as both the RMC and the RO, so long as the corporation meets the requirements of this NOFA for a resident organization.)

(iv) Applicants are eligible to apply to receive technical assistance if they are already receiving technical assistance under this program, as long as the request creates no scheduling conflict with other TA requests from the same applicant.

(v) Applicants are eligible to apply to receive technical assistance whether or not they are already receiving drug elimination funds under the Public Housing Drug Elimination Program.

(vi) In circumstances determined by HUD to be drug-related and to require emergency attention, eligible parties may receive technical assistance initiated and approved by HUD. These circumstances may include riots, disputes among tenants, and disputes between tenants and management. HUD will use the procedures of this NOFA to select a consultant in these cases.

(2) Eligible Consultants

Consultants who want to provide short-term technical assistance services under this NOFA must be listed in the Consultant Database approved by HUD's Drug Free Neighborhoods Division (DFND). To be included in that database, consultants must complete, in accordance with the requirements of section I.(c)(2)(ii), below, of this NOFA, a consultant application packet available from the Resident Initiatives Clearinghouse at 1–800–955–2232, and submit the packet to the address specified in the application kit. (This is a toll-free number.)

(i) *Consultant eligibility.* HUD is seeking individuals or entities who have experience working with public or Indian housing, or other low-income populations to provide short-term technical assistance under this NOFA. Consultants who have previously been deemed eligible and are part of the TA Consultant Database need not reapply. To qualify as eligible consultants, individuals or entities should have experience in one or more of the following general areas:

(A) PHA/IHA-related experience: agency organization and management; facility operations; program development; experience working with residents and community organizations.

(B) Drug-related experience: prevention/intervention programs; enforcement strategies; alternative programs.

(C) HUD especially encourages PHAs, IHAs, PHA/IHA employees, RMCs, incorporated resident councils and resident organizations, and public and Indian housing residents, with experience in the above areas, to submit a consultant application for eligibility under this NOFA. Eligible consultants will be entered into the Consultant Database for possible recommendation to Technical Assistance applicants.

(ii) *Applying to be a consultant.* Individuals or entities interested in being listed in the TA Consultant Database should prepare their applications and send them to the address specified in the application kit. Before they can be entered into the Consultant Database, consultants must submit an application that includes the following information:

(A) The Consultant Resource Inventory Questionnaire, including three references;

(B) A resume;

(C) A narrative statement regarding the consultant's experience in the specific skills identified on the Resource Inventory Questionnaire, and outlining the consultant's overall approach;

(D) Evidence submitted by the consultant to HUD that documents the standard daily fee previously paid to the consultant for technical assistance services similar to those requested under this NOFA. This evidence can include an accountant's statement, W–2 Wage Statements, or invoices, and should be supplemented with a statement or other evidence of days worked in the course of the particular project (for an invoice) or for a tax year in the case of a W–2 Statement.

(iii) *Consultant payment.* HUD will determine a specific fee to pay a consultant under this NOFA, subject to a maximum cap of the daily equivalent of the maximum rate paid for ES–IV of the Executive Schedule for Federal White-Collar Workers, based upon the evidence submitted in section I.(c)(2)(D), above, of this NOFA.

(iv) *Conflicts of interest.* In addition to the conflict of interest requirements in 24 CFR part 85:

(A) No person who is an employee, agent, officer, or appointed official of the applicant may be funded as a consultant to the applicant by this Drug Elimination Technical Assistance program.

(B) Consultants who wish to provide Drug Elimination Technical Assistance services through this program may not have any involvement in the preparation or submission of the TA proposal which requests their services. Any involvement of the consultant will be considered a conflict of interest, which makes the consultant ineligible for providing consulting services to the applicant, and could disqualify the consultant from future consideration.

(3) Eligible Activities

To assist the eligible applicants identified in section I.(c)(1), above, of this NOFA, in responding immediately to drug-related problems in public and Indian housing developments, the U.S. Department of Housing and Urban Development (HUD) has supplemented the Public Housing Drug Elimination Program (PHDEP) and Youth Sports Program (YSP) with funds for short-term technical assistance (TA). Short-term technical assistance means that consultants shall only be reimbursed for

a maximum of 30 days of work, which must be completed in less than 90 days from the date of the approved statement of work. The TA program is intended to provide short-term, immediate assistance to PHAs, IHAs, RMCs, RCs and ROs developing and/or implementing their drug elimination strategies. The program will fund the use of consultants who can provide the necessary consultation and/or training for the types of activities outlined below, or to fund the use of consultants who will assist the applicant in undertaking a task such as program planning and development for future drug elimination strategies, or conducting a needs assessment or survey. To assist housing authorities and resident councils, the TA program funds efforts in:

(i) Assessing drug problems in public or Indian Housing development(s) and surrounding community(ies);

(iii) Designing and identifying appropriate anti-drug-related practices and programs in the following areas:

(A) Law enforcement strategies, including resident security patrols;

(B) Management techniques;

(C) Youth initiatives;

(D) Family management/parenting;

(E) Resident intervention and assistance programs;

(F) Community organization and leadership development; and

(G) Other areas that meet the drug elimination purposes of this NOFA, as determined by HUD.

(iii) Training for housing authority staff and residents in anti-drug practices, programs and management;

(iv) Improving overall agency management, operations and programming so that the applicant can more effectively respond to drug problems in the targeted public housing development(s).

(4) Ineligible Activities

(i) Funding is not permitted for any type of monetary compensation for residents unless they are listed in the TA Consultant Database and are working as consultants.

(ii) Funding is not permitted for any activity that is funded under any other HUD program.

(iii) Funding is not permitted for salary or fees to staff of the applicant, or former staff of the applicant within a year of his or her leaving the housing authority or resident organization.

(iv) Funding is not permitted for underwriting conferences.

(v) Funding is not permitted for conference speakers unless the speaker will also be providing additional TA as outlined in the eligible activities in sections (c)(3)(i–ii) of this NOFA.

(vi) Funding is not permitted for program implementation, proposal writing, the purchase of hardware or equipment, or any activities deemed ineligible in the Drug Elimination Program, excluding consultant's fees.

(5) General Program Requirements

(i) Applicants for short-term technical assistance may be funded up to $10,000 per request, with HUD providing payment directly to the authorized consultant for the consultant's fee, travel, room and board, and other approved costs.

(ii) Applicants that have not previously received technical assistance under this program may submit only one application initially. After the applicant's initial technical assistance report has been received and reviewed by HUD or the contractor administering the program, as appropriate, the applicant may submit multiple applications.

(d) Selection Criteria/Ranking Factors

An application must include the minimum required elements listed as section III.(a) of this NOFA, and cannot request assistance for ineligible activities as listed in I.(c)(4)(iv), and will be scored according to the criteria outlined below:

(1) The extent to which the applicant needs short-term technical assistance. This will be measured by the applicant's discussion of the problems that triggered the request for assistance under this NOFA. (Maximum points: 10)

(2) The extent to which the applicant clearly describes the kind of technical assistance and skills needed to address the problems, and how well the technical assistance requested will address the problems. (Maximum points: 10)

(3) The likelihood that the requested technical assistance will assist the applicant's current drug elimination strategy, as described in the application; or, if the applicant does not currently have a strategy, the extent to which the technical assistance will help them develop a drug elimination strategy. (Maximum points: 10)

(e) Application Review, Awards, and Payment

(1) Application Review

Applications will be reviewed as they are received, and will be time- and date-stamped to determine their order of receipt. An application must include both the descriptive letter (or form provided in the application kit) and certification statement (or form provided in the application kit) to be eligible for funding. All applications that qualify on the basis of the minimum required elements will be scored on the basis of the selection criteria in section I.(d) of this NOFA. Applications that receive a total of 15 or more points, with no less than 3 points in any of the three selection criteria in section I.(d) of this NOFA will be eligible for funding. Eligible applications will be funded in the order in which negotiations for a statement of work are completed between the consultant and the program administrator until all funds are expended. The basis for each funding decision under this section will be documented.

(2) Application Awards

(i) If the application includes the descriptive letter (or forms) requesting eligible activities, the certification statement (or form), and at least 15 points as described in section I.(e)(1) of this NOFA, it is eligible for funding. If sufficient funds are available to fund the technical assistance request, staff will confer with the applicant to confirm the work requirements. The TA Consultant Database will be searched to choose at least three consultants who: (1) Have a principal place of business or residence located within a reasonable distance from the applicant, as determined by HUD or its agent, or (2) appear to have the requisite knowledge and skills to assist the applicant in addressing its needs. The applicant's preference for a consultant will be taken into account. An HA employee may not serve as a consultant to his or her employer. An HA employee who serves as a consultant must be on annual leave to receive the consultant fee. A list of the suggested consultants will be forwarded to the applicant. From this list, the applicant will recommend the consultant to provide the requested TA. Instructions for consultants to be included in the TA Consultant Database are outlined above in section I.(b)(2) of this NOFA.

(ii) The applicant must contact each TA consultant from the list provided. After making contact with each consultant, the applicant must list the consultants in order of preference, indicating any that are unacceptable, and state the reasons for its preference. There is no guarantee that the applicant's first preference will be approved. Consultants will only be approved for the TA if the request is not in conflict with other requests for the consultant's services.

(iii) Staff designated by HUD will work with the consultant and applicant

to develop a statement of work that includes a timeline and estimated budget. The statement of work should also include a discussion of the kind of technical assistance and skills needed to address the problem, and how the technical assistance requested will address these needs; a description of the current drug elimination strategy, and a discussion of how the requested technical assistance will assist that strategy. If the applicant does not currently have a strategy, there should be a statement of how the technical assistance will help them develop a drug elimination strategy. When the statement of work is approved, the consultant will be authorized to start work. The consultant must receive written authorization from HUD or its authorized agent before he or she can begin to provide technical assistance under this NOFA. The applicant and the relevant Field Office or OIP will also be notified. Because this program is for short-term technical assistance, consultants shall only be reimbursed for a maximum of 30 days of work, which must be completed in fewer than 90 days from the date of the approved statement of work.

(3) Payment for TA Consultants

The consultant must submit a report of its activities, findings and recommendations, a fee invoice, and its expenses and receipts to the address specified in the application kit. A copy of the report must also be submitted to the applicant. Required elements of these reports are outlined in the application kit. After the report and expenses have been approved, and a verbal or written evaluation is received from the applicant, payment will be issued to the consultant. Evaluation forms are then sent to the applicant, to be completed and returned.

II. Application Process

(a) Application Kit

An application kit may be obtained from the local HUD FO or OIP, or by calling HUD's Resident Initiatives Clearinghouse on 1–800–955–2232. The application kit contains information on all exhibits and requirements of this NOFA.

(b) Application Submission

This NOFA is effective upon publication. Short-term (90 days from completion) technical assistance applications and consultant application kits may be immediately submitted to the address specified in the application kit. There is no application submission deadline for the short-term technical assistance grants available under this NOFA. Technical assistance applications will be reviewed on a continuing first-come, first-serve basis, until funds under this NOFA are no longer available.

(1) An applicant must submit the application and the necessary assurances to the address specified in the Application Kit.

(2) In addition, applicants must simultaneously forward a copy of these documents to the HUD Field Office or Office of Indian Programs with jurisdiction over the relevant housing authority. The HUD Field Office copy must be addressed to Director, Division of Public Housing or Office of Indian Programs, as appropriate.

III. Checklist of Application Submission Requirements

Each application for a grant under this program must include the following:

(a) An application will not be considered for funding unless it includes, at a minimum, the following elements:

(1) An application letter, of no more than two pages, which responds to each of the selection criteria in section I.(d) of this NOFA, or the completed application forms available in the application kit, signed by the executive director of the housing authority or the authorized representative of the RMC or incorporated RC or RO, and;

(2) A certification statement, or the form provided in the application kit, signed by the executive director of the housing authority or the authorized representative of the RMC or incorporated RC or RO, certifying that any technical assistance received will be used in compliance with all requirements in the NOFA.

(b) HUD Form 2880 (Lobbying Disclosure Form).

(c) If the applicant has a particular consultant to recommend to provide the technical assistance, the response should identify the consultant and the basis for the recommendation. A consultant recommended by an applicant is not guaranteed to be approved to provide the requested technical assistance. If the consultant recommended by an applicant is not listed in the Consultant Database approved by HUD's Drug Free Neighborhoods Division (DFND), the consultant must apply as outlined in section I.(c)(2), above, of this NOFA. These consultant applications to be included in the TA Consultant Database will be given expedited review by the Department. However, a consultant must be listed to be eligible for funding under this NOFA.

IV. Corrections to Deficient Applications

(a) HUD will notify an applicant, in writing, or by telephone, of any curable technical deficiencies, such as a missing signature in the application. A log of telephone notifications will be maintained. The applicant must correct the deficiency in accordance with the information specified in HUD's notification. The application will not be given further consideration until the deficiency is corrected.

(b) Curable technical deficiencies relate to items that are not necessary to make a determination of an applicant's eligibility. The items necessary for this determination are listed at section III.(a) of this NOFA, although missing signatures on the application letter, certification or forms are curable.

