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Presidential Documents

Title 3—

The President

Presidential Determination No. 93–31 of July 14, 1993

Military Sales of Depleted Uranium Ammunition

Memorandum for the Secretary of State [and] the Secretary of Defense

Pursuant to the authority vested in me by Section 551 of the Foreign Operations, Export Financing, and Related Programs Appropriations Act, 1993 (Public Law No. 102–391), I hereby determine that, notwithstanding the limitations of that section of law, it is in the national security interest of the United States to allow funds provided in the above-mentioned or any other Act to be made available to facilitate the sale of M–829 depleted uranium antitank ammunition to Sweden.

You are hereby authorized and directed to transmit this determination to Congress and to arrange for its publication in the **Federal Register**.

William J. Clinton

THE WHITE HOUSE,
Washington, July 14, 1993.

[FR Doc. 93–18141
Filed 7–26–93; 2:28 pm]
Billing code 4710–10–M

Presidential Documents

Presidential Determination No. 93–32 of July 19, 1993

Certification of Free, Fair, and Democratic Elections in Angola Under Section 842 of Public Law 102–484

Memorandum for the Secretary of State

Pursuant to the authority vested in me by Public Law 102–484, section 842, I hereby certify that free, fair, and democratic elections have taken place in Angola.

You are authorized and directed to report this determination to the Congress and publish it in the **Federal Register.**

William J. Clinton

THE WHITE HOUSE,
Washington, July 19, 1993.

[FR Doc. 93–18142
Filed 7–26–93; 2:29 pm]
Billing code 4710–10–M

Rules and Regulations

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FARM CREDIT ADMINISTRATION

12 CFR Part 614

RIN 3052–AB35

Loan Policies and Operations; Lending Limits

AGENCY: Farm Credit Administration.

ACTION: Final rule.

SUMMARY: The Farm Credit Administration (FCA), by the Farm Credit Administration Board (Board), adopts final regulations relating to lending limits. The Agricultural Credit Act of 1987 [1] (1987 Act), authorized the creation of new corporate entities from mandatory and voluntary mergers and the transfer of long-term real estate lending authorities from Farm Credit Banks (FCBs) to certain associations and directed the FCA to reconcile the authorities of the resulting institutions. These changes required amendments to FCA regulations to reflect the structural changes and the lending authorities of the new entities. Other provisions of the regulations are amended to make conforming changes and to eliminate a number of FCA prior approvals including provisions relating to lending limits.

The final regulations on lending limits contain a limit on extensions of credit to a single borrower of 25 percent of capital for all Farm Credit System (FCS or System) direct lender institutions, except banks for cooperatives (BCs). It provides for exceptions to the lending limitation and rules for the attribution of loans to separate but related borrowers for the purpose of making "single borrower" determinations. The FCA believes that limiting the amount that can be lent to any one borrower or a group of related borrowers is an effective way to control concentrations of risk in a lending institution and limit the amount of risk to an institution's capital arising from losses incurred by large "single credits."

EFFECTIVE DATE: These final regulations shall become effective on January 1, 1994, or upon the expiration of 30 days after publication during which either or both Houses of Congress are in session, whichever is later. Notice of the effective date will be published in the **Federal Register**.

FOR FURTHER INFORMATION CONTACT:

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or

Gary L. Norton, Assistant General Counsel, Regulatory Operations Division, Office of General Counsel, Farm Credit Administration, McLean, VA 22102–5090, (703) 883–4020, TDD (703) 883–4444.

SUPPLEMENTARY INFORMATION:

I. General

Lending limit regulations were originally included as part of the Eligibility/Lending Authorities regulations proposed on November 3, 1988, 53 FR 44438. The amendments were removed from the regulations prior to their adoption and were reproposed, along with appraisal and loan purchase and sale regulations, on January 23, 1991, 56 FR 2452. The comment period on the reproposed regulations ended on March 25, 1991. The FCA received approximately 430 letters in response to the published reproposed regulations. A substantial number of the comment letters expressed concern about the potential impact of the lending limits and appraisal requirements of the reproposed regulations. The FCA published a Notice of Public Hearings on May 10, 1991, 56 FR 21637, to provide an opportunity for System borrowers, institutions, and other interested parties to state their views and to offer constructive suggestions on issues of concern in the reproposed regulations. The Notice of Public Hearings contained a solicitation of comments on specific topics. It also clarified the application of specific rules relating to attribution (§ 614.4358(a)(1)) and nonconforming loans (§ 614.4359) that were used to compute lending limits under the reproposed regulations. Testimony was presented by 121 individuals during the 4 days of the public hearings; 94 comment letters responded to questions raised in the Notice and at the hearings; and 85 additional letters were received during the public hearing comment period which ended on July 31, 1991. Subsequent to the close of the public hearing comment period the loan purchase and sale and collateral evaluation requirement portions of the reproposed regulations were separated from the lending limit regulations and later adopted by the FCA Board as final regulations (57 FR 38237, August 24, 1992) and (57 FR 54683, November 20, 1992).

All comments received after publication of the reproposed regulations, as well as all documents, testimony, and comments relating to the public hearings, were considered by the FCA in the development of the final regulations. The significant changes to the reproposed regulations, including any comments received on the subject matter, are explained below in the Summary of Comments and in the Section-by-Section Discussion of Changes preceding the affected part of title 12 of the Code of Federal Regulations. Finally, the FCA made technical corrections to the regulations designed to shorten them and enhance their readability.

The FCA Board recognizes the importance of this topic to the business operations of the institutions and acknowledges the high level of concern about the content of these final regulations. Some commenters have continued to request that the Board repropose rather than adopt the regulations in the form published today. The Board desires to be responsive to the concerns of the FCS institutions, yet must be aware of the time and costs involved in reproposing the regulations and the operational constraints that could be placed on the institutions in the absence of the final regulations. The Board has established an effective date for these regulations of January 1, 1994. The Board believes that with the delayed effective date the public will have ample opportunity to further review the regulations and bring any observations to the Board's attention prior to the effective date of the regulations. As always, the Board will

[1] Pub. L. No. 100–233, 101 Stat. 1568 (1988).

consider requests for further clarification or amendments to the regulations prior to or after their effective date.

II. Other Financial Institutions (OFIs)

Several OFIs inquired as to whether they were required to comply with the provisions of the lending limits regulations. The OFIs stated that such compliance would be detrimental to their ability to do business. Alternatively, comments were received from several production credit associations (PCAs) objecting to the OFIs not being subject to the requirements of the lending limits regulations.

The FCA noted during its public hearings that the lending limits regulations do not apply to the OFIs. The OFIs obtain their financing under arrangements with FCBs. The FCA has authority to regulate the discount relationship between the OFIs and the FCBs. However, unlike its regulatory authority over the FCS associations, the FCA does not have direct regulatory authority over the OFIs. It is the FCA's position that an OFI's lending limit should be addressed in the financing agreement between the FCB and the OFI. The FCB, under its lending policies and the terms and conditions of the financing agreement, may require lending criteria to comply with the requirements of the FCA's lending limits regulations. FCBs are subject to the lending limits regulations and, therefore, are restricted by the regulations from extending more than the percent of their lending limit base established in the regulations to any "single borrower," whether such loans are discounted from an association or an OFI.

III. Subpart J—Lending Limits

A. Summary of Comments

1. Computation of Lending Limits

The reproposed regulations based the calculation of lending limits on permanent capital, eliminating any double-counted capital and including stock protected under section 4.9A of the Farm Credit Act of 1971, as amended (Act), until January 1, 1998. The final regulations have substituted the term "lending limit base" for the term "capital" throughout the regulations, to avoid confusion regarding the base against which institutions can extend credit. There is no significant difference in the net computation between the existing and the final regulations.

The lending limit base is comprised of an institution's permanent capital, as defined in § 615.5201(h) of this chapter. As defined, permanent capital includes all capital except stock and other equities that may be retired on the repayment of the holder's loan or otherwise at the option of the holder. For the purposes of the lending limits regulations, stock protected under section 4.9A of the Act may be included in the lending limit base until January 1, 1998. A new § 614.4351, entitled "Computation of lending limit," has been added to the final regulations, describing how the lending limit base should be adjusted for equity eliminations.

One FCB supported basing the calculation of the lending limits on permanent capital. The American Bankers' Association (ABA) also supported the use of permanent capital, but objected to including protected stock in the lending limit base. The ABA claimed that the inclusion would artificially inflate capital levels for FCS institutions.

The FCA continues to believe that for a limited period of time stock protected under section 4.9A of the Act should be included as capital for lending limit purposes. Excluding this stock from the computation of lending limits could have an immediate negative impact on the size of the loans some institutions can make. The FCA believes that it would not be justifiable or fair to remove protected borrower stock from the lending limit base while some institutions still have considerable amounts of such stock outstanding, but recognizes that the level of protected stock is declining. Therefore, the final regulation provides that after January 1, 1998, such stock will no longer be counted for lending limit purposes.

Several associations commented that the elimination of the FCBs' investments in the associations required under the permanent capital regulations would have a negative effect on their lending limits. The FCA recognizes that the lending limits of direct lender associations may be negatively impacted by equity allocations that assign the equity to the bank, as was required under the original permanent capital regulations. However, recent and pending changes to the capital regulations provide the associations with an opportunity to reach an agreement with the bank on the allocation of equities. Therefore, the FCA does not believe that the regulatory requirements are overly restrictive or impose an undue hardship on the associations.

The FCA's position is based on the following rationale: (a) The double counting of capital should be eliminated; (b) the double counting of capital is inappropriate for calculating lending limits; and (c) the capital must be counted for lending limit purposes where it is counted for capital purposes. When an association's investment in a bank is counted as the bank's capital, then the bank, not the association, is considered to have control over the capital. The bank is considered to have complete discretion, within its operating authorities, to invest or use the funds as it sees fit. It would not be prudent for an association to loan against capital over which it has no direct control. Accordingly, the final regulations continue to reflect the FCA's belief that it is important to count capital where control is vested.

Several associations and a FCB commented that the allowance for loan losses should be included in the capital calculation. They said this argument was particularly compelling in the case of the PCAs, which were required by law to maintain an allowance equal to 3.50 percent of loan assets even though that would exceed the allowance required under generally accepted accounting principles (GAAP). They also pointed out that commercial banks are permitted to include the allowance for loan losses in the capital base when determining lending limits. To assure equitable treatment, they urged that the allowance be included as permanent capital for lending limit calculations.

With regard to the PCA allowance, following the expiration of the comment period the Act was amended to delete the required 3.50 percent allowance requirement.[2] As amended, the law now requires all System institutions, including PCAs, to maintain their allowance in accordance with GAAP, therefore the PCA allowance is no longer an issue.

Contrary to the comments received and the practices of commercial banks, the FCA continues to believe that the allowance for loan losses computed in accordance with GAAP should be excluded from the definition of the lending limit base. Such funds already represent specifically known risk exposure and generally anticipated risk of loss. It would be inappropriate for an institution to expose funds already earmarked to cover losses to increased risk of loss by including them in the lending limit base. Therefore, the final regulation continues to exclude the amount of the allowance for losses required by GAAP from the lending limit base.

[2] Farm Credit Banks and Associations Safety and Soundness Act of 1992 (Pub. L. 102–552). 106 Stat. 4102.

The BCs commented that changing the basis of the calculation of lending limits from net worth to permanent capital, would adversely affect their lending limits. They said this would require the smaller BCs to participate more loans with CoBank. This adverse impact stems from the regulatory treatment of investments in other institutions due to participation of loans.

Under existing regulation, § 614.4354(d), a BC purchasing a participation interest in another BC's loan would calculate its lending limit by subtracting from its net worth the amount of any capital that the originating BC is required to have in the purchasing bank. Thus, when CoBank purchases a participation from the other BCs, it deducts from its net worth the amount of investment in CoBank owned by the other BCs. For example, assume that the originating bank has a net worth of $50 million and that its investment in the purchasing bank is $20 million. Further assume that the purchasing bank's net worth is $500 million. Under existing regulations, the purchasing bank can participate a seasonal and term loan with the originating bank up to 35 percent of its $480 million net worth, or $168 million. The originating bank can loan up to 35 percent of its $50 million net worth, or $17.5 million.

The reproposed regulation revised this elimination and required the originating bank to deduct from its capital the investment in the purchasing bank that the originating bank was required to purchase. Therefore, under the reproposed regulation, if the Springfield or St. Paul BCs sold a participation to CoBank, they would have to deduct from their capital the amount of their investment in CoBank in order to determine their lending limit. At the same time, if CoBank were to purchase a participation from the other BCs, it would not have to deduct from its capital the amount of investments owned by the other BCs.

In light of these comments, FCA has reconsidered this provision of the reproposed regulations and determined that the regulation should revert back to the computation originally provided in the proposed regulations. It was determined that the reproposed regulation would have adversely impacted the lending limit of the two smaller BCs, and the FCA is prohibited by statute from setting more restrictive lending limits for the BCs than are currently in effect. FCA believes that application of this method of computation will not create a safety and soundness concern for the FCBs and associations and therefore should also be applicable to these institutions in order to provide a consistent methodology for computing lending limits.

Accordingly, for purposes of capitalizing participation interests, the final regulations have revised the manner in which the investment in other institutions is eliminated. Section 614.4351(c) of the final regulations requires the investment to be deducted from the purchasing institution's lending limit base rather than from the originating institution's lending limit base.

2. Computation of Obligations

The reproposed regulations allow an institution to exclude loans that are discharged in bankruptcy or that are legally unenforceable because of judicial decision or the expiration of the statute of limitations when making a determination if loans to a borrower are within the lending limit. The Farm Credit Council (FCC) commented that the regulation should be broadened to exclude those portions of a loan where the lender cannot legally enforce payment because of formal restructuring or similar actions. One FCB suggested that the phrase "because of judicial decision or the expiration of the statute of limitations" be deleted. The FCB maintained that an institution should not be required to obtain a judicial decision or to postpone extending credit during the statute of limitations period for otherwise qualified eligible borrowers. The FCB argued that the provision is excessively restrictive and would inhibit the restructuring of loans authorized by the Act.

One FCB also commented that charged-off loans should not be included in a borrower's total obligations when determining whether additional credit can be extended. The FCB asserted that the conditions under which previous indebtedness was charged off may have little similarity to the borrower's present financial condition and that each extension of credit requires a credit decision that takes into account existing credit factors.

The FCA agrees that all payments that are determined to be legally unenforceable are no longer considered to be a loan for lending limit purposes and should be excluded from a borrower's obligations. The final regulation has been clarified accordingly. The final regulation continues to include chargeoffs in the calculation of a borrower's total obligations because chargeoffs do not affect the borrower's legal obligation to repay the debt unless the institution has modified the obligating instruments. If the borrower's present financial condition has improved to the point that the institution wishes to extend additional credit, the institution should first make every effort to collect previous extensions of credit from which the borrower has not been legally released.

3. Timing of Determinations

Several comments were received requesting clarification as to when a loan or commitment is considered to have been made for the purpose of determining whether a borrower's indebtedness exceeds the lending limit. In addition, one association commented that lending limits should be based solely on the outstanding principal balance and should not include undisbursed commitments.

To ensure uniformity concerning the point in time when the lending determination is made, the definition of "commitment" has been revised. Under the final regulations, a commitment is effective at the time it becomes a legal obligation. Since commitments are contractual obligations of the institution when they are made, they must be combined with any other outstanding debts of a borrower in determining lending limits. Therefore, before an institution makes a loan commitment, it shall ensure that the commitment, together with all loans and commitments outstanding and attributed to that borrower, is within the lending limits or is able to be participated.

4. Attribution Rules

The attribution rules are intended to identify all loans to a single borrower or related borrowers which must be combined with the borrower's loan when calculating the borrower's lending limit. The criteria for attributing one borrower's loan to another is set forth in the final regulations to allow all FCS institutions to identify "single credit risks" before making a loan or commitment to lend.

A number of comments were received from FCS institutions, individual borrowers, the FCC, and other interested parties regarding the reproposed attribution rules. A majority of the comments were from BCs and their borrowers. The commenters were primarily concerned with how the regulations would impact loans to regional and local cooperatives. The BCs and their customers were concerned that the rules of attribution in the reproposed regulations would restrict the BCs' lending activities. Additional

comments were received from the FCC with similar concerns.

Existing regulation § 614.4354(e) requires FCA prior approval to treat related BC borrowers as separate credit risks. The reproposed attribution rules apply to all FCS borrowers and were based on the same criteria that FCA has used internally in the past in determining whether to approve exceptions for those BC borrowers who were determined to be independently viable. These criteria were included in order to eliminate the prior approval requirement and allow all institutions to make their own determinations of "single credit risk."

In response to the comments the FCA reconsidered the reproposed regulations and the underlying rationale. The FCA also conducted a study of the various cooperative ownership structures found in the BCs lending portfolios as well as the ownership structures and borrowing relationships found in the FCBs' and associations' loan portfolios. Based on this analysis, the attribution rules have been modified in the final regulations. As modified, the attribution rules will not create a more restrictive application of lending limits on the BCs than already existed. Following the completion of the study, FCA confirmed that no existing BC borrowing relationship would have been required to be attributed that would not also have been required to be attributed, upon identification, under the existing regulations.

Under the final regulations, the issue of whether a related borrower's loan needs to be combined with the borrower's loans, when calculating the borrower's lending limit, will depend on whether the borrower either exerts corporate control over the related borrower's operation or is a primary source of repayment on the related borrower's loan(s). In cases where the borrower is obligated to repay or has the ability to influence the repayment of the related borrower's loan, the related borrower's debt must be attributed to the borrower and combined with the borrower's debt for lending limit purposes.

The following is a discussion of the specific changes to the regulations.

(a) "Named" and "subject" borrower. Under the rules of attribution in the reproposed regulations, loans to a borrower (named borrower) were required to be combined with and attributed to another borrower (subject borrower) when any one of five conditions occurred. Considerable comment was received stating that the terms "subject" and "named" borrower were confusing, making it difficult to determine how the rules of attribution should be applied. In response to these comments, the final regulations have been revised by deleting all reference to subject and named borrower. For the purposes of applying the lending limits to the indebtedness of an applicant for a loan, the applicant, previously referred to as the subject borrower is referred to as the borrower in the final regulations. A loan in the name of another borrower, previously referred to as "named" borrower, is referred to as the "related" borrower.

(b) Liability. Under the reproposed regulations, any loan for which the borrower is primarily or secondarily liable would be combined with the total debt of that borrower. Numerous commenters stated that the rules of attribution should only apply to the portion of the loan being guaranteed by the borrower. The FCA agrees with the commenters and has modified the regulations accordingly. While the final regulation continues to require attribution when the borrower has primary or secondary liability for a loan made to the related borrower, it clarifies that the amount of such loan attributable to the borrower is limited to the amount of the borrower's liability.

The FCA notes that guarantees are presumed to be taken in support of the credit decision and not out of an abundance of caution. Only when an institution documents in the appropriate loan files that the guarantee is not a necessary factor in the credit decision may the abundance of caution exception be taken. If the documentation fails to provide such support, then the portion of the loan that is guaranteed must be combined with the borrower's other debt for lending limit purposes. If this results in the loan to the borrower exceeding the lending limit the excess amount of the loan would be subject to the provisions of § 614.4359 of this subpart.

A substantial number of the comments continued to reflect the impression that loans guaranteed by a borrower must be attributed to both the borrower and the related borrower under the reproposed rules of attribution. The FCA had previously attempted to clarify this issue in its Notice of Public Hearings relating to the reproposed lending limit regulation (56 FR 21638, May 10, 1991). The reproposed regulations were intended to require all loans which the borrower guaranteed to be combined with the borrower's other loans when calculating the borrower's lending limit. As stated in the Notice, a loan guaranteed by a borrower would be combined with the loans outstanding to that borrower. However, loans outstanding to the guarantor would not be combined with and attributed to the related borrower whose loan is being guaranteed. For example, assume cooperative A (borrower) has a $100 million loan, and provides a full guarantee on cooperative B's (related borrower) $50 million loan. Because of the guarantee, cooperative B's loan would be attributed to the guarantor, cooperative A, and combined with cooperative A's outstanding loan. Cooperative A's total debt for lending limit purposes would be $150 million. Cooperative B's debt remains at $50 million for lending limit purposes.

A Comment received on behalf of the BCs expressed concern that the reproposed attribution rules would disallow the exception for "look-through" notes contained in § 614.4354(a)(2) of the existing regulation. This exception was not removed in the reproposed regulation and continues under the final regulation. Under the *Liability* section of the final attribution rules in § 614.4358(a), look-through notes are exempt from the lending limit provisions for the BCs, provided the notes meet all the criteria of § 614.4356.

(c) Financial interdependence. The reproposed regulations required attribution if two borrowers' operations were so intertwined that viability could not be independently determined. A number of comments were received regarding this section of the reproposed regulations and the terms used to determine when borrowers are financially interdependent. As discussed below, the financial interdependence section of the final regulations has been reorganized and modified to clarify the application of the regulation.

A number of commenters expressed concern that the attribution rule would be difficult to apply because the terms "intertwined" and "viability" were vague. The FCA agrees with the commenters and has modified the final regulations by deleting these terms and incorporating this concept under § 614.4358(a)(2). Under this section, the borrower's loan should be combined with and attributed to another borrower's loan when their operations are so financially interdependent that the economic survival of one operation will materially affect the economic survival and repayment capacity of the other operation.

A substantial number of comments received from the BCs and their borrowers regarded the source of repayment criteria used in the reproposed regulation. A majority of commenters did not object to the use of

the gross receipts standard but requested that the percentage be raised to 50 percent, stating that the higher percentage would result in less frequent consolidation of credits of different borrowers and provide more flexibility in addressing the credit risk associated with interdependence.

In response to these comments, the FCA analyzed the potential impact of the reproposed regulation on the BCs and their borrowers and in particular the various cooperative ownership structures and the use of the 30-percent gross receipts in the repayment criteria. Based on the results of its analysis, the FCA has modified the final regulations to increase the percentage of gross receipts from 30 to 50 percent. Under the final regulations, a borrower is considered to be the primary source of repayment if the borrower is obligated to supply 50 percent or more of the related borrower's annual gross receipts, and reliance on the income from one another is such that, regardless of the solvency and liquidity of the borrower's operations, the debt service obligation of the related borrower could not be met if income flow is interrupted or terminated. Gross receipts include, but are not limited to, revenues, intercompany loans, dividends, and capital contributions.

Under the final regulation, financial interdependence is not limited to borrowers who supply 50 percent or more of the related borrower's gross receipts. Borrowers will also be considered to be financially interdependent and required to combine their debts, when the assets or operations of the borrowers are commingled to such an extent that they cannot be separated without materially impacting the repayment capacity of each borrower. Therefore, even if a borrower supplies less than 50 percent of the gross receipts, the related borrower's loans must be attributed to the borrower if their assets or operations are so commingled.

The reproposed regulation provided that the gross receipts rule did not apply to "integrated operations." FCA received comments requesting clarification of the scope of this exception and its applicability to contract growers. The exception was intended to identify those relationships where one borrower could reasonably continue to do business or service its debt without a continuing, ongoing relationship with the other borrower. Those often involve contractual relationships that can easily be replaced in the marketplace without adversely affecting the viability or repayment ability of the related borrower. The final regulations were revised so that the source of repayment rule would apply the same criteria to all borrowers instead of attempting to specifically exclude a particular class of borrower, such as integrated operations from the attribution rules. As an example, the final rule would not require attribution for integrated operations where the integrator had choices as to which contract operators the integrator would have under contract. At the same time, the individual contract operators' loans would not be required to be consolidated as long as they have reasonable contract replacement alternatives and their viability or repayment ability is not jeopardized.

The reproposed regulations required attribution when the proceeds of loans to the related borrower are used by or for the direct benefit of the borrower. Direct benefit was deemed to have occurred when the proceeds of the loan were either transferred to or used to purchase an asset that was transferred to the borrower without a reasonably equivalent exchange of value. Several commenters objected to this direct benefit rule, asserting that it was difficult for institutions to measure or monitor. They also questioned why loans must be attributed solely because of loan purpose. The FCA agrees with the commenters and has deleted the direct benefit rule from the final attribution rules. The FCA believes that risk will be contained by focusing on financial interdependence and control rather than on loan purpose.

Contrary to a number of comments received from local and regional cooperatives who borrow from the BCs, the borrowers' loans are generally not required to be attributed to a related borrower for the purpose of calculating the related borrower's lending limit. FCA has modified the final regulation to further clarify this point. Under the final regulation, the only time the borrower's loan would be attributed to the "related" borrower would be if the related borrower controls repayment of the borrowers' loans.

(d) Control. The reproposed regulation required attribution when the borrower directly or indirectly controls or is controlled by the related borrower. Control was defined as exercising a controlling influence over the affairs of another borrower or operating under common control with another borrower. The criteria used to determine control included any one of the following: (1) Ownership or the power to vote 25 percent or more of the voting securities in another; (2) control of the election of a majority of directors of another; (3) the power to exercise a controlling influence over the management of another's operations; or (4) the sharing of a common directorate or management with another.

Comments regarding the definition of control came primarily from the BCs, BC borrowers, and the FCC. Several commenters stated that using 25-percent ownership as a basis for control was not consistent with established principles for operating on a cooperative basis because one characteristic of traditional cooperative structures is that one borrower equals one vote. They stated that the reproposed regulations presumed that 25-percent ownership could be translated into voting control. They felt that by using 25-percent stock ownership the FCA was equating stock ownership in cooperatives to stock ownership in corporations. The FCC and other commenters suggested that § 614.4350(d)(1) be revised to require attribution when a borrower has the power to vote 50 percent or more of the voting securities in another.

The FCC also stated that § 614.4350(d)(3), which defined "control" to include the authority to exercise a controlling influence over the management of another's operations was vague and should be deleted. Finally, the FCC recommended that § 614.4350(d)(4), regarding when a borrower shares a common directorate or management with another, be improved by establishing a more objective standard.

The FCA acknowledges that cooperative ownership structures may differ significantly from non-cooperative corporate ownership structures. Generally, in a cooperative, each member has only one vote regardless of the amount of stock owned while in a corporation, voting rights typically correspond to the amount of stock owned. The FCA also realizes that the nature of cooperative relationships is undergoing a transition to more capital-based ownership structures and has chosen to include the percentage of stock ownership as one of the criteria for determining control. The final regulations have been revised to reflect these distinctions and to incorporate both traditional and nontraditional cooperative structures.