V. Other Matters

(a) Nondiscrimination and equal opportunity. The following nondiscrimination and equal opportunity requirements apply:

(1) The requirements of title VIII of the Civil Rights Act of 1968, 42 U.S.C. 3600–20 (Fair Housing Act) and implementing regulations issued at subchapter A of title 24 of the Code of Federal Regulations, as amended by 54 FR 3232 (published January 23, 1989); Executive Order 11063 (Equal Opportunity in Housing) and implementing regulations at 24 CFR part 107; and title VI of the Civil Rights Act of 1964 (42 U.S.C. 2000d–2000d–4) (Nondiscrimination in Federally Assisted Programs) and implementing regulations issued at 24 CFR part 1;

(2) The Indian Civil Rights Act (ICRA) (title II of the Civil Rights Act of 1968, 25 U.S.C. 1301–1303) provides, among other things, that "no Indian tribe in exercising powers of self-government shall * * * deny to any person within its jurisdiction the equal protection of its laws or deprive any person of liberty or property without due process of law." The Indian Civil Rights Act * applies to any tribe, band, or other group of Indians subject to the jurisdiction of the United States in the exercise of recognized powers of self-government. The ICRA is applicable in all cases where an IHA has been established by exercise of tribal powers of self-government.

(3) The prohibitions against discrimination on the basis of age under the Age Discrimination Act of 1975 (42 U.S.C. 6101–07) and implementing regulations at 24 CFR part 146, and the prohibitions against discrimination against handicapped individuals under section 504 of the Rehabilitation Act of

1973 (29 U.S.C. 794) and implementing regulations at 24 CFR part 8;

(4) The requirements of Executive Order 11246 (Equal Employment Opportunity) and the regulations issued under the Order at 41 CFR chapter 60;

(5) The requirements of section 3 of the Housing and Urban Development Act of 1968, 12 U.S.C. 1701u (Employment Opportunities for Lower Income Persons in Connection with Assisted Projects); and

(6) The requirements of Executive Orders 11625, 12432, and 12138. Consistent with HUD's responsibilities under these Orders, recipients must make efforts to encourage the use of minority and women's business enterprises in connection with funded activities.

(b) Use of debarred, suspended or ineligible contractors. Applicants for short-term technical assistance under this NOFA are subject to the provisions of 24 CFR part 24 relating to the employment, engagement of services, awarding of contracts, or funding of any contractors or subcontractors during any period of debarment, suspension, or placement in ineligibility status.

(c) Drug-Free Workplace Act of 1988. The requirements of the Drug-Free Workplace Act of 1988 at 24 CFR part 24, subpart F.

(d) Environmental Impact. In accordance with 40 CFR 1508.4 of the regulations of the Council on Environmental Quality and 24 CFR 50.20(b) of the HUD regulations, the policies and procedures proposed in this document are determined not to have the potential of having a significant impact on the quality of the human environment, and, therefore, are categorically excluded from the requirements of the National Environmental Policy Act of 1969. Accordingly, a Finding of No Significant Impact is not required.

(e) Family Impact. The General Counsel, as the Designated Official for Executive Order 12606, the Family, has determined that the provisions of this NOFA have the potential for a positive, although indirect, impact on family formation, maintenance and general well-being within the meaning of the Order. The NOFA is designed to assist housing authorities and resident organizations in their public housing anti-drug-related efforts by providing short-term technical assistance. HUD expects that the provision of such assistance will better prepare and educate housing authority and resident organization officials to confront the widespread abuse of controlled substances in public housing communities. This, in turn, would, indirectly affect the quality of life for public housing residents.

(f) Federalism Impact. The General Counsel, as the Designated Official under section 6(a) of Executive Order 12612, Federalism, has determined that the provisions of this NOFA do not have "federalism implications" within the meaning of the Order. The NOFA provides short-term technical assistance to housing authorities and resident organizations to assist them in their anti-drug efforts in public housing communities. The involvement of resident organizations should greatly increase the success of the anti-drug efforts under this technical assistance program and, therefore, should have positive effects on the target population. As such, the program helps housing authorities to combat serious drug problems in their communities.

(g) Documentation and Public Access Requirements; Applicant/Recipient Disclosures: HUD Reform Act.

Disclosures. HUD will make available to the public for five years all applicant disclosure reports (HUD Form 2880) submitted in connection with this NOFA. Update reports (also Form 2880) will be made available along with the applicant disclosure reports, but in no case for a period of less than three years. All reports—both applicant disclosures and updates—will be made available in accordance with the Freedom of Information Act (5 U.S.C. 552) and HUD's implementing regulations at 24 CFR part 15, subpart C, and the notice published in the **Federal Register** on January 16, 1992 (57 FR 1942), for further information on these disclosure requirements.)

Public notice. HUD will include recipients that receive assistance pursuant to this NOFA in its quarterly **Federal Register** notice of recipients of all HUD assistance awarded on a competitive basis. (See 24 CFR 12.16(b), and the notice published in the **Federal Register** on January 16, 1992 (57 FR 1942), for further information on these requirements.)

(h) Section 112 HUD Reform Act. Section 13 of the Department of Housing and Urban Development Act contains two provisions dealing with efforts to influence HUD's decisions with respect to financial assistance. The first imposes disclosure requirements on those who are typically involved in these efforts—those who pay others to influence the award of assistance or the taking of a management action by the Department and those who are paid to provide the influence. The second restricts the payment of fees to those who are paid to influence the award of HUD assistance, if the fees are tied to the number of housing units received or are based on the amount of assistance received, or if they are contingent upon the receipt of assistance.

Section 13 was implemented by final rule published in the **Federal Register** on May 17, 1991 (56 FR 22912) as 24 CFR part 86. If readers are involved in any efforts to influence the Department in these ways, they are urged to read the final rule, particularly the examples contained in appendix A of the rule.

Authority: The Departments of Veterans Affairs and Housing and Urban Development, and Independent Agencies Appropriations Act of 1991 (Pub. L. 101–507, approved November 5, 1990), and the Departments of Veterans Affairs and Housing and Urban Development, and Independent Agencies Appropriations Act 1992, (Pub. L. 102–139, approved October 28, 1991).

Dated: April 28, 1993.

Michael B. Janis,

General Deputy, Assistant Secretary for Public and Indian Housing.

[FR Doc. 93–13143 Filed 6–3–93; 8:45 am]

BILLING CODE 4210–33–M

federal register

Friday
June 4, 1993

Part VI

Department of Education

Reporting of Final Expenditures for Expired Discretionary Grants; Notice

DEPARTMENT OF EDUCATION

Accounting and Financial Management Service Reporting of Final Expenditures for Expired Discretionary Grants (EDPMS 272 & SF 269 Reporting)

AGENCY: Department of Education.

ACTION: Notice of Enforcement of Education Department Closeout Procedures.

SUMMARY: The Secretary publishes this notice to advise the public that there is a requirement at 34 CFR 74.111(b)(3) and 80.50(b) that recipients of discretionary grants or cooperative agreements report final expenditures within 90 days after the expiration of a grant. The recipients must report the final expenditures on the first Federal Cash Transaction Report (EDPMS 272) due after the end of the 90-day period. If the recipient is also required to report expenditures on the Financial Status Report (SF 269), the final expenditures must be reported on the final SF 269, which is due 90 days after the end of a grant. The Secretary is taking this action as part of the Department's response to reports by the General Accounting Office and the Department's Inspector General recommending that the Department improve its grant closeout procedures.

EFFECTIVE DATE: June 4, 1993.

FOR FURTHER INFORMATION CONTACT: Requests for further information regarding the enforcement procedures should be sent to: Peggy Lindsay, Staff Accountant, Accounting and Financial Management Service, U.S. Department of Education, Financial Operations Division, Room 3083, 400 Maryland Avenue, SW., Washington, DC 20202–4331. Information may also be obtained by calling (202) 401–1160. Individuals who use a telecommunications device for the deaf (TDD) may call the Federal Information Relay Service (FIRS) at 1–800–877–8339 between 8 a.m. and 8 p.m., Eastern time, Monday through Friday.

SUPPLEMENTARY INFORMATION: Department of Education regulations generally require a recipient to report final expenditures under a grant or cooperative agreement within 90 days after the end of the project period for the grant. See 34 CFR 74.111(b)(3) and 80.50(b). However, the actual date that the Department will accept for submission of this information depends upon the report that is submitted and the due date for that report under the Department's regulations. This notice informs recipients of these requirements as part of the Department's effort to improve grant closeout procedures.

All discretionary grant and cooperative agreement recipients report expenditures on the EDPMS 272. This report consolidates, in a single report, reporting of expenditures on all grants made to the grantee. Grantees and recipients of cooperative agreements are required under 34 CFR 74.74(d) and 80.41(c)(4) to report expenditures on the EDPMS 272 on a quarterly basis, unless they have total annual grant advance authorizations in excess of one million dollars. If a recipient exceeds this advance authorization level, it must submit the EDPMS 272 every month, through an electronic filing process.

However, the reporting cycle for the monthly or quarterly EDPMS 272 may not always coincide with the 90-day due date for reporting of final expenditures. For example, depending on the grant expiration date, the due date for the EDPMS 272 may occur before the end of the 90-day reporting period for some expired grants. Thus, in order to ensure that the recipient can take advantage of the 90-day final expenditure reporting period, the Department advises recipients that they must report final expenditures no later than on the first EDPMS 272 report that is due after the end of the 90-day period.

In addition to reporting expenditures on the EDPMS 272, recipients that are subject to cost sharing or matching requirements, have been designated high risk grantees, generate program income, or are subject to restricted indirect cost rates are also required to report expenditures separately for each grant on the SF 269. Under the Department's regulations, a grantee must report final expenditures under the grant, on a final SF 269, 90 days after the expiration or termination of grant support. 34 CFR 74.73(d) and 74.111(b)(3) or 80.41(b)(4) and 80.50(b).

If a recipient believes that it is unable to meet the deadline for the reporting of final expenditures on an expired grant, then the recipient must, under 34 CFR 74.72(g) and 74.111(b)(3) or 80.41(a)(7) and (b)(4), submit a written "justified request" to the appropriate grants officer to extend the reporting period. Requests for extensions of the 90-day limit will be considered by grants officers on a case-by-case basis.

The Secretary interprets a "justified request" ordinarily as one involving circumstances, beyond the control of the grantee, that make it unable to submit a timely report. Justified requests might include cases in which an ongoing audit, investigation, cost dispute, or court action involving the grant prohibit the recipient from expending all of the grant funds. In this situation, the recipient would not be able to report final expenditures until after the dispute is settled and the final costs determined, which could be after the deadline for submission of the recipient's final expenditure report. In such a case, the recipient would have to submit a written "justified request" to the appropriate grants officer for an extension of the report deadline.

A recipient that fails to submit a "justified request" for an extension of the reporting period will lose its authorization to draw on remaining funds under the expired award. In order to restore its authority to draw on the unexpended grant funds, a recipient must submit a written justification to the grants officer, requesting restoration of the recipient's authority to draw on those funds. In this case, the request must be justified under the same standards as a request for extension of the reporting period.

The Secretary is interested in minimizing any difficulties recipients may face when the Department enforces these final reporting procedures. Recipients of discretionary grants and cooperative agreements who have questions or concerns about the reporting requirements described in this notice may contact the Department grants officer identified on the notification of grant award. The contact person for general questions about the new policy is identified at the beginning of this notice under "**FOR FURTHER INFORMATION CONTACT.**"

Authority: 34 CFR 74.72(g), 74.73(d), 74.74(d), 74.111(b)(3), 80.41(a)(7), 80.41(b)(4), 80.41(c)(4), 80.50(b).

Dated: May 27, 1993.

Richard W. Riley,

Secretary of Education.

[FR Doc. 93–13118 Filed 6–3–93; 8:45 am]

BILLING CODE 4000–01–P

federal register

Friday
June 4, 1993

Part VII

Department of the Treasury

Office of the Comptroller of the Currency
Office of Thrift Supervision

Federal Reserve System

Federal Deposit Insurance Corporation

12 CFR Part 34 et al.
Real Estate Appraisals; Notice of Proposed Rulemaking

DEPARTMENT OF THE TREASURY

Office of the Comptroller of the Currency

12 CFR Part 34

[Docket No. 93–10]

FEDERAL RESERVE SYSTEM

12 CFR Part 225

[Regulation Y; Docket No. R–0803]

FEDERAL DEPOSIT INSURANCE CORPORATION

12 CFR Part 323

RIN 3064–AB05

DEPARTMENT OF THE TREASURY

Office of Thrift Supervision

12 CFR Parts 545, 563, 564

[Docket No. 93–78]

RIN 1550–AA64

Real Estate Appraisals

AGENCIES: Office of the Comptroller of the Currency, Treasury; Board of Governors of the Federal Reserve System; Federal Deposit Insurance Corporation; and Office of Thrift Supervision, Treasury.

ACTION: Notice of proposed rulemaking.

SUMMARY: The Office of the Comptroller of the Currency, the Board of Governors of the Federal Reserve System, the Federal Deposit Insurance Corporation, and the Office of Thrift Supervision (collectively the agencies) solicit comments on proposed amendments to the agencies' regulations regarding appraisals of real estate, adopted pursuant to Title XI of the Financial Institutions Reform, Recovery, and Enforcement Act of 1989.

The proposed amendments would increase to $250,000 the threshold level at or below which appraisals are not required pursuant to Title XI, expand and clarify existing exemptions to the Title XI appraisal requirement, and identify additional circumstances when appraisals are not required under Title XI. In addition, the proposal would amend existing requirements governing appraisal content and appraiser independence.

The agencies are proposing these amendments as a result of experience gained from implementing their appraisal regulations. The amendments are an effort to serve federal financial and public policy interests by reducing regulatory burden while requiring Title XI appraisals when such appraisals enhance the safety and soundness of financial institutions or otherwise further public policy. If adopted, this proposal would reduce the number of real estate-related financial transactions that require the services of an appraiser and simplify the preparation of appraisals for federally related transactions.

DATES: Comments must be received by July 19, 1993.

ADDRESSES: Comments should be directed to:

Office of the Comptroller of the Currency

Communications Division, Comptroller of the Currency, 9th Floor, 250 E Street, SW, Washington, DC 20219, Attention: Docket No. 93–10. Comments will be available for public inspection and photocopying at the same location.

Board of Governors of the Federal Reserve System

Comments, which should refer to Docket No. R–0803, may be mailed to Mr. William Wiles, Secretary, Board of Governors of the Federal Reserve System, 20th Street and Constitution Avenue NW., Washington, DC 20551. Comments addressed to Mr. Wiles may also be delivered to the Board's mail room between 8:45 a.m. and 5:15 p.m., and to the security control room outside of these hours. Both the mail room and control room are accessible from the courtyard entrance on 20th Street between Constitution Avenue and C Street, NW. Comments may be inspected in room B–1122 between 9:00 a.m. and 5:00 p.m., except as provided in § 261.8 of the Board's Rules Regarding Availability of Information, 12 CFR 261.8.

Federal Deposit Insurance Corporation

Send comments to Hoyle L. Robinson, Executive Secretary, Federal Deposit Insurance Corporation, 550 17th Street, NW., Washington, DC 20429. Comments may be hand delivered to room F–402, 1776 F Street, NW., Washington, DC on business days between 8:30 a.m. and 5 p.m. [FAX number (202) 898–3838]. Comments will be available for inspection and photocopying in room 7118, 550 17th Street, NW., Washington DC between 9 a.m. and 4:30 p.m. on business days.

Office of Thrift Supervision

Send comments to Director, Information Services Division, Office of Communications, Office of Thrift Supervision, 1700 G Street, NW, Washington, DC 20552, Attention Docket No. 93–78. These submissions may be hand delivered to 1700 G Street, NW, from 9:00 a.m. to 5:00 p.m. on business days; they may be sent by facsimile transmission to FAX number (202) 906–7755. Submissions must be received by 5:00 p.m. on the day they are due in order to be considered by the OTS. Late-filed, misaddressed or misidentified submissions will not be considered by the OTS in this rulemaking. Comments will be available for inspection at 1776 G Street, NW, Level 1C.

FOR FURTHER INFORMATION CONTACT:

Office of the Comptroller of the Currency (OCC)

Thomas E. Watson, National Bank Examiner, Office of the Chief National Bank Examiner, (202) 874–5170; or Horace G. Sneed, Senior Attorney, or F. John Podvin, Jr., Attorney, (202) 874–4460, Bank Operations and Assets Division.

Board of Governors of the Federal Reserve System (Board)

Roger Cole, Deputy Associate Director, (202) 452–2618, Rhoger H. Pugh, Assistant Director, (202) 728–5883, Stanley B. Rediger, Supervisory Financial Analyst (202) 452–2629, or Virginia M. Gibbs, Supervisory Financial Analyst, (202) 452–2521, Division of Banking Supervision and Regulation; or Gregory A. Baer, Senior Attorney (202) 452–3236 or Christopher Bellini, Attorney (202) 452–3269, Legal Division.

Federal Deposit Insurance Corporation (FDIC)

Robert F. Miailovich, Associate Director, (202) 898–6918, James D. Leitner, Examination Specialist, (202) 898–6790, Division of Supervision; or Walter P. Doyle, Counsel, (202) 898–3682, Legal Division.

Office of Thrift Supervision (OTS)

Robert Fishman, Program Manager, Credit Risk, Supervision Policy, (202) 906–5672; Deirdre G. Kvartunas, Policy Analyst, Supervision Policy, (202) 906–7933; Ellen J. Sazzman, Attorney, Regulations and Legislation Division, Chief Counsel's Office, (202) 906–7133.

SUPPLEMENTARY INFORMATION:

I. Background

Title XI of the Financial Institutions Reform, Recovery, and Enforcement Act of 1989 (FIRREA), 12 U.S.C. 3331 *et seq.*, directs the agencies to publish appraisal rules for federally related transactions within the jurisdiction of each agency. The purpose of the

legislation is to provide that federal financial and public policy interests in real estate related transactions will be protected by requiring that real estate appraisals utilized in connection with federally related transactions are performed in writing, in accordance with uniform standards, by individuals whose competency has been demonstrated and whose professional conduct will be subject to effective supervision. See 12 U.S.C. 3331.

Section 1121(4) of FIRREA, 12 U.S.C. 3350(4), defines a federally related transaction as a real estate-related financial transaction that is regulated or engaged in by a federal financial institutions regulatory agency and requires the services of an appraiser. A real estate-related financial transaction is defined as any transaction that involves: (i) The sale, lease, purchase, investment in or exchange of real property, including interests in property, or the financing thereof; (ii) the refinancing of real property or interests in real property; and (iii) the use of real property or interests in real property as security for a loan or investment, including mortgage-backed securities. See 12 U.S.C. 3350(5) (FIRREA section 1121(5)).

In July and August of 1990, the agencies published regulations to meet the requirements of Title XI of FIRREA. See 55 FR 34684 (August 24, 1990) (OCC); 55 FR 27762 (July 5, 1990) (Board); 55 FR 33879 (August 20, 1990) (FDIC); 55 FR 34532 (August 23, 1990) (OTS).

In their appraisal regulations, the agencies identify categories of real estate-related financial transactions that do not require the services of an appraiser in order to protect federal financial and public policy interests or to satisfy principles of safe and sound banking. These real estate-related financial transactions are not federally related transactions under the statutory and regulatory definitions. Accordingly, they are subject to neither Title XI of FIRREA nor those provisions of the agencies' regulations governing appraisals.

In March and April of 1992, the OCC, FDIC and OTS amended their appraisal regulations. Those amendments increased from $50,000 to $100,000 the threshold at or below which the services of an appraiser would not be required. [1] The amendments also identified additional real estate-related financial transactions that do not require the services of an appraiser. See 57 FR 12190 (OCC) (April 9, 1992); 57 FR 9043 (FDIC) (March 16, 1992); 57 FR 12698 (OTS) (April 13, 1992).

In December 1992, Congress provided that the agencies may set a threshold level below which the services of state certified or licensed appraisers are not required in connection with federally related transactions if they determine in writing that the threshold does not represent a threat to the safety and soundness of financial institutions. See Housing and Community Development Act of 1992, Public Law 102–550, sec. 954, 106 Stat. 3672, 3894 (1992) (amending 12 U.S.C. 3341).

As part of the burden reduction study mandated by section 221 of the Federal Deposit Insurance Corporation Improvement Act of 1991, Public Law 102–242, 105 Stat. 2236, 2305, the agencies reviewed their appraisal regulations to determine if additional changes could be made to reduce regulatory burden consistent with federal financial and public policy interests and the safety and soundness of regulated institutions. As part of this process, the agencies requested comments from the public on ways to reduce burden.

II. Proposed Amendments

As a result of the comments and their own experience, the agencies believe that the requirement of a Title XI appraisal can impose additional direct and indirect costs on both the lender and the borrower. One result of this increased cost may be a restriction on the availability of credit. In some cases, appraisals may prove so expensive that they may make a sound small- or medium-sized business loan uneconomical.

While in many cases an appraisal is a necessary part of a sound loan-underwriting decision process, the agencies believe that the statutory flexibility should be used and that the agencies should not require Title XI appraisals where they impose significant costs without promoting to a significant extent the safety and soundness of regulated institutions or furthering the purposes of Title XI of FIRREA. Accordingly, the agencies are proposing to amend their regulations to clarify and expand the circumstances in which a Title XI appraisal is not required.

It is also the agencies' experience that the current minimum standards applicable to federally related transactions and requirements concerning the independence of appraisers can be simplified without significantly affecting the reliability of Title XI appraisals. Therefore, the agencies are proposing to amend their regulations to eliminate regulatory appraisal standards that parallel standards in the Uniform Standards of Professional Appraisal Practice promulgated by the Appraisal Standards Board of the Appraisal Foundation. In addition, the agencies are proposing to amend their regulations concerning appraiser independence to permit regulated institutions to use appraisals prepared for other financial services institutions.

The agencies believe that federal financial and public policy interests can be served by making several changes to provisions of their appraisal regulations that identify: (i) When Title XI appraisals are not required; (ii) when an evaluation is needed for real estate-related financial transactions that do not require Title XI appraisals; and (iii) when an agency may require a Title XI appraisal to address safety and soundness concerns. These changes should reduce regulatory burden, improve credit availability and serve federal financial and public policy interests without threatening the safety and soundness of financial institutions.

The agencies also propose to simplify compliance with regulatory requirements for both appraisers and users of the appraisals by changing provisions of their regulations that govern: (i) Publication of the Uniform Standards of Professional Appraisal Practice; (ii) minimum appraisal standards; (iii) unavailable information; (iv) institution developed additional appraisal standards; and (v) appraiser independence. The proposed changes should reduce costs without affecting the reliability of appraisals used in connection with federally related transactions.

A. Transactions That Do Not Require Appraisals

The proposed amendments identify new categories of transactions for which Title XI appraisals will not be required and expand and clarify existing categories of transactions that do not require Title XI appraisals.

1. Increase the Threshold from $100,000 to $250,000

The agencies propose to increase to $250,000 the threshold level at or below which the services of an appraiser

[1] When the other agencies initially adopted a threshold level of $50,000, the Board, which had already adopted a $100,000 threshold, sought comment on (1) whether it should conform its level to those of the other agencies, and (2) the appropriate minimum standards for State-licensed appraisers. Because the other agencies then raised their levels to $100,000 and the States have adopted appropriate licensing standards, the Board took no further action on its proposed rulemaking.

would not be required in connection with real estate-related financial transactions.

The current threshold level is set at $100,000. See 12 CFR 34.43(a)(1) (OCC); 12 CFR 225.63(a)(1) (Board); 12 CFR 323.3(a)(1) (FDIC); and 12 CFR 564.3(a)(1) (OTS).

The agencies do not regularly collect data on rates of loss by the size of loans because of the excessive burden to the industry associated with the collection of such data. The agencies note, however, that loss information for commercial real estate loans based on a small sample of lending institutions was considered by the Office of Management and Budget (OMB) in a 1992 report [2] to Congress prepared pursuant to section 472 of Federal Deposit Insurance Corporation Improvement Act of 1991. That report, which the agencies will include in the rulemaking record, suggests it may be appropriate to approach an increase in the threshold above $100,000 with some caution due to higher loss rates associated with larger commercial loans.

Since the establishment of a $100,000 threshold level, the agencies have not found any evidence to indicate that there has been a significant increase in the defaults on real estate-related loans of $100,000 or less. Furthermore, the agencies believe that faulty estimates of value of real estate collateral are not a major cause of losses in connection with transactions below $100,000.

The agencies believe that the low loss experience with the $100,000 threshold stems from the fact that loans secured by 1-to-4 family residential real estate comprise the majority of transactions falling below the $100,000 threshold. These loans have not been the cause of major credit losses in the banking system. Data for all commercial banks as of December 1992 show that the net loan charge-off rate [3] for 1-to-4 family residential real estate loans was 0.20 percent compared to 1.26 percent for all loans. The net loan charge-off rate for savings associations was 0.22 percent for 1-to-4 family residential real estate loans compared to 0.51 percent for all loans.

The agencies believe that an increase in the threshold level from $100,000 to $250,000 for banks and thrifts would not represent a threat to the safety and soundness of financial institutions. Moreover, the agencies believe that federal financial and public policy interests would continue to be protected if the proposed increase were adopted.

The agencies believe that the majority of loans below a $250,000 threshold level would continue to be loans secured by 1-to-4 family residential real estate. Thus, the agencies do not believe that loans of $100,001 to $250,000 would pose significantly greater risks to financial institutions than similar loans below the existing threshold. The agencies believe that in the event such losses do occur, the $250,000 threshold would protect the deposit insurance funds and the safety and soundness of financial institutions.

Separately, the agencies are proposing an amendment stating that each agency reserves the right to require a regulated institution to obtain a Title XI appraisal whenever the agency believes it is necessary to address safety and soundness concerns. As a matter of policy, the OTS intends to require problem institutions or institutions in a troubled condition to obtain appraisals for transactions of more than $100,000.

2. The "Abundance of Caution" Provision

The agencies propose to amend their regulations to clarify and expand the scope of the exemption for real estate liens taken in an "abundance of caution."

The agencies' appraisal regulations currently provide that an appraisal is not required when a lien on real estate has been taken as collateral solely through an abundance of caution and where the terms of the transaction as a consequence have not been made more favorable than they would have been in the absence of a lien. See 12 CFR 34.43(a)(2)(i) (OCC); 12 CFR 225.63(a)(2) (Board); 12 CFR 323.3(a)(2) (FDIC); and 12 CFR 564.3(a)(2)(i) (OTS).