The final regulations provide that, for purposes of lending limits, where a borrower owns 50 percent or more of the stock of another, direct control exists and attribution is required. Where a borrower owns or controls 25 percent of the voting stock, attribution will be required if at least one of three management control conditions is also present. By combining stock ownership with managerial control, the FCA has

addressed the concern that the control criterion is unduly subjective and restrictive for traditional cooperative relationships. At the same time, the regulation continues to require attribution in those instances where the borrower may indirectly control the stock, but plays a major role in the related borrower's operations.

Instead of requiring attribution if any one of the four criteria in the reproposed regulations are met, the final regulation at § 614.4358(a)(3) requires attribution when the borrower owns 50 percent or more of the stock of the related borrower or the borrower owns or has the power to vote 25 percent or more of the voting stock of a related borrower and meets at least one of the following three management control criteria. These three criteria were contained in the reproposed regulations and the way in which they are applied to the question of attribution has been modified in the final regulations. They are:

(1) The borrower shares a common directorate or management with a related borrower. A common directorate is deemed to exist when a majority of the directors, trustees, or other persons performing similar functions of one borrower also serves the other borrower in a like capacity. A common management is deemed to exist if any employee of the borrower holds the position of chief executive officer, chief operating officer, chief financial officer, or an equivalent position in the related borrower's organization.

(2) The borrower controls in any manner the election of a majority of directors of a related borrower.

(3) The borrower exercises or has the power to exercise a controlling influence over management of a related borrower's operations through the provisions of management placement or marketing agreements, or providing services such as insurance carrier or bookkeeping. An example of the test for determining borrower control under this condition would be where the related borrower's ability to make independent decisions is limited by the actions of the borrower.

5. Transition period

A number of comments were received regarding the transition period provisions of the reproposed regulations. The reproposed regulations required loans that were made prior to the effective date of the regulations which became nonconforming solely because of a change in the regulations to be retired or liquidated over a reasonable period, not to exceed 7 years. Several commenters requested this requirement be deleted, because institutions cannot unilaterally change existing terms of loan contracts that exceed the 7-year period. Some commenters also argued that institutions should not be penalized for retroactively failing to comply with new regulations. The FCC urged that the new lending limits be applied prospectively and that all existing loans be "grandfathered" unless subsequent loan servicing results in a material change in the contract terms allowing the institution to bring the loan into conformance with the new lending limits. One institution noted that loans maturing or renewing much earlier than 18 months, combined with the added restrictions on participations and the lowering of the lending limits, would create an undue burden. Several borrowers expressed concern that they would have to refinance their loans at the end of the 18-month period and that they might be forced to seek financing elsewhere if their loans were not within the institution's new lending limit.

The FCA recognizes that the term of some existing loans might exceed 7 years and that institutions cannot change the term of a loan contract to comply with their new regulatory lending limit. To address these concerns, the final regulations provide a "grandfather" provision for all loans on the books on the date these regulations become effective. Furthermore, after careful consideration of the comments expressing concern that institutions would not have ample time to conform to the new regulations, the FCA has chosen to delay the effective date of the regulations until January 1, 1994, or upon the expiration of 30 days after publication in the **Federal Register** during which either or both Houses of Congress are in session, whichever is later. Since this date marks the beginning of a new year and quarter, the FCA believes it will be easier for institutions to calculate and comply with the new lending limits.

All new loans or commitments entered into after the regulations become effective must conform to the new regulations. A grandfathered loan will be considered a new loan if funds are advanced to the borrower in excess of existing commitments, the terms and conditions of the loan are materially changed, a different borrower is substituted for an original borrower who is released, or an additional person is added to the loan contract. Also, for purposes of this subpart, when a renewal or reamortization involves the capitalization of interest, new funds would be considered to have been advanced and the entire loan must then be within the lending limit.

The transition section of the reproposed regulations also allowed commitments made prior to the effective date of the regulations to be funded. If the commitment would result in a lending limit violation when fully funded, then no additional funds in excess of the commitment amount may be advanced. The FCC commented that § 614.4360(b) could be read as prohibiting the advance of additional funds under an existing commitment if the advance would result in a nonconforming loan. This was not the intent of the regulations and the final regulations were amended to eliminate any ambiguity.

6. Lending Limit Violations

The reproposed regulations contained a section governing "nonconforming" loans, which were defined as loans or commitments that were within the lending limit when made, but which subsequently exceeded the limits. The FCC and several other FCS institutions requested clarification of the nonconforming loan designation and its impact on the institutions.

The final regulations were reorganized and clarified to emphasize that all loans which exceed the lending limit, except "grandfathered" loans, are lending limit violations. However, the final regulation also provides an exception for those loans which were previously categorized as "nonconforming" and clarifies that these excepted loans are not required to be removed from an institution's collateral base. In addition, the final regulation adds an exception for loans which exceed the lending limits due to mergers and acquisitions.

The FCA recognizes that if the loan or commitment was legal at the time it was made, then the institution has not knowingly violated the lending limit regulations. Therefore, under the final regulations, if a loan or commitment, when combined with all other loans and commitments outstanding and attributed to the borrower, was within the lending limit when made, the loan may continue to be funded and advances can be made under the commitment even if: (a) The institution experiences a decline in capital and thus its lending limit base; or (b) the borrower's operations are merged with another borrower resulting in total consolidated loans in excess of the institution's lending limit.

To ensure that institutions make every effort to bring loans which violate the lending limit into conformance, the reproposed regulations required nonconforming loans to have a written plan prescribing specific actions that

will be taken by the institution and the borrower to bring the loan into conformance with the legal lending limit. The FCC and several FCBs urged that this requirement be revised to remove any requirement for corrective action by the borrower. They asserted that this change was necessary since an institution cannot amend the borrower's contractual rights in order to bring a loan into conformance with the institution's lending limits. The FCC also suggested that the written plan is unnecessary because it will simply state that the loan will be retired in an orderly fashion in accordance with the loan contract.

The FCA continues to believe that a written plan to resolve lending limit violations is necessary. The plan should serve as the institution's vehicle to resolve the violation and should be used by the board and management to monitor both the level of loans in excess of the lending limit and the length of time such loans remain on its books. However, the FCA agrees with the commenters that the borrower has no control over the institution's lending limit and should not be obligated in the plan to an accelerated repayment schedule. The final regulations have been modified by deleting the requirements for corrective action by the borrower.

The FCA notes that there are options other than retiring a loan according to the loan contract that can cure a lending limit violation. For instance, where undisbursed commitments are consistently held in excess of a borrower's peak credit requirements the need for such excess commitments should be reviewed in terms of the loan's conformance with the institution's legal lending limits. In addition, if an institution has a loan which exceeds the lending limits, it is in the institution's best interest to try to participate the loan or commitment, particularly if it anticipates a request for additional credit from the borrower or a decline in capital.

The FCA is aware that the business environment in which FCS borrowers operate is changing, and such changes may impact the ability of FCS institutions to provide their borrowers with continuing credit. Therefore, § 614.4359(b)(3) of the final regulation includes an exception to the lending limit violations which addresses those instances where a merger or acquisition of a corporate borrower results in a combined lending relationship in excess of the legal lending limits. Where one borrower merges with, or the borrower's operations are acquired by, another borrower and the resulting consolidation of debt results in a total indebtedness in excess of the lending limit prior to a loan maturity or renewal, then the institution can renew or extend the maturity of a loan for a period of not more than 1 year from the date of the merger. During this waiver period, the institution may advance and/or re-advance funds under the same terms, conditions, and amounts as previously existed prior to the merger or acquisition. At the end of the maximum 1-year waiver, any remaining balances and undisbursed commitments in excess of the applicable lending limit will be considered lending limit violations.

7. Monthly Reporting Requirement

The reproposed regulations required lending limits to be calculated on a monthly basis. The FCC and several FCS institutions asked for additional clarification on this requirement. They expressed concern that participations would need to be adjusted monthly as loan balances and lending limits fluctuate, necessitating a new independent credit judgment. They urged that adjustments to the lending limit be calculated on a quarterly or semiannual basis.

The FCA continues to believe that lending limits should be calculated on a monthly basis as of the preceding month end. Institutions currently prepare monthly financial statements, therefore, this requirement should not be burdensome. If participations are shared on a last-in-first-out basis, then balances will be required to be adjusted as lending limits fluctuate. The loan purchase and sale regulations, § 614.4325(e), require an independent credit judgment be made prior to the purchase of the participation interest and prior to each servicing action that changes the terms of the contract under which the asset was purchased. The agreement or contract between the participating institutions must state the amount each institution is willing to lend. Therefore, a shift in balances among participating institutions would not constitute a servicing action which changes the terms and conditions and a new credit judgment would not be necessary every month.

8. Lending Limit Percentage

The reproposed regulations lowered the lending limit for all direct lender associations to 20 percent of capital. All banks, except the BCs, remained at the existing 20-percent level. Lending limits for BCs continued to vary according to the type of loan, with 25 percent for term debt, 35 percent for seasonal debt, and an overall limit of 35 percent of capital in most circumstances. Numerous comments were received from FCS institutions concerning the reproposed lending limit. Three FCBs fully supported the reproposed lending limit. One of the FCBs commented that they would strongly oppose lending limits in excess of the 20-percent level. This commenter stated that the limitation of risk concentration is an essential component in assuring safety and soundness of the System as a whole, as well as for individual institutions. Another FCB commented that the 20-percent lending limit is sound and quite appropriate, but only when considered in concert with a reasonable definition of loans, rules of attribution, and the permanent capital standards. The ABA supported the adoption of the reproposed regulations in the interest of competitive equality.

One FCB encouraged the FCA to re-examine whether the same lending limit is appropriate for both associations and banks. The FCB urged the FCA to adopt lending limits of 20 percent for associations, an overall limit of 35 percent for FCBs, with term or real estate loans not to exceed 25 percent. They asserted that such limits for FCBs would be comparable to the limits applicable to the BCs. Since the FCB's role has moved toward that of participant and pooler, the FCB believed that a 35-percent limit would be large enough to avoid unnecessary participations with other districts or lenders outside the System. The FCB also asserted that the higher 35-percent limit would provide all banks, including BCs, more equal treatment. One FCB suggested that each bank be authorized to establish a lending limit up to 50 percent for its affiliated associations. Another FCB suggested a limit of no less than 35 percent, stating that the 20-percent limit would be overly restrictive, and result in a loss of income to originating institutions as well as a loss of an appreciable share of the market. This FCB also felt exceptions could be incorporated into the limits, including exceptions based on the quality and quantity of collateral.

Several associations commented that the reproposed limit of 20 percent was overly restrictive and would reduce their ability to carry larger loans and thereby decrease earnings. One association requested that the FCA incorporate certain exceptions to the lending limit. It claimed that State banks, who are their primary competitors, have a limit of 20 percent and are allowed exceptions similar to those provided to national banks. The association suggested a 40-percent lending limit. A federation established

to represent the PCAs in Texas urged the FCA to adopt a lending limit of no less than 35 percent. They asserted that the incorporation of certain exceptions to the lending limit would not be difficult to apply. The federation expressed concerns that the lower lending limit would increase participations. They claimed that as a number of institutions make independent credit decisions, credit service would be unacceptably delayed to borrowers whose loans exceed the lower lending limits.

The FCA has carefully considered the comments claiming that the reproposed lending limit would competitively disadvantage FCS institutions when compared to the lending limits for national and State banks. A review of lending limit regulations for State banks indicates that the lending limits for State banks vary widely. Many States closely align their regulations to those governing national banks, limiting loans to 15 percent of capital. Regulations of both national and State banks typically incorporate some exceptions into their lending limits, which increase the limits for many types of loans. However, a loan must be fully secured before any of the exceptions can be applied. Therefore, while the general limitation for national banks and some State banks is 15 percent of capital, an institution may lend a greater percentage of capital for certain types of fully collateralized loans.

In addition, the FCA reviewed the specific lending limits established by other Federal regulatory agencies such as the Office of the Comptroller of the Currency (OCC). The OCC's base lending limit is 15 percent with various exceptions provided. For instance, the OCC provides that loans that are fully secured by either short-term assets or real estate and/or are for the purpose of financing livestock operations are subject to a 25-percent lending limit. In comparison, a large majority of the loans financed by the FCS institutions would fall within the 25-percent lending limit used by the OCC.

Based on the comments received, an analysis of the lending limits of other regulators, and the results of an internal study completed on a representative sample of direct lender associations, the FCA believes that 25 percent of capital lending limit is the most appropriate. This lending limit will be applicable for all banks and direct lender associations operating under title I or title II authorities of the Act, respectively. In establishing the lending limit, the FCA has balanced the agency's safety and soundness concerns with the institutions' concerns of being able to service the credit needs of creditworthy, eligible borrowers.

FCA believes that a 25-percent lending limit will address the FCA's concerns of single credit concentrations and yet not impose a significant burden on any specific bank or district structure. In addition, due to the grandfathering provision of the final regulations, no existing loan would be forced to leave the System or be participated.

However, future loan structures may require further evaluation in light of the new limits. While a few individual associations may need to participate a portion of some of their loans to other institutions in the future, there is every reason to believe this can be done with minimum negative effects. Through the expanded loan participation authorities adopted by the FCA on September 10, 1992, no loans would be forced outside of the Farm Credit System solely on the basis of the final regulations. The association also has the opportunity to replace such participated loans with other loan interests purchased through participations from other FCS institutions. The 25-percent limit for the banks would allow the association's funding bank to fully carry any participation of existing loans resulting from these regulations.

The FCA considered the request of some FCBs to have lending limits that were at 35 or 50 percent in order to be comparable with the BCs. Because the FCBs direct lending authority is limited to long-term loans, the 25-percent limit in the final regulation is in fact comparable to the BCs 25-percent limit for long-term loans, as well as the limits for commercial banks. Finally, a 25-percent lending limit would place all institutions in the System, with the exception of BC seasonal loans, on a level playing field.

Exceptions are granted in § 614.4357 of the final regulations for government-guaranteed loans and loans fully secured by obligations fully guaranteed by the United States government. These loans were not exempt from lending limits under existing regulations.

FCA considered, but did not adopt exceptions based on the type and quantity of collateral supporting the loan. FCA concluded that such exceptions would be difficult and time-consuming to apply and administer while providing very little real advantage to FCS borrowers. For example, allowing exceptions based on collateral could disadvantage some institutions that do not extend loans secured by accepted collateral. Furthermore, the FCA does not wish to encourage institutions to place undue reliance upon collateral as a basis for extending credit above the 25-percent lending limit.

The FCA does not agree with the commenters that participations will prove onerous, disrupt credit service, and decrease earnings. In many cases, the borrower will not even be aware that the institution has participated the loan. While an institution might need to sell a portion of a loan that exceeds the lending limit, it can also buy loans from other FCS institutions to compensate for lost volume.

One FCB argued for a 5-year phase-in of the lending limits to allow institutions time to build capital. It maintained that immediate compliance with the lower lending limits would disadvantage its affiliated associations, forcing them to participate loans of their larger customers, thereby decreasing income. Another FCB and an association also supported a gradual implementation of the reduction in lending limits to 25 percent over a 5-year period. The FCB argued that the reduction in direct lender association lending limits would have a major detrimental impact on operations and earnings and hinder the associations' ability to service large customers.

The FCA does not believe that it is necessary or in the best interest of the System to phase-in the lending limits. The reproposed regulations were published in the **Federal Register** on January 23, 1991, putting institutions on notice of an intended change to the lending limits. In fact, several districts have used the time since publication to lower lending limits in anticipation of publication of the final lending limit regulations. The final regulations specifically address the institutions' concerns regarding immediate implementation of the lending limits through the transition criteria. In addition, the effective date of the lending limit regulations has been delayed until January 1, 1994, to provide institutions ample time to conform to the new regulations.

Two FCBs commented that single credit concentrations are safety and soundness issues that should be controlled by the FCA through its examination, supervision, and enforcement actions rather than through the regulatory establishment of lending limits. One association maintained that risk could be controlled through the association's lending agreement with the FCB. The association also believed that dynamic credit administration and proper management of loans would provide more risk protection than the regulation of loan size. Another association believed that the existing 50-

percent limit should remain in place and that the FCB should oversee the size of an association's loans. It stated that restricting loan size would result in significant earnings reduction, which would negatively impact the financial position of the institution more than the increased risk from large loans. Another association recommended that each FCB establish an association's lending limit based on demonstrated performance and quality of the association's loan portfolio.

The FCA believes that the safety and soundness of FCS institutions are maintained, not controlled, through examination and supervision. Enforcement actions are taken to implement corrective action in situations where safety and soundness have been jeopardized. The examination and supervision of institutions are retroactive, allowing corrective action only after the credit has been extended. In setting these lending limits, the FCA is attempting to reduce "single borrower" concentration risk to the financial position of an institution resulting from losses on loans disproportionate to their capital base before that risk is reflected on the institution's balance sheet. In addition, FCBs are encouraged to establish in-house lending limits which are less than the regulatory limit. Such in-house limits should be addressed as part of the bank/association lending relationship controlled by the terms and conditions of the general financing agreement.

FCA notes that these lending limits only address single borrower risks and are not intended to address the risks associated with industry concentrations, faulty credit administration, poor management practices, poor accounting practices, etc. While the regulations do not impose lending limits based on industry concentrations or direct loans to associations the institutions are encouraged to address such risk factors. Generally such risks can be addressed within the institution's capital requirements and the general allowance for loan loss allocations.

Comments were received from the FCC, an FCB, and several associations on the lending limits in relation to the permanent capital requirements. Commenters noted that permanent capital standards were issued when the lending limits were much higher. The FCA's justification for the level of permanent capital was the risk involved in single-industry lending. The commenters claimed that the FCA has not adequately explained why safety and soundness concerns dictate lower lending limits when minimum permanent capital standards are higher than those established for other federally regulated financial institutions.

The FCA wanted to allow time to implement the final capital adequacy regulations and to review the restructuring of institutions before making changes to the lending limits. The lending limits regulations originally proposed setting lending limits at the level applicable to the individual banks or associations prior to the mergers required or allowed by the 1987 Act. The reproposed regulations addressed the FCA's concerns with the level of risk associated with the existing lending limits and the problems that have arisen in the past due to such single borrower concentrations. The reproposed regulations were designed to address the lending limits after many institutions had completed mergers and capital between the banks and associations had been adjusted. The capital regulations were designed to address the institutions' overall financial strength and their ability to safely fund and manage their loan portfolios. As stated earlier, it is expected that the institutions will address issues such as general portfolio risks and industry concentrations through means such as their capital plans and allowance requirements. The lending limits are intended to address single borrower loan concentrations and limit the risk to an institution's capital associated with potential losses incurred by these large loans. After reviewing the comments and completing the associated impact studies, the FCA believes that the lending limits in the final regulations are appropriate for FCS institutions and adequately take into consideration all of the safety and soundness concerns of the agency.

B. Section-by-Section Discussion of Changes

1. Section 614.4350—Definitions

This section of the reproposed regulations contained the definitions used throughout subpart J. The final regulations have clarified several of the definitions, and moved the definition of "control" to the attribution rules contained in § 614.4358. The definition of "commitment" has been expanded to clarify when a commitment becomes effective. The term "capital" has been deleted from the definition section and has been replaced by a discussion of the computation of the "lending limit base" contained in § 614.4351. The identification of when an institution makes a loan has been broadened under the definition of "loan" to include when it enters into a commitment to lend.

2. Section 614.4351—Computation of Lending Limit Base

This section of the reproposed regulations contained the lending limits for all banks, except BCs. The lending limits for banks are now contained in § 614.4352. Under the final regulations, § 614.4351 contains the adjustments and eliminations required to be made to permanent capital (as defined in § 615.5201(h) of this chapter) for purposes of computing an institution's lending limit base. Under the reproposed regulations, the definition of "capital" required eliminations and adjustments according to § 615.5210(d)(1) through (d)(4) of this chapter. Section 614.4351 has been revised so that the investment resulting from loan participations is deducted from the purchasing institution's capital to determine its lending limit base, which is the same as required by existing lending limit regulations for BCs.

3. Section 614.4352—Farm Credit Banks and Agricultural Credit Banks

Under the reproposed regulations this section applied to direct lender associations. In the final regulations, this section sets forth the lending limit for FCBs and agricultural credit banks (ACBs) which is increased from the 20 percent contained in the reproposed regulations to 25 percent in the final regulations for the FCBs and for ACB loans made under the authority of title I of the Act. For ACBs making loans under the authority of title III of the Act the lending limits governing BCs as described in § 614.4355, would apply.

4. Section 614.4353—Direct Lender Associations

Section 614.4353 of the reproposed regulations addressed the endorsement liability limit of Federal land bank associations (FLBAs). Under the final regulations, § 614.4353 has been renumbered to § 614.4354. Section 614.4353 of the final regulations addresses the lending limit for all direct lender associations, which includes PCAs.

5. Section 614.4354—Federal Land Bank Associations

Section 614.4354 of the reproposed regulations detailed the lending limits applicable to BCs. Under the final regulations, most of this section has been renumbered to § 614.4355, while § 614.4354(a)(2) of the existing regulation has been renumbered as § 614.4356. Under the final regulations, § 614.4354 addresses the endorsement liability of FLBAs.

6. Section 614.4355—Banks for Cooperatives

Section 614.4355 under the final regulations sets forth the lending limits for the BCs. The reproposed and final regulations amend the existing regulations for the BCs, § 614.4354(a), by requiring lending limits to be calculated on a monthly basis, instead of semiannually. The final regulations do not change the BC lending limits contained in paragraph (a)(1) of the existing regulations and redesignate paragraph (a)(2) as § 614.4356 in the final regulations.

The attribution rules in § 614.4358 of the final regulations continue to exempt loans satisfying the criteria of existing § 614.4354(a)(2). Section 614.4354(a)(3) has been removed because it is no longer necessary to compute the total BCs' lending limit base under the final regulations. In addition, § 614.4354(a)(4) is removed. Paragraph (b) of § 614.4354 has been removed as the final regulations do not contain a requirement for a systemwide BC lending limit. The FCA believes this requirement is not necessary since the lending limit percentages applied to CoBank are nearly as large as the percentages applied to the combined net worth of the previous 13 individual BCs.

Paragraph (c) of § 614.4354, relating to the Central Bank for Cooperatives, has been removed because it is no longer appropriate. The lending limits contained in § 614.4355(a)(1) of the final regulations are applicable to all BCs. Paragraph (d) of § 614.4354 has also been removed. The content of this paragraph is addressed in the final regulations in § 614.4351 relating to the computation of the lending limit base. Paragraph (e) of § 614.4354 has been removed since the manner in which "one borrower" is determined is set forth in § 614.4358 in the final regulations relating to rules of attribution. Paragraph (f) of § 614.4354 has been removed in the final regulations.

7. Section 614.4356—Banks for Cooperatives Look-Through Notes

Section 614.4356 is a new section of the final regulations which incorporates the provisions of the existing § 614.4354(a)(2).

8. Section 614.4357—Computation of Obligations

Section 614.4357 of the final and reproposed regulations relates to the computation of obligations, parts of which were contained in § 614.4360 of the existing regulations. Section 614.4357 has been expanded and details what loans must be included in a borrower's total loans outstanding and what loans may be excluded. The exclusion for loans guaranteed by a FCS institution, contained in existing regulations § 614.4360(c), continues to apply and is set forth in the final regulations in § 614.4357(b)(2).

Paragraph (a) of § 614.4360 of the existing regulations, relating to participation loans, is addressed in the final regulations in paragraph (a)(2) of § 614.4357. The final regulations provide that loans sold with recourse must still be included in a borrower's total indebtedness. Section 614.4357(a)(1) of the final regulations has expanded the computation of borrower indebtedness to include the total amount of outstanding commitments in addition to the total unpaid principal balance, contained in § 614.4360(b) of existing regulations. The exemption from the indebtedness computation in paragraph (b) of existing § 614.4360 is no longer applicable.

9. Section 614.4358—Attribution Rules

The rules of attribution are contained in § 614.4358 in both the reproposed regulations and the final regulations. However, the contents of the reproposed regulations set forth in § 614.4358(a)(1) through (a)(5) were reorganized and clarified in § 614.4358(a)(1) through (a)(3) of the final regulations. Section 614.4358(a)(1) of the reproposed regulations remains unchanged except for some minor clarification. Section 614.4358(a)(2) through (a)(4) of the reproposed regulations was modified in response to comments received and was combined under § 614.4358(a)(2) of the final regulations. Section 614.4358(a)(5) of the reproposed regulations was expanded in the final regulations to clarify the control criteria and to incorporate the definition of "control" previously set forth in § 614.4350(d).

In the reproposed regulations, "control" was defined in § 614.4350(d)(1) through (d)(4) as exercising a controlling influence on the affairs of another borrower or operating under common control with another borrower. In the final regulations, control criteria are set forth in the attribution rules under § 614.4358(a)(3).

10. Section 614.4359—Lending Limit Violations

Section 614.4359 of the reproposed regulations discussed "nonconforming" loans and is not contained in the existing regulations. The final regulations have been revised to reduce their complexity and simplify their application. As revised, the final regulations recognize that any loan which exceeds the lending limit, except loans on the books on the effective date of these regulations (grandfathered loans), is a violation, but provide exceptions for loans that were originally designated as "nonconforming" in the reproposed regulations. The exceptions include a discussion of those situations where a loan would violate the lending limit because of a lending limit base reduction or as a result of a merger or acquisition. Other changes included deleting the statement under paragraph (c) of the reproposed regulation, concerning the guarantor's inability to pay the guaranteed loan. This statement was considered unnecessary as the guarantor is the United States government. Paragraph (c) of the final regulation deleted the requirement that the borrower correct nonconformance because such a requirement was considered unenforceable.

11. Section 614.4360—Transition Period

Section 614.4360 of the reproposed regulations deals with the transition period for implementing the new lending limits prescribed by the final regulations. Paragraph (a) of the reproposed regulations, which required all loans to be brought into conformance with the new regulations by the earlier of the next maturity date, loan servicing action, or a period not to exceed 18 months, is no longer necessary. Under § 614.4360(a) of the final regulation, loans or commitments which exceed the lending limits because of a regulatory change in the lending limits will be grandfathered until the current contract expires. Once the contract expires on such loans and commitments, funds advanced will be considered new loans and must conform with the lending limit rules. The content of paragraph (c) of the reproposed regulations requiring a written plan to bring loans into conformance is included in paragraph (c) of § 614.4359 of the final regulations and does not apply to those loans "grandfathered" by § 614.4360.

IV. Subpart H—Loan Purchases and Sales

Section 614.4325(g) of the existing loan purchases and sales regulations, addressing exclusions from the lending limits, has been deleted and the language of the existing paragraph has been moved to § 614.4357(b)(4), *Computation of obligations.*

List of Subjects in 12 CFR Part 614

Agriculture, Banks, banking, Foreign trade, Reporting and recordkeeping requirements, Rural areas.