The agencies' experience with implementing the appraisal regulations indicates that the existing abundance of caution exemption has been interpreted too narrowly. The additional requirement that the transaction would have been made on the same terms absent the lien on real estate collateral has significantly reduced the number of cases in which the exemption applies. To emphasize the broader scope of the abundance of caution exemption, the agencies propose to delete the word "solely" from the current exemption. The agencies also propose to delete the language requiring that the terms of the transaction not be more favorable to the borrower than they would have been in the absence of the real estate lien. To qualify for this exemption, other sources of repayment or collateral must support the decision to extend credit.

The application of the proposed amendment is illustrated by the following examples.

Example 1: A business with an established cash flow seeks a loan from a regulated institution to purchase an adjacent property for expansion. As a common business practice, the institution takes a lien against real estate whenever available for greater comfort. However, the institution's analysis determines that the current income from the business and personal property available as collateral support the decision to extend credit without knowing the real estate's market value. During loan negotiations, the institution offers to make the loan on slightly better terms for the borrower if it receives a lien on real estate. The borrower accepts the offer and provides the additional real estate collateral.

The regulated institution may reasonably conclude that the lien on the real estate was taken in an abundance of caution because the current income from the business and personal property taken as collateral support the decision to extend credit. Therefore, no appraisal would be required.

Example 2: The owner of a shop seeks a term loan from a regulated institution for modernization of its facilities. The institution determines that other sources of repayment and collateral do not sufficiently support the decision to extend credit without taking a lien on the real estate and knowing the real estate's market value. Therefore, in order to prudently extend credit to the borrower, the institution needs an appraisal.

The regulated institution should conclude that the real estate lien has not been taken in an abundance of caution because the other sources of repayment and collateral do not support the decision to extend credit without knowing the real estate's market value. Assuming no other exemption is applicable to this transaction, a Title XI appraisal would be required.

3. Loans Not Secured by Real Estate

The agencies propose to adopt a uniform exemption for transactions that are not secured by real estate.

Currently, the appraisal regulations of the OCC, FDIC and OTS exempt these transactions. See 12 CFR 34.43(a)(2)(ii) (OCC); 12 CFR 323.3(a)(7) (FDIC); and 12 CFR 564.3(a)(2)(ii) (OTS). However, there are minor differences between the provisions adopted by the OCC and OTS and the provision in the FDIC's rule. Currently, the Board's appraisal

[2] *De Minimis Levels for Commercial Real Estate Appraisals*, Report to Congress, Office of Management and Budget (August 1992).

[3] The net loan charge-off rate is determined by taking the dollar amount of gross losses, subtracting the amount recovered, and dividing the result by the average of outstanding loans.

regulation does not specifically exempt these transactions.

The proposed amendment would clarify that a regulated institution does not need a Title XI appraisal when it makes a loan that is not secured by real estate even though the borrower uses the loan proceeds to purchase or invest in real estate. For example, this exemption would be applicable to transactions in which the borrower provides collateral for the loan other than real estate or qualifies for unsecured credit.

For transactions that would be covered by this proposed exemption, the real estate has no direct effect on the regulated institution's decision to extend credit because the institution has no legal interest in the real estate as collateral. Therefore, the agencies believe that federal financial and public policy interests would not be served by requiring lenders and borrowers to incur the cost of obtaining Title XI appraisals in connection with these transactions.

4. Liens for Purposes Other Than the Real Estate's Value

The agencies are proposing a new exemption for transactions in which a regulated institution takes a lien on real estate for a purpose other than the value of the real estate.

Regulated institutions frequently take real estate liens to protect legal rights to other collateral and not because of the value of the real estate as an individual asset. For instance, in lending associated with logging operations, regulated institutions typically take a lien against the real estate upon which the timber stands to ensure their access to the timber. Similarly, where the collateral for a loan is a business or manufacturing facility, a regulated institution may take a lien against the land and improvements in order to be able to sell the entire business or facility as a going concern if the borrower defaults.

As defined in the agencies' regulations, an appraisal is a written statement independently and impartially prepared by a qualified appraiser setting forth an opinion as to the market value of real estate. See 12 CFR 34.42(a) (OCC); 12 CFR 225.62(a) (Board); 12 CFR 323.2(a) (FDIC); and 12 CFR 564.2(a) (OTS). When the market value of the real estate as an individual asset is not part of the regulated institution's decision to take a lien against real estate, no purpose is served by requiring the institution to obtain an appraisal.

5. Real Estate-Secured Business Loans Less Than $1 Million

The agencies are proposing a new exemption for business loans with a value of less than $1 million where the sale of, or rental income derived from, the real estate taken as collateral is not the primary source of repayment. In connection with this proposed exemption, the agencies also are proposing to amend their regulations to define "business loan."

The agencies believe that the cost and delay associated with obtaining an appraisal has had an adverse impact on the types of small- and medium-sized business lending that would be exempted by this provision. In the experience of the agencies, the appraisal requirement has adversely affected the ability of small- and medium-sized businesses to obtain credit. In effect, the cost of an appraisal may have impeded small- and medium-sized businesses from receiving working capital, operating loans and other business-related credits that otherwise would be consistent with prudent banking practice. The agencies do not believe that this was the intent of Title XI of FIRREA, and do not believe that federal public policy interests are served by requiring a Title XI appraisal in these cases.

The agencies are proposing an exemption designed to serve the public policy interest in small- and medium-sized business lending while ensuring that the safety and soundness of financial institutions would be protected. The proposed exemption would apply only to transactions involving business loans with a value less than $1 million. This would help ensure that the transactions would generally involve small- and medium-sized businesses and that any losses associated with exempting these transactions from the Title XI appraisal requirement would not generally pose a threat to the safety and soundness of financial institutions.

In addition, the exemption would only apply to transactions where the sale of, or rental income derived from, the real estate is not the primary source of repayment for the loan. For exempt transactions, lenders would need to document the ability of the business to repay the loan from business operations. Where the value of the real estate is closely linked to the ability of the borrower to repay the business loan, an appraisal would be required unless another exemption is applicable to the transaction.

In connection with this exemption, the agencies also propose to amend their regulations to define "business loan" as a loan or extension of credit to any corporation, general or limited partnership, business trust, joint venture, pool, syndicate, sole proprietorship (including an individual engaged in farming), or other business entity. This definition excludes individuals, individual trusts, associations, and unincorporated organizations.

The application of the proposed amendment is illustrated by the following examples.

Example 1: The owner of a shop seeks a term loan for less than $1 million from a regulated institution. The loan will be repaid with income derived from operations. The regulated institution would not extend credit to the borrower without a lien against the real estate.

However, because the loan is less than $1 million and the sale of, or rental income derived from, the real estate is not the primary source of repayment, a Title XI appraisal would not be required for this transaction under this exemption.

Example 2: A company acquires an adjacent parcel of land to construct an office building. The company seeks a loan of less than $1 million from a regulated institution to provide construction financing and a permanent mortgage for the office building. The company intends to lease part of the building and will use the rental income to help repay the loan.

The lender estimates that operations of the business would contribute approximately 45 percent of the funds necessary to repay the loan and rental income approximately 55 percent.

The regulated institution should conclude that rental income derived from the real estate serves as the primary source of repayment for the loan. Therefore, assuming no other exemption is applicable to the transaction, a Title XI appraisal would be required.

6. Leases

The agencies are not proposing any substantive change to the exemption for operating leases. However, as a result of including new exemptions in the regulations, this exemption is being renumbered.

7. Requirements for Renewals, Refinancings, and Other Subsequent Transactions

The agencies propose to amend and clarify the exemption for renewals, refinancings, and other transactions resulting from an existing extension of credit to simplify the conditions under which the exemption applies.

The agencies' appraisal regulations currently provide that an appraisal is not required for a subsequent transaction that results from a maturing extension of credit if: (i) The borrower has performed satisfactorily according to the original terms; (ii) no new monies are advanced other than as previously agreed; (iii) the credit standing of the borrower has not deteriorated; and (iv) there has been no obvious and material deterioration in market conditions or physical aspects of the property which would threaten the institution's collateral protection. See 12 CFR 34.43(a)(4) (OCC); 12 CFR 225.63(a)(4) (Board); 12 CFR 323.3(a)(4) (FDIC); and 12 CFR 564.3(a)(4) (OTS). Under the proposed amendment, the use of this exemption no longer would be conditioned on meeting all of these requirements.

The proposed amendment would permit regulated institutions to renew or refinance any existing extension of credit and extend additional funds without obtaining a new Title XI appraisal if the institution's collateral protection would not be threatened as a result of the transaction. The borrower's past performance and ability for future performance are significant factors to be considered as a matter of prudent banking practice when determining whether to renew or refinance an existing extension of credit. However, in the absence of a material change in market conditions or the condition of the property that threaten the institution's collateral protection, no purpose is served by obtaining a new Title XI appraisal. For example, a loan originally extended with a low loan-to-value ratio could be renewed without a Title XI appraisal, even though market conditions have deteriorated, if the regulated institution concludes that the new loan-to-value ratio would remain low and, therefore, its collateral protection would not be threatened.

The proposed amendment also would permit a regulated institution to advance additional funds to the borrower up to a level that would not threaten the institution's collateral protection. However, if the advance of additional funds alone, or in combination with a deterioration in market conditions, results in the regulated institution's collateral protection being threatened, a new Title XI appraisal would then be required.

8. Transactions Involving Real Estate Notes

The agencies are proposing to amend and clarify the current text of the regulation that exempts purchases of real estate-secured loans.

The agencies' appraisal regulations currently allow regulated institutions to purchase loans or interests in pools of loans secured by real estate provided that each loan has an appraisal that conforms to the appraisal regulation if it was applicable at the time the loan was originated. See 12 CFR 34.43(a)(5) (OCC); 12 CFR 225.63(a)(5) (Board); 12 CFR 323.3(a)(5) (FDIC); and 12 CFR 564.3(a)(5) (OTS).

The proposed amendment would clarify that a regulated institution may engage in certain transactions involving real estate-secured notes without obtaining a new appraisal if the underlying real estate loan was originated prior to the effective date of the appropriate agency's regulation, or the underlying real estate loan was originated after the effective date of the appropriate agency's appraisal regulation and is supported by an appraisal that met the requirements of the appropriate agency's appraisal regulation either at the time of origination or subsequent sale.

The agencies do not believe that new appraisals are required for these transactions in order to protect federal financial and public policy interests or the safety and soundness of financial institutions. In addition, requiring new appraisals may restrict the market for purchases, sales, and investments in real estate-secured loans by increasing costs for those transactions.

9. Transactions Insured or Guaranteed by a United States Government Agency or United States Government Sponsored Agency

The agencies are proposing to amend their appraisal regulations to adopt an exemption for transactions that are insured or guaranteed by a United States government agency or government sponsored agency.

The appraisal regulations of the OCC, FDIC, and OTS currently provide that loans insured or guaranteed by an agency of the United States government do not require appraisals. See 12 CFR 34.43(a)(6) (OCC); 12 CFR 323.3(a)(6) (FDIC); and 12 CFR 545.32(b) and 563.170(c)(1)(iv) (OTS).

The OCC and the FDIC are proposing to amend this provision in their regulations by deleting the requirement that the transaction be supported by an appraisal that conforms to the requirements of the insuring or guaranteeing agency. In order to receive the insurance or guarantee, the transaction must meet all underwriting requirements of the insurer or guarantor, including real estate appraisal or evaluation requirements. Therefore, it is unnecessary to require regulated institutions to ensure compliance with appraisal requirements of the federal insurer or guarantor.

The OTS also is proposing to adopt this provision as part of its appraisal regulation in 12 CFR Part 564 and, if adopted, will modify its current regulations to be consistent with this provision.

The Board is proposing to adopt a new exemption for transactions insured or guaranteed by a United States government agency or government sponsored agency.

10. Transactions That Meet the Qualifications for Sale to a United States Government Agency or Government Sponsored Agency

The agencies are proposing to adopt an exemption for transactions that meet the qualifications for sale to a United States government agency or government sponsored agency.

Currently, the appraisal regulations of the OCC, FDIC and OTS provide that appraisals in connection with transactions involving 1-to-4 family residential properties need not comply with certain appraisal standards if the appraisals conform to the appraisal standards approved by the Federal National Mortgage Association (Fannie Mae) or Federal Home Loan Mortgage Corporation (Freddie Mac). See 12 CFR 34.44(b) (OCC); 12 CFR 323.4(b) (FDIC); and 12 CFR 564.8(d)(1) (OTS).

The proposed amendment would permit a regulated institution to originate, hold, buy or sell transactions that meet the qualifications for sale to any United States government agency or government sponsored agency without obtaining a Title XI appraisal. The agencies believe that the appraisal standards of U.S. government agencies or government sponsored agencies established to maintain a secondary market in loans are sufficient to protect federal financial and public policy interests in the loans those government or government sponsored agencies purchase. The agencies also believe that compliance with these standards will protect the safety and soundness of financial institutions. By referring to any U.S. government agency or U.S. government sponsored agency, the proposed amendment would include transactions that meet the qualifications for sale to entities such as the College Construction Loan Insurance Association and Federal Agricultural Mortgage Corporation, as well as the Federal National Mortgage Association and Federal Home Loan Mortgage Corporation.

The agencies believe that permitting regulated institutions to follow these

standardized appraisal requirements, without the necessity of obtaining an additional appraisal or appraisal supplement, will increase institutions' ability to buy and sell these loans and their liquidity.