For reasons stated in the preamble, part 614 of chapter VI, title 12 of the

Code of Federal Regulations is amended as follows:

PART 614—LOAN POLICIES AND OPERATIONS

1. The authority citation for part 614 continues to read as follows:

Authority: Secs. 1.3, 1.5, 1.6, 1.7, 1.9, 1.10, 2.0, 2.2, 2.3, 2.4, 2.10, 2.12, 2.13, 2.15, 3.0, 3.1, 3.3, 3.7, 3.8, 3.10, 3.20, 3.28, 4.12, 4.12A, 4.13, 4.13B, 4.14, 4.14A, 4.14C, 4.14D, 4.14E, 4.18, 4.19, 4.36, 4.37, 5.9, 5.10, 5.17, 7.0, 7.2, 7.6, 7.7, 7.8, 7.12, 7.13, 8.0, 8.5 of the Farm Credit Act; 12 U.S.C. 2011, 2013, 2014, 2015, 2017, 2018, 2071, 2073, 2074, 2075, 2091, 2093, 2094, 2096, 2121, 2122, 2124, 2128, 2129, 2131, 2141, 2149, 2183, 2184, 2199, 2201, 2202, 2202a, 2202c, 2202d, 2202e, 2206, 2207, 2219a, 2219b, 2243, 2244, 2252, 2279a, 2279a-2, 2279b, 2279b-1, 2279b-2, 2279f, 2279f-1, 2279aa, 2279aa-5; sec. 413 of Pub. L. 100–233, 101 Stat. 1568, 1639.

Subpart H—Loan Purchases and Sales

§614.4325 [Amended]

2. Section 614.4325 is amended by removing paragraph (g) and redesignating existing paragraph (h) as new paragraph (g).

3. Subpart J is revised to read as follows:

Subpart J—Lending Limits

Sec.

Subpart J—Lending Limits

§614.4350 Definitions.

For purposes of this subpart, the following definitions shall apply:

(a) *Borrower* means an individual, partnership, joint venture, trust, corporation, or other business entity (except a Farm Credit System association or other financing institution, as defined in § 614.4540 of this part) to which an institution has made a loan or a commitment to make a loan either directly or indirectly.

(b) *Commitment* means a legally binding obligation to extend credit, enter into lease financing, purchase or participate in loans or leases, or pay the obligation of another, which becomes effective at the time such commitment is made.

(c) *Loan* means any extension of, or commitment to extend, credit authorized under the Act whether it results from direct negotiations between a lender and a borrower or is purchased from or discounted for another lender, including participation interests. The term "loan" includes loans outstanding, obligated but undisbursed commitments, contracts of sale, notes receivable, other similar obligations, guarantees, and lease financing. An institution "makes a loan" when it enters into a commitment to lend, advances new funds, substitutes a different borrower for a borrower who is released, or where any other person's liability is added to the outstanding loan or commitment.

(d) *Primary liability* means an obligation to repay that is not conditioned upon an unsuccessful prior demand on another party.

(e) *Secondary liability* means an obligation to repay that only arises after an unsuccessful demand on another party.

§614.4351 Computation of lending limit base.

(a) *Lending limit base.* An institution's lending limit base is comprised of the permanent capital of the institution, as defined in § 615.5201(h) of this chapter, with the adjustments provided for in § 615.5210(d)(1), (d)(2) and (d)(4) of this chapter, and paragraphs (a)(1) and (a)(2) of this section.

(1) Where one institution invests in another institution in order to capitalize a participation interest, the amount of investment in the purchasing institution that is owned by the originating institution shall be deducted from the purchasing institution's capital.

(2) Stock protected under section 4.9A of the Act may be included in permanent capital until January 1, 1998.

(b) *Timing of calculation.* The lending limit base will be calculated on a monthly basis as of the preceding month end.

§614.4352 Farm Credit Banks and agricultural credit banks.

(a) *Farm Credit Banks.* No Farm Credit Bank may make or discount a loan to a borrower, if the consolidated amount of all loans outstanding and undisbursed commitments to that borrower exceed 25 percent of the bank's lending limit base.

(b) *Agricultural credit banks.* (1) No agricultural credit bank may make or discount a loan to a borrower under the authority of title I of the Act, if the consolidated amount of all loans outstanding and undisbursed commitments to that borrower exceeds 25 percent of the bank's lending limit base.

(2) No agricultural credit bank may make or discount a loan to a borrower under the authority of title III of the Act, if the consolidated amount of all loans outstanding and undisbursed commitments to that borrower exceeds the lending limits prescribed in § 614.4355 of this subpart.

§614.4353 Direct lender associations.

No association may make a loan to a borrower, if the consolidated amount of all loans outstanding and undisbursed commitments to that borrower exceeds 25 percent of the association's lending limit base.

§614.4354 Federal land bank associations.

No Federal land bank association may assume endorsement liability on any loan if the total amount of the association's endorsement liability on loans outstanding and undisbursed commitments to that borrower would exceed 25 percent of the association's lending limit base.

§614.4355 Banks for cooperatives.

No bank for cooperatives may make a loan if the consolidated amount of all loans outstanding and undisbursed commitments to that borrower exceeds the following percentages of the lending limit base of the bank:

(a) *Basic lending limit.* (1) Term loans to eligible cooperatives: 25 percent.

(2) Term loans to foreign and domestic parties: 10 percent.

(3) Lease loans qualifying under § 614.4020(a)(3) and applying to the lessee: 25 percent.

(4) Standby letters of credit qualifying under § 614.4810: 35 percent.

(5) Guarantees qualifying under § 614.4800: 35 percent.

(6) Seasonal loans exclusive of seasonal loans qualifying under § 614.4231: 35 percent.

(7) Foreign trade receivables qualifying under § 614.4700: 50 percent.

(8) Bankers' acceptances held qualifying under § 614.4710 and seasonal loans qualifying under § 614.4231: 50 percent.

(9) Export and import letters of credit qualifying under § 614.4321: 50 percent.

(b) *Total lending limit.* (1) The sum of term and seasonal loans exclusive of seasonal loans qualifying under § 614.4231: 35 percent.

(2) The sum of paragraphs (a)(1) through (a)(9) of this section: 50 percent.

§614.4356 Banks for cooperatives look-through notes.

Where a bank for cooperatives makes a loan to an eligible borrower that is

secured by notes of individuals or business entities, the basic lending limits provided in § 614.4355 may be applied to each original notemaker rather than to the loan to the eligible borrower, if:

(a) Each note is current and carries a full recourse endorsement or unconditional guarantee by the borrower;

(b) The bank determines the financial condition, repayment capacity, and other credit factors of the loan to the original maker reasonably justify the credit granted by the endorser; and

(c) The loans are fully supported by documented loan files, which include, at a minimum:

(1) A credit report supporting the bank's finding that the financial condition, repayment capacity, and other factors of the maker of the notes being pledged justify the credit extended by the bank and/or endorser;

(2) A certification by a bank officer designated for that purpose by the loan or executive committee that the financial responsibility of the original notemaker has been evaluated by the loan committee and the bank is relying primarily on each such maker for the payment of the obligation; and

(3) Other credit information normally required of a borrower when making and administering a loan.

§ 614.4357 Computation of obligations.

(a) *Inclusions.* The computation of total loans to each borrower for the purpose of computing their lending limit shall include:

(1) The total unpaid principal of all loans and the total amount of undisbursed commitments except as excluded by paragraph (b) of this section. This amount shall include loans that have been charged off on the books of the institution in whole or in part but have not been collected, except to the extent that such amounts are not legally collectible;

(2) Purchased interests in loans, including participation interests, to the extent of the amount of the purchased interest, including any undisbursed commitment;

(3) Loans attributed to a borrower in accordance with § 614.4358.

(b) *Exclusions.* The following loans when adequately documented in the loan file, may be excluded from loans to a borrower subject to the lending limit:

(1) Any loan or portion of a loan that carries a full faith and credit performance guaranty or surety of any department, agency, bureau, board, commission, or establishment of the United States government, provided there is no evidence to suggest that the guaranty has become unenforceable and the institution can demonstrate that it is in compliance with the terms and conditions of the guaranty.

(2) Any loan or portion of a loan guaranteed by a Farm Credit System institution, pursuant to the provisions of § 614.4345 on guaranty agreements. This exclusion does not apply to the institution providing the guaranty.

(3) Any loan or portion of a loan that is secured by bonds, notes, certificates of indebtedness, or Treasury bills of the United States or by other obligations guaranteed as to principal and interest by the United States government, provided the loans are fully secured by the current market value of such obligations. If the market value of the collateral declines to below the balance of the loan, and the entire loan, individually, or when combined with other loans and undisbursed commitments to or attributed to the borrower, causes the borrower's total indebtedness to exceed the institution's lending limit, the institution shall have 5 business days to bring the loan into conformance before it shall be deemed to be in violation of the lending limit.

(4) Interests in loans sold, including participation interests, when the sale agreement meets the following requirements:

(i) The interest sold must be an undivided interest in the principal amount of the loan and in the collateral securing the loan; and

(ii) The interest must be sold without recourse; and

(iii) The agreement under which the interest is sold must provide for the sharing of all payments of principal, collection expenses, collateral proceeds, and risk of loss on a pro rata basis according to the percentage interest in the principal amount of the loan. Agreements that provide for the pro rata sharing to commence at the time of default or similar event, as defined in the agreement under which the interest is sold, shall be considered to be pro rata agreements, notwithstanding the fact that advances are made and payments are distributed on a basis other than pro rata prior to that time.

(5) Loans sold in their entirety to a pooler certified by the Federal Agricultural Mortgage Corporation, if an interest in a pool of subordinated participation interests is purchased to satisfy the requirements of title VIII of the Act.

§ 614.4358 Attribution rules.

(a) For the purpose of applying the lending limit to the indebtedness of a borrower, loans to a related borrower shall be combined with loans outstanding to the borrower and attributed to the borrower when any one of the following three conditions exist:

(1) *Liability.* (i) The borrower has primary or secondary liability on a loan made to the related borrower. The amount of such loan attributable to the borrower is limited to the amount of the borrower's liability.

(ii) This section does not require attribution of a guarantee taken out of an abundance of caution. To qualify for the abundance of caution exception to the requirements of this subpart, the institution must document in the loan file that the loan, when evaluated on the credit factors set forth in § 614.4160 of this part without considering the guarantee, would support the credit decision under the same basic terms and conditions.

(iii) For the banks for cooperatives and agricultural credit banks operating under title III authorities of the Act, look-through notes are exempt from the lending limit provisions provided they meet the criteria of § 614.4356.

(2) *Financial interdependence.* The operations of a borrower and related borrower are financially interdependent. Financial interdependence exists if the borrower is the primary source of repayment for a related borrower's loan, or if the operations of the borrower and the related borrower are commingled.

(i) The borrower shall be considered the primary source of repayment on the loan to the related borrower if the borrower is obligated to supply 50 percent or more of the related borrower's annual gross receipts, *and* reliance on the income from one another is such that, regardless of the solvency and liquidity of the borrower's operations, the debt service obligation of the related borrower could not be met if income flow from the borrower is interrupted or terminated. For the purpose of this paragraph, gross receipts include, but are not limited to, revenues, intercompany loans, dividends and capital contributions.

(ii) The assets or operations of the borrower and related borrower are considered to be commingled if they cannot be separated without materially impacting the economic survival of the individual operations and their ability to repay their loans.

(3) *Control.* The borrower directly or indirectly controls the related borrower. A borrower is deemed to control a related borrower if either paragraph (a)(3)(i) or (a)(3)(ii) of this section exist:

(i) The borrower, directly or acting through one or more other persons, owns 50 percent or more of the stock of the related borrower; or

(ii) The borrower, directly or acting through one or more other persons, owns or has the power to vote 25 percent or more of the voting stock of a related borrower, and meets at least one of the following three conditions:

(A) The borrower shares a common directorate or management with a related borrower. A common directorate is deemed to exist when a majority of the directors, trustees, or other persons performing similar functions of one borrower also serves the other borrower in a like capacity. A common management is deemed to exist if any employee of the borrower holds the position of chief executive officer, chief operating officer, chief financial officer, or an equivalent position in the related borrower's organization.

(B) The borrower controls in any manner the election of a majority of directors of a related borrower.

(C) The borrower exercises or has the power to exercise a controlling influence over management of a related borrower's operations through the provisions of management placement or marketing agreements, or providing services such as insurance carrier or bookkeeping.

(b) Each institution shall make provisions for appropriately designating loans to a related borrower that are combined with the borrower's loan and attributed to the borrower to ensure that loans to the borrower are within the lending limits.

(c) *Attribution rules table.* For the purposes of applying the lending limit to the indebtedness of a borrower, loans to a related borrower shall be combined with loans outstanding to the borrower and attributed to the borrower when any one of three attribution rules are met as outlined in Table 1.

TABLE 1

Attribution rule	Criteria per § 614.4358	Attribute
(A) Liability	Borrower has primary or secondary liability	Yes.*
*to the extent of the borrower's liability	Borrower's liability is taken out of an abundance of caution	No.*
	Look-through notes (BC only)	No.
(B) Financial Interdependence	Source of Repayment:	
(Economic survival of the borrower's operation will materially impact economic survival of the related borrowers operation).	Borrower is obligated to supply 50 percent or more of related borrower's annual gross receipts, *and* reliance on the income from one another is such that the debt service of the related borrower could not be met if income flow from the borrower is interrupted or terminated.	Yes.
	Commingled Operations:	
	Assets or operations of the borrowers are commingled and cannot be separated without materially impacting the borrowers' repayment capacity	Yes.
(C) Control	The borrower owns 50 percent or more of the stock of the related borrower	Yes.
(The borrower, directly or indirectly, controls the related borrower).	The borrower owns or has the power to vote 25 percent or more of the voting stock of a related borrower, and (1) Shares a common directorate or management with a related borrower, or (2) Controls the election of a majority of directors of a related borrower, or (3) Exercises a controlling influence over management of a related borrower's operations through the provisions of management placement or marketing agreements, or providing services such as insurance carrier or bookkeeping	Yes.

§ 614.4359 Lending limit violations.

(a) Each loan, except loans that are grandfathered under the provisions of § 614.4360, shall be in compliance with the lending limit on the date the loan is made, and at all times thereafter. Except as provided for in paragraph (b) of this section, loans which are in violation of the lending limit shall comply with the provisions of § 615.5090 of this chapter.

(b) Under the following conditions a loan that violates the lending limit shall be exempt from the provisions of § 615.5090 of this chapter:

(1) A loan in which the total amount of principal outstanding and undisbursed commitments exceed the lending limit because of a decline in permanent capital after the loan was made.

(2) Loans on which funds are advanced pursuant to a commitment that was within the lending limit at the time the commitment was made, even if the lending limit subsequently declines.

(3) A loan that exceeds the lending limit as a result of the consolidation of the debt of two or more borrowers as a consequence of a merger or the acquisition of one borrower's operations by another borrower. Such a loan may be extended or renewed, for a period not to exceed 1 year from the date of such merger or acquisition, during which period the institution may advance and/or readvance funds not to exceed the greater of:

(i) 110 percent of the advances to the borrower in the prior calendar year; or

(ii) 110 percent of the average of the advances to the borrower in the past 3 calendar years.

(c) For all lending limit violations except those exempted under § 614.4359(b)(3), within 90 days of the identification of the violation, the institution must develop a written plan prescribing the specific actions that will be taken by the institution to bring the total amount of loans and commitments outstanding or attributed to that borrower within the new lending limit, and must document the plan in the loan file.

(d) Nothing in this section limits the authority of the FCA to take administrative action, including, but not limited to, monetary penalties, as a result of lending limit violations.

§ 614.4360 Transition.

(a) A loan (not including a commitment) made or attributed to a borrower prior to the effective date of this subpart, which does not comply with the limits contained in this subpart, will not be considered a violation of the lending limits during the existing contract terms of such loans. A new loan must conform with the rules set forth in this subpart. A new loan includes but is not limited to:

(1) Funds advanced in excess of existing commitment;

(2) A different borrower is substituted for a borrower who is subsequently released; or

(3) An additional person becomes an obligor on the loan.

(b) A commitment made prior to the effective date of these regulations which exceeds the lending limit may be funded to the full extent of the legal commitment. Any advances that exceed

the lending limit are subject to the provisions prescribed in § 614.4359.

Subpart M—Loan Approval Requirements

§ 614.4470 [Amended]

4. Section 614.4470 is amended by removing the reference "§ 614.4360(b)" and adding in its place "subpart J of this part" in paragraph (c).

Subpart Q—Bank for Cooperatives Financing International Trade

§ 614.4710 [Amended]

5. Section 614.4710 is amended by removing the reference "§§ 614.4350, 614.4354, and 614.4360" and adding in its place "subpart J" in the second sentence of the introductory paragraph; and by removing the reference "§ 614.4354" and adding "§ 614.4355" in the introductory paragraph at the second place it appears and in paragraphs (a)(2), (a)(3), and (b)(1).

Dated: July 20, 1993.

Curtis M. Anderson,

Secretary, Farm Credit Administration Board.

[FR Doc. 93–17917 Filed 7–27–93; 8:45 am]

BILLING CODE 6705–01–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. 91–ANE–05; Amendment 39–8645; AD 93–14–20]

Airworthiness Directives; Pratt & Whitney JT9D Series Turbofan Engines

AGENCY: Federal Aviation Administration, DOT.

ACTION: Final rule.

SUMMARY: This amendment adopts a new airworthiness directive (AD), applicable to Pratt & Whitney (PW) JT9D series turbofan engines, that requires initial and repetitive borescope inspections of high pressure turbine (HPT) stage 2 vane assemblies. This amendment is prompted by reports of uncontained engine failures. These failures were caused by distressed vanes inducing high vibratory stress on HPT stage 2 blades and the lenticular airseal. The actions specified by this AD are intended to prevent uncontained HPT stage 2 blade fractures or lenticular airseal failures.

DATES: Effective August 27, 1993.

The incorporation by reference of certain publications listed in the regulations is approved by the Director of the Federal Register as of August 27, 1993.

ADDRESSES: The service information referenced in this AD may be obtained from Pratt & Whitney, Publications Department, 400 Main Street, East Hartford, CT 06108. 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, MA; or at the Office of the Federal Register, 800 North Capitol Street, NW., suite 700, Washington, DC.

FOR FURTHER INFORMATION CONTACT: Daniel Kerman, Aerospace Engineer, Engine Certification Office, FAA, Engine and Propeller Directorate, 12 New England Executive Park, Burlington, MA 01803–5299; telephone (617) 238–7130; fax (617) 238–7199.

SUPPLEMENTARY INFORMATION: A proposal to amend part 39 of the Federal Aviation Regulations to include an airworthiness directive (AD) that is applicable to Pratt & Whitney (PW) JT9D–59A, –70A, –7Q, and –7Q3 turbofan engines, was published in the **Federal Register** on January 10, 1992 (57 FR 1126). That action proposed to require initial and repetitive borescope inspections for distress of the high pressure turbine (HPT) stage 2 vane assemblies in accordance with PW Service Bulletin (SB) No. 5667, Revision 1, dated September 13, 1989.

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 states that the proposed rule does not apply to second stage HPT vane assemblies configured in accordance with PW SB No. 5829, Revision 4, dated November 14, 1990, (5829 vanes), PW SB No. 5895, Revision 2, dated October 16, 1990, (5895 vanes), or PW SB No. 5837, Revision 1, dated April 10, 1989 (5837 vanes). The commenter states that service experience shows that second stage HPT vane distress still occurs with the 5829 and 5837 vanes, and recommends that the AD apply to the 5829 and 5837 vanes as well. The Federal Aviation Administration (FAA) concurs. FAA analysis indicates that the service life and durability of the 5829 and 5837 vanes require the need for repetitive borescope inspections. The ceramic coated 5895 vanes, however, show greater durability with an improvement in vane metal temperature and vane life. The manufacturer has issued PW Service Bulletin No. 5667, Revision 2, dated June 11, 1992, which includes 5829 and 5837 vanes in the inspection program. The FAA has therefore changed the AD to include the 5829 and 5837 vanes, and has increased the number of engines affected in the economic analysis accordingly.

The commenter also states that the AD needs only to address the vane cluster assembly part numbers as these numbers are tracked by operators when HPT modules are built. The FAA concurs. The manufacturer has issued PW SB No. 5667, Revision 2, dated June 11, 1992, which lists only the vane cluster assembly part numbers. The FAA has changed the AD to reference this new revision of the SB.

One commenter mentioned that they had been performing borescope inspections of the second stage HPT vane assemblies for the past three years and that only one engine remains in service with the older second stage HPT vane assemblies. The commenter further states that there is no need for an AD since they are already in compliance with the requirements. This commenter requests that the FAA perform an audit to determine the number of engines that would be affected by adoption of this AD. If there are relatively few engines affected, and the operators of such engines are already performing inspections and have plans to shortly replace those second stage HPT vane assemblies with newer units, then an AD should not be issued. The FAA does not agree. The FAA completed an audit of the affected PW JT9D fleet. The audit indicates that approximately 70% of the world-wide fleet has not incorporated 5895 vanes. This audit confirms the need to issue the AD. In addition, operators who have already incorporated 5895 vanes on their engines are not required to accomplish the inspections of this AD.

Two comments state that the AD should refer to the appropriate aircraft maintenance manual instead of the PW maintenance manual (MM). The comments state that these PW MM's are written for the use by the airframe manufacturers, not operators, and the PW MM's are not readily available to the operators. The FAA does not agree. Aircraft MM's are often customized to meet individual operator's needs. These operator specific aircraft MM's may not receive engineering review by the Engine and Propeller Directorate or through a PW Designated Engineering Representative (DER). When citing a MM in an engine AD, the FAA considers imperative Engineering oversight of that MM by the Directorate, or the manufacturer's DER. Therefore, the AD will continue to reference the PW MM. The sections of the PW MM referenced in the AD are available either through PW or the FAA.

After careful review of the available data, including the comments noted above, the FAA has determined that air safety and the public interest require the adoption of the rule with the changes described previously. The FAA has revised the estimate of economic impact to reflect an increase in the number of engines affected.

There are approximately 602 PW JT9D–59A, –70A, –7Q, and –7Q3 turbofan engines of the affected design in the worldwide fleet. The FAA estimates that 125 engines on aircraft of U.S. Registry will be affected by this AD, that the inspection will be performed approximately 6 times annually, the inspections will take approximately 2 work hours per engine to accomplish the required actions, and that the average labor cost would be $55 per work hour. Based on these figures, the total cost impact of the AD on U.S. operators is estimated to be $82,500 annually.

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 adding the following new airworthiness directive:

93–14–20 Pratt & Whitney: Amendment 39–8645. Docket No. 91–ANE–05.

Applicability: Pratt & Whitney (PW) JT9D–59A, –70A, –7Q, and –7Q3 turbofan engines installed on, but not limited to Boeing 747, McDonnell Douglas DC–10, and Airbus A300 aircraft, in which the following high pressure turbine (HPT) stage 2 vane assemblies, identified by vane cluster assembly part numbers, are installed: 743772, 774872, 806272, 807372, 807772, 807072, and 808372.

Compliance: Required as indicated, unless previously accomplished.

To prevent uncontained HPT stage 2 blade fractures or lenticular airseal failures, accomplish the following:

(a) For engines that have not incorporated the requirements of PW Service Bulletin (SB) 5566, Revision 5, dated August 10, 1990, and the requirements of PW SB 5428, Revision 3, dated March 12, 1984, borescope inspect the HPT stage 2 vanes in accordance with the Accomplishment Instructions of PW SB 5667, Revision 2, dated June 11, 1992, and in accordance with the criteria identified in the applicable PW Maintenance Manual (MM) listed in paragraph (c) of this AD, prior to accumulating 1,000 hours time in service (TIS) since vane installation, or within the next 125 hours TIS after the effective date of this AD, whichever occurs later, and remove from service, prior to further flight, second stage turbine vanes exhibiting distress beyond serviceable limits.

(b) For engines that have incorporated the requirements of PW SB 5566, Revision 5, dated August 10, 1990, and PW SB 5428, Revision 3, dated March 12, 1984, borescope inspect the HPT stage 2 vanes in accordance with the Accomplishment Instructions of PW SB 5667, Revision 2, dated June 11, 1992, and in accordance with the criteria identified in the applicable PW MM listed in paragraph (c) of this AD, prior to accumulating 2,000 hours total part TIS since new on the entire set of vanes, or within 1,000 hours TIS since vane installation, or within the next 125 hours TIS after the effective date of this AD, whichever occurs later, and remove from service, prior to further flight, second stage turbine vanes exhibiting distress beyond serviceable limits.

(c) Thereafter, inspect the HPT stage 2 vanes in accordance with the criteria identified in the following PW MMs, and remove from service, prior to further flight, HPT stage 2 vanes exhibiting distress beyond serviceable limits.

Engine models	MM part number/Revision date	Section/Table
JT9D–7Q/7Q3	783777/December 25, 1989.	72–00–00/604A
JT9D–59A/–70A	783778/April 25, 1990.	72–00–00/605A
JT9D–59A	783779/September 15, 1989.	72–00–00/605

(d) An alternative method of compliance or adjustment of the compliance time that provides an acceptable level of safety may be used if approved by the Manager, 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 methods of compliance with this airworthiness directive, if any, may be obtained from Engine Certification Office.

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

(f) The inspections shall be done in accordance with the following service document:

Document no.	Pages	Issue	Date
PW SB No. 5667. Total pages: 6.	1–6	Revision 2.	June 11, 1992.

This incorporation by reference was approved by the Director of the Federal Register in accordance with 5 U.S.C. 552(a) and 1 CFR part 51. Copies may be obtained from Pratt & Whitney, Publications Department, 400 Main Street, East Hartford, CT 06108. Copies may be inspected at the FAA, New England Region, Office of the Assistant Chief Counsel, 12 New England Executive Park, Burlington, MA; or at the Office of the **Federal Register**, 800 North Capitol Street, NW., suite 700, Washington, DC.

(g) This amendment becomes effective on August 27, 1993.

Issued in Burlington, Massachusetts, on July 19, 1993.

Jack A. Sain,

Manager, Engine and Propeller Directorate, Aircraft Certification Service.

[FR Doc. 93–17941 Filed 7–27–93; 8:45 am]

BILLING CODE 4910–13–P

14 CFR Part 39

[Docket No. 93–ANE–28; Amendment 39–8603; AD 93–10–02]

Airworthiness Directives; Teledyne Continental Motors O–200, O–300, IO/TSIO/LTSIO–360, O/IO/TSIO–470, IO/TSIO/LTSIO/GTSIO–520 and IO/TSIO/TSIOL–550 Series Reciprocating Engines

AGENCY: Federal Aviation Administration, DOT.