If the proposed amendment is adopted, the OCC, FDIC and OTS would delete their current provisions. The Board has no similar provision.

11. Transactions by Regulated Institutions as Fiduciaries

The agencies are proposing a new exemption for transactions in which a regulated institution is acting in a fiduciary capacity and is not required to obtain an appraisal under other law.

The agencies do not believe that a Title XI appraisal should be required when a regulated institution engages in a real estate-related financial transaction in a fiduciary capacity, unless other federal, state or common law requires an appraisal for those transactions. Losses as a result of these transactions would not, absent some negligence by the institution, be incurred by the institution. Thus, exempting these transactions from the Title XI appraisal requirement should not adversely affect the safety and soundness of financial institutions. When an appraisal is required under other law, it should conform to the requirements of the agencies' regulations.

12. Transactions Where the Services of an Appraiser Are Not Necessary To Protect Federal Financial and Public Policy Interests

As a result of their experience in implementing their regulations, the agencies recognize that it is impossible to identify all transactions for which the services of an appraiser should not be required under Title XI of FIRREA. The specific exemptions of the proposed regulation describe the major categories of transactions that would not require appraisals. However, the agencies are proposing to retain the authority to determine in a given case that the services of an appraiser are not required in order to protect federal financial and public policy interests in real estate-related financial transactions or to protect the safety and soundness of the institution.

13. Definition of Real Estate

The Board is proposing to incorporate the definition of real estate and real property currently employed by the other agencies. That definition specifically excludes mineral rights, timber rights, growing crops, water rights, and similar interests.

B. Use of Evaluations

The agencies are proposing minor changes to the provisions of their regulations governing the use of evaluations.

Currently, the OCC, Board and OTS require evaluations for all transactions that do not require appraisals. See 12 CFR 34.43(a) (OCC); 12 CFR 225.63(a) (Board); and 12 CFR 564.3(a) (OTS). The FDIC's regulation provides that supervisory guidelines, general banking practices or other prudent standards may require an appropriate valuation of real property collateral. See 12 CFR 323.3(a). The agencies believe that the effect of these provisions for some regulated institutions may have been to require evaluations for certain real estate-related financial transactions when the evaluations did not assist in protecting the safety and soundness of the institutions.

The agencies propose to amend this provision to state that evaluations should be obtained for some, but not all, real estate-related financial transactions that do not require Title XI appraisals. Under the proposed amendment, regulated institutions would be expected to obtain an evaluation whenever necessary to assist the institution in its decision to enter into the real estate-related financial transaction. These include transactions below the threshold level, business loans below $1 million where real estate is not the primary source of repayment, and transactions resulting from an existing extension of credit.

C. Appraisals to Address Safety and Soundness Concerns

The agencies are proposing to amend their regulations to clarify that each agency may require Title XI appraisals to address safety and soundness concerns. Under this provision, the agencies could require appraisals where real estate-related financial transactions present greater-than-normal risk to individual institutions. For example, an agency may require a problem institution or an institution in troubled condition to obtain appraisals for transactions below the proposed threshold level.

D. Publication of USPAP

The agencies also are seeking comment on alternatives to the current practice of publishing the Uniform Standards of Professional Appraisal Practice (USPAP) as an appendix to each agency's appraisal regulation.

Section 1107 of FIRREA states that appraisal standards shall be prescribed in accordance with procedures set forth in section 553 of title 5, United States Code, including the publication of notice and receipt of written comments or the holding of public hearings with respect to any standards or requirements proposed to be established.

As part of the effort to simplify their regulations, the agencies are considering three alternatives for satisfying the statutory requirement to publish appraisal standards applicable to federally related transactions.

Under Alternative I, the applicable provisions of the USPAP would be repeated in the agencies' regulations. Under Alternative II, the provisions of the USPAP would be included in the agencies' rules through incorporation by reference. Under both Alternatives I and II, a failure to comply with the USPAP in any particular transaction would be a violation of the regulation. Therefore, if an agency wanted to pursue an enforcement or remedial action against a regulated institution, the agencies would only have to show that the USPAP was not followed.

In addition, under Alternatives I and II the agencies would have to comply with the notice and comment requirements of the Administrative Procedure Act, 5 U.S.C. 553, in order to adopt any substantive changes to the USPAP promulgated by the Appraisal Standards Board of the Appraisal Foundation. This could mean that the version of the USPAP used by the agencies and regulated institutions could be outdated. Institutions, therefore, would not be able to use the substantive changes of the current version of the USPAP until the agencies could amend their regulations in accordance with notice and comment rulemaking procedures.

Under Alternative III, the USPAP would not be a part of the agencies' regulations. Adopting this approach would mean that a failure to follow the USPAP would not constitute a violation of the regulation. Therefore, if an agency wanted to pursue an enforcement or remedial action against a regulated institution, it would have to demonstrate that the failure to follow the USPAP in the particular situation violated generally accepted appraisal standards.

Under this alternative, the agencies would not have to republish changes to the USPAP adopted by the Appraisal Standards Board. References to the USPAP would not be to a particular edition. Instead, references would be assumed to always mean the most current edition.

E. Minimum Standards

The agencies propose to amend their regulations to reduce the number of minimum appraisal standards applicable to Title XI appraisals for federally related transactions from 14 to four and eliminate the current prohibition on the use of the USPAP Departure Provision in connection with federally related transactions.

Title XI of FIRREA states that each federal financial institutions regulatory agency shall prescribe appropriate standards for the performance of real estate appraisals in connection with federally related transactions under the jurisdiction of each such agency. These rules shall require, at a minimum that: (i) real estate appraisals be performed in accordance with generally accepted appraisal standards as evidenced by the standards promulgated by the Appraisal Standards Board of the Appraisal Foundation; and (ii) that such appraisals shall be written appraisals.

Under Title XI, each agency may require compliance with additional standards if it makes a determination in writing that such additional standards are necessary in order to properly carry out its statutory responsibilities.

At the time the agencies began drafting their appraisal regulations, the Appraisal Standards Board was in the process of amending its appraisal standards. Because of uncertainty about the content of the standards that would be promulgated by the Appraisal Standards Board, and the interpretation of those standards, the agencies included within their appraisal regulations 13 minimum standards that paralleled existing or proposed USPAP standards. Compliance with these 13 standards was required in addition to compliance with the USPAP.

The agencies also prohibited the use of the USPAP Departure Provision in connection with federally related transactions. The Departure Provision permits an appraiser to prepare an appraisal without complying with certain recommended provisions of the USPAP if the appraisal report is not rendered misleading.

The agencies have gained considerable experience with the Appraisal Standards Board and its appraisal standards and believe that it is no longer necessary to include all the additional standards in their appraisal regulations. The agencies also believe that the Departure Provision of the USPAP may appropriately be used in connection with federally related transactions.

In addition to the standard involving the USPAP, the agencies are proposing to adopt three minimum standards that would require Title XI appraisals to: (i) be written; (ii) set forth a market value as defined in the regulation; and (iii) be performed by a certified or licensed appraiser in accordance with the regulation.

Although the agencies are proposing to streamline their appraisal regulations by eliminating standards in their current regulations that parallel USPAP requirements, the agencies are requesting specific comment on whether other minimum standards should be required.

F. Elimination of Provision on Unavailable Information

The agencies are proposing to delete the current provision that requires appraisers to disclose and explain when information necessary to the completion of an appraisal is unavailable. See 12 CFR 34.44(c) (OCC); 12 CFR 225.64(b) (Board); 12 CFR 323.4(c) (FDIC); and 12 CFR 564.4(b) (OTS).

The USPAP currently requires appraisers to disclose and explain the absence of information necessary to completion of an appraisal that is not misleading. See USPAP Standard Rule 2–2(k). Therefore, the elimination of this provision would not result in a substantive change in the requirements applicable to appraisals for federally related transactions if the agencies continue to require, as a minimum standard, that appraisals conform to standards contained in the USPAP, either as adopted and published by the agencies or incorporated by reference into the agencies' regulations.

Elimination of this provision could result in a change in the enforceability of this requirement if the agencies adopt Alternative III, which would establish a minimum appraisal standard that requires appraisals to conform to generally accepted appraisal standards as evidenced by the USPAP, rather than adopting Alternatives I and II, which would establish a standard that requires compliance with the USPAP.

Under Alternative III, a regulated institution that accepted an appraisal in which the appraiser failed to disclose and explain the absence of information necessary to completion of an appraisal that is not misleading would be in violation of the regulation only if generally accepted appraisal standards required the absence of necessary information to be disclosed and explained. While the regulated institution's failure to comply with the USPAP would not be a violation of the regulation, the agencies would rely on USPAP Standard Rule 2–2(k) as evidence of what constitutes generally accepted appraisal standards in determining whether the regulated institution met the minimum standard.

G. Elimination of Provision on Additional Appraisal Standards

The agencies propose to delete the current provision confirming that the agencies' adoption of minimum appraisal standards for federally related transactions does not prevent a regulated institution from requiring appraisers to comply with additional standards. See 12 CFR 34.44(d) (OCC); 12 CFR 225.64(c) (Board); 12 CFR 323.4(d) (FDIC); and 12 CFR 564.4(c) (OTS).

A regulated institution may ask the appraisers it hires to provide any additional information the institution may require in connection with the preparation of an appraisal. The agencies believe that regulated institutions retain the authority to require appraisers to provide additional information to satisfy the institutions' business needs.

H. Appraiser Independence

The agencies are proposing to amend and clarify their appraisal regulations to permit use of appraisals prepared for financial services institutions other than institutions subject to Title XI of FIRREA.

The agencies' current appraisal regulations provide that fee appraisers must be engaged by the regulated institution or its agent. An exception to this requirement is permitted if the appraiser is directly engaged by another institution that is subject to Title XI of FIRREA.

The current provision was adopted to help ensure that appraisers would not be subject to conflicts of interest as a result of having been engaged by borrowers. However, the agencies believe that the current provision is too restrictive. It requires a regulated institution to obtain a new appraisal if the borrower originally sought the loan from an institution that is not subject to Title XI of FIRREA and is not an agent of the regulated institution. There also has been uncertainty about the meaning of agent in these cases.

The agencies propose to permit a regulated institution to use an appraisal that was prepared for any financial services institution, including mortgage bankers. The appraiser would not be allowed to have a direct or indirect interest, financial or otherwise, in the property or the transaction, and must have been directly engaged by the non-regulated institution. Further, the regulated institution would be required to ensure that the appraisal conforms to

the requirements of the regulation and is otherwise acceptable.

III. Public Comment

The agencies are requesting public comment on all aspects of their proposed rules as well as specific comment on certain proposals. All comments are voluntary and no individual or institution is required to provide any of the information requested below, nor must comments be provided in any particular format.

The agencies are requesting comment in Questions 1 through 9 concerning the threshold level, loss history for certain transactions, effect of the proposed changes on credit availability, effect of the proposed threshold on housing loans sold in the secondary market, proposed exemption for business loans, proposed exemption for sales to government agencies or government sponsored agencies, and the effect of the current regulation on the cost and time needed to complete certain transactions.

In addition, the agencies request comment on whether the four proposed minimum standards for appraisals are sufficient to serve the purposes of Title XI. In particular, the agencies request comment on whether the regulations (or other agency guidance) should incorporate any of the current standards, the standards discussed in questions 10 through 13 below, or any other standard.

It would assist the agencies in reviewing the comments if commenters referred to the numbers listed below when responding to those requests for comment. Further, commenters are asked to clearly identify the exemption or provision they are discussing.

All commenters are advised that, pursuant to the Administrative Procedure Act, all information provided to the agencies will be available for public inspection.

A. Specific Comment

1. Threshold Level

Should the agencies increase the threshold level below which an appraisal is not required from $100,000 to $250,000, and why? Would a threshold higher than $250,000 be appropriate, and why?

2. Loss Experience

(a) *Threshold Level.*

Real estate-secured loans and size of loans	Number of loans	Outstanding principal amount of loans (12/31/92)	Loss on loans (annual net charge-offs) (12/31/92)
Loans secured by 1-to-4 family residential real estate:			
Loans greater than $250,000			
Loans of $250,000 or less			
Loans secured by commercial real estate:			
Loans greater than $250,000			
Loans of $250,000 or less			

(b) *Business Loans Less than $1 Million Where Sale of, or Rental Income Derived from, the Real Estate Taken as Collateral is Not the Primary Source of Repayment.*

Real estate-secured loans	Number of loans (12/31/92)	Outstanding principal amount of loans (12/31/92)	Loss on loans (annual net charge-offs) (12/31/92)
All real estate-secured business loans			
Real estate-secured business loans less than $1 million that are *not* dependent on the sale of, or rental income derived from, the real estate taken as collateral as the primary source of repayment for the loan			

3. Credit Availability

(a) To what extent, if any, will an increase in the threshold level to $250,000 affect the availability of credit for real estate-secured loans below $250,000? Where possible, please provide quantitative data on the expected effect on lending.

(b) To what extent, if any, would the proposed amendment exempting real estate-secured business loans (including farm loans) of less than $1 million that are not dependent upon the sale of, or rental income derived from, the real estate taken as collateral as the primary source of repayment, affect the availability of credit for small- and medium-sized businesses? Where possible, please provide quantitative data on the expected effect on lending to small- and medium-sized businesses.

(c) To what extent, if any, would the proposed amendments affect the availability of credit for community development lending? Where possible, please provide quantitative data on the expected effect on community development lending.

4. Effect of the Proposed $250,000 Threshold on Housing Loans Sold in the Secondary Market

To what extent, if any, do you sell your housing loans on the secondary market, e.g., to the Federal National Mortgage Association or Federal Home Loan Mortgage Corporation? How often is an appraisal required regardless of the size of the loan in these cases? What effect, if any, would an increase in the threshold to $250,000 have on these types of housing loans? Where possible, please provide quantitative data.

5. Business Loans Less Than $1 Million Secured by Real Estate That are Not Dependent on the Sale of, or Rental Income Derived From, the Real Estate Taken as Collateral as the Primary Source of Repayment

(a) Should the exemption for real estate-secured business loans be based on the extent to which the primary source of repayment of the loan is dependent upon the sale of, or rental

income derived from, the real estate collateral? If yes, at what point should reliance on the sale of, or rental income derived from, the real estate taken as collateral be considered the "primary source" of repayment, and why? If no, what are alternative criteria that would be consistent with safety and soundness concerns, and why?

(b) Is the $1 million limit on this exemption appropriate? If not, should the limit be higher, lower, or eliminated, and why?

6. Transactions that Meet the Qualifications for Sale to a United States Government Agency or Government Sponsored Agency

The current proposal includes an exemption for transactions that meet the qualifications for sale to a United States government agency or government sponsored agency. Should this exemption apply to any U.S. government agency or government sponsored agency or should it be limited to certain agencies, and why?

7. Effect of Title XI Appraisals by Certified or Licensed Appraisers

Based on historical data and the most recent experience under the existing appraisal regulations, does the requirement for a Title XI appraisal by a certified or licensed appraiser affect loan performance and ultimate loss experience:

(a) For real estate-secured loans below $250,000?

(b) For business loans of $1 million or less secured by real estate that are not dependent on the sale of, or rental income derived from, the real estate taken as collateral as the primary source of repayment?

8. Effect of the Current Regulation on the Cost of Making Real Estate-Secured Loans

To what extent, if any, has the current appraisal regulation affected the cost of real estate loans to the lender or borrower:

(a) For transactions of $250,000 or less?

(b) For business loans of $1 million or less secured by real estate that are not dependent on the sale of, or rental income derived from, the real estate taken as collateral as the primary source of repayment?

9. Effect of the Current Regulation on Delay in Making Real Estate-Secured Loans

To what extent, if any, has the current appraisal regulation affected the time necessary to complete a real estate loan:

(a) For transactions of $250,000 or less?

(b) For business loans of $1 million or less secured by real estate that are not dependent on the sale of, or rental income derived from, the real estate taken as collateral as the primary source of repayment?

10. Data and Analysis on Revenues, Expenses and Vacancies

The agencies request comment on whether it would be beneficial to require, by regulation, that appraisals include, where applicable, data and analysis on revenues, expenses and vacancies as well as on current market conditions.

11. Analyze and Report Deductions and Discounts

The agencies request comment on whether the regulations should specifically require an analysis and report of appropriate deductions and discounts for proposed construction, partially leased buildings, submarket leases, and tract developments with unsold units. The USPAP does not specifically require that an appraiser analyze and report this data in the appraisal.

12. Separate Valuation of Personal Property

The agencies request comment on whether it would be beneficial to require that personal property, fixtures and intangibles included in the appraisal be identified and separately valued, and the effect of their value on the overall value estimate be discussed.

13. Reconciliation of Three Approaches to Value

The agencies request comment on whether it would be beneficial to require that an appraisal include a reconciliation of the three approaches to market value (i.e., the direct sales, income and cost approaches) and explain the elimination of any method not used by the appraiser.

Regulatory Flexibility Act Statement

Pursuant to section 605(b) of the Regulatory Flexibility Act, the OCC, the Board, the FDIC, and the OTS, hereby independently certify that the proposed rule is not expected to have a significant economic impact on a substantial number of small entities. Accordingly, a regulatory flexibility analysis is not required. However, the proposed rule, if adopted, is expected to result in reduced burden and costs for some small entities.

For federally related transactions, Title XI of FIRREA requires financial institutions which are regulated by the OCC, the Board, the FDIC, or the OTS, to use appraisals prepared in accordance with generally accepted appraisal standards as evidenced by the appraisal standards promulgated by the Appraisal Standards Board of the Appraisal Foundation. Since the USPAP standards only codify appraisal practices that are usual and customary in the appraisal industry, adoption of this regulation should not result in a material departure from existing practice by regulated institutions or cause a significant economic impact on a substantial number of small entities.

OCC and OTS Executive Order Statement

The OCC and the OTS have independently determined that this proposed rule does not constitute a "major rule" within the meaning of Executive Order 12291 and Treasury Department Guidelines. Accordingly, a Regulatory Impact Analysis is not required on the grounds that, if adopted, this proposed rule, exclusive of those effects attributable to requirements imposed by Title XI of FIRREA, (i) would not have an annual effect on the economy of $100 million or more, (ii) would not result in a major increase in the cost of financial institution operations or governmental supervision, and (iii) would not have a significant adverse effect on competition (foreign and domestic), employment, investment, productivity or innovation, within the meaning of the executive order.

For federally related transactions, Title XI requires the financial institutions supervised by the OCC or the OTS to obtain appraisals prepared in accordance with generally accepted appraisal standards as evidenced by the appraisal standards promulgated by the Appraisal Standards Board of the Appraisal Foundation. Since these standards only codify appraisal practices and procedures that are usual and customary in the appraisal industry, they should not cause a significant departure from current appraisal practices by regulated institutions, or a substantial effect on the economy.

OCC Paperwork Reduction Act

The collection of information contained in this notice of proposed rulemaking has been submitted to the Office of Management and Budget for review in accordance with the Paperwork Reduction Act of 1980 (44 U.S.C. 3504(h)). Comments on the collection of information should be sent to the Comptroller of the Currency, Legislative, Regulatory, and

International Activities, Attention: 1557–0190, 250 E Street, SW., Washington, DC 20219, with a copy to the Office of Management and Budget, Paperwork Reduction Project 1557–0190, Washington, DC 20503.

The collection of information in this proposed regulation is in 12 CFR 34.44. This information is required by the OCC to protect federal financial and public policy interests in real estate-related financial transactions requiring the services of an appraiser. National banks will use this information in determining whether and on what terms to enter into federally related transactions, such as making loans secured by real estate. The OCC will use this information in its examination of national banks to ensure that national banks undertake real estate-related financial transactions in accordance with safe and sound banking principles.

The likely recordkeepers are for-profit institutions.

The estimated annual burden per recordkeeper varies from 0 hours to in excess of 100 hours, depending on individual circumstances, with an estimated average of 34.5 hours.

Estimated number of recordkeepers: 3,600.

Board Paperwork Reduction Act

The collection of information contained in this notice of proposed rulemaking has been submitted to the Office of Management and Budget for review in accordance with the Paperwork Reduction Act of 1980 (44 U.S.C. 3504(h)). Comments on the collection of information should be sent to the Secretary, Board of Governors of the Federal Reserve System, 20th Street and Constitution Avenue, NW., Washington, DC 20551, with a copy to the Office of Management and Budget, Paperwork Reduction Project 7100–0250, Washington, DC 20503.

The collection of information in this proposed regulation is in 12 CFR part 225. This information is required by the Federal Reserve System to protect federal financial and public policy interests in real estate-related financial transactions requiring the services of an appraiser. State member banks will use this information in determining whether and on what terms to enter into federally related transactions, such as making loans secured by real estate. The Federal Reserve System will use this information in its examination of State member banks and bank holding companies to ensure that they undertake real estate-related financial transactions in accordance with safe and sound banking principles.

The likely recordkeepers are for-profit institutions.

The estimated annual burden per recordkeeper varies from 0 hours to in excess of 100 hours, depending on individual circumstances, with an estimated average of 25.1 hours.

Estimated number of recordkeepers: 1,183.

FDIC Paperwork Reduction Act

The collection of information contained in this notice of proposed rulemaking has been submitted to the Office of Management and Budget for review in accordance with the Paperwork Reduction Act of 1980 (44 U.S.C. 3504(h)). Comments on the collection of information should be sent to the Assistant Executive Secretary (Administration), room F–400, 550 17th Street, NW., Washington, DC 20429, with a copy to the Office of Management and Budget, Paperwork Reduction Project 3064–0103, Washington, DC 20503.

The collection of information in this proposed regulation is in 12 CFR part 323. This information is required by the FDIC to protect federal financial and public policy interests in real estate-related financial transactions requiring the services of an appraiser. State nonmember banks will use this information in determining whether and on what terms to enter into federally related transactions, such as making loans secured by real estate. The FDIC will use this information in its examination of State nonmember banks to ensure that they undertake real estate-related financial transactions in accordance with safe and sound banking principles.

The likely recordkeepers are for-profit institutions.

The estimated annual burden per recordkeeper varies from 0 hours to in excess of 100 hours, depending on individual circumstances, with an estimated average of 20.0 hours.

Estimated number of recordkeepers: 7,393.

OTS Paperwork Reduction Act

The collection of information contained in this notice of proposed rulemaking has been submitted to the Office of Management and Budget for review in accordance with the Paperwork Reduction Act of 1980 (44 U.S.C. 3504(h)). Comments on the collection of information should be sent to the Office of Management and Budget, Paperwork Reduction Project (1550), Washington, DC 20503 with copies to the Office of Thrift Supervision, 1700 G Street, NW., Washington, DC 20552.

The collection of information in this notice of proposed rulemaking is found at 12 CFR 564.4. Each savings association will use the information in connection with determining whether and upon what terms to enter into a federally related transaction, such as making a loan on commercial real estate or purchasing property for its own operation. The OTS will use the information in its examination of savings associations to ensure that extensions of credit by the associations, which are collateralized by real estate, and permissible investments in real estate are undertaken in accordance with safe and sound banking principles.

The likely recordkeepers are for-profit institutions.

The estimated annual burden per recordkeeper varies from 0 to over 100 hours, depending on individual circumstances, with an estimated average of 59 hours. This is a reduction from the current average estimated burden per recordkeeper of 78.7 hours. The estimated number of recordkeepers is 2,200.

List of Subjects

12 CFR Part 34

Mortgages, National banks, Real estate appraisals, Real estate lending standards, Reporting and recordkeeping requirements.

12 CFR Part 225

Administrative practice and procedure, Banks, Banking, Holding companies, Reporting and recordkeeping requirements, Securities.

12 CFR Part 323

Banks, Banking, Mortgages, Real estate appraisals, Reporting and recordkeeping requirements, State nonmember insured banks.

12 CFR Part 545

Accounting, Consumer protection, Credit, Electronic funds transfers, Investments, Manufactured homes, Mortgages, Reporting and recordkeeping requirements, Savings associations.

12 CFR Part 563

Accounting, Advertising, Crime, Currency, Flood insurance, Investments, Reporting and recordkeeping requirements, Savings associations, Securities, Surety bonds.

12 CFR Part 564

Appraisals, Real estate appraisals, Reporting and recordkeeping requirements, Savings associations.

COMPTROLLER OF THE CURRENCY

Authority and Issuance

For the reasons set out in the joint preamble, part 34 of chapter I of title 12 of the Code of Federal Regulations is proposed to be amended as set forth below:

PART 34—REAL ESTATE LENDING AND APPRAISALS

1. The authority citation for part 34 continues to read as follows:

Authority: 12 U.S.C. 1 *et seq.*, 93a, 371, 1701j–3, 1828(o), 3331 *et seq.*

2. In § 34.42, existing paragraphs (d) through (l) are redesignated as paragraphs (e) through (m) and a new paragraph (d) is proposed to be added to read as follows:

§ 34.42 Definitions.

* * * * *

(d) *Business loan* means a loan or extension of credit to any corporation, general or limited partnership, business trust, joint venture, pool, syndicate, sole proprietorship, or other business entity.

* * * * *

2. In § 34.43, paragraph (a) is revised, paragraphs (b) through (d) are redesignated as paragraphs (c) through (e), and a new paragraph (b) is added to read as follows:

§ 34.43 Appraisals required; transactions requiring a State certified or licensed appraiser.

(a) *Appraisals required.* An appraisal performed by a State certified or licensed appraiser is required for all real estate-related financial transactions except those in which:

(1) The transaction value is $250,000 or less;

(2) A lien on real estate has been taken as collateral in an abundance of caution;

(3) The transaction is not secured by real estate;

(4) A lien on real estate has been taken for purposes other than the real estate's value;

(5) The transaction is a business loan that:

(i) Has a transaction value of less than $1 million; and

(ii) Is not dependent on the sale of, or rental income derived from, the real estate taken as collateral as the primary source of repayment;

(6) A lease of real estate is entered into, unless the lease is the economic equivalent of a purchase or sale of the leased real estate;

(7) The transaction results from an existing extension of credit, provided that there has been no obvious or material deterioration in market conditions or physical aspects of the property that threaten the institution's real estate collateral protection;

(8) The transaction:

(i) Involves the purchase, sale, investment in, exchange of, or extension of credit secured by, a loan or interest in a loan, pooled loans, or interests in real property, including mortgaged-backed securities; and

(ii) Is supported by an appraisal that meets the requirements of this subpart for each loan or interest in a loan, pooled loan, or real property interest originated after August 24, 1990;

(9) The transaction is insured or guaranteed by a United States government agency or United States government sponsored agency;

(10) The transaction meets all of the qualifications for sale to a United States government agency or United States government sponsored agency;

(11) The regulated institution is acting in a fiduciary capacity and is not required to obtain an appraisal under other law; or

(12) The Office of the Comptroller of the Currency determines that the services of an appraiser are not necessary in order to protect Federal financial and public policy interests in real estate-related financial transactions or to protect the safety and soundness of the institution.