ACTION: Final rule, request for comments.

SUMMARY: This document publishes in the **Federal Register** an amendment adopting Airworthiness Directive (AD) 93–10–02 that was sent previously to all known U.S. owners and operators of Teledyne Continental Motors (TCM) O–200, O–300, IO/TSIO/LTSIO–360, O/IO/TSIO–470, IO/TSIO/LTSIO/GTSIO–520 and IO/TSIO/TSIOL–550 series reciprocating engines by individual letters. This AD requires inspection of affected engines to determine for each cylinder if the valve retainer key is missing or the roto coil, if applicable, is mispositioned; and repair or replacement, if necessary, of those cylinders. This amendment is prompted by a report from TCM of an engine shipped from the factory containing a cylinder with a valve retainer key missing. The actions specified by this AD are intended to prevent an engine failure due to a missing cylinder valve retainer key.

DATES: Effective on August 12, 1993, to all persons except those persons to whom it was made immediately effective by priority letter AD 93–10–02, issued on May 17, 1993, which contained the requirements of this amendment.

The incorporation by reference of certain publications listed in the regulations is approved by the Director of the Federal Register as of August 12, 1993.

Comments for inclusion in the Rules Docket must be received on or before September 27, 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–28, 12 New England Executive Park, Burlington, MA 01803–5299.

The applicable service information may be obtained from Teledyne Continental Motors, P.O. Box 90, Mobile, AL 36601; telephone (205) 438–3411 ext. 305, fax (205) 438–3411 ext. 179. This information may be examined at the FAA, New England Region, Office of the Assistant Chief Counsel, 12 New England Executive Park, Burlington, MA; or at the Office of the Federal Register, 800 North Capitol Street, NW., suite 700, Washington, DC.

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 May 17, 1993, the Federal Aviation Administration (FAA) issued priority letter AD 93–10–02, applicable to Teledyne Continental Motors (TCM) O–200, O–300, IO/TSIO/LTSIO–360, O/IO/TSIO–470, IO/TSIO/LTSIO/GTSIO–520, and IO/TSIO/TSIOL–550 series reciprocating engines listed by serial number in TCM Mandatory Service Bulletin (MSB) No. 93–12, dated May 12, 1993, or that contain cylinder assemblies purchased from TCM between July 29, 1992, and March 30, 1993. That priority letter AD requires inspection of affected engines to determine for each cylinder if the valve retainer key is missing or the roto coil, if applicable, is mispositioned; and repair or replacement, if necessary, of those cylinders. That action was prompted by a report from TCM of an engine shipped from the factory containing a cylinder with a valve retainer key missing. There has been one additional report from an operator of an engine failure resulting from a cylinder with a missing valve retainer key. There were 2,786 engines shipped from the factory between July 29, 1992, and March 30, 1993, that may be missing valve retainer keys, as well as an unspecified number of individual cylinder assemblies. On certain engine models, a missing valve retainer key may be indicated by a mispositioned roto coil. A missing valve retainer key on either the intake or exhaust valve will result in complete engine failure in a very short timeframe. The FAA has determined that cylinders that operate normally for 25 hours time in service (TIS) after new, rebuild, or overhaul do not have missing valve retainer keys, and therefore need not be inspected. This condition, if not corrected, could result in an engine failure due to a missing cylinder valve retainer key.

The FAA has reviewed and approved the technical contents of TCM Mandatory Service Bulletin No. 93–12, dated May 12, 1993, that lists affected engines by serial number and describes procedures for inspection of cylinders to determine if the valve retainer key is missing or the roto coil, if applicable, is mispositioned.

Since the unsafe condition described is likely to exist or develop on other engines of the same type design, the FAA issued priority letter AD 93–10–02 to prevent an engine failure due to a missing cylinder valve retainer key. The AD requires inspection of affected engines to determine for each cylinder if the valve retainer key is missing or the roto coil, if applicable, is mispositioned; and repair or replacement, if necessary, of those cylinders. The actions are required to be accomplished in accordance with the service bulletin described previously.

Since it was found that immediate corrective action was required, notice and opportunity for prior public comment thereon were impracticable and contrary to the public interest, and good cause existed to make the AD effective immediately by individual letter issued on May 17, 1993, to all known U.S. owners and operators of engines. These conditions still exist, and the AD is hereby published in the **Federal Register** as an amendment to Section 39.13 of part 39 of the Federal Aviation Regulations (FAR) to make it effective to all persons.

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–28." 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, 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 adding the following new airworthiness directive:

93–10–02 Teledyne Continental Motors: Amendment 39–8603. Docket 93–ANE–28.

Applicability: Teledyne Continental Motors (TCM) O–200, O–300, IO/TSIO/LTSIO–360, O/IO/TSIO–470, IO/TSIO/LTSIO/GTSIO–520, and IO/TSIO/TSIOL–550 series reciprocating engines listed by serial number in TCM Mandatory Service Bulletin (MSB) No. 93–12, dated May 12, 1993, or that contain cylinder assemblies purchased from TCM between July 29, 1992, and March 30, 1993; installed on but not limited to: Aeronca Models 15AC and S15AC; American Champion (Bellanca) Models 7ACA and 402; Beagle Model 206S; Beech Models Debonaire, Bonanza, and Baron; Bellanca Models 14–19, 14–19–2, 14–19–3, 14–19–3A, 17–30, 17–31, and 17–31TC; Cessna Models 150, 170, 172, 180, 182, 185, 188, 205, 206, 207, 210, 303, 310, 320, 335, 336, 337, 340, 401, 402, 404, 414, 421, and T41; Aero Commander Models 200, 500, and 685; Champion Models Citabria and Lancer; Maule Models Bee Dee M–4, M–4, M–4C, M–4S, M–4T, M–4–210, M–4–210C, M–4–210S, M–4–210T, and M–5–210C; Mooney Models 231 and 252; Navion series; Piper Models Arrow, Seneca, and PA46–310P; and Taylorcraft Model F–19 aircraft.

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

To prevent an engine failure due to a missing cylinder valve retainer key, accomplish the following:

(a) For engines that have less than 25 hours time in service (TIS), or unknown TIS, on the effective date of the AD since new, rebuild, or factory overhaul, visually inspect each cylinder to determine if both valve retainer keys are in place on each valve, and if the roto coil, if applicable, is properly positioned, in accordance with TCM MSB No. 93–12, dated May 12, 1993.

Note: Certain TCM engine models do not incorporate roto coils in the valve assembly.

(1) If a valve retainer key is missing, or if a roto coil, if applicable, is mispositioned, repair or replace the cylinder, as necessary, in accordance with the applicable TCM Overhaul Manual.

(2) If the valve retainer keys are in place, and the roto coil, if applicable, is correctly positioned, return engine to service in accordance with TCM MSB No. 93–12, dated May 12, 1993.

(b) For engines with individually installed new service or chrome plated cylinder assemblies purchased from TCM between July 29, 1992, and March 30, 1993, that have less than 25 hours TIS on the effective date of this AD since installation of any cylinder(s), visually inspect each new service or chrome plated cylinder, and repair or replace the cylinder, as necessary, in accordance with paragraph (a) of this AD.

(c) Uninstalled cylinder assemblies purchased from TCM between July 29, 1992, and March 30, 1993, must be inspected and repaired, as necessary, in accordance with paragraph (a) of this AD prior to installation on an engine.

(d) For engines that have 25 hours or more TIS on the effective date of this AD, since new, rebuild, or factory overhaul, no inspection is required.

(e) An alternative method of compliance or adjustment of the compliance time that provides an acceptable level of safety may be used if approved by the Manager, 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.

(f) The inspections shall be done in accordance with the following service bulletin:

Document no.	Pages	Revision	Date
TCM MSB No. 93–12. Total pages: 7.	1–7	Original ...	May 12, 1993.

This incorporation by reference was approved by the Director of the Federal Register in accordance with 5 U.S.C. 552(a) and 1 CFR part 51. Copies may be obtained from Teledyne Continental Motors, P.O. Box 90, Mobile, AL 36601; telephone (205) 438–3411 ext. 305, fax (205) 438–3411 ext. 179. Copies may be inspected at the FAA, New England Region, Office of the Assistant Chief Counsel, 12 New England Executive Park, Burlington, MA; or at the Office of the Federal Register, 800 North Capitol Street, NW., suite 700, Washington, DC.

(g) This amendment becomes effective on August 12, 1993, to all persons except those persons to whom it was made immediately effective by priority letter AD 93–10–02, issued May 17, 1993, which contained the requirements of this amendment.

Issued in Burlington, Massachusetts, on June 17, 1993.

Michael H. Borfitz,

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

[FR Doc. 93–17942 Filed 7–27–93; 8:45 am]

BILLING CODE 4910–13–P

14 CFR Part 97

[Docket No. 27359; Amdt. No. 1555]

Standard Instrument Approach Procedures; Miscellaneous Amendments

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Final rule.

SUMMARY: This amendment establishes, amends, suspends, or revokes Standard Instrument Approach Procedures

(SIAPs) for operations at certain airports. These regulatory actions are needed because of the adoption of new or revised criteria, or because of changes occurring in the National Airspace System, such as the commissioning of new navigational facilities, addition of new obstacles, or changes in air traffic requirements. These changes are designed to provide safe and efficient use of the navigable airspace and to promote safe flight operations under instrument flight rules at the affected airports.

DATES: *Effective:* An effective date for each SIAP is specified in the amendatory provisions.

Incorporation by reference—approved by the Director of the Federal Register on December 31, 1980, and reapproved as of January 1, 1982.

ADDRESSES: Availability of matters incorporated by reference in the amendment is as follows:

For Examination—

1. FAA Rules Docket, FAA Headquarters Building, 800 Independence Avenue, SW., Washington, DC 20591;
2. The FAA Regional Office of the region in which the affected airport is located; or
2. The Flight Inspection Field Office which originated the SIAP.

For Purchase—

Individual SIAP copies may be obtained from:

1. FAA Public Inquiry Center (APA–200), FAA Headquarters Building, 800 Independence Avenue, SW., Washington, DC 20591; or
2. The FAA Regional Office of the region in which the affected airport is located.

By Subscription—

Copies of all SIAPs, mailed once every 2 weeks, are for sale by the Superintendent of Documents, U.S. Government Printing Office, Washington, DC 20402.

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

SUPPLEMENTARY INFORMATION: This amendment to part 97 of the Federal Aviation Regulations (14 CFR part 97) establishes, amends, suspends, or revokes Standard Instrument Approach Procedures (SIAPs). The complete regulatory description of each SIAP is contained in official FAA form documents which are incorporated by reference in this amendment under 5 U.S.C. 552(a), 1 CFR part 51, and § 97.20 of the Federal Aviation Regulations (FAR). The applicable FAA Forms are identified as FAA Forms 8260–3, 8260–4, and 8260–5. Materials incorporated by reference are available for examination or purchase as stated above.

The large number of SIAPs, their complex nature, and the need for a special format make their verbatim publication in the **Federal Register** expensive and impractical. Further, airmen do not use the regulatory text of the SIAPs, but refer to their graphic depiction on charts printed by publishers of aeronautical materials. Thus, the advantages of incorporation by reference are realized and publication of the complete description of each SIAP contained in FAA form documents is unnecessary. The provisions of this amendment state the affected CFR (and FAR) sections, with the types and effective dates of the SIAPs. This amendment also identifies the airport, its location, the procedure identification and the amendment number.

This amendment to part 97 is effective upon publication of each separate SIAP as contained in the transmittal. Some SIAP amendments may have been previously issued by the FAA in a National Flight Data Center (FDC) Notice to Airmen (NOTAM) as an emergency action of immediate flight safety relating directly to published aeronautical charts. The circumstances which created the need for some SIAP amendments may require making them effective in less than 30 days. For the remaining SIAPs, an effective date at least 30 days after publication is provided.

Further, the SIAPs contained in this amendment are based on the criteria contained in the U.S. Standard for Terminal Instrument Approach Procedures (TERPs). In developing these SIAPs, the TERPS criteria were applied to the conditions existing or anticipated at the affected airports. Because of the close and immediate relationship between these SIAPs and safety in air commerce, I find that notice and public procedure before adopting these SIAPs are unnecessary, impracticable, and contrary to the public interest and, where applicable, that good cause exists for making some SIAPs effective in less than 30 days.

The FAA has determined that this regulation only involves an established body of technical regulations for which frequent and routine amendments are necessary to keep them operationally current. It, therefore—(1) Is not a "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. For the same reason, the FAA certifies that this amendment will not have a significant economic impact on a substantial number of small entities under the criteria of the Regulatory Flexibility Act.

List of Subjects in 14 CFR Part 97

Air traffic control, Airports, Incorporation by reference, Navigation (Air), Standard instrument approaches, Weather.

Issued in Washington, DC on July 16, 1993.

Thomas C. Accaridi,

Director, Flight Standards Service.

Adoption of the Amendment

Accordingly, pursuant to the authority delegated to me, part 97 of the Federal Aviation Regulations (14 CFR part 97) is amended by establishing, amending, suspending, or revoking Standard Instrument Approach Procedures, effective at 0901 UTC on the dates specified, as follows:

PART 97—STANDARD INSTRUMENT APPROACH PROCEDURES

1. The authority citation for part 97 continues to read as follows:

Authority: 49 U.S.C. App. 1348, 1354(a), 1421 and 1510; 49 U.S.C. 106(g) (Revised Pub. L. 97–449, January 12, 1983); and 14 CFR 11.49(b)(2).

2. Part 97 is amended to read as follows:

By amending: § 97.23 VOR, VOR/DME, VOR or TACAN, and VOR/DME or TACAN; § 97.25 LOC, LOC/DME, LDA, LDA/DME, SDF, SDF/DME; § 97.27 NDB, NDB/DME; § 97.29 ILS, ILS/DME, ISMLS, MLS, MLS/DME, MLS/RNAV; § 97.31 RADAR SIAPs; § 97.33 RNAV SIAPs; and § 97.35 COPTER SIAPs, identified as follows:

** * * Effective September 16, 1993*

Dodge City, KS, Dodge City Regional, VOR RWY 14, Amdt. 17
Dodge City, KS, Dodge City Regional, ILS RWY 14, Amdt. 1
Tangier, VA, Tangier Island, VOR/DME RWY 2, Orig.
Tangier, VA, Tangier Island, VOR/DME RWY 2, Amdt. 6, Cancelled

** * * Effective August 19, 1993*

Goodland, KS, Renner Field (Goodland Muni), RNAV RWY 12, Amdt. 4, Cancelled
Santa Fe, NM, Santa Fe County Muni, VOR RWY 33, Amdt. 7

Santa Fe NM, Santa Fe County Muni, VOR/DME-A, Orig.
Santa Fe, NM, Santa Fe County Muni, NDB RWY 2, Amdt. 3
Santa Fe, NW, Santa Fe County Muni, ILS RWY 2, Amdt. 3
Dickinson, ND, Dickinson Muni, NDB RWY 32, Orig.
Dickinson, ND, Dickinson Muni, ILS RWY 32, Orig.
Dickinson, ND, Dickinson Muni, ILS/DME RWY 32, Amdt, 3, Cancelled
East Stroudsburg, PA Birchwood-Pocono Airpark, VOR/DME RWY 32, Amdt. 3 Cancelled
Gordonsville, VA Gordonsville Muni, VOR-A, Amdt. 2, Cancelled

* * * *Effective July 6, 1993*

Gallatin, TN, Sumner County Regional, RADAR-1, Amdt. 3

[FR Doc. 93–17971 Filed 7–27–93; 8:45 am]
BILLING CODE 4910–13–M

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14 CFR Part 97

[Docket No. 27360; Amdt. No. 1556]

Standard Instrument Approach Procedures: Miscellaneous Amendments

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Final rule.

SUMMARY: This amendment establishes, amends, suspends, or revokes Standard Instrument Approach Procedures (SIAPs) for operations at certain airports. These regulatory actions are needed because of changes occurring in the National Airspace System, such as the commissioning of new navigational facilities, addition of new obstacles, or changes in air traffic requirements. These changes are designed to provide safe and efficient use of the navigable airspace and to promote safe flight operations under instrument flight rules at the affected airports.

DATES: *Effective:* An effective date for each SIAP is specified in the amendatory provisions.

Incorporation by reference approved by the Director of the Federal Register on December 31, 1980, and reapproved as of January 1, 1982.

ADDRESSES: Availability of matter incorporated by reference in the amendment is as follows:

For Examination—

1. FAA Rules Docket, FAA Headquarters Building, 800 Independence Avenue SW., Washington, DC 20591;
2. The FAA Regional Office of the region in which affected airport is located; or
3. The Flight Inspection Field Office which originated the SIAP.

For Purchase—

Individual SIAP copies may be obtained from:

1. FAA Public Inquiry Center (APA–200), FAA Headquarters Building, 800 Independence Avenue SW., Washington, DC 20591; or
2. The FAA Regional Office of the region in which the affected airport is located.

By Subscription—

Copies of all SIAPs, mailed once every 2 weeks, are for sale by the Superintendent of Documents, US Government Printing Office, Washington, DC 20402.

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

SUPPLEMENTARY INFORMATION: This amendment to part 97 of the Federal Aviation Regulations (14 CFR part 97) establishes, amends, suspends, or revokes Standard Instrument Approach Procedures (SIAPs). The complete regulatory description on each SIAP is contained in the appropriate FAA Form 8260 and the National Flight Data Center (FDC)/Permanent (P) Notices to Airmen (NOTAM) which are incorporated by reference in the amendment under 5 U.S.C. 552(a), 1 CFR part 51, and § 97.20 of the Federal Aviations Regulations (FAR). Materials incorporated by reference are available for examination or purchase as stated above.

The large number of SIAPs, their complex nature, and the need for a special format make their verbatim publication in the **Federal Register** expensive and impractical. Further, airmen do not use the regulatory text of the SIAPs, but refer to their graphic depiction of charts printed by publishers of aeronautical materials. Thus, the advantages of incorporation by reference and realized and publication of the complete description of each SIAP contained in FAA form documents is unnecessary. The provisions of this amendment state the affected CFR (and FAR) sections, with the types and effective dates of the SIAPs. This amendment also identifies the airport, its location, the procedure identification and the amendment number.

The Rule

This amendment to part 97 of the Federal Aviation Regulations (14 CFR part 97) establishes, amends, suspends, or revokes SIAPs. For safety and timeliness of change considerations, this amendment incorporates only specific changes contained in the content of the following FDC/P NOTAM for each SIAP. The SIAP information in some previously designated FDC/Temporary (FDC/T) NOTAMs is of such duration as to be permanent. With conversion to FDC/P NOTAMs, the respective FDC/T NOTAM have been cancelled. The FDC/P NOTAMs for the SIAPS contained in this amendment are based on the criteria contained in the U.S. Standard for Terminal Instrument Approach Procedures (TERPs). In developing these chart changes to SIAPs by FDC/P NOTAMs, the TERPs criteria were applied to only these specific conditions existing at the affected airports.

This amendment to part 97 contains separate SIAPs which have compliance dates stated as effective dates based on related changes in the National Airspace System or the application of new or revised criteria. All SIAP amendments in this rule have been previously issued by the FAA in a National Flight Data Center (FDC) Notice Airmen (NOTAM) as an emergency action of immediate flight safety relating directly to published aeronautical charts. The circumstances which created the need for all these SIAP amendments requires making them effective in less than 30 days.

Further, the SIAPs contained in this amendment are based on the criteria contained in the US Standard for Terminal Instrument Approach Procedures (TERPs). Because of the close and immediate relationship between these SIAPs and safety in air commerce, I find that notice and public procedure before adopting these SIAPs are unnecessary, impracticable, and contrary to the public interest and, where applicable, that good cause exists for making these SIAPs effective in less than 30 days

Conclusion

The FAA has determined that this regulation only involves an established body of technical regulations for which frequent and routine amendments are necessary to keep them operationally current. It, therefore—(1) is not a "major rule" under Executive Order 12291; is not a "significant rule" under DOT Regulatory Policies and Procedures (44 FR 11034; February 26, 1979); and (3) does not warrant preparation of a regulatory evaluation as the anticipated impact is so minimal. For the same reason, the FAA certifies that this amendment will not have a significant economic impact on a substantial

number of small entities under the criteria of the Regulatory Flexibility Act.

List of Subjects in 14 CFR Part 97

Approaches, Standard instrument, Incorporation by reference.

Issued in Washington, DC on July 16, 1993.

Thomas C. Accardi,

Director, Flight Standards Service.

Adoption of the Amendment

Accordingly, pursuant to the authority delegated to me, Part 97 of the Federal Aviation Regulations (14 CFR Part 97) is amended by establishing, amending, suspending, or revoking Standard Instrument Approach Procedures, effective at 0901 UTC on the dates specified, as follows:

PART 97—STANDARD INSTRUMENT APPROACH PROCEDURES

1. The authority citation for part 97 continues to read as follows:

Authority: 49 U.S.C. App. 1348, 1354(a), 1421 and 1510; 49 U.S.C. 106(g) (revised Pub. L. 97–449, January 12, 1983); and 14 CFR 11.49(b)(2).

2. Part 97 is amended to read as follows:

By amending: § 97.23 VOR, VOR/DME, VOR, or TACAN, and VOR/DME or TACAN; § 97.25 LOC, LOC/DME, LDA, LDA/DME, SDF, SDF/DME; § 97.27 NDB, NDB/DME; § 97.29 ILS, ILS/DME, ISMLS, MLS, MLS/DME, MLS/RNAV; § 97.31 RADAR SIAPs; § 97.33 RNAV SIAPs; and § 97.35 COPTER SIAPs, identified as follows:

NFDC TRANSMITTAL LETTER

Effective	State	City	Airport	FDC No.	SIAP
06/02/93	OK	Henryetta	Henryetta Muni	3/2946	NDB RWY 35 AMDT 2...
06/11/93	WV	Clarksburg	Benedum	3/3477	ILS RWY 21 AMDT 12...THIS CORRECTS NOTAM IN PREVIOUS TL.
06/16/93	IA	Fort Dodge	Fort Dodge Regional	3/3196	ILS RWY 6 AMDT 6...
06/16/93	VT	Barre-Montpelier	Edward F. Knapp	3/3191	ILS RWY 17 AMDT 4...
06/17/93	TN	Memphis	Memphis Intl	3/3219	ILS RWY 36R AMDT 8A...
06/21/93	MS	Natchez	Hardy-Anders Field Natchez-Adams County.	3/3285	NDB RWY 17 AMDT 4...
06/21/93	MS	Natchez	Hardy-Anders Field Natchez-Adams County.	3/3286	VOR RWY 17 AMDT 10...
06/22/93	CA	San Francisco	San Francisco Intl	3/3328	ILS RWY 28L AMDT 19A...
06/22/93	MS	Natchez	Hardy-Anders Field Natchez-Adams County.	3/3326	VOR/DME RWY 13 AMDT 2...
06/25/93	SC	Hilton Head Island	Hilton Head	3/3411	RNAV RWY 3 AMDT 4...
06/25/93	SC	Hilton Head Island	Hilton Head	3/3412	RNAV RWY 21 AMDT 4...
06/25/93	SC	Hilton Head Island	Hilton Head	3/3413	VOR/DME–A AMDT 9A...
06/29/93	NH	Portsmouth	Pease International/Tradeport	3/3484	VOR OR TACAN RWY 16 AMDT 1...
06/29/93	NH	Rochester	Skyhaven	3/3482	VOR/DME–A ORIG...
07/02/93	FL	Jacksonville	Craig Muni	3/3528	ILS RWY 32 AMDT 2...
07/02/93	GA	Atlanta	The William B. Hartsfield Atlanta Intl.	3/3532	ILS RWY 08L AMDT 1...
07/02/93	GA	Atlanta	The William B. Hartsfield Atlanta Intl.	3/3533	ILS RWY 27R AMDT 2...
07/02/93	GA	Brunswick	Glynco Jetport	3/3531	RNAV RWY 25 AMDT 6A...
07/02/93	GA	Brunswick	Glynco Jetport	3/3537	ILS RWY 7 AMDT 7A...
07/02/93	GA	Brunswick	Glynco Jetport	3/3539	NDB RWY 7 AMDT 9A...
07/02/93	GA	Brunswick	Glynco Jetport	3/3540	RNAV RWY 7 AMDT 6A...
07/02/93	GA	Brunswick	Glynco Jetport	3/3593	BOR/DME–B AMDT 6A...
07/02/93	GA	La Grange	Callaway	3/3534	ILS RWY 31 AMDT 1...
07/02/93	GA	Savannah	Savannah Intl	3/3535	ILS RWY 9 AMDT 25...
07/02/93	GA	Tifton	Henry Tift Myers	3/3536	ILS RWY 33 ORIG...
07/02/93	MO	St. Louis	Spirit of St. Louis	3/2958	ILS RWY 8R AMDT 12B...
07/13/93	IA	Sioux City	Sioux Gateway	3/3761	ILS RWY 31 AMDT 24A...

[FR Doc. 93–17972 Filed 7–27–93; 8:45 am]

BILLING CODE 4910–13–M

CONSUMER PRODUCT SAFETY COMMISSION

16 CFR Parts 1500 and 1505

Exemption of Video Games From Requirements for Electrically Operated Toys or Other Electrically Operated Articles Intended for Use by Children

AGENCY: Consumer Product Safety Commission.

ACTION: Final rule.

SUMMARY: The Commission exempts video games from its safety regulations for electrically-operated toys and other electrically-operated articles intended for use by children. Video games are exempted because application of the regulations to video games would be unlikely to reduce future injuries to children. Further, compliance with the regulations would cause testing, recordkeeping, and labeling costs.

EFFECTIVE DATE: This change is effective August 27, 1993.

FOR FURTHER INFORMATION CONTACT: Frank Krivda, Division of Regulatory Management, Office of Compliance and Enforcement, Consumer Product Safety Commission, Washington, D.C. 20207; telephone (301) 504-0400.

SUPPLEMENTARY INFORMATION:

I. Background

A. Electrically-Operated Toys

The Consumer Product Safety Commission ("Commission" or "CPSC") administers the Federal Hazardous Substances Act ("FHSA"), 15 U.S.C. 1261-1277. Before the Commission was created, the FHSA was administered by the Food and Drug Administration

("FDA"). In 1972, the FDA proposed safety regulations under the FHSA for electrically-operated toys and other electrically-operated articles intended for use by children. In 1973, the FDA issued these regulations, and the Commission later republished them in the Code of Federal Regulations at 16 CFR 1500.18(b)(1) and part 1505. 38 FR 6138 (March 7, 1973) and 38 FR 27032 (Sept. 27, 1973).

The regulations for electrically-operated toys apply to "any toy, game, or other article designed, labeled, advertised, or otherwise intended for use by children which is intended to be powered by electrical current from nominal 120 volt (110-125 V.) branch circuits." 16 CFR 1505.1(a)(1). They do not apply to components powered by circuits of 30 volts rms (42.4 volts peak) or less, or to articles designed primarily for use by adults that may be used incidentally by children. *Id.*

The Commission's regulations for electrically-operated toys contain requirements for labeling, manufacturing, electrical design and construction, performance, and maximum acceptable temperatures for surfaces and materials. If any toy or other children's article fails to meet a regulatory requirement, it is a "banned hazardous substance" under the FHSA. 15 U.S.C. 1261(q)(1)(A).

B. Application to Video Games of the Regulations for Electrically-Operated Toys

In 1972, the Electronic Industries Association's Consumer Electronics Group ("EIA/CEG") asked FDA for an interpretation of the proposed regulations for electrically-operated toys as they applied to consumer electronic equipment (February 17, 1972, letter from J. Edward Day, Esq.). FDA's Deputy Commissioner responded that "I should like to assure you that the proposal . . . is not intended to apply to television and radio receivers, phonographs, tape equipment, and audio components" (March 2, 1972, letter from FDA Deputy Commissioner James D. Grant). However, FDA indicated that the rule would apply to record players intended specifically for use by small children. *Id.*

Since the early 1970's, a wide variety of video games have been marketed. In 1982, the Commission's compliance staff decided that the regulations for electrically-operated toys applied to video games and informed certain video game manufacturers of this determination. The EIA/CEG and some manufacturers disagreed with that decision, and the industry made plans to petition the Commission for an exemption from the regulations. The compliance staff decided informally not to enforce the regulations against video games while such a petition was under consideration.

C. EIA/CEG Petition for an Exemption for Video Games

On December 21, 1983, EIA/CEG submitted its petition (docketed by the Commission as petition HP 84-1). The petition made the following points:

1. Most video games are designed for teenagers and adults.

2. Application of the regulations for electrically-operated toys to video games raises insurmountable definitional problems.

3. Video game safety is already assured.

4. The regulations burden manufacturers with recordkeeping, testing, and labeling requirements.

5. Commission policy would be served by excluding video games from the regulations.

Despite its request for an exemption, the EIA/CEG did not concede that video games actually fall within the scope of the regulations. The petition asserted that the regulations were never intended to cover electronic video games because (a) such games do not fall within the traditional scope of the regulations and (b) they are like televisions and other home entertainment devices that FDA had indicated were not subject to the regulations for electrically-operated toys.

D. Commission Action on the Petition

For reasons discussed below, the Commission preliminarily found that many video games fall within the FHSA's definition of toys and other articles intended for use by children, as well as within the scope of the Commission's regulations for electrically-operated toys. 15 U.S.C. 1261(f)(1)(D); 16 CFR part 1505. However, the Commission preliminarily concluded that video games present a small risk of injury to children, and application of the regulations to video games would be unlikely to reduce future injuries to children. Further, compliance with the regulations for electrically-operated toys would involve testing, recordkeeping, and labeling costs for manufacturers. Therefore, the Commission granted petition HP 84-1 and issued proposed changes to the regulations for electrically-operated toys that would generically exclude video games. 57 FR 46349 (October 8, 1992).

II. Interpretation of the Applicability to Video Games of the Regulations for Electrically-Operated Toys

Video games as a product group are difficult to define, but, for the purposes of this exemption, the term video games refers to video game hardware systems, which consist of games which produce a dynamic video image and which have some way to control movement of portions of the video image. The image may be produced on a specially manufactured viewing screen or, by the use of cables or remote controls, on a television set. The term includes only hardware systems (the console, cables, and controls); nonelectrical software systems (the video game cartridges) are not included, although software systems are required in order to operate the games.

The Commission concludes that video games, as defined above, are products intended for use by children, as that term is used in section 2(f)(1)(D) of the FHSA, and are thus subject to the electrically-operated toy regulation if they are powered by current from nominal 120 volts branch circuits. A U.S. Court of Appeals held that the determination of such intent "is vested in the sound discretion of the Commission." *Forester* v. *CPSC*, 559 F.2d 774 (D.C. Cir. 1977).

The fact that a children's product is also used by adults does not mean that the product is not intended for use by children under § 2(f)(1)(D). The *Forester* case was a challenge to the Commission's regulation of bicycles under the FHSA. Before issuing the regulation, the Commission had found that a large percentage of bicycles were of types that were used by adults, children, and adolescents, and that there was no precise way of distinguishing between the ones intended exclusively for adults and those intended for children as well as adults. 39 FR 26100 (1974). The Court upheld the bicycle regulation, refusing to find that the Commission "abused its discretion or acted contrary to law in determining that all bicycles except those excluded from the regulation are 'intended for use by children.'" *Forester* at 786.

In a more recent case, a Court considered FHSA jurisdiction over lawn darts. *First National Bank of Dwight* v. *Regent Sports Corp.*, 803 F.2d 1431 (7th Cir. 1986). The Court stated that sports equipment intended for the use of children falls within the statutory definition.

Under these principles, the Commission concludes that video games, as a product class, are intended

for use by children and fall within the meaning of the FHSA term "toy or other article intended for use by children." Based on such objective factors as advertising, marketing, and use patterns for these products, the Commission concludes that use of video games by children is reasonably foreseeable and that video games are therefore intended for use by children. *See U.S.* v. *Articles of Banned Hazardous Substances Consisting of 1030 Gross (More or Less) of Baby Rattles*, 614 F. Supp. 226, 231 (E.D.N.Y. 1985); *U.S.* v. *Focht*, 882 F.2d 55 (3rd Cir. 1989).

The Commission also concluded that most video games are the types of electrically-operated toys or articles intended for use by children that are within the scope of the regulation since they are intended to be powered from nominal 120 volt branch circuits. Video games that can be powered only by batteries are not currently subject to the regulation.

Only video games as described above are being exempted. However, the Commission notes that a product is not covered by the regulation in the first place unless it is a "toy or other article intended for use by children" as that term is used in section 2(f)(1)(D) of the FHSA, 15 U.S.C. 1261(f)(1)(D). Many nome computers, for example, are not specifically adapted for use by children, and are thus not subject to the regulation for electrically-operated toys. For example, a home computer whose ability to function as a video game is incidental to other functions it can perform, which does not contain features intended to make the computer especially suitable for children, and which is not marketed as being especially advantageous for use by children may not be considered to be intended for use by children. In any event, such home computers would seem to fall within the intent of FDA's earlier interpretation that TV sets and other articles intended for the use of adults, but that are also used by children, are not within the scope of the regulation. The Commission sees no reason why this earlier interpretation by FDA should be changed.

III. Effects of Applying the Regulations for Electrically-Operated Toys to Video Games

The Commission's Directorate for Epidemiology has reports of 36 incidents from January 1, 1983, through December 31, 1992, that may be related to the electrical aspects of products subject to this petition. Thirty-three of these incidents involved fires. Of these 33 fire incidents, 7 reports indicated that the fire was caused by either the video game or a television set, 5 reports cited short circuits, 11 cited the transformer or the AC adapter, 1 an overload in the AC circuit, and 2 an overload of a video computer game. The remaining seven fire incidents were categorized as involving video games, but the specific cause was not reported. The three remaining non-fire electrical incidents consisted of two incidents of electrical shock and one incident of plug failure.

There were 5 deaths and 10 injuries associated with the 36 reported incidents. One of the fire incidents resulted in four fatalities, but the exact involvement of the video game as a fire source was not established in that case. The other death occurred in a house fire started when an electrical adapter for a video game overheated while it was plugged into an electrical outlet.

Electronic video games are currently designed and tested to an existing voluntary standard (UL 961, Hobby and Sports Equipment). The Commission's Engineering Staff compared the Commission's regulations for electrically-operated toys with UL 961 to determine how effective each standard is in addressing electrical and thermal hazards associated with video games.

The Commission concludes that, despite differences in the requirements for video games in the CPSC regulation and the UL standard, there would not be a significant decrease in the risk of injury to children if the Commission enforced its regulation. The staff was unable to conclude from the 36 reports of incidents involving video games that any of these incidents would have been prevented had the games complied with all the requirements of the CPSC regulation for electrically-operated toys rather than only with the UL standard. Although the CPSC regulations do contain more stringent requirements in some areas, these deal with accessibility to electrically-live parts, labeling, and excessive surface temperatures in normal operation (to protect against burns, not against fires caused by failures or defects, which are addressed by the UL standard). None of the risks addressed by the CPSC standard but not the UL standard was found to be involved in the 36 known incidents, most of which were reported as fires.

If the regulations for electrically-operated toys were applied to video games, industry would incur a number of costs. These would include testing each model for compliance, keeping records of such testing, maintaining the records for three years, and labeling the games' packaging and transformers.

IV. Regulatory Analysis

When issuing requirements under the FHSA, the Commission is required to develop a final regulatory analysis containing a discussion of various factors, including a description of the potential benefits and potential costs of the regulation (including any benefits or costs that cannot be quantified in monetary terms), an identification of those likely to receive the benefits and bear the costs, and a description of any reasonable alternatives to the regulation, together with a summary description of their potential costs and benefits and brief explanation why such alternatives were not chosen. Although these findings do not apply to rules granting exemptions from preexisting requirements, a discussion of these topics is given below. (See Section VII below concerning appropriate rulemaking procedure for exemptions.)

A. Costs and Benefits of the Exemption

Costs. Potential costs of exempting electronic video games from the current regulation, if any, will be borne by purchasing consumers, and their families, friends, and neighbors. The potential costs consist of the possibility that future injuries, deaths, or property damage will be associated with games that did not comply with the current regulation's requirements and that such injuries and deaths would have been prevented if the games had complied with the regulations. The Commission is aware of 33 fire incidents that occurred during the period from January 1, 1983, to December 31, 1992, that may have been related to the electrical aspects of products that will be subject to this exemption. In most of these cases, the available information does not permit a determination of whether a video game was responsible for the fire. The Commission's Engineering Sciences staff concluded that "[a] review of incidents associated with video games did not reveal any that would have been prevented had the games been manufactured in accordance with the requirements of the Federal regulation 16 CFR part 1505." At the end of 1992, there were an estimated 45-50 million video games in use. Video games are found in an estimated 50 percent of U.S. households. The current market is dominated by two firms, one of which accounts for nearly 70 percent of total sales.

Costs may also be incurred if future sales of video games included units which were significantly more hazardous than those marketed over the last decade. However, there is no information to suggest that future

entrants will market poorer quality hardware in order to obtain a price advantage, and the cost of hardware is not the primary determinant of demand. The current market leaders reached their market dominance through the marketing of popular game cartridges that are compatible only with their own hardware. Purchase decisions appear to be driven by the amount and popularity of the games' software, rather by than the price of the hardware systems.

The Commission's staff estimates that the number of "second-generation" (8-bit) video games in use has reached a 40 percent saturation of U.S. Homes. Trade sources indicate that this segment of the video game market is not expected to increase significantly, and these games are directed most heavily (through advertising and software content) at those households with members aged 8-15. Second-generation systems also see considerable use outside the target population. Future increases in households owning video games are expected to come from "third-generation" (16-bit) and "fourth-generation" (24-bit) systems, which currently are primarily targeted at consumers over 15 years of age. An estimated 15 percent of U. S. households had a third-generation system at the end of 1992.

Based on available epidemiological and engineering information, the CPSC staff expects no potential injuries or deaths to be associated with the exemption of video games from the electric-toy regulations. Thus, there will be no societal costs imposed by the exemption.

Benefits. The exemption will provide benefits to manufacturers through a continued avoidance of cost increases associated with compliance with the electric-toy regulations. The future purchasers of these products will also receive these benefits through the avoidance of retail price increases related to compliance. Manufacturers and retailers will also benefit through the elimination of uncertainty about enforcement of existing regulations, and from clarification of the requirements applicable to future product development.

The imposition of the requirements of 16 CFR part 1505 on video games would add certain costs to their production. As noted above, current production is designed and tested to an existing voluntary standard (UL 961, Hobby and Sports Equipment), and there are differences between requirements under the voluntary UL standard and the mandatory regulations under 16 CFR part 1505. For example, the mandatory regulation requires labels on both packages and instructional literature, while the UL standard requires labeling only on the product itself. (The per-unit costs of increased labeling, however, are not likely to be significant.) There are also differences between the two standards in construction and performance requirements.

Trade sources indicate that compliance with the CPSC electric-toy regulations could require a significant retooling of the hardware, and video game consoles could have to be significantly changed. For instance, the plastic console may require reinforcement in order to meet the CPSC regulation's drop test, compression test, and pressure test requirements. Also, the existing CPSC regulation does not allow detachable cords, which might affect the portability of video hardware systems. Each of these modifications could entail design and production cost increases.

Modification of the hardware also could require modification of the game cartridges. If this occurred, existing machines might be incompatible with future cartridges, resulting in increased costs to consumers wishing to compile a library of video games, or in decreased utility for those who are not in a position to purchase the modified hardware and software. Such a situation may result in a consumer rejection of the concept of home video games, as occurred in the early 1980's. This type of consumer rejection is not similar to consumers switching to third-generation systems, which, because of superior visual quality and graphics, provide a more desirable product to the consumer.

Industry sources have not indicated what the expected per-unit price increase would be if the mandatory standard were applied to future production of video games; however, the total cost to society could be substantial due to the numbers of units involved. Over the period 1985-92 (the period during which current second-generation video games have been marketed), video game hardware sales averaged about eight million units annually (including third-generation video games from 1989-92); an estimated 15 million units were sold in 1992, at an average retail price of about $125 each. If any modifications required by CPSC's current regulation added only a 1 percent increase at retail, the annual cost to consumers could be about $10 million (based on average sales).

Hand-held video games are designed to be used with batteries. Hand-held video games that are not sold with AC adapters are not subject to the regulations for electrically-operated toys because they operate on less than 30 volts rms. Some hand-held units, however, are sold with adapters that step down the AC house voltage to the voltage provided by the batteries. In this case, the AC adapter and the video game's package would be subject to the requirements of the electrically-operated toy regulation because the adapter operates off 120 volts.

Hand-held units are not included in the analysis given above because the Commission's staff does not know what percentage of hand-held units are subject to the regulations for electrically-operated toys because they are sold with AC adapters. To the extent such units would need to be changed if the Commission were to enforce this regulation, however, the annual costs to consumers given above would be increased. (An estimated five million hand-held units were sold in 1992, at an average price of about $90.)

Industry sources indicate that compliance with the existing electric-toy regulation would also impose additional recordkeeping, testing, and labeling costs on manufacturers. These sources indicate that compliance with the existing rule "would impose substantial burdens on manufacturers." These costs would likely be passed on to purchasers in the form of higher prices.

Another benefit of the exemption, considered by industry sources to be most significant, will be the elimination of market uncertainty involving future sales of these products. Recent products have been designed to be in compliance with the UL standard. If the more stringent mandatory standards are applied (despite the lack of known safety benefits), the product features required by such standards might place limitations on the innovations that can be designed for these products. The Commission is unable to determine the extent to which this consideration will be a significant benefit of the exemption. To the extent it is, however, withholding the exemption could have an adverse effect on innovation, such as the recent introduction of third- and fourth-generation systems.

An effective date as early as 30 days after publication of the final rule in the **Federal Register** will have little or no effect on the quantifiable costs and benefits associated with this exemption. Manufacturers and marketers will be expected to receive some benefits associated with removal of market uncertainty; these benefits will accrue at the time the industry becomes aware of the rule, rather than at the effective date. Thus, the timing of the effective date is not likely to affect marketers or consumers of these products.

B. Alternatives to the Rule

As one alternative to the exemption, the Commission could have determined that electronic video games should comply with the existing electric-toy regulation. The Commission considered this option and decided to reject this alternative because the uncertain level of benefits accruing through enforcement may be significantly less than potential costs associated with this option.

Another alternative would be for the Commission to issue a statement of enforcement policy stating that the Commission would not enforce the existing regulation as to video games. However, such a statement of policy may not assuage manufacturers' concerns over continued future action involving video games. The resulting uncertainty may lead to market disruption through postponements in innovation.

Because electronic video games are currently designed and tested to existing voluntary standard UL 961, another possible alternative to the exemption of video games from the present mandatory standard would be to amend the mandatory standard to be essentially identical to the current UL standard. This would not be a feasible or desirable alternative for two reasons. First, the Commission is prohibited by statute from issuing a mandatory standard for a product when there is an adequate applicable voluntary standard for the product and there is substantial compliance with such voluntary standard. FHSA section 3(i)(2)(A); 15 U.S.C. 1262(i)(2)(A). This appears to be the situation with respect to video games and UL 961. Second, it is quicker and more feasible to revise a voluntary standard in response to changes in a product's design or use than it is to revise a mandatory standard.

The Commission determined that the available feasible alternatives may not address the concerns of the parties that petitioned the Commission for an exemption. Further, potential future hazards from video games with design or manufacturing defects may be addressed through section 15(c) of the FHSA, 15 U.S.C. 1274(c), without reliance on the existing regulations for electrically-operated toys.

V. Environmental Impact

Pursuant to the National Environmental Policy Act, and in accordance with Council on Environmental Quality regulations and CPSC procedures for environmental review, the Commission's staff performed a preliminary assessment of the environmental impact associated with the rule. The assessment addresses the potential effects of an exemption of video games from existing regulations for electrically-operated toys.

The rule is not expected to affect preexisting packaging, molds, printed circuit boards, plastic stocks, production processes, or other materials of construction now in the hands of manufacturers. Thus, there will be no destruction or discarding of existing materials. Existing inventories of finished products, including those at retail, will not be rendered unusable through the implementation of the rule. Further, inventories will not require retrofit in order to comply with the exemption.

The requirements of the rule are not expected to have a significant effect on the materials used in production or packaging of video games, or on the amount or types of materials discarded after the rule. Therefore, the Commission finds that no significant environmental effects will result from the exemption for video games.

VI. Final Regulatory Flexibility Analysis

The Regulatory Flexibility Act (RFA, 5 U.S.C. 601-612) requires agencies to prepare a final regulatory flexibility analysis whenever a general notice of proposed rulemaking is required for a rule. This analysis shall describe the impact of the rule on small businesses, small organizations, and small government jurisdictions. A regulatory flexibility analysis is not required, however, where the agency certifies that the rule is not likely to have a significant economic impact on a substantial number of small entities.

Since this exemption merely formalizes existing industry and regulatory practices and does not make substantial changes in the Commission's enforcement activities, it is not likely to have a significant impact on small businesses or other small entities. Accordingly, the Commission certifies that this regulation will not have a significant economic impact on a substantial number of small entities.

VII. Rulemaking Procedure

The Commission's regulations for electrically-operated toys were issued under the authority of section 2(f)(1)(D) of the FHSA, 15 U.S.C. 1261(f)(1)(D), which includes within the definition of hazardous substance "[a]ny toy or other article intended for use by children which the [Commission] by regulation determines, in accordance with section 3(e) of [the FHSA, 15 U.S.C. 1262(e)], presents an electrical, mechanical, or thermal hazard." Under section 3(e)(1), 15 U.S.C. 1262(e)(1), the Commission may use the notice-and-comment procedures of 5 U.S.C. 553 to determine that a toy or other article intended for use by children presents an electrical, mechanical, or thermal hazard. The Commission concludes that the additional procedures in sections 3(f)-(i) of the FHSA are intended to apply where products that previously could be manufactured are being banned, and not where, as here, products are being exempted from existing requirements. Sections 3(f)-(i) provide for an advance notice of proposed rulemaking and detailed findings designed to ensure that the regulation is necessary to reduce or eliminate an unreasonable risk of injury. These types of findings are inappropriate when an exemption is being considered; therefore, only the notice-and-comment procedures of 5 U.S.C. 553 are being used in this rulemaking.

VIII. Comments on Proposed Rule

Two comments were received on the proposed rule, and they both supported the exemption. One commenter, with no identified affiliation, analyzed the information in the proposal and concluded that the costs of requiring compliance of video games outweigh the benefits.

The other comment was from EIA. It reiterated its contention that video games are not subject to the electrically-operated-toy regulation in the first place. This argument is addressed in Section II of this notice. Otherwise, EIA agreed with the Commission's findings and data supporting the proposal.

IX. Conclusion

List of Subjects

16 CFR Part 1500

Consumer protection, Hazardous materials, Hazardous substances, Imports, Infants and children, Labeling, Law enforcement, Toys.

16 CFR Part 1505

Consumer protection, Electronic products, Infants and children, Toys.

For the reasons given above, the Commission amends title 16 of the Code of Federal Regulations as follows:

PART 1500—[AMENDED]

1. The authority citation for part 1500 is revised to read as follows:

Authority: 15 U.S.C. 1261-1277, 2079.

PART 1505—REQUIREMENTS FOR ELECTRICALLY OPERATED TOYS OR OTHER ELECTRICALLY OPERATED ARTICLES INTENDED FOR USE BY CHILDREN

1. The authority citation for part 1505 is revised to read as follows:

Authority: 15 U.S.C. 1261-1262, 2079.

§1505.1 [Amended]

2. Section 1505.1(a)(1) is amended by removing the word "or" preceding the word "articles" in the last sentence and by adding ", or video games" before the period in the last sentence.

3. Section 1505.1 is amended by adding a new paragraph (a)(2) reading as follows:

§1505.1 Definitions.

(a) * * *

(2) The term *video games* means video game hardware systems, which are games that both produce a dynamic video image, either on a viewing screen that is part of the video game or, through connecting cables, on a television set, and have some way to control the movement of at least some portion of the video image.

Dated: July 23, 1993.

Sadye E. Dunn,

Secretary, Consumer Product Safety Commission.

List of Relevant Documents

(Note: This list will not be published in the Code of Federal Regulations.)

1. 37 FR 1020 (January 21, 1972).
2. 38 FR 6138 (March 7, 1973).
3. Briefing package for the Commission, "Petition HP 84-1 on Video Games," dated August 22, 1988, with the following attachments:

TAB A. Letter from Gary J. Shapiro, Staff Vice President, Government and Legal Affairs, Consumer Electronics Group, Electronic Industries Association, re: "Petition for Exemption or Modification and Request for Stay of Enforcement Pending Decision on Petition," dated December 21, 1983 (HP 84-1).

TAB B.

a. Letter from J. Edward Day, Counsel for Consumer Electronics Group of the Electronics Industries Association, to James D. Grant, Deputy Commissioner, Food and Drug Administration, dated February 17, 1972.

b. Letter from James D. Grant, Deputy Commissioner, Food and Drug Administration, to J. Edward Day, dated March 2, 1972.

TAB C.

a. Memorandum from Carolyn Kennedy, Directorate for Economic Analysis, to David W. Thome, Office of Program Management and Budget, entitled "Video Game Petition, HP 84-1," dated June 24, 1988.

b. Memorandum from Carolyn Kennedy, Directorate for Economic Analysis, to Carl W. Blechschmidt, Office of Program Management and Budget, entitled "Video Games - Product Identification," dated November 21, 1984.

TAB D.

a. Memorandum from Debbie Tinsworth, Directorate for Epidemiology, to David W. Thome, Office of Program Management and Budget, entitled "Video Game Petition (HP 84-1)," dated July 11, 1988.

b. Memorandum from William Rowe, Directorate for Epidemiology, to Carole Shelton, Office of Program Management and Budget, entitled "HP 84-1 Video Games: EPI Review of Incidents," dated February 25, 1988.

TAB E. Memorandum from John Preston, Directorate for Engineering Sciences, to David W. Thome, Office of Program Management and Budget, entitled "Petition HP 84-1; Electronic Video Games," dated July 1, 1988.

TAB F. Draft proposed "Statement of Interpretation and Enforcement Policy on Video Games."

4. Briefing package for the Commission, "Proposed Exemption of Video Games," dated August 11, 1992, with the following attachments:

TAB A. Draft **Federal Register** notice, "Proposed Exemption of Video Games."

TAB B. Memorandum from Audrey E. J. Corley, EPHA, to Ron L. Medford, EXHR, entitled "Video Game Exemption," dated October 15, 1991.

TAB C.

a. Memorandum from John Preston, ESME, to David W. Thome, EXPB entitled "Petition HP 84-1 Electronic Video Games," dated July 1, 1988.

b. Memorandum from John Preston, ESME, to David W. Thome, FO, entitled "Video Games, Petition HP 84-1," dated February 18, 1992.

TAB D.

a. Anthony C. Homan and Terrance R. Karels, Directorate for Economic Analysis, "Preliminary Regulatory Analyses, Economic and Environmental Assessments: Proposed Amendments to the Electrically Operated Toy Regulation," October, 1991.

b. Memorandum from Anthony C. Homan, to Bert G. Simson, EXHR, entitled "Market Sketch Update," dated October 16, 1991.

c. Memorandum from Anthony C. Homan, EXPA, to Elaine A. Tyrrell, EX-P, entitled "Market Sketch Home Video Games," dated March 10, 1989.

5. Comments on the proposed exemption (2).

6. "Briefing Package -- Exemption of Video Games," David W. Thome, EXHR, June 29, 1993, with the following attachments:

TAB A. Draft **Federal Register** notice.

TAB C. Memorandum from William Rowe, EPHA to David Thome, FO, "Video Games Incident and Injury Data," May 19, 1993.

TAB D. a. Memorandum from John Preston, ESMT, to David W. Thome, FO, "Video Games Petition, HP 84-1," June 2, 1993. b. Memorandum from John Preston, ESME, to David W. Thome, EXPB, "Petition HP 84-1 — Electronic Video Games," dated July 1, 1988.

TAB E. a. Memorandum from Anthony C. Homan, ECPA, to David W. Thome, FO, "Market Sketch Update – Home Video Games," June 9, 1993. b. Memorandum from Anthony C. Homan, ECPA, "Final Regulatory Analyses for the Proposed Amendment to the Electronically Operated Toy Regulation," June 1993.

TAB F. Comments on the proposal: a. Electronic Industries Association. b. Richard J. Renk, Jr.

[FR Doc. 93-18026 Filed 7-27-93; 8:45 am]

BILLING CODE 6355-01-F

COMMODITY FUTURES TRADING COMMISSION

17 CFR Parts 1 and 155

Final Rule Prohibiting Dual Trading by Floor Brokers

AGENCY: Commodity Futures Trading Commission.

ACTION: Final rule.