(b) *Evaluations and other appraisals.* Transactions for which the services of a State certified or licensed appraiser are not required under paragraphs (a)(1), (a)(5) or (a)(7) of this section nevertheless should have an appropriate evaluation of real property collateral that is consistent with agency guidance. The Office of the Comptroller of the Currency reserves the right to require an appraisal under this subpart whenever the agency believes it is necessary to address safety and soundness concerns.

* * * * *

3. Section 34.44, is revised to read as follows:

§ 34.44 Minimum appraisal standards.

For federally related transactions, all appraisals shall, at a minimum:

ALTERNATIVE I FOR PARAGRAPH (a)

(a) Conform to the Uniform Standards of Professional Appraisal Practice (USPAP) adopted by the Appraisal Standards Board of the Appraisal Foundation;

ALTERNATIVE II FOR PARAGRAPH (a)

(a) Conform to the Uniform Standards of Professional Appraisal Practice (USPAP) adopted by the Appraisal Standards Board of the Appraisal Foundation, 1993 Edition (as adopted December 8, 1992), which is specifically incorporated by reference in accordance with 5 U.S.C. 552(a) and 1 CFR part 51 (the USPAP is available from the Appraisal Foundation, 1029 Vermont Avenue, NW., Suite 900, Washington, DC 20005–3517);

ALTERNATIVE III FOR PARAGRAPH (a)

(a) Conform to generally accepted appraisal standards as evidenced by the Uniform Standards of Professional Appraisal Practice (USPAP) promulgated by the Appraisal Standards Board of the Appraisal Foundation;

(b) Be written;

(c) Set forth a market value as defined in this subpart; and

(d) Be performed by State licensed or certified appraisers in accordance with requirements set forth in this subpart.

4. In § 34.45, paragraph (b) is revised to read as follows:

§ 34.45 Appraiser independence.

* * * * *

(b) *Fee appraisers.* (1) If an appraisal is prepared by a fee appraiser, the appraiser shall be engaged directly by the regulated institution or its agent, and have no direct or indirect interest, financial or otherwise, in the property or the transaction.

(2) A regulated institution also may accept an appraisal that was prepared by an appraiser engaged directly by another financial services institution, if:

(i) The appraiser has no direct or indirect interest, financial or otherwise, in the property or the transaction; and

(ii) The regulated institution determines that the appraisal conforms to the requirements of this subpart and is otherwise acceptable.

Dated: May 25, 1993.

Eugene A. Ludwig,

Comptroller of the Currency.

FEDERAL RESERVE SYSTEM

For the reasons outlined in the joint preamble, the Board of Governors proposes to amend 12 CFR part 225 as set forth below:

PART 225—BANK HOLDING COMPANIES AND CHANGE IN BANK CONTROL

1. The authority citation for 12 CFR part 225 continues to read as follows:

Authority: 12 U.S.C. 1817(j)(13), 1818, 1831i, 1843(c)(8), 1844(b), 1972(l), 3106, 3108, 3907, 3909, 3310, and 3331–3351.

2. Section 225.62 is amended by redesignating paragraphs (g) through (k)

as paragraphs (i) through (m), redesignating paragraphs (d) through (f) as paragraphs (e) through (g), and adding new paragraphs (d) and (h) to read as follows:

§ 225.62 Definitions.

* * * * *

(d) *Business loan* means a loan or extension of credit to any corporation, general or limited partnership, business trust, joint venture, pool, syndicate, sole proprietorship, or other business entity.

* * * * *

(h) *Real estate or real property* means an identified parcel or tract of land, with improvements, and includes easements, rights of way, undivided or future interests, or similar rights in a tract of land, but does not include mineral rights, timber rights, growing crops, water rights, or similar interests severable from the land when the transaction does not involve the associated parcel or tract of land.

* * * * *

3. Section 225.63 is amended by revising the section heading and paragraph (a), redesignating paragraphs (b) and (c) as paragraphs (c) and (d), and adding a new paragraph (b) to read as follows:

§ 225.63 Appraisals required; transactions requiring a State-certified or State-licensed appraiser.

(a) *Appraisals required.* An appraisal performed by a State certified or licensed appraiser is required for all real estate-related financial transactions except those in which:

(1) The transaction value is $250,000 or less;

(2) A lien on real estate has been taken as collateral in an abundance of caution;

(3) The transaction is not secured by real estate;

(4) A lien on real estate has been taken for purposes other than the real estate's value;

(5) The transaction is a business loan that:

(i) Has a transaction value of less than $1 million; and

(ii) Is not dependent on the sale of, or rental income derived from, the real estate taken as collateral as the primary source of repayment;

(6) A lease of real estate is entered into, unless the lease is the economic equivalent of a purchase or sale of the leased real estate;

(7) The transaction results from an existing extension of credit, provided that there has been no obvious or material deterioration in market conditions or physical aspects of the property that threaten the institution's real estate collateral protection;

(8) The transaction:

(i) Involves the purchase, sale, investment in, exchange of, or extension of credit secured by, a loan or interest in a loan, pooled loans, or interests in real property, including mortgage-backed securities; and

(ii) Is supported by an appraisal that meets the requirements of this subpart for each loan or interest in a loan, pooled loan, or real property interest originated after August 9, 1990;

(9) The transaction is insured or guaranteed by a United States government agency or United States government sponsored agency;

(10) The transaction meets all of the qualifications for sale to a United States government agency or United States government sponsored agency;

(11) The regulated institution is acting in a fiduciary capacity and is not required to obtain an appraisal under other law; or

(12) The Board determines that the services of an appraiser are not necessary in order to protect Federal financial and public policy interests in real estate-related financial transactions or to protect the safety and soundness of the institution.

(b) *Evaluations and other appraisals.* Transactions for which the services of a State certified or licensed appraiser are not required under paragraphs (a)(1), (a)(5) or (a)(7) of this section nevertheless should have an appropriate evaluation of real property collateral that is consistent with agency guidance. The Board reserves the right to require an appraisal under this subpart whenever the agency believes it is necessary to address safety and soundness concerns.

* * * * *

4. Section 225.64 is revised to read as follows:

§ 225.64 Appraisal standards.

For federally related transactions, all appraisals shall, at a minimum:

ALTERNATIVE I FOR PARAGRAPH (a)

(a) Conform to the Uniform Standards of Professional Appraisal Practice (USPAP) adopted by the Appraisal Standards Board of the Appraisal Foundation;

ALTERNATIVE II FOR PARAGRAPH (a)

(a) Conform to the Uniform Standards of Professional Appraisal Practice (USPAP) adopted by the Appraisal Standards Board of the Appraisal Foundation, 1993 Edition (as adopted December 8, 1992), which is specifically incorporated by reference in accordance with 5 U.S.C. 552(a) and 1 CFR part 51 (the USPAP is available from the Appraisal Foundation, 1029 Vermont Avenue, NW., Suite 900, Washington, DC 20005–3517);

ALTERNATIVE III FOR PARAGRAPH (a)

(a) Conform to generally accepted appraisal standards as evidenced by the Uniform Standards of Professional Appraisal Practice (USPAP) promulgated by the Appraisal Standards Board of the Appraisal Foundation;

(b) Be written;

(c) Set forth a market value as defined in this subpart; and

(d) Be performed by State licensed or certified appraisers in accordance with requirements set forth in this subpart.

5. Section 225.65 is amended by revising paragraph (b) to read as follows:

§ 225.65 Appraiser independence.

* * * * *

(b) *Fee appraisers.* (1) If an appraisal is prepared by a fee appraiser, the appraiser shall be engaged directly by the regulated institution or its agent, and have no direct or indirect interest, financial or otherwise, in the property or the transaction.

(2) A regulated institution also may accept an appraisal that was prepared by an appraiser engaged directly by another financial services institution, if:

(i) The appraiser has no direct or indirect interest, financial or otherwise, in the property or the transaction; and

(ii) The regulated institution determines that the appraisal conforms to the requirements of this subpart and is otherwise acceptable.

Dated: May 28, 1993.

William W. Wiles,

Secretary of the Board.

FEDERAL DEPOSIT INSURANCE CORPORATION

Authority and Issuance

For the reasons set out in the joint preamble, part 323 of subchapter B of Chapter III of title 12 of the Code of Federal Regulations is proposed to be amended as set forth below:

PART 323—APPRAISALS

1. The authority citation for part 323 is revised to read as follows:

Authority: 12 U.S.C. 1818, 1819 ["Seventh" and "Tenth"], and 3331–3352.

2. Section 323.2 is amended by redesignating paragraphs (d) through (l) as paragraphs (e) through (m) and adding a new paragraph (d) to read as follows:

§ 323.2 Definitions.

* * * * *

(d) *Business loan* means a loan or extension of credit to any corporation, general or limited partnership, business trust, joint venture, pool, syndicate, sole proprietorship, or other business entity.

* * * * *

3. Section 323.3 is amended by revising the section heading and paragraph (a), revising the phrase in paragraph (d) "paragraphs (b) and (c) of this section" to read "paragraphs (c) and (d) of this section", redesignating paragraph (d) as paragraph (e), and redesignating paragraphs (b) and (c) as paragraphs (c) and (d) and adding a new paragraph (b) to read as follows:

§ 323.3 Appraisals required; transactions requiring a State certified or licensed appraiser.

(a) *Appraisals required.* An appraisal performed by a State certified or licensed appraiser is required for all real estate-related financial transactions except those in which:

(1) The transaction value is $250,000 or less;

(2) A lien on real estate has been taken as collateral in an abundance of caution;

(3) The transaction is not secured by real estate;

(4) A lien on real estate has been taken for purposes other than the real estate's value;

(5) The transaction is a business loan that:

(i) Has a transaction value of less than $1 million; and

(ii) Is not dependent on the sale of, or rental income derived from, the real estate taken as collateral as the primary source of repayment;

(6) A lease of real estate is entered into, unless the lease is the economic equivalent of a purchase or sale of the leased real estate;

(7) The transaction results from an existing extension of credit, provided that there has been no obvious or material deterioration in market conditions or physical aspects of the property that threaten the institution's real estate collateral protection;

(8) The transaction:

(i) Involves the purchase, sale, investment in, exchange of, or extension of credit secured by, a loan or interest in a loan, pooled loans, or interests in real property, including mortgage-backed securities; and

(ii) Is supported by an appraisal that meets the requirements of this part for each loan or interest in a loan, pooled loan, or real property interest originated after September 19, 1990;

(9) The transaction is insured or guaranteed by a United States government agency or United States government sponsored agency;

(10) The transaction meets all of the qualifications for sale to a United States government agency or United States government sponsored agency;

(11) The regulated institution is acting in a fiduciary capacity and is not required to obtain an appraisal under other law; or

(12) The FDIC determines that the services of an appraiser are not necessary in order to protect Federal financial and public policy interests in real estate-related financial transactions or to protect the safety and soundness of the institution.

(b) *Evaluations and other appraisals.* Transactions for which the services of a State certified or licensed appraiser are not required under paragraphs (a)(1), (a)(5) or (a)(7) of this section nevertheless should have an appropriate evaluation of real property collateral that is consistent with agency guidance. The FDIC reserves the right to require an appraisal under this part whenever the agency believes it is necessary to address safety and soundness concerns.

* * * * *

4. Section 323.4 is revised to read as follows:

§ 323.4 Minimum appraisal standards.

For federally related transactions, all appraisals shall, at a minimum:

ALTERNATIVE I FOR PARAGRAPH (a)

(a) Conform to the Uniform Standards of Professional Appraisal Practice (USPAP) adopted by the Appraisal Standards Board of the Appraisal Foundation;

ALTERNATIVE II FOR PARAGRAPH (a)

(a) Conform to the Uniform Standards of Professional Appraisal Practice (USPAP) adopted by the Appraisal Standards Board of the Appraisal Foundation, 1993 Edition (as adopted December 8, 1992), which is specifically incorporated by reference in accordance with 5 U.S.C. 552(a) and 1 CFR part 51 (the USPAP is available from the Appraisal Foundation, 1029 Vermont Avenue, NW., suite 900, Washington, DC 20005–3517);

ALTERNATIVE III FOR PARAGRAPH (a)

(a) Conform to generally accepted appraisal standards as evidenced by the Uniform Standards of Professional Appraisal Practice (USPAP) promulgated by the Appraisal Standards Board of the Appraisal Foundation;

(b) Be written;

(c) Set forth a market value as defined in this part; and

(d) Be performed by State licensed or certified appraisers in accordance with requirements set forth in this part.

5. Section 323.5 is amended by revising paragraph (b) to read as follows:

§ 323.5 Appraiser independence.

* * * * *

(b) *Fee appraisers.* (1) If an appraisal is prepared by a fee appraiser, the appraiser shall be engaged directly by the regulated institution or its agent, and have no direct or indirect interest, financial or otherwise, in the property or the transaction.