SUMMARY: The Commodity Futures Trading Commission ("Commission") has adopted final rules that implement the statutory mandate of section 4j(a) of the Commodity Exchange Act ("Act") as amended by section 101 of the Futures Trading Practices Act of 1992 ("1992 Act").[1] New Commission regulation 155.5 prohibits dual trading in contract markets with average daily trading volume equal to or in excess of 8000 contracts, except to the extent permitted by contract market rules made effective under section 5a(a)(12) of the Act and Commission regulation 1.41. A contract market may petition the Commission for an exemption from the dual trading prohibition. The exemption petition must demonstrate that the contract market's trade monitoring system satisfies specified standards, or that there is a substantial likelihood that a dual trading prohibition would harm the public interest in hedging or price basing at the contract market and that the contract market will implement corrective actions to achieve compliance with the specified trade monitoring standards. Each contract market that meets the average daily volume threshold and that is not exempted must adopt rules pursuant to section 5a(a)12 of the Act and Commission regulation 1.41 to prohibit dual trading in accordance with the provisions of regulation 155.5.

EFFECTIVE DATE: The amendment to regulation 1.35(e)(1) and regulation 155.5 (a), (b), (c), and (e) are effective October 26, 1993. Regulation 155.5(d) and appendix A are effective

[1] Public Law Number 102-546, section 101, 106 Stat. 3590 (1192).

immediately upon publication in the Federal Register (July 28, 1993).

FOR FURTHER INFORMATION CONTACT: De'Ana H. Dow, Special Counsel, or Linda Kurjan, Special Counsel, Division of Trading and Markets, Commodity Futures Trading Commission, 2033 K Street, NW., Washington, DC 20581. Telephone: (202) 254–8955.

SUPPLEMENTARY INFORMATION:

I. Introduction

On March 9, 1993, the Commission published for public comment in the Federal Register proposed new regulation 155.5.[2] The new regulation was proposed in response to the statutory mandate set forth in section 101 of the 1992 Act. The 1992 Act generally requires the Commission to prohibit dual trading on each contract market with an average daily trading volume equal to or in excess of 8000 contracts and allows the Commission to exempt those contract markets that have trade monitoring systems capable of detecting and deterring trading abuses attributable to dual trading. Further, the Commission is required to provide for exceptions to the dual trading prohibition as necessary and appropriate to ensure fairness and orderly trading in contract markets subject to the dual trading prohibition and not otherwise exempted.

The Commission received ten written comments in response to the proposed rulemaking. The commenters included five contract markets (Chicago Board of Trade ("CBT"), Chicago Mercantile Exchange ("CME"), Commodity Exchange, Inc. ("Comex"), Coffee Sugar & Cocoa Exchange, Inc. ("CSC"),[3] and New York Mercantile Exchange ("NYMEX")), and four commodity industry trade associations (American Farm Bureau Federation ("AFBF"), Iowa Grain and Feed Association ("IGFA"), National Grain and Feed Association ("NGFA")), and Comodity Floor Brokers and Traders Association ("CFBTA")). The comments received on particular aspects of the proposed rulemaking are discussed below. The Commission has reviewed each of these comments and, based upon that review, is adopting the rules as proposed with certain modifications consistent with the statutory objectives of the 1992 Act.

II. Proposed Rulemaking

A. Definitions

1. Dual Trading

a. Proposed Regulation

Proposed regulation 155.5(a)(4) defined dual trading as the execution of customer orders by a floor broker during the same trading session in which the floor broker executes directly or indirectly a transaction in the same contract market for: (1) The floor broker's own account; (2) any account in which the floor broker's ownership interest or share of trading profits is ten percent or more; (3) an account for which the floor broker has trading discretion; (4) or an account controlled by a person with whom such floor broker is subject to trading restrictions under section 4j(d) of the Act, as amended, to the extent section 4j(d) has been applied by Commission rule or order.[4]

b. Comments Received

CBT, CSC, Comex, and NYMEX each commented on various aspects of the proposed dual trading definition. Regarding the execution of orders for "any account in which the floor broker's ownership interest or share of trading profits is ten percent or more," CBT and CSC commented that the proposed definition exceeds Commission authority because it is broader than the statutory definition, which references only the floor broker's own account. CBT also commented that all discretionary accounts should not be restricted because many brokers maintain discretionary authority, but have not actual control over trading the account and solely receive a salary or commission.

Comex, CBT, and NYMEX commented that the definition of dual trading, which refers in the 1992 Act to trades executed by the floor broker, should not be expanded to encompass trades executed indirectly by a floor member. In this regard, the commenters noted that the concept of "indirect execution" is vague and potentially overbroad, such that permissible and impermissible conduct may not be distinguishable. NYMEX further asked that the "indirect execution" provision not include trades that offset a pre-existing open position and customer type indicator ("CTI") 3 trades for which audit trail requirements are met.[5]

c. Regulation 155.5(a)(4)

The Commission has considered these comments in light of the language of section 101 and its legislative history. As the Commission stated previously, the proposed definition is intended to encompass all accounts that are owned in whole or in part or controlled by the floor broker, as these accounts all raise similar concerns. Including accounts in which the floor broker has an ownership interest or share of trading profits of ten percent or more prevents a floor broker from circumventing the dual trading prohibition through the use of other accounts in which he has a significant financial interest, and is otherwise consistent with rules of Commission defining proprietary or controlled accounts. Based on the scope of the statutory language, the Commission believes that the inclusion of such accounts in the prohibition is necessary and appropriate. The statute expressly includes discretionary accounts within the definition of dual trading because of the potential for abuse of customer orders through an account over which the floor broker has control.

The Commission, however, is amending the proposed rule to clarify the reference to "indirect" trading activity by deleting "indirectly" and identifying the specific type of trading activity intended to be covered. As revised, the rule now will prohibit a floor broker from initiating and passing an order for his personal account or other accounts listed in the regulation to another floor broker for execution on his behalf. The Commission believes that such CTI 3 trading activity clearly falls within the ambit of the statutory prohibition.

The Commission considered NYMEX's comment that the regulation should exempt from coverage trades that offset a pre-existing open position, but has determined that such an exception would defeat the purpose of the rule. The Commission believes that there are alternatives that the floor broker can choose to cover a pre-existing open position effectively. For example, the floor member, prior to the session in which the member intends to do brokerage, could place a protective stop or a limit order to liquidate a position.

d. Amended Regulation 1.35(e)(1)

The Commission has amended regulation 1.35(e)(1) regarding CTI 1

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[2] 58 FR 13025 (March 9, 1993).

[3] CSC submitted two comment letters, one pertaining to specific provisions of the proposed rule and the other pertaining to the alleged regulatory impact of the rule on CSC and small entities.

[4] At this time, there are no Commission-imposed trading restrictions among members of broker associations. See 58 FR 31167 (June 1, 1993).

[5] The CTI is a numerical code required by Commission regulation 1.35(e) that is used to identify the Commission regulation 1.35(e) that is used to identify the source of a trade. CTI 1 designates a trade by a broker for his own account; CTI 2, a trade for his clearing member's house account; CTI 3, a trade for another member present on the floor or an account controlled by such other member; and CTI 4, a trade for any other type of customer.

trades, which referenced trading for the floor member's own account, to include transactions for an account for which the floor member has discretion. The amendment would cover discretionary transactions to the extent that such transactions need not be passed off to another broker for execution under Commission regulation 155.2.[6] This amendment makes regulation 1.35(e)(1) coextensive with the statute and consistent with the definition of "dual trading" in regulation 155.5(a)(4), which includes an account for which the broker has trading discretion. An account over which a floor broker has discretion is similar to the floor broker's own account in terms of his interest or control over the account. In any event, the Commission believes that although a floor broker may not have any direct financial interest in a controlled account, there may be other incentives to trade discretionary accounts for personal gain.

By conforming the language of regulation 1.35(e)(1) to regulation 155.5(a)(4), the Commission also intends to facilitate the enforcement of the dual trading prohibition. In particular, the amendment will result in identification for surveillance purposes of trading for an account for which the floor broker has discretion as equivalent to trading for the floor broker's own account (CTI 1). Both types of trading would be subject to the dual trading prohibition. The Commission notes that the New York Cotton Exchange, Comex, NYMEX and CSC currently include accounts for which the floor broker has discretion within the definition of CTI 1 trades and that staff of other exchanges have indicated that this change could be implemented readily.[7]

2. Customer

a. Proposed Regulation

"Customer" was defined in proposed regulation 155.5 as an account owner for which a trade is designated with the CTI prescribed under regulation 1.35(e)(4). Only those trades required by Commission regulation to be identified as CTI 4 trades would be considered customer trades and, therefore, "customer" would not include the house account of the broker's clearing member (CTI 2 trades) or accounts for other members present on the floor (CTI 3 trades). The Commission excluded CTI 2 and CTI 3 trades because it believes that clearing members and member-customers are in a better position to protect themselves against potential abuse of their orders. However, the Commission invited comments as to whether the definition of "customer" should include CTI 2 trades.

b. Comments Received

CBT, NYMEX and CME agreed with the Commission's decision not to include CTI 2 trades in the definition of "customer." CBT stated that the broker's clearing member is capable of protecting itself from any abuses attributable to dual trading. NYMEX commented that a clearing member is not in need of the special safeguards accorded a public customer. NYMEX further noted that a clearing member is already in possession of information concerning a floor broker's personal trades and, as an industry professional, has the ability to monitor such personal trading for potential abuses relating to the clearing member's own trades.

c. Regulation 155.5(a)(2)

Based on the comments received, the Commission is adopting the definition of "customer" as proposed. "Customer" is defined as an account owner for which a trade is designated with the CTI prescribed under Commission regulation 1.35(e)(4) and excludes CTI 2 and 3 trades.

3. Contract Market

a. Proposed Regulation

Proposed regulation 155.5 defined "contract market" as any contract separately designated by the Commission, provided that two or more contracts trading concurrently pursuant to a single designation order on other than a transitory basis and for which the contract terms differ significantly other than as to delivery or expiration months would each be considered a contract market. Thus, where there is more than one contract trading pursuant to one designation order, the contracts would be identified for this purpose as separate contract markets.[8] The Commission requested that boards of trade identify in their comments any such contracts that they believe would constitute separate markets under the proposed definition.

b. Comments Received

NYMEX noted that the Commission's approach is important with respect to determining the threshold level for an affected contract market and to the applicability of the dual trading prohibition to a floor broker's activities. CBT commented that the proposed definition and accompanying proviso seem reasonable, but suggested some clarification. CBT believes that a broker should be permitted to trade for his personal account in delivery months in affected contracts other than those in which he executes customer orders.

c. Regulation 155.5(a)(3)

The Commission is amending the definition of "contract market" to recognize contracts trading through certain screen-based trading systems separately from contracts traded on the floor of an exchange by open outcry. This amendment is discussed below in response to comments regarding the exclusion of screen-based trading systems from the dual trading prohibition (Section IIB1).

With respect to the CBT's suggestion, the 1992 Act specifically defines dual trading in terms of transactions for a customer's account and the floor broker's account in the same contract market and requires the Commission, in prohibiting such activity, to reject the contract-month approach advocated by the exchanges. Accordingly, the statute does not provide the Commission with authority to implement the prohibition on a contract-month basis.

4. Trading Session

a. Proposed Regulation

Proposed regulation 155.5(a)(1) defined trading session to mean the hours during which a contract market is scheduled to trade continuously during a trading day, as set forth in contract market rules, including any related post-settlement trading session. It further provided that a contract market may have more than one trading session during a trading day; for example, a regular session and an evening session. A broker could trade for a customer and an account in which he has an interest in the same contract market during different trading sessions.

The Commission stated previously that although dual trading-related

[6] Regulation 155.2(c) prohibits a floor broker from executing any transaction for any account over which a broker has trading discretion. Orders for such an account must be passed off to another member for execution, with certain exceptions. Those exceptions include accounts for which the broker has only time, price and contract month discretion, and accounts of immediate family members, of members present on the floor and his clearing member's house accounts.

[7] Regulation 1.35(e)(1) previously included accounts for which the floor broker has trading discretion. The provision, however, was deleted without explanation. 41 FR 3193 (January 21, 1976), 41 FR 56134 (December 23, 1976).

[8] For example, the Commission recently designated the CBT to trade futures on catastrophic insurance indices under four designation orders. Pursuant to each designation order, three separate indices contracts—quarterly, semi-annual, and annual—can trade. Another example of multiple contracts trading pursuant to a single designation order is the CSC sugar #11 and sugar #14 contracts.

abuses could occur over more than one trading session, it believes that a dual trading restriction based on a single trading session should render dual trading-related abuses more difficult to commit. Further, to the extent that dual trading has been regulated in the securities and equity option markets, the trading session-based restriction has been considered sufficient to address abusive trading activity.[9]

b. Comments Received

NYMEX endorsed the application of the dual trading prohibition to the hours during which the contract market is scheduled to trade continuously during a trading day, including any related post-settlement trading session. NYMEX noted that the period of restriction has been limited to a single trading session on securities exchanges and that it has been sufficient to deter trading abuse. Further, NYMEX suggested that because of the use of screen-based trading systems, it would be appropriate to distinguish between an on-floor open outcry trading session and a screen-based trading system trading session. In this regard, NYMEX requested that the Commission clarify that the definition of trading session does not treat an on-floor open outcry trading session and a screen-based system trading session in the same contract market as one trading session.

CBT commented that it does not believe that the proposal provides as much flexibility to respond to market factors as is necessary. Therefore, CBT requested that the Commission refine the definition of trading session to permit dual trading during a trading session depending upon such factors as time, volume, whether a market has been designated as "fast," or to permit dual trading in certain months of an affected contract. CBT also suggested that the Commission adopt a restriction similar to the CME's dual trading rule, under which a broker may switch from trading to brokerage upon receipt of a customer order during a trading session (but not from brokerage to trading).[10]

c. Regulation 155.5(a)(1)

As discussed below, trading in a contract market through certain screen-based trading systems will be treated separately from trading in the same commodity on the exchange floor. For example, Eurodollars traded on the CME floor by open outcry and Eurodollars traded on GLOBEX will be treated as separate contract markets for the purposes of this rule. In response to NYMEX, a distinction between trading sessions is not applicable to separate contract markets.

CBT's comment is addressed partially by permissible exceptions to the dual trading prohibition. For example, an exchange could adopt a rule permitting suspension of a dual trading prohibition based on emergency market conditions, such as abruptly changing market conditions that may result in an extraordinary influx of orders. An exchange also may adopt a rule to except low-volume months, as described in regulation 155.5(c)(4)(v). The Commission believes that these exceptions provide exchanges with sufficient flexibility to address different market conditions.

5. Volume Year

a. Proposed Regulation

Under the proposal, volume year was defined as a continuous 12-month period that includes the last calendar month-end date prior to the date on which the contract market computes its average daily trading volume.

b. Comment Received

CSC commented that the rule should provide for a date certain from which the computation of the average daily trading volume should initially be made, for example, the last date of the calendar month preceding the month in which the regulation becomes effective.

c. Regulation 155.5(a)(7)

The definition of "volume year" remains unchanged from the proposal. With respect to CSC's comment, regulation 155.5(c)(2) provides that at least five days before the effective date of the dual trading prohibition,[11] each contract market is required to publish a list of the affected contract markets. Accordingly, a contract market that may be subject to a dual trading prohibition must compute the average daily trading volume to determine whether it is an affected contract market at least five days before the dual trading prohibition becomes effective. CSC may determine a date certain from which the computation of the average daily trading volume should be made provided that such date is at least five days before the effective date of the dual trading prohibition.

6. Average Daily Trading Volume

a. Proposed Regulation

The proposed regulation would define "average daily trading volume" as an arithmetic average of daily trading volume, *i.e.*, the total number of sells (buys) executed in any contract market during a trading day for all trading sessions, in a contract market over the specified time period on any day when any option expiration or futures delivery month was listed for trading.[12] Ex-pit transactions, such as exchange of futures for physicals ("EFPs"), transfer trades and office trades, would be excluded from the computation of daily trading volume.

b. Comments Received

AFBF stated its support for the proposed definition of "daily trading volume" and noted that use of the 12-month period should define more accurately the contracts that are capable of sustaining trading levels that would make such markets subject to the dual trading prohibition.

NYMEX endorsed the exclusion of ex-pit trades, such as transfer trades and EFPs, from the computation of daily trading volume. NYMEX stated that the exclusion of ex-pit transactions is consistent with the objective of section 4j of the 1992 Act, *i.e.*, the curbing of trading abuses that occur on the trading floor.

CBT commented that trading months excluded the low volume exception, discussed below, should be excluded from the computation of average daily trading volume. Further, CBT commented that for the spot month, average daily trading volume should be defined more narrowly to reflect accurately the decreased activity in any spot month. Specifically, the CBT stated that a five-day moving average would be more representative of how trading activity occurs as expiration approaches than a full-month average.[13] The CBT added that the volume in such months should not be counted for purposes of computing average daily trading volume to determine affected contract market status.

Comex recommended that the Commission permit an exclusion from the computation for volume attributable

[9] *See, e.g.*, New York Stock Exchange Rule 112; Chicago Board Options Exchange Rule 8.8.

[10] CME Rule 552.

[11] The effective date of the prohibition would be the effective date under the regulation or under an order denying an exemption petition or revoking an exemption.

[12] Section 4j(a)(1)(D) of the 1992 Act permits the Commission to specify the methodology for determining a contract market's average daily trading volume based on a moving daily average of either six or 12 months.

[13] The CBT apparently is suggesting that the spot month be treated differently from the other months for purposes of determining the average daily trading volume because the volume in the spot month is not representative of typical volume in a non-expiring month of a given contract market.

to rollover from one delivery month to another, as this volume merely reflects the transfer of open interest from one trading month to another.[14] Comex also commented that the exclusion of ex-pit transactions from the calculation was too narrowly drawn and urged the Commission to exclude EFPs.

c. Regulation 155.5(a)(6)

The Commission has considered the above comments but has determined not to revise the definition of "average daily trading volume." With respect to the comments that the volume in the excepted low volume months and in the rollover period should be excluded from the computation of average daily trading volume, the 8000 contracts threshold level established in the statute is based on the amount of liquidity in a contract market as a whole and not individual expiration months or trading days. Moreover, the Commission believes it would not be consistent with the Congressional intent to create various volume exclusions for trading volume occurring in the pit. Therefore, the Commission has determined to require that the volume in potentially excepted low volume months and volume attributable to the rollover period be counted for purposes of computing the contract market's average daily trading volume.

As to Comex's comments, the Commission reiterates that ex-pit transactions include EFPs, transfer trades and office trades. Ex-pit transactions by definition do not occur in the pit, and therefore, they are excluded from the computation of average daily trading volume and are not affected by the dual trading prohibition.

7. Affected Contract Market

a. Proposed Regulation

"Affected contract market" was defined as a contract market in which the average daily trading volume equalled or exceeded the threshold level of 8000 contracts, as specified in section 4j(a)(4) of the Act, for each of four quarters during the most recent volume year. Each contract market would be required to compute on a quarterly basis its average daily trading volume for each of four quarters during the most recent volume year to determine whether it was an affected contract market.

[14] The "rollover period" is the period of trading either immediately prior to or shortly after the beginning of each delivery period during which large numbers of traders liquidate their positions or roll their positions forward into more distant futures months.

b. Comments Received

NYMEX endorsed the Commission's proposed computation for determining affected contract market status. CSC commented that the Commission should ascertain a threshold level for each contract market rather than a uniform one for all exchanges, given the effect that a dual trading prohibition allegedly would have on certain markets.

c. Regulation 155.5(a)(9)

The definition of "affected contract market" reflects section 4j(a)(1)(D) of the Act, which requires the Commission to specify the methodology for determining the average daily trading volume in a contract market based on either six or 12 months. The Commission selected a 12-month period because it identifies more reliably than a six-month period those contract markets that can be expected to continue at the threshold trading level on a relatively permanent basis.[15]

Section 4j(a)(4)(B) requires the Commission to set the threshold trading level at 8000 contracts initially. After enactment, the Commission, by rule or order, may approve increases in the threshold trading level for specific contract markets and, beginning three years after enactment, may approve decreases in the threshold level. Dual trading will be prohibited in affected contract markets, subject to certain exceptions permitted by contract market rules, unless exempted under the proposed regulation.

B. Dual Trading Prohibition

1. Floor Brokers

a. Proposed Regulation

Proposed regulation 155.5(b) provided that no floor broker shall dual trade in an affected contract market, except as provided in contract market rules, unless that contract market is exempted. As discussed above, this prohibition would not affect ex-pit transactions. The Commission requested comment on whether any Commission-approved electronic trading system also should be excluded from the prohibition and the definition of daily trading volume.

[15] The statute also requires that the regulation provide transition measures for when a contract market's volume increases to or above, or decreases below, the threshold trading level. Further, the specification that the average daily trading volume meet the threshold in each quarter of a 12-month period distinguishes affected markets from those that may reach the threshold level based on only seasonal phenomena or as a result of other temporary surges in trading volume, rather than on a more long-term basis. For those affected markets where the trading volume falls below the threshold trading level, the quarterly assessment will result in relatively prompt removal from affected contract market status.

b. Comments Received

CME and CBT commented that the type of trading abuses facilitated by dual trading apply only to brokers operating on open-outcry trading floors and should not apply to the GLOBEX electronic trading system. They stated that the superior audit trail that exists for all trades conducted on GLOBEX negates the need to apply the prohibition to GLOBEX. CME and CBT also stated that GLOBEX volume should be excluded from the computation of average daily trading volume.

IGFA, NGFA and AFBA commented that Commission-approved electronic trading systems should permit dual trading because such systems should provide a superior audit trail to identify any trading irregularities clearly. AFBA also noted that such systems should reduce the possibility of trading abuses related to dual trading.

c. Regulation 155.5(b)

The Commission has considered the comments regarding the exclusion of screen-based trading from the prohibition.[16] For purposes of this regulation, a contract market trading on the floor of an exchange will be considered separate from a contract market in the same commodity trading through a screen-based trading system. In adopting this provision, the Commission believes that the two trading mechanisms are qualitatively different and sufficiently independent. Consequently, the average daily trading volume for electronic trading and for floor trading will be computed separately for purposes of determining affected contract market status. Currently, there are no electronic trading systems with volume in a contract market near the 8000 contract threshold level. Further, in the event that the trading volume in a contract market transacted through an electronic trading system were to reach that threshold in the future, that volume level or greater would have to be maintained for four consecutive calendar quarters before a dual trading prohibition could apply.

Accordingly, at this time, the Commission is not excluding electronic trading from the prohibition. Instead, the Commission is retaining the flexibility to consider this matter further. Based on its oversight

[16] Screen-based trading refers to trading on an electronic trading system conducted through a competitive auction process pursuant to an algorithm that applies nondiscretionary rules of priority as permitted under contract market rules made effective under the Act, such as GLOBEX (CME and CBT's screen-based system) and NYMEX ACCESS.

experience with such systems and the exchanges' experience in operating such systems, the Commission will determine whether a dual trading prohibition is appropriate for such trading at such time as the relevant contract market could be deemed an affected contract market. If such a market were deemed to be an affected contract market, the exemption process would be applicable.

2. Contract Markets

Proposed regulation 155.5(c) required each affected contract market, unless exempted, to adopt rules pursuant to section 5a(a)(12) of the Act and Commission regulation 1.41 to prohibit dual trading in accordance with the proposed regulation. The contract market would be required to adopt such rules prior to the later of the effective date of the dual trading prohibition or the effective date set forth in a Commission order denying a contract market's exemption petition or revoking an exemption. Absent such contract market rules, Commission regulations 155.5 (a) and (b) would be deemed to be the contract market's rules upon the effective date of the dual trading prohibition. The Commission received no comments on this provision. Therefore, regulation 155.5(c) is being adopted as proposed.

C. Exceptions

Section 4j(a)(1)(B) of the 1992 Act requires that Commission regulations provide for exceptions to the dual trading prohibition as deemed necessary and appropriate to ensure fair and orderly trading in affected contract markets. The 1992 Act specifically directed that exceptions be provided for transition measures and a reasonable phase-in period; spread transactions; correction of trading errors; written customer consent annually naming a floor broker to dual trade; and other measures reasonably designed to accommodate unique or special characteristics of individual boards of trade or contract markets, to address emergency or unusual market conditions, or otherwise to further the public interest.

1. Correction of Errors

a. Proposed Regulation

Consistent with the express statutory directive regarding error trades, the Commission proposed an exception to permit a floor broker to offset trading errors by placing trades executed to fill customer orders that resulted in errors into his personal error account. A floor broker would be required to liquidate the position in his personal error account resulting from that error as soon as practicable, but not later than the close of business on the business day following the discovery of the error, which would occur at or before the time the trade is placed in the error account. In the event that the daily price fluctuation limit is reached and a floor broker is unable to offset the error trade, however, the floor broker would be required to liquidate the position as soon as practicable thereafter.

b. Comments Received

CBT commented that the proposed exception is necessary in order to comply with current regulations and also to protect the marketplace. However, CBT believes that the proposed time limit for floor brokers to liquidate error-related positions is unwarranted once the trade has been placed in a broker's error account. CBT noted that its regulations provide specific protection to the customer by placing the liabilities associated with errors on the relevant floor broker or clearing firm. Under CBT rules, the broker must assume any liabilities for errors associated with executing orders by making monetary adjustments to customers and assuming any erroneous position established. CBT further believes that its computer surveillance systems would readily detect dual trading conflicts involving error accounts.

Comex also supported the proposed exception, but believes that the time limitation for liquidation is unreasonable. Comex commented that requiring offset of the error within a prescribed time frame, rather than allowing a broker to exercise discretion as to how to minimize his exposure, may engender substantial losses to a broker without providing any corresponding customer protection. As an alternative, Comex suggested that each exchange adopting this exception be required to codify procedures for the resolution of errors incorporating audit trail and surveillance measures deemed sufficient by the Commission to ensure proper use of error accounts.

CME and CFBTA objected to the requirement that trading errors assigned to a personal error account be liquidated by the end of the day following their discovery. The commenters stated that the requirement is inconsistent with industry custom and practice and has no legislative basis.

NYMEX endorsed the proposed exception to permit a floor broker to offset trading errors subject to the time periods specified in the proposed regulation.

c. Regulation 155.5(c)(4)(i)

The Commission has considered the comments but does not agree that there should be no time limit on the liquidation of error trades. The Commission believes that if the position is the result of a true error, it should be offset promptly. In fact, Commission staff have observed that errors ordinarily are liquidated as soon as possible to avoid exposure. In adopting Commission regulation 1.46(d)(8)(ii),[17] the Commission stated that it had determined that the close of business on the day following discovery of the error is generally the appropriate demarcation for deeming an error trade to have changed to a speculative new position or a non-error trade.

The liquidation time limits are intended to reduce the potential for use of the floor broker's personal error account to circumvent the dual trading prohibition. However, the liquidation time limits are also intended to provide flexibility responsive to market conditions and the concerns raised by the commenters as to practice. For example, if the daily price fluctuation is reached and the trader is unable to offset the error trade, the FCM would have until "as soon as practicable thereafter" to offset the error trade. Thus, the time limits in the regulation take into consideration market conditions that could serve to frustrate good faith efforts to offset an error trade promptly. Also, in situations where errors are not discovered immediately, the floor broker is allowed one day after the discovery of the error to offset the trade.

2. Customer Consent

a. Proposed Regulation

Proposed regulation 155.5(c)(4)(ii) provide that a contract market could adopt rules pursuant to which a customer could consent to receiving brokerage services from a dual-trading broker. The customer would be required to designate in writing not less than once annually a specifically identified floor broker who would be authorized to dual trade while executing orders for such customer's account. This rule incorporated explicit language in the statute itself that plainly requires both

[17] Commission regulations 1.46(d)(8)(ii) provides an exception for trades in error accounts to the general rule pertaining to the application and closing out by a futures commission merchant ("FCM") of offsetting long and short commodity futures of option positions in a customer account. The time limits in the dual trading regulation are consistent with Commission regulation 1.46(d)(8)(ii). 57 FR 55082 (November 24, 1992).

designation of a named person and annual consent.[18]

The Commission requested comment whether an account controller acting pursuant to a power of attorney should be permitted to provide consent on behalf of the customer for a floor broker to dual trade while executing orders for such customer's account. Commenters also were asked to address the extent to which an account controller might provide such consent on the basis of the potential benefits to himself as distinguished from his fiduciary duty to the customer. Contract markets adopting rules to effectuate this exception were required to establish procedures to monitor compliance. The Commission suggested that one possibility would be for floor brokers or others, as designated under contract market rules, to be responsible for filing customer consent forms with the contract market.

b. Comments Received

CBT stated that the annual renewal requirement is unduly burdensome. NYMEX commented that the Commission should permit the customer to designate in writing more than one floor broker to dual trade or issue a blanket authorization allowing any floor broker, including subcontractors to dual trade. CBT and CSC commented that the requirement that the customer name a specific floor broker restricts the ability of an FCM to select the broker it believes can provide the best fill for its customers. Therefore, they argue that the regulation should permit an FCM to name floor brokers on behalf of its customer, provided the customer has given such consent to the FCM in the customer agreement. Comex and CBT commented that the regulation should permit the designation of "broker groups" as well as of individual brokers, because most customers vest discretion in a fund manager or FCM who often selects broker groups, rather than particular individuals, to handle their orders.

For monitoring compliance, CBT stated that it would seem more efficient to have the FCM carrying the customer account retain the consent form. CBT further commented that one form could cover a consent for brokers to dual trade on several exchanges rather than requiring one consent form for each exchange. Thus, CBT stated that the FCM's designated self-regulatory organization could verify that the appropriate consent has been obtained.

CBT, CME, Comex, IGFA, AFBF, NYMEX and CSC commented that an account controller by virtue of a power of attorney should be permitted to provide consent on behalf of the customer. CFBTA stated that the more appropriate requirement would be that the consent emanate from the non-clerical person who transmits the order to the floor and who has selected and knows the floor broker.

IGFA, NGFA, and NYMEX commented that a power of attorney need not detail every potential decision a controller might make on behalf of the customer. NYMEX further commented that no special power of attorney form should be required because the standardized form already authorizes such discretion. AFBF commented, however, that the consent from the customer to the account controller should be required to be explicitly granted in the power of attorney.

CSC also commented that certain customers who trade large quantity orders may wish to have those orders executed by floor brokers to whom they have given consent to dual trade, but may not wish to have their identity disclosed to those brokers. For example, a commercial firm wanting to effect a large transaction may wish to give orders to several different brokers and, to protect its identity, to send some orders through an FCM. The FCM, without identifying the customer, might place all or a portion of the order with a particular floor broker who had been named by the customer in a written dual trading consent. In such case, the floor broker would not know that he is accepting an order for a customer who has consented to dual trading, but must rely upon the FCM's representation that it is true. Such reliance should be expressly permitted in the proposed regulation.

c. Regulation 155.5(c)(4)(ii)

Pursuant to contract market rules, a customer may consent to receiving brokerage services from a dual-trading broker. The customer must designate in writing, not less than once annually, a specifically identified floor broker who will be authorized to dual trade while executing orders for such customer's account. This provision implements the requirement in the 1992 Act that a customer's consent expressly refer to "named" floor brokers. Therefore, a customer may grant consent to more than one floor broker, provided each floor broker authorized to dual trade on the customer's behalf is named individually. A customer may not grant consent to a broker group or registered broker association.[19] In accordance with the 1992 Act, the customer must renew consent for the designated floor broker to dual trade annually. These requirements are intended to ensure that the consent is the result of the customer's independent decision-making.

The statute does not require that a floor broker know the identity of the customer for whom he is authorized to dual trade. The customer can give written consent naming a particular floor broker or floor brokers authorized to dual trade while executing such customer's order through the floor broker's FCM. In response to CSC's comment, the FCM, upon the customer's request to remain anonymous, would not be prohibited from withholding from the floor broker the identity of the customer granting the dual trading consent. In this situation, as the CSC stated, the floor broker would have to rely on the FCM's representation that the customer granted consent for the floor broker to dual trade. In the event that a contract market wanted to permit such an arrangement, it would have to adopt rules that clearly define the responsibilities of each of the parties involved, *i.e.*, customer, FCM, and floor broker, and implement procedures to ensure that the FCM and floor broker adhere to the customer's decision regarding who may execute the orders. These duties and responsibilities may also be affected by the contractual relationships between the FCM, the floor broker and the ultimate customer.

The Commission is revising the proposed regulation to permit an account controller acting pursuant to a power of attorney to provide consent on behalf of his customer, provided that the customer explicitly grants in writing to the account controller the authority to select a dual trading broker. The power of attorney must run to an individual. Thus, for this purpose, the power of attorney could not be granted to an FCM, although it could be granted to a specific FCM employee who acts as the account controller. The Commission believes that these requirements implement the statutory mandate that customer consent to dual trade be obtained in a formal and particularized manner.

Of course, a contract market that adopts a rule to allow for this exception is responsible for enforcing the requirements of the rule. Regardless of

[18] Section 4j(a)(1)(B)(iii).

[19] Commission regulation 156.1, in part, defines "broker association" as two or more contract market members with floor trading privileges, who engage in floor brokerage activity on behalf of the same employer and of whom at least one is acting as a floor broker. This definition would encompass floor brokers employed by the same FCM, such that the employing FCM would be considered a broker association.

where the consent filing is maintained (for example, with the contract market or clearing member), a contract market must use necessary and appropriate means to ensure that a customer's consent is not compelled or coerced, *i.e.*, that there is a real ability not to select a dual-trading broker.

3. Spread Transactions

a. Proposed Regulation

The Commission's proposal identified two limited circumstances in which it believed that an exception for spread transactions would be necessary and appropriate in order to facilitate customer order execution. First, dual trading would be permitted so that a broker who unsuccessfully attempted to leg into a spread transaction for a customer could take the executed leg into his personal account and offset the resulting position. This proposed exception for "legged in" spreads is intended to address the situation in which the broker is unable to fill a customer spread order, as requested, as a single transaction and attempts to leg into the position. If, for example, the market shifts after one leg of the spread is executed such that the broker is unable to leg into the remaining position at a price permissible under the terms of the customer order, the proposed exception would permit the broker to take the executed leg into his personal account and offset the position.

In order for the contract market and the Commission in its oversight role to verify the legitimacy of the transaction, the contract market would be required to prepare and to maintain a record to demonstrate that the customer order specified a spread trade, preferably on the contract market's trade register required under Commission regulation 1.35(e). Further, the contract market was to require the floor broker to identify the trade as a spread on both his trading card and the customer order that gave rise to the excepted position.

Second, dual trading would be permitted so that a broker could execute for his personal account a spread transaction recognized by a contract market [20] if at least one leg of the spread is in a non-affected contract market. As a result, under this spread exception, the member would be permitted to do brokerage in an affected market and still participate in and provide liquidity to non-affected contract markets.

b. Comments Received

NYMEX endorsed the proposed exception for spread transactions, specifically with respect to "legged in" transactions recognized by the relevant exchanges as spreads.

CBT commented that the spread exception should be broadened to include all spread transactions or, at least, all trades executed at a differential. CBT also stated that an exception for spread orders executed between mature and liquid months and less liquid months can create liquidity. Similarly, CSC commented that an exception should be fashioned for intracommodity spread transactions if at least one leg of the spread is in a low-volume contract month. CBT commented that it would be appropriate to provide an exception for spreads involving any expiring contract month beginning at first notice day. CBT also commented that if dual trading is necessary to execute a customer's spread order under the terms the customer requested, no reason exists not to lift the dual trading ban in order to give the customer the service requested.

CBT and Comex commented that the requirement that a record be prepared and maintained to demonstrate that the customer order was for a spread trade is unwarranted and unnecessary. The commenters noted that "legged in" spreads that are not designated with an "S" can be related easily to the underlying documentation for surveillance purposes.

c. Regulation 155.5(c)(4)(iii)

The Commission agrees that an exception for spreads can be appropriate to provide needed liquidity to low-volume contract months in an affected contract market. Therefore, the Commission is expanding the spread exception to include intra-commodity spreads where one leg of the spread is in a low-volume contract month, *i.e.*, futures delivery months or option expirations that reasonably can be expected to have an average daily trading volume of less than 500 contracts. This new exception would apply only where a contract market has in effect rules that provide for the low-volume months exception. The provision is a logical extension of the spread exception previously proposed.

Ideally, the contract market would identify the excepted "legged in" spreads on the trade register. Such transactions must be identified on the trading card and order ticket to permit compliance personnel to trace the leg placed in the broker's own account to the customer's order ticket reflecting the spread order. Further, the contract market must have in place procedures to monitor this exception.

With respect to CBT's comment regarding an exception for spreads involving expiring contracts beginning at first notice day, the Commission is making other changes, discussed below, to address exchange concerns.

4. Member Customers

a. Proposed Regulation

The proposed regulation allowed an exception for transactions for members of the contract market not present on the floor. This exception recognizes that members generally are better able than public customers to assure the proper handling of their orders. In order to facilitate surveillance, a contract market adopting this exception would be required, on its trade register, to identify such excepted transactions through account numbers, a separate CTI, or otherwise for surveillance purposes.[21]

b. Comments Received

CBT commented that it supports this proposal as long as "member" includes individual members and member firms. CBT further commented that given the necessary flexibility, it could implement this exception without imposing new major costs on market users and that a separate CTI designation is unnecessary. Comex and NYMEX endorsed the proposal and agreed with a requirement of special identification of such transactions on the exchange's trade register for surveillance purposes.

c. Regulation 155.5(c)(4)(iii)

A contract market adopting rules to provide the member customer exception must identify the excepted transactions, on the trade register required under Commission regulation 1.35(e), so that transactions for member customers off the exchange floor can be distinguished from transactions for public customers. Such identification may be accomplished through account identification numbers, a separate CTI code, or other means which facilitate surveillance of the excepted transactions. Thus, in response to the CBT, a contract market is not required necessarily to adopt a new CTI code, but

[20] An exchange-recognized spread is a spread for which an exchange has established lower margin rates because such positions carry less risk than outright futures positions, *e.g.*, T-Bills/Eurodollars, wheat/corn, hogs/pork bellies, and soybean futures/option spreads.

[21] Under Commission regulation 1.35(e), a transaction executed for the account of any type of customer, including a member customer not present on the floor, is required to be designated as a CTI 4. It would be difficult to monitor an exception for member customers without a method for differentiating between a floor broker's activity for member customers off the exchange floor and for public customers.

may determine the recordkeeping requirement most appropriate for its individual markets to provide the needed information on the trade register for ready computer monitoring.

The Commission considered the CBT's comment that it endorses the exception as long as "member" includes individual members and member firms. The Commission believes that the same rationale for allowing an exception for individual members not present on the floor applies to member firms.[22] However, the excepted transaction must be of the member firm's proprietary account and not for any customer of the member firm.[23] In this regard, a contract market that wishes to include member firm orders under the member-customer exception must be able to ensure that a dual trading broker accepts orders only for proprietary, and not customer, accounts of the member firm.

5. Low-volume Months

a. Proposed Regulation

The proposal permitted an exception for futures delivery months or option expirations in affected contract markets that reasonably can be expected to have an average daily trading volume of less than 500 contracts.[24] The volume in such potentially excepted months, however, would be counted for purposes of computing the contract market's average daily trading volume to determine affected contract market status. Excepted low-volume months would be identified based on historical data and an analysis thereof provided by the contract market and other factors identified. The contract market would be required to keep full and systematic records supporting its determinations and, as part of its trade surveillance program, to establish special procedures including appropriate reports to monitor dual trading activity in the excepted low-volume futures delivery months and option expirations.

b. Comments Received

CME and CSC commented that the average daily trading volume level of 500 contracts per day is too low.

Comex supported the exception but also believes that exchanges should be permitted to authorize dual trading during volume surges to assure the availability of reserve brokerage services, subject to the constraint that a floor broker not be permitted to resume trading for his own account after handling a customer order.

c. Regulation 155.5(c)(4)(iv)

Final regulation 155.5(c)(4)(iv) retains the exception for affected contract markets that reasonably can be expected to have an average daily trading volume of less than 500 contracts.[25] The Commission believes that the exception at the level specified will serve the intended purpose of minimizing the effect of a dual trading prohibition in those contract months where additional liquidity of any origin may be most significant.

The Commission reaffirms that determinations as to the applicability of this exception must be based on historical data and an analysis thereof provided to the Commission by the contract market and other factors it identifies to the Commission. The contract market must keep full and systematic records supporting these determinations.

As part of its trade monitoring program, a contract market must establish special procedures including appropriate reports to monitor dual trading activity in the relevant low-volume futures delivery months and option expirations. In addition, any contract market rule providing for this exception should address, as necessary, related matters such as transition issues. Contract markets also must publish a list of any excepted low-volume months, in conjunction with the quarterly publication of affected contract markets, in a manner sufficient to reach all members.

6. Spot Months

The Commission received several comments pertaining to the impact of a dual trading prohibition on trading activity during the spot month. CBT commented that an exception should be provided for spread transactions involving an expiring contract beginning at first notice day, noting that the resulting liquidity will assist in the orderly liquidation of the contract. In addition, CBT suggested that "average daily trading volume" be more narrowly defined to reflect accurately the decreased activity in any spot month.

The Commission recognizes that there may be periods of trading as a contract matures when additional liquidity may be necessary to assure proper functioning of a market with respect to hedging and to assist in orderly liquidation of the contract. For example, a maturing contract may experience a large influx of orders from market participants who do not desire to take delivery of the cash commodity or to have their position cash settled. These persons, particularly speculative traders, commonly move their position to the next expiring future by use of spread transactions or, in some instances, liquidate the position in the expiring future. During this period, the prices of effectively functioning futures markets converge with cash prices. Additional liquidity during this period may be necessary to facilitate execution of the influx of orders without impairing the convergence of cash and futures prices.

In addition, contracts in which there is simultaneous trading and delivery generally exhibit substantially reduced trading volume and a declining open interest during the period when notices are being issued and received. During this period, additional liquidity may be needed to assist in orderly liquidation of the remaining open interest.

In view of the above, the Commission has determined to provide an additional exception to the dual trading prohibition with respect to specific and limited periods of trading in the spot month. The Commission is revising the regulation to make available an exception pursuant to exchange rules to recognize a period of trading in a maturing futures contract during which a dual trading prohibition may be suspended with respect to both outright transactions in the expiring month and spread transactions between the expiring month and the next deferred month. The regulation provides that a contract market may specify such a period provided that it demonstrates that during the specified period, liquidity in the maturing futures contract reasonably can be expected, on the basis of historical data and an analysis thereof and other factors identified, to shift to the next contract month.[26] A contract market also would have to demonstrate that effective surveillance will be conducted for dual

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[22] The transaction for the member firm to be excepted from the prohibition is to be distinguished from a transaction for the broker's clearing member's house account (CTI 2), which is not affected by the dual trading prohibition. Trades for a member firm not affiliated with the floor broker are designated as CTI 4 trades, which, but for the specific exception, would be affected by the dual trading prohibition.

[23] Commission regulation 1.3(y) defines what constitutes a proprietary account.

[24] See 58 FR 13025 n. 47 for specific application of this exception.

[25] *Id.* As previously noted, the Commission intends that this exception could apply either to specific futures delivery months or option expirations or more generically to designated delivery months or option expirations specified in proximity to the nearby month (*e.g.*, "the fourth month out").

[26] CME, the only contract market that restricts dual trading, similarly allows flexibility with respect to application of the dual trading restriction during a period immediately prior to and including the last day of trading. CME Interpretation of Rule 552. Dual Trading Restrictions.

trading-related abuses during the specified period.

7. Market Emergencies

The proposal would permit a contract market to suspend the dual trading prohibition in the event of a market emergency that required the contract market to take a temporary emergency action under recently amended Commission regulation 1.41(f). A contract market would be able to suspend the dual trading prohibition through emergency action to maintain an orderly market in the event of emergency conditions, such as abruptly changing market conditions that may result in an extraordinary influx of orders. Temporary emergency actions taken pursuant to Commission regulation 1.41(f) would be subject to Commission review and the various requirements mandated by the 1992 Act.[27]

NYMEX, CBT, and Comex endorsed this exception as being in the public interest and facilitating the ability of an exchange to maintain an orderly market. The Commission is making no changes to this provision.

D. Exemption Petitions

1. Standards

a. Proposed Regulation

Proposed regulation 155.5(d)(1) required a contract market to apply for an exemption from the dual trading prohibition by filing a written petition, signed by the contract's chief operating officer. In that petition, the contract market would be required to demonstrate that its trade monitoring system is capable of detecting and deterring, and is used on a regular basis to detect and deter, all types of violations attributable to dual trading. The contract market's trade monitoring system also would have to be capable of generating an audit trail that satisfies the requirements of Commission regulation 1.35.

The Commission proposed to establish guidelines as to what would be required for a contract market to demonstrate successfully that its trade monitoring system components are sufficient to detect and deter violations attributable to dual trading. The proposed guidelines, contained in Appendix A to the proposed regulation, set forth minimum standards with respect to each component of the contract market's trade monitoring system and would be applied to determine whether a particular contract market's trade monitoring system satisfies the exemption requirements. Specifically, appendix A contains guidelines for the following components of a contract market's trade monitoring system: Physical observation of trading areas; audit trail system; recordkeeping system; surveillance system; dual trading-related disciplinary actions; and commitment of resources. The Commission in its discretion, however, will consider the contract market's trade monitoring system as a whole in determining whether to grant a conditional or unconditional exemption.

b. Comments Received

NYMEX commented that contract market officials, other than the chief operating officer, including senior officials in charge of legal, operations, trade surveillance, compliance and/or regulatory affairs should be permitted to sign the petition in the event the chief operating officer is not available. CME, CSC, and Comex stated that the proposal would redundantly require exchanges to produce information on their ability to produce an audit trail that already has been formally reviewed and approved by the Commission.

CBT commented that the requirement that an exchange demonstrate that it satisfies dual trading rules and guidelines to obtain an exemption has no statutory basis. It believes that the Commission can only impose as a condition to an exemption that an exchange demonstrate that its trade monitoring system "satisfies CEA section 5a(b) with regard to violations attributable to dual trading at such contract market."

In its comments, CBT also argues that the proposed regulations contravene Constitutional due process requirements for both floor brokers and exchanges because they do not afford trial-type procedures to those seeking exemptions from the ban on dual trading.

c. Regulation 155.5 (d)(1) and Appendix A

Upon review of NYMEX's comment regarding the potential unavailability of the chief operating officer for purposes of signing the exemption petition, the Commission has determined to amend this provision. If the chief operating officer is unavailable, the exemption petition may be signed by the contract market official acting in the chief operating officer's capacity. The Commission is adding this degree of flexibility in order to ensure that the exemption process is not delayed due to the absence or unavailability of the chief operating officer. However, the Commission believes it is important to preserve the accountability of high-level contract market officials.

A contract market may not substitute information contained in a recent rule enforcement review in place of the specific information required under the regulation and the guidelines in appendix A. In drafting the exemption provisions, the Commission applied the new express requirements in the 1992 Act as to an exchange's trade monitoring system. The Commission's regulations are drafted to require contract markets to provide current, detailed, and uniform information in exemption petitions. However, as the Commission stated previously, a contract market may attach excerpts from recent rule enforcement reviews in support of its petition. The relevance of such attached excerpts will be in part determined based on the target period of the review in question.

CBT incorrectly asserts that the rules and guidelines to obtain an exemption have no statutory basis. The guidelines contained in appendix A add specificity to the statutory requirements of section 5a(b) of the 1992 Act and provide additional guidance to a contract market as to what the Commission believes is necessary to demonstrate that the components of a contract market's trade monitoring system are sufficient to detect and deter violations attributable to dual trading. Furthermore, section 4j(a)(1)(c) requires the Commission to specify the relevant data required to be submitted with each exemption petition. The Commission believes that the guidelines, as drafted, are consistent with the purpose and intent of the exemption process, which is designed to assess whether a contract market's trade monitoring system is sufficient to qualify it for an exemption from the dual trading prohibition. Whether a contract market's trade monitoring system is sufficient to qualify it for an exemption from the dual trading prohibition.

The underlying premise of CBT's due process contentions is that the practice of dual trading constitutes a protected interest, *i.e.*, a property right. We conclude, however, that the CBT has failed to demonstrate any protected property interest in dual trading for

[27] Regulation 1.41(f) requires a contract market to make every effort practicable to give the Commission notice of its intention to implement, modify, or terminate a temporary emergency rule before taking action. A temporary emergency rule will remain in effect unless the Commission suspends the effect of the rule pending review under section 5a(a)(12)(A) or otherwise based upon a determination that the emergency action was arbitrary, capricious, or an abuse of discretion; lacking reasonable basis in fact; or taken in bad faith by the contract market or its officials. 58 FR 26229 (May 3, 1993).

either the exchanges or the individual brokers themselves.

As the Supreme Court has stated, "(t)o have a property interest in a benefit, a person clearly must have more than an abstract need or desire for it. He must have more than a unilateral expectation of it. He must, instead, have a legitimate claim of entitlement to it."[28] Generally, either a statute or a regulation is evidence of the creation of a property right by the Government.[29]

The relevant statutory provision, section 4j(a)(1) of the Act, prohibits dual trading in certain markets absent the grant of an exemption.[30] Thus, assuming without deciding that one could obtain a "property interest" in dual trading, whatever "interest" there is could only arise after obtaining this exemption.

Courts have recognized that an entitlement may exist for a benefit sought but not yet obtained, such as a license to engage in lawful activity, if the law limits the exercise of discretion by the official responsible for conferring the benefit.[31] But here Congress has declared the activity in question to be unlawful, rather than lawful. Moreover, the determination whether to grant any exemption is not "limited," but part of an exercise of broad authority to determine if a contract market has made the necessary showing to overcome the statutory prohibition against dual trading.

The CBT attempts to show entitlement under the Act on two bases. It first argues that a floor broker's existing license, authorized by the Act, incorporates the right to dual trade. Further, it contends that section 4j(a), which defines the term "dual trading," also creates the right to dual trade.

The notion that a floor broker's license encompasses a right to dual trade is not supported by any evidence of a mutual understanding between the Commission and the exchanges that this license subsumed a right to dual trade. Nothing in the regulations for floor brokers or in the Act grants or acknowledges a right to dual trade. To the contrary, in amending the Act in 1974, Congress instructed the Commission to determine whether the practice of dual trading should be permitted.[32] An ongoing study of whether dual trading would be allowed does not rise to the level of creating a legal guarantee of a protected activity. Indeed, section 4j(a)(1) of the Act refers to dual trading as a "privilege," underscoring that there is no entitlement to dual trade.

Based on the above, the Commission concludes that the CBT has articulated at best an expectation of continuing to dual trade. As explained, however, a protectable interest must be more than a "unilateral expectation."[33]

The CBT separately raises other concerns about the exemption process and its effect on an exchange's legal status under the Act. Purportedly, denial of an exemption based on a finding that the contract market's trade monitoring system does not satisfy the standards of section 5a(b) of the Act would be equivalent to a finding that the exchange is operating unlawfully and does not have adequate ability to police the contract market effectively.[34] This, in turn, would: (1) Preclude an exchange from obtaining contract market designations for new products; (2) result in an automatic suspension or revocation of the exchange's contract market designation; and (3) result in private-right-of-action suits by customers against the exchange for failing to enforce its rules. According to the CBT, these consequences of a denial make the exemption procedure adversarial in nature, and thus require a full evidentiary hearing.

Our review of the statute discloses no intent by Congress to make the exemption process adversarial in character. As part of the exemption analysis, the statute directs the Commission to exempt a contract market from the prohibition "upon finding that * * * (A) the trading monitoring system in place at the contract market satisfies the requirements of section 5a(b) with regard to violations attributable to dual trading at such contract market * * *."[35] Moreover, section 4j(a)(5)(B) requires the Commission, before denying an exemption or granting a conditional exemption, to provide the affected contract market, upon request, with an opportunity for oral presentation of views and comments, as opposed to the taking of oral testimony common to adversarial proceedings—under terms set by the Commission.

Such an exemption procedure, which focuses on the capability of an exchange's trade monitoring system, is fundamentally distinct from an enforcement proceeding instituted against an exchange by the Commission, where sanctions may be imposed for the exchange's failure to enforce its own rules or for engaging in violations of the Act or the Commission's rules.[36]

Even assuming the applicability of procedural due process considerations to the exemption denial or revocation procedure, such process is a flexible concept and "calls for such procedural protections as the situation demand."[37] Where an agency is called upon to consider whether groups of individuals are affected by identical operative facts, there is no requirement of individualized hearings, let alone trial-type hearings.[38]

The same considerations weaken the CBT's call for a provision for cross-examination.[39] The credibility of exchange members and individual brokers is not called into question anywhere in the applicable regulations. The focus instead is on the efficacy of the exchanges' trade monitoring systems. Consequently, any role of cross-examination, the hallmark of a full adversarial hearing, is, at best, questionable.[40]

2. Content Requirements

a. Proposed Regulation

Proposed regulation 155.5(d)(2) would require a contract market's exemption petition to identify each contract market that is, or is projected to be, affected. The petition would be required to include a full description of

[28] *Board of Regents* v. *Roth*, 408 U.S. 564, 577 (1972).