(2) A regulated institution also may accept an appraisal that was prepared by an appraiser engaged directly by another financial services institution, if:

(i) The appraiser has no direct or indirect interest, financial or otherwise, in the property or the transaction; and

(ii) The regulated institution determines that the appraisal conforms to the requirements of this part and is otherwise acceptable.

By order of the Board of Directors.

Dated at Washington, DC this 26th day of May, 1993.

Federal Deposit Insurance Corporation.

Hoyle L. Robinson,

Executive Secretary.

OFFICE OF THRIFT SUPERVISION

Authority and Issuance

Accordingly, for the reasons set forth in the joint preamble, the Office of Thrift Supervision hereby proposes to amend chapter V, title 12 of the Code of Federal Regulations, as set forth below:

SUBCHAPTER C—REGULATIONS FOR FEDERAL SAVINGS ASSOCIATIONS

PART 545—OPERATIONS

1. The authority citation for part 545 continues to read as follows:

Authority: 12 U.S.C. 1462a, 1463, 1464, 1828.

2. Section 545.32 is amended by revising the first sentence of paragraph (b)(2) to read as follows:

§ 545.32 Real estate loans.

* * * * *

(b) * * *

(2) *Appraisals.* A Federal savings association may make a real estate loan only after an appraiser has submitted a signed appraisal of the security property consistent with the requirements of part 564 of this chapter. * * *

* * * * *

3. Section 545.103 is amended by revising the second sentence of paragraph (b) to read as follows:

§ 545.103 Suretyship.

* * * * *

(b) * * * If real estate, the value must be established by a signed appraisal consistent with the requirements of part 564 of this chapter. * * *

* * * * *

SUBCHAPTER D—REGULATIONS APPLICABLE TO ALL SAVINGS ASSOCIATIONS

PART 563—OPERATIONS

4. The authority citation for part 563 continues to read as follows:

Authority: 12 U.S.C. 1462, 1462a, 1463, 1464, 1467, 1468, 1817, 1818, 3806; 42 U.S.C. 4106; Pub. L. 102–242, sec. 306, 105 Stat. 2236, 2335 (1991).

5. Section 563.170 is amended by revising paragraph (c)(1)(iv) to read as follows:

§ 563.170 Examinations and audits; appraisals; establishment and maintenance of records.

* * * * *

(c) * * *

(1) * * *

(iv) One or more written appraisal reports, prepared at the request of the lender or its agent and for the lender's use, and signed prior to the approval of such application (except in the case of an approval conditioned upon obtaining an appraisal) that satisfies the requirements of part 564 of this chapter: *Provided, however,* That nothing in this paragraph (c)(1)(iv) shall apply to property improvement loans, as that term is used in 24 CFR 200.167, insured by the Federal Housing Administration for which that agency does not require an appraisal or certification of valuation;

* * * * *

PART 564—APPRAISALS

6. The authority citation for part 564 is revised to read as follows:

Authority: 12 U.S.C. 1462, 1462a, 1463, 1464, 1828(m), 3331 *et seq.*

7. Section 564.2 is amended by redesignating paragraphs (d) through (l) as paragraphs (e) through (m), respectively, and by adding a new paragraph (d) to read as follows:

§ 564.2 Definitions.

* * * * *

(d) *Business loan* means a loan or extension of credit to any corporation, general or limited partnership, business trust, joint venture, pool, syndicate, sole proprietorship, or other business entity.

* * * * *

8. Section 564.3 is amended by revising paragraph (a), redesignating paragraphs (b) through (d) as paragraphs (c) through (e), and adding a new paragraph (b) to read as follows:

§ 564.3 Appraisals required; transactions requiring a State certified or licensed appraiser.

(a) *Appraisals required.* An appraisal performed by a State certified or licensed appraiser is required for all real estate-related financial transactions except those in which:

(1) The transaction value is $250,000 or less;

(2) A lien on real estate has been taken as collateral in an abundance of caution;

(3) The transaction is not secured by real estate;

(4) A lien on real estate has been taken for purposes other than the real estate's value;

(5) The transaction is a business loan that:

(i) Has a transaction value of less than $1 million; and

(ii) Is not dependent on the sale of, or rental income derived from, the real estate taken as collateral as the primary source of repayment;

(6) A lease of real estate is entered into, unless the lease is the economic equivalent of a purchase or sale of the leased real estate;

(7) The transaction results from an existing extension of credit, provided that there has been no obvious or material deterioration in market conditions or physical aspects of the property that threaten the institution's real estate collateral protection;

(8) The transaction:

(i) Involves the purchase, sale, investment in, exchange of, or extension of credit secured by, a loan or interest in a loan, pooled loans, or interests in real property, including mortgage-backed securities; and

(ii) Is supported by an appraisal that meets the requirements of this part for each loan or interest in a loan, pooled loan, or real property interest originated after August 23, 1990;

(9) The transaction is insured or guaranteed by a United States government agency or United States government sponsored agency;

(10) The transaction meets all of the qualifications for sale to a United States government agency or United States government sponsored agency;

(11) The regulated institution is acting in a fiduciary capacity and is not required to obtain an appraisal under other law; or

(12) The Office of Thrift Supervision determines that the services of an appraiser are not necessary in order to protect Federal financial and public policy interests in real estate-related financial transactions or to protect the safety and soundness of the institution.

(b) *Evaluations and other appraisals.* Transactions for which the services of a State certified or licensed appraiser are not required under paragraphs (a)(1), (a)(5) or (a)(7) of this section nevertheless should have an appropriate evaluation of real property collateral that is consistent with agency guidance. The Office of Thrift Supervision reserves the right to require an appraisal under this part whenever the agency believes it is necessary to address safety and soundness concerns.

* * * * *

9. Section 564.4 is revised to read as follows:

§ 564.4 Minimum appraisal standards.

For federally related transactions, all appraisals shall, at a minimum:

ALTERNATIVE I FOR PARAGRAPH (a)

(a) Conform to the Uniform Standards of Professional Appraisal Practice (USPAP) adopted by the Appraisal Standards Board of the Appraisal Foundation;

ALTERNATIVE II FOR PARAGRAPH (a)

(a) Conform to the Uniform Standards of Professional Appraisal Practice (USPAP) adopted by the Appraisal Standards Board of the Appraisal Foundation, 1993 Edition (as adopted December 8, 1992), which is specifically incorporated by reference in accordance with 5 U.S.C. 552(a) and 1 CFR part 51 (the USPAP is available from the Appraisal Foundation, 1029 Vermont Avenue, NW., suite 900, Washington, DC 20005–3517);

ALTERNATIVE III FOR PARAGRAPH (a)

(a) Conform to generally accepted appraisal standards as evidenced by the Uniform Standards of Professional Appraisal Practice (USPAP) promulgated by the Appraisal Standards Board of the Appraisal Foundation;

(b) Be written;

(c) Set forth a market value as defined in this part; and

(d) Be performed by State licensed or certified appraisers in accordance with requirements set forth in this part.

10. Section 564.5 is amended by revising paragraph (b) to read as follows:

§ 564.5 Appraiser independence.

* * * * *

(b) *Fee appraisers.* (1) If an appraisal is prepared by a fee appraiser, the appraiser shall be engaged directly by the regulated institution or its agent,

and have no direct or indirect interest, financial or otherwise, in the property or the transaction.

(2) A regulated institution also may accept an appraisal that was prepared by an appraiser engaged directly by another financial services institution, if:

(i) The appraiser has no direct or indirect interest, financial or otherwise, in the property or the transaction; and

(ii) The regulated institution determines that the appraisal conforms to the requirements of this part and is otherwise acceptable.

§ 564.8 [Amended]

11. Section 564.8 is amended by removing paragraph (d)(1), by removing the colon following the introductory text of paragraph (d), by revising the word "Appraisals" to read "appraisals" in paragraph (d)(2), and by removing the paragraph designation (d)(2).

By the Office of Thrift Supervision.

Jonathan L. Fiechter,

Acting Director.

[FR Doc. 93–13233 Filed 6–3–93; 8:45 am]

BILLING CODE 4810-33-P, 6210-01-P, 6714-01-P, 6720-01-P

Reader Aids

Federal Register

Vol. 58, No. 106

Friday, June 4, 1993

INFORMATION AND ASSISTANCE

Federal Register

Index, finding aids & general information	202–523–5227
Public inspection desk	523–5215
Corrections to published documents	523–5237
Document drafting information	523–3187
Machine readable documents	523–3447

Code of Federal Regulations

Index, finding aids & general information	523–5227
Printing schedules	523–3419

Laws

Public Laws Update Service (numbers, dates, etc.)	523–6641
Additional information	523–5230

Presidential Documents

Executive orders and proclamations	523–5230
Public Papers of the Presidents	523–5230
Weekly Compilation of Presidential Documents	523–5230

The United States Government Manual

General information	523–5230

Other Services

Data base and machine readable specifications	523–3447
Guide to Record Retention Requirements	523–3187
Legal staff	523–4534
Privacy Act Compilation	523–3187
Public Laws Update Service (PLUS)	523–6641
TDD for the hearing impaired	523–5229

ELECTRONIC BULLETIN BOARD

Free **Electronic Bulletin Board** service for Public Law numbers, Federal Register finding aids, and a list of Clinton Administration officials. **202–275–1538, or 275–0920**

FEDERAL REGISTER PAGES AND DATES, JUNE

31147–31330.....1
31331–31460.....2
31461–31646.....3
31647–31892.....4

CFR PARTS AFFECTED DURING JUNE

At the end of each month, the Office of the Federal Register publishes separately a List of CFR Sections Affected (LSA), which lists parts and sections affected by documents published since the revision date of each title.

3 CFR

Proclamations:
6566.....31325
Executive Orders:
10582 (See DOL notice of June 1).....31220
12073 (See DOL notice of June 1).....31220
12850.....31327
6277 of September 8, 1933 (Revoked in part by PLO 6975).....31475
Administrative Orders:
Presidential Determinations:
No. 92–23 of May 28, 1993.....31329
No. 93–21 of May 12, 1993.....31461
No. 93–22 of May 19, 1993.....31463

5 CFR

1201.....31234
1633.....31331

7 CFR

905.....31465

8 CFR

103.....31147

10 CFR

26.....31467
70.....31467
73.....31467
Proposed Rules:
2.....31478
72.....31478

12 CFR

327.....31150
363.....31332
Proposed Rules:
34.....31878
225.....31878
323.....31878
545.....31878
563.....31878
564.....31878

14 CFR

39.....31159, 31160, 31342, 31647, 31649, 31650
71.....31652
91.....31640
Proposed Rules:
39.....31347, 31348, 31350, 31352, 31354, 31356, 31481, 31681
71.....31483, 31484, 31485, 31486

17 CFR

1.....31162
156.....31167

19 CFR

Proposed Rules:
151.....31487
152.....31487

20 CFR

366.....31343
626.....31471
627.....31471
628.....31471
629.....31471
630.....31471
631.....31471
637.....31471

21 CFR

310.....31236
1301.....31171
1304.....31171
Proposed Rules:
1301.....31180

22 CFR

Proposed Rules:
308.....31181

26 CFR

301.....31343

29 CFR

825.....31794

33 CFR

117.....31473
165.....31473
Proposed Rules:
100.....31488

36 CFR

242.....31175, 31252

39 CFR

111.....31177

40 CFR

51.....31622
52.....31622, 31653, 31654
131.....31177
271.....31344, 31474
Proposed Rules:
Ch. I.....31685, 31686
51.....31358

43 CFR

Public Land Orders:
6974.....31655
6975.....31475

6975.....31475
6976.....31475
6977.....31655
6978.....31656
6979.....31656

47 CFR

73.....31178, 31657, 31658
90.....31345, 31476, 31477

Proposed Rules:

Ch. I.....31182, 31686
2.....31183
15.....31183
22.....31183
73.....31183, 31184, 31686, 31687, 31688
80.....31185
87.....31185
99.....31183

49 CFR

571.....31658

Proposed Rules:

1312.....31490
1314.....31490

50 CFR

17.....31660
100.....31175, 31252
625.....31234
661.....31664
663.....31179, 31345
672.....31679, 31680

Proposed Rules:

20.....31244
21.....31247
216.....31186
222.....31688
227.....31490, 31688

LIST OF PUBLIC LAWS

This is a continuing list of public bills from the current session of Congress which have become Federal laws. It may be used in conjunction with "PLUS" (Public Laws Update Service) on 202–523–6641. The text of laws is not published in the **Federal Register** but may be ordered in individual pamphlet form (referred to as "slip laws") from the Superintendent of Documents, U.S. Government Printing Office, Washington, DC 20402 (phone, 202–512–2470).

H.J. Res. 80/P.L. 103–34

Designating May 30, 1993, through June 7, 1993, as a "Time for the National Observance of the Fiftieth Anniversary of World War II". (May 31, 1993; 107 Stat. 95; 2 pages)

H.R. 1378/P.L. 103–35

To amend title 10, United States Code, to revise the applicability of qualification requirements for certain acquisition workforce positions in the Department of Defense, to make necessary technical corrections in that title and certain other defense-related laws, and to facilitate real property repairs at military installations and minor military construction during fiscal year 1993. (May 31, 1993; 107 Stat. 97; 7 pages)

Last List May 28, 1993