[29] *See, e.g., Cleveland Board of Education* v. *Loudermill*, 470 U.S. 532, 538 (1985); *Thompson* v. *Washington*, 497 F.2d 626, 635 (D.C. Cir. 1973).

[30] Prior to the 1992 Act, the Commission, under section 4j, was authorized to prohibit dual trading by rule. Apart from the statutory ban, the Commission has retained the authority to ban dual trading. See section 4j(b) of the Act.

[31] *See, e.g., Midnight Sessions, Ltd.* v. *City of Philadelphia*, 945 F.2d 667, 680 (3d Cir. 1991).

[32] Former section 4j(1) of the Act, as added in 1974, provided in part:

The Commission shall * * * make a determination * * * whether or not a floor broker may trade for his own account or any account in which such broker has trading discretion, and also execute a customer's order for future delivery and, if the Commission determines that such trades and such executions shall be permitted, the Commission shall further determine the terms, conditions, and circumstances under which such trades and such executions shall be conducted * * *.

[33] *Board of Regents* v. *Roth*, 408 U.S. at 577. As noted, the CBT also urges that, by adding the definition of dual trading to section 4j(a)(2) of the Act, Congress intended to make dual trading a property right. A definition alone, however, cannot create such a right.

[34] CBT legal memorandum, attached to dual trading comment letter, at 8.

[35] Section 4j(a)(3) of the Act.

[36] *See* section 6(b), 6b and 6c of the Act.

[37] *Morrissey* v. *Brewer*, 408 U.S. 471, 481 (1972).

[38] *See, e.g., Thompson* v. *Washington*, 497 F.2d 626, 640 (D.C. Cir. 1973).

[39] CBT legal memorandum at 10–12.

[40] *See Burr* v. *New Rochelle Municipal Housing Authority*, 479 F.2d 1165, 1169 (2d Cir. 1973), quoting *Geneva Towers Tenants Organizations et al.* v. *Federated Mortgage Investors et al* (N.D. Cal. Jan. 8, 1972) ("the opportunity to present oral evidence is not particularly valuable where technical financial data is at issue. The 'credibility' of conflicting data is not best resolved by evaluating the demeanor of witnesses; it is best resolved by independent agency investigation * * *").

each component of the contract market's trade monitoring system, including the systems in place, rules, policies and procedures in effect, standards applied, trading violations targeted, and the results achieved. The petition should include performance statistics covering the 12-month period ending with the month preceding the petition date. If such statistics are not available, specific representative performance examples should be provided. Contract markets also could attach materials, such as excerpts from recent rule enforcement reviews, and information regarding any programs adopted independently by the contract market to monitor certain trading activity, which the contract market could include in its exemption petition. The proposed regulation also would require that the contract market set forth in its petition the existing program or plan and projected implementation timetable for conformity with the audit trail requirements of section 5a(b)(3) of the 1992 Act.

b. Comments Received

CSC commented that unless a contract market complied with the guidelines before their publication date, an exemption request could not be made until one year after the effective date of the regulation, given the 12-month statistical period. CME stated that the regulation should clearly indicate that the Commission will consider, as part of the systems described in regulation 155.5(2)(iii), exchange rules and other regulatory measures designed to prevent dual trading abuses. IGFA, AFBF and NGFA commented that the proposed exemption guidelines are consistent with fair and orderly trading and that the proposed standards for exemption are appropriate.

c. Regulation 155.5(d)(2)

A contract market need not delay apply for an exemption because it does not believe that it comported with the guidelines set forth in appendix A for the 12-month statistical period. In this situation and for other appropriate reasons, the Commission could consider whether to grant a conditional exemption, providing sufficient time for a contract market to correct any deficiencies.

In response to the CME's comment, the Commission amended the regulation and appendix A to state that the Commission, in reviewing a contract market's exemption petition, will consider contract market rules and other regulatory measures designed to upgrade its existing program to prevent trading abuses attributable to dual trading. This amendment is consistent with the Commission's previous statement, noted above, that a contract market could support its exemption petition with information regarding any programs adopted independently by the contract market to monitor certain trading activity. Thus, a contract market could properly include within its petition for an exemption a description of any programs or procedures in place or to be put in place in the immediate future to limit dual trading.

3. Audit Trail and Recordkeeping Systems

a. Proposed Regulation

The proposed regulation would require a contract market to provide a detailed description of the methodology and procedures followed to verify the accuracy of recorded trade execution times. Further, the contract market would be required to demonstrate that its one-minute trade execution times, as required under Commission regulation 1.35(g), were accurate to the highest degree practicable (but in no event less than 90 percent accurate) during four consecutive months within the 12-month period ending with the month preceding the petition date. This standard, as well as others, would be subject to change as, for example, new statutory standards become effective and exchange systems evolve.

Contract markets that record trade execution times manually would be required to demonstrate the accuracy rate through, at a minimum, a comparison of times recorded for both the buying and sellings sides of the trade to the times reported in the price change register. If trade execution times are imputed at the contract market, the contract market would be required to demonstrate its accuracy rate through, at a minimum, the accuracy of the data inputted and a description of the contract market's trade imputation algorithm program. Such description would include information as to how and why the program based on input data reliably establishes the accuracy of the imputed trade execution times at the rate represented.

With respect to recordkeeping systems, the contract market would be required to demonstrate that a "representative sample" of documentation required to be prepared and maintained by each floor member and member firm regarding the execution of customer orders and other trading is reviewed for compliance with Commission regulation 1.35 at least once each year. A contract market should provide a checklist used in the annual reviews to evidence the completion of the required reviews and the performance of its floor members over the review period. A contract market also would have to demonstrate that evidence of inadequate or violative recordkeeping is incorporated into other compliance activities as appropriate.

b. Comments Received

NYMEX commented that the 90-percent test is not appropriate for every contract market and is not necessarily indicative of the quality of an audit trail system. NYMEX further commented, along with CBT, that the Commission should delete reference to the 90-percent accuracy test and substitute a qualitative review of each contract market's audit trail system. CBT also stated that the one-minute timing standard is arbitrary with no statutory basis and that the Commission should abandon its reliance on subjective measures. CME commented that the 90-percent accuracy standard is undefined and vague.

Comex asked for clarification of the description of the comparison methodology required for exchanges that rely upon manual trade time recordation. NYMEX noted that independent time-stamping by an exchange's employee and the use of an electronic hand-held system for recording trade execution times presumably would not be within the term "recorded manually." Therefore, NYMEX requested that the Commission clarify the term "recorded manually" in the guidelines to the final rule.

CME commented that the Commission should allow innovative exchanges to develop alternate surveillance procedures that otherwise satisfy the recordkeeping requirements. In this regard, CME stated that the proposed rules should be flexible enough to allow alternate recordkeeping procedures, which potentially can reduce market participant costs, to evolve.

c. Regulation 155.5(d)(2)(ii)

Final regulation 155.5 continues to require contract markets to demonstrate at least a one-minute trade timing accuracy rate of 90 percent. The Commission has considered the comments regarding the 90-percent accuracy standard, but believes that the specified standard is necessary and appropriate to achieve one-minute trade execution times that are accurate to the highest degree practicable. The Commission reaffirms, however, that a contract market's trade monitoring system will not be judged solely on this standard. Instead, the Commission, in its discretion, will consider the contract

market's trade monitoring system as a whole in determining whether to grant a conditional or unconditional exemption. Also, the Commission has amended Guideline A expressly to require that a contract market demonstrate the effective integration of trade timing data into the contract market's surveillance systems with respect to dual trading-related abuses.

As to the comparison methodology for a contract market that relies on manual trade time recordation, the contract market should compare both the buying and selling brokers' recorded execution times to the price change register. There is no requirement for comparison of the buying broker's time to the selling broker's time.[41]

NYMEX'S trade execution times, which are independently time-stamped on a pit card, are not manually recorded times in that they are not handwritten. For purposes of determining that exchange's one-minute timing accuracy rate, however, the comparison methodology is similar to that used by contract markets that rely on manual trade time recordation. NYMEX should compare each pit card time stamp to the trade time appearing on the price change register. The Commission is revising appendix A accordingly.

The Commission also is revising appendix A to recognize the impending use of electronic hand-held trading cards by stating the methodology for demonstrating the timing accuracy of such trading cards.[42] If trade execution times are recorded through electronic hand-held trading cards, the contract market must demonstrate the accuracy rate through, at a minimum, the accuracy of the timing mechanism (such as an internal clock), including a description of how the timing mechanism is set and the uniformity of the time set for all the electronic hand-held trading cards used on the contract market, and the unalterability of the trade execution times recorded.

The Commission considered CME's comment that the regulation should allow alternate recordkeeping procedures that otherwise satisfy the recordkeeping requirements. As the Commission has stated previously, the standards set forth in appendix A should serve as guidelines for a contract market to demonstrate the efficacy of its trade monitoring system for purposes of the exemption process. It is not intended to discourage innovative development of new systems and procedures which effectively accomplish the purposes of the regulation.

4. Appropriate Disciplinary Actions

a. Proposed Regulation

A contract market's exemption petition would be required to demonstrate use, on a consistent basis, of surveillance information to bring dual trading-related disciplinary actions. A contract market must submit a list of each investigation and related disciplinary proceeding involving dual trading-related abuses for the 12-month statistical review period. The list should indicate the source of the investigation, the type of dual trading-related abuse alleged or found, and the disposition at each level of the disciplinary process. For each settlement or adjudication, the list also must state any penalties assessed.

b. Comment Received

NYMEX commented that disciplinary cases included in the exemption petition should be identified by number rather than by name for purposes of confidentiality and in fairness to persons subject to investigation.

c. Regulation 155.5(d)(2)(iv)

The Commission is adopting this provision as proposed. In response to NYMEX's comment, contract markets must provide the names of persons subject to investigation and/or disciplinary action. The Commission will maintain the confidentiality of such information as appropriate under section 8 of the Act.

5. Remittal of Exemption Petition

a. Proposed Regulation

Proposed regulation 155.5(d)(4) would authorize the Director of the Division of Trading and Markets (or a designee) to remit to the contract market any exemption petition that does not comply with the content requirements set forth in the regulation. The remittal letter would provide, where practicable, an appropriate explanation of the remittal and would identify the content deficiencies. The contract market would have 20 days following receipt of the remittal letter in which to resubmit the exemption petition with the deficiencies corrected. If the corrected petition is not resubmitted within that time frame, the Commission could exercise its discretion to permit the dual trading prohibition to become effective as to the affected contract market.

b. Comments Received

NYMEX and COMEX commented that the Commission should delete the "where practicable" language and set forth an appropriate explanation for remittal of the exemption petition. CBT and CSC stated that the deadline for resubmission of an electronic remitted exemption petition with deficiencies corrected is unreasonable and recommended that the Commission lengthen the time for resubmission to at least 90 days.

c. Regulation 155.5(d)(4)

Based on the comments received, the Commission deleted the "where practicable" language from the final rule. Accordingly, the remittal letter will set forth an appropriate explanation for remittal of the petition.

The final regulation will continue to require resubmission of a remitted exemption petition 20 days following receipt of the remittal letter. The Commission believes that 20 days should be sufficient time to correct the deficiencies in the contents of the exemption petition. The specified time period is intended to ensure that a contract market's petition does not remain in remitted status for an extended period of time without the affected market being subject to the dual trading prohibition. Furthermore, the Commission, at its discretion, could extend the time period for resubmission under exceptional circumstances.

D. Other Comments

The Commission also received comments stating concerns regarding the competitive and systemic consequences of the dual trading prohibition from CSC, Comex and CFBTA. The Commission acknowledges the comments, but reiterates that the regulation responds to a specific statutory mandate.

III. Related Matters

A. Regulatory Flexibility Act

The Regulatory Flexibility Act ("RFA") requires federal agencies (including the Commission), in adopting rules, to consider the impact of those rules on small businesses.[43] Regulation 155.5 will directly affect certain contract markets, which are not small entities for RFA purposes,[44] and certain floor brokers, which may be considered small entities in the present context.[45] In

[41] Although there is no Commission requirement for a broker to broker comparison of trade execution times, a contract market may find such a comparison useful in other aspects of its trade practice surveillance program.

[42] Currently no electronic hand-held trading cards are in use.

[43] 5 U.S.C. 601 *et seq.* (1988).

[44] 47 FR 18618, 18619 (April 30, 1982).

[45] The Commission stated that it would determine in connection with specific rule proposals whether floor brokers should be considered small entities for

Continued

proposing regulation 155.5, the Commission stated its belief, and the Acting Chairman certified, that the proposal could be implemented without imposing a significant economic burden on a substantial number of floor brokers.[46] Consequently, the Commission did not prepare an initial regulatory impact analysis.[47]

The Commission received two comment letters on the proposed regulation that raised issues in connection with the RFA. In general, the commenters, CSC and Comex, contended that regulation 155.5 as proposed could have a significant economic impact on a substantial number of floor brokers at those exchanges due to the relatively high percentage of volume on the likely affected contract markets attributable to dual traders and their relatively low degree of specialization.[48] The Commission has evaluated those comments carefully and now believes that it cannot be determined whether or not regulation 155.5 will have a significant economic impact on a substantial number of small entities.

Consequently, in accordance with the RFA, the Commission prepared a regulatory impact analysis in conjunction with the adoption of regulation 155.5 as a final rule. The Commission, however, has been unable to identify any alternatives to regulation 155.5 that would satisfy the statutory requirements of section 4j(a) at a lower potential cost to certain dual-trading floor brokers at CSC and Comex.[49] In any event, the Commission's legal obligation to impose the dual trading prohibition in accordance with the section 4j(a), despite any potentially significant adverse impact such prohibition may have on a possibly substantial number of floor brokers that could be small entities (including those at CSC and Comex), is not lessened or superseded by the FRA.[50]

The analysis, together with a copy of this notice, has been transmitted to the Chief Counsel for Advocacy of the Small Business Administration.[51] Copies of the regulatory impact analysis are available to the public by contacting the Office of the Secretariat, Commodity Futures Trading Commission, 2033 K Steet, NW., Washington, DC 20581; telephone: (202) 254–6314/

B. Paperwork Reduction Act

The Paperwork Reduction Act of 1980 ("PRA") imposes certain requirements on federal agencies (including the Commission) in connection with their conducting or sponsoring any collection of information as defined by the PRA.[52] In compliance with the PRA, the Commission previously submitted this regulation in its proposed form and its associated information collection requirements to the Office of Management and Budget ("OMB"). It has been assigned OMB Control No. 3038–0022.

The burden associated with the entire collection, including this final rule, is as follows:

Average burden hours per response.....613.26
Number of respondents.....4,295
Frequency of response.....on occasion

The burden associated with this specific final regulation is as follows:

Average burden hours per response.....528.00
Number of respondents.....2,813
Frequency of response.....on occasion

Copies of the OMB approved information collection package associated with this rule may be obtained from Gary Waxman, Office of Management and Budget, room 3228, NEOB, Washington, DC 20503; (202) 395–7340.

List of Subjects in 17 CFR Parts 1 and 155

Commodity futures, Commodity options, Contract markets, Customers, Dual trading, Floor brokers, Futures commission merchants, Members of contract markets.

For the reasons set out in the preamble and pursuant to the authority contained in the Commodity Exchange Act and, in particular, sections 4, 4b, 4c, 4e, 4g, 4j, 5, 5a, 8 and 8a thereof, 7 U.S.C. 6, 6b, 6c, 6e, 6g, 6j, 7, 7a, 12 and 12a, the Commission amends parts 1 and 155 of title 17 of the Code of Federal Regulations as follows:

PART 1—GENERAL REGULATIONS UNDER THE COMMODITY EXCHANGE ACT

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

Authority: 7 U.S.C. 2, 2a, 4, 4a, 6, 6a, 6b, 6c, 6d, 6e, 6f, 6g, 6h, 6i, 6k, 6l, 6m, βn, 6o, 7, 7a, 7b, 8, 12, 12a, 12c, 13a, 13a–1, 16, 16a, 19, 21, 23, and 24, unless otherwise noted.

2. Section 1.35(e)(1) is revised to read as follows:

§ 1.35 Records of cash commodity, futures and option transactions.

* * * * *

(e) * * *

(1) Was trading for his own account or an account for which he has discretion;

* * * * *

PART 155—TRADING STANDARDS

3. The authority citation for part 155 continues to read as follows:

Authority: 7 U.S.C. 6b, 6g, 6j and 12a, unless otherwise noted.

4. Section 155.5 is added to read as follows:

§ 155.5 Prohibition of dual trading by floor brokers.

(a) *Definitions.* For purposes of this section:

(1) *Trading session* means the hours during which a contract market is scheduled to trade continuously during a trading day, as set forth in contract market rules, including any related post-settlement trading session. A contract market may have more than one trading session during a trading day.

(2) *Customer* means an account owner for which a trade is designated with the customer type indicator prescribed under Commission regulation 1.35(e)(4).

(3) *Contract market* means any contract separately designated by the Commission, *provided, that* two or more contracts trading concurrently pursuant to a single designation order on other

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RFA purposes. Any floor broker employed by an FCM, however, would not be considered a small business entity, because such a floor broker is part of the FCM's business and the Commission previously determined that FCMs are not small entities under the RFA. *Id.*

[46] 58 FR 13025, 13036–37 (March 9, 1993).

[47] The RFA provides that an initial regulatory impact analysis is not required in conjunction with a rule proposal if the head of the agency certifies that the rule will not, if promulgated, have significant economic impact on a substantial number of small entities. 5 U.S.C. 605 (1988).

[48] CSC letter dated May 7, 1993; Comex letter dated May 13, 1993.

[49] In their comments, CSC and Comex emphasized the extent to which their members are not highly specialized between brokerage and trading and argued the implications thereof. It is reasonable to expect that, in light of the comments they submitted, CSC and Comex will seek exemptions for their affected contract markets. If the Commission nevertheless denies such an exemption to any of their affected contract markets, the degree to which the floor participants do not specialize in customer or personal trading would be a factor in the Commission's determination of the date to be set for the prohibition to take effect.

[50] Exec. Order No. 12,291 § 3(f)(3), 46 FR 13193 (1981), reprinted in 5 U.S.C. 601 (1988) (nothing in the requirements for regulatory impact analysis and review under the RFA shall be construed as displacing the agency's responsibilities delegated by law).

[51] Ordinarily, a final regulatory impact analysis for a major rule is to be transmitted 30 days prior to the publication of the rule as a final rule. Exec. Order No. 12,291 § 3(c)(2). That procedure, however, does not apply to the extent that it conflicts with deadlines imposed by statute. Exec. Order No. 12,291 § 8(a)(2). Given the deadline imposed on the Commission by the 1992 Act for issuance of dual trading regulations (July 25, 1993), transmittal to the Chief Counsel for Advocacy 30 days in advance of publication was impracticable.

[52] 44 U.S.C. 3501 *et seq.* (1988). A collection of information includes applications to the government and reporting or recordkeeping requirements.

than a transitory basis and for which the contract terms differ significantly other than as to delivery or expiration months shall each be considered a contract market for purposes of this section, and *provided further, that* screen-based trading in a contract designated by the Commission to the extent conducted through a competitive auction process pursuant to an algorithm that applies non-discretionary rules of priority as permitted under contract market rules made effective under the Act shall be considered a separate contract market for purposes of this section.

(4) *Dual trading* means the execution of customer orders by a floor broker during the same trading session in which the floor broker executes directly or initiates and passes to another member for execution a transaction in the same contract market for:

(i) The floor broker's own account;

(ii) Any account in which the floor broker's ownership interest or share of trading profits is ten percent or more;

(iii) An account for which the floor broker has trading discretion; or

(iv) Any other account controlled by a person with whom such floor broker is subject to trading restrictions under section 4j(d) to the extent section 4j(d) has been applied by Commission rule or order.

(5) *Daily trading volume* means the total number of sells (or buys) executed in any contract market during a trading day, excluding from the computation ex-pit transactions as permitted under contract market rules that have been made effective under the Act.

(6) *Average daily trading volume* means an arithmetic average of daily trading volume in a contract market over a specified time period on any day when any expiration or delivery month was listed for trading.

(7) *Volume year* means a continuous 12-month period that includes the last calendar month-end date prior to the computation date.

(8) *Computation date* means the date on which a contract market computes its average daily trading volume for the most recent volume year.

(9) *Affected contract market* means a contract market in which the average daily trading volume equals or exceeds the threshold level of 8,000 contracts for each of four quarters during the most recent volume year.

(b) *Dual trading prohibition.* No floor broker shall dual trade in an affected contract market, except as provided in contract market rules that have been made effective pursuant to section 5a(a)(12) of the Act and Commission regulation 1.41, unless that contract market is exempted under paragraph (d) of this section. This prohibition shall not affect ex-pit transactions as described in paragraph (a)(5) of this section.

(c) *Contract markets.—(1) Contract market rules.* Prior to the effective date of the dual trading prohibition under this section or under a Commission order denying an exemption petition filed pursuant to paragraph (d) of this section or revoking an exemption pursuant to paragraph (e) of this section, each affected contract market, unless exempted under paragraph (d) of this section, shall adopt rules that have been made effective pursuant to section 5a(a)(12) of the Act and Commission regulation 1.41 to prohibit dual trading in accordance with the provisions of this section. In the absence of such contract market rules, upon the effective date of the dual trading prohibition as implemented either under this section or by Commission order, Commission regulations 155.5 (a) and (b) shall be deemed to be rules of the contract market.

(2) *Volume computation.* Each contract market that may be subject to a dual trading prohibition shall determine whether it is an affected contract market by computing at least quarterly its average daily trading volume for each of four quarters during the most recent volume year. In addition, the contract market shall:

(i) At least five days before the effective date of the dual trading prohibition under this section or under a Commission order denying an exemption petition or revoking an exemption, and thereafter within at least two business days of each computation date, publish, in a manner sufficient to reach all members, a list of the affected contract markets and the effective date of the dual trading prohibition and, on the same date, provide that information in writing to the Director of the Division of Trading and Markets, or an employee of the Commission under the supervision of such Director, as may be designated by the Director; and

(ii) Maintain a record of its average daily trading volume computations required hereunder. Such record shall include the computation date, the beginning and ending dates for the volume year under consideration, the beginning and ending dates for each quarter in the volume year and the average daily trading volume for each quarter.

(3) *Newly affected contract market.* If a contract market that was not affected on the immediately preceding computation date becomes affected as of the current computation date, the effective date of a dual trading prohibition for that contract market shall be no more than 30 calendar days after the current computation date for that contract market.

(4) *Permitted exceptions.* Notwithstanding the applicability of a dual trading prohibition under this section, dual trading shall be permitted in affected contract markets in accordance with rules that have been submitted to the Commission pursuant to section 5a(a)(12) of the Act and Commission regulation 1.41 as follows:

(i) *Correction of errors.* To offset trading errors resulting from the execution of customer orders, *provided, that* the floor broker must liquidate the position in his personal error account resulting from that error by open and competitive means as soon as practicable, but not later than the close of business on the business day following the discovery of the error. In the event that the daily price fluctuation limit is reached and a floor broker is unable to offset the error trade, however, the floor broker must liquidate the position in his personal error account resulting from that error as soon as practicable thereafter.

(ii) *Customer consent.* To permit a customer to designate in writing not less than once annually a specifically identified floor broker to dual trade while executing orders for such customer's accounts. An account controller acting pursuant to a power of attorney may designate a dual trading broker on behalf of its customer, *provided, that* the customer explicitly grants in writing to the individual account controller the authority to select a dual trading broker.

(iii) *Spread transactions.* To permit a broker who unsuccessfully attempts to leg into a spread transaction for a customer to take the executed leg into his personal account and to offset such position, *provided, that* a record is prepared and maintained to demonstrate that the customer order was for a spread trade; to permit a broker to execute for his personal account a spread transaction recognized by a contract market if at least one leg of the spread is in a non-affected market; and to permit a broker to execute for his personal account an intra-market spread transaction if at least one leg of the spread is in a low-volume month as described in § 155.5(c)(4)(v).

(iv) *Member customers.* To permit transactions for members of the contract market not present on the floor, *provided, that* the contract market, within the single record required by Commission regulation 1.35(e), specifically identifies such transactions

through account numbers, a separate customer type indicator, or otherwise for surveillance purposes.

(v) *Low-volume months.* To recognize any expiration or delivery month that, on the basis of historical data and an analysis thereof and other factors identified by the contract market, reasonably can be expected to have an average daily trading volume of less than 500 contracts during the period beginning with the current computation date and ending with the next computation date, *provided, that* the contract market keeps full and systematic records supporting these determinations and, as part of its trade surveillance program, establishes special procedures, including appropriate reports, to monitor dual trading activity in the relevant low-volume contract months.

(vi) *Spot month.* To recognize a period of trading in a maturing futures contract, during which period liquidity in the maturing futures contract reasonably can be expected on the basis of historical data and an analysis thereof and other factors identified by the contract market, to shift to the next contract month, *provided, that* the contract market can demonstrate that effective surveillance will be conducted for dual trading-related abuses during such period.

(vii) *Market emergencies.* To address emergency market conditions resulting in a temporary emergency action under Commission regulation 1.41(f).

(d) *Exemption petitions.*—(1) *Standards.* A contract market may apply for an exemption from the dual trading prohibition of paragraph (b) of this section by filing a written petition, signed by the contract market's chief operating officer or, in his absence, an exchange official acting in the capacity of chief operating officer, that states facts sufficient to demonstrate that its trade monitoring system, consistent with the standards articulated in guidelines set forth in appendix A to this section, is capable of detecting and deterring, and is used on a regular basis to detect and deter, all types of violations attributable to dual trading, and is capable of generating an audit trail that satisfies the requirements of Commission regulation 1.35. The petition shall be directed to the Office of the Secretariat, Commodity Futures Trading Commission, 2033 K Street, NW., Washington, DC 20581, with a copy to the Director of the Division of Trading and Markets.

(2) *Content requirements.* An exemption petition must identify each contract market that is, or is projected to be, affected. The petition must include a full description of each component of the contract market's trade monitoring system including the systems in place, rules, policies and procedures in effect, standards applied, trading violations targeted, and the results achieved. To the extent practicable, the petition shall include performance statistics covering the 12-month period ending with the month preceding the petition date. Where such statistics are not available, specific, representative performance examples should be provided. The petition also must set forth the contract market's program or plan and projected implementation timetable for conformity with the requirements of section 5a(b)(3) of the Act. An exemption petition must address, in the order listed below, the following components of a contract market's trade monitoring system:

(i) Physical observation of trading areas;

(ii) Audit trail and recordkeeping systems able to, and used to, capture essential data on the terms, participants, and sequence of transactions (including relevant data on unmatched trades and outtrades) and otherwise satisfy the requirements of Commission regulation 1.35 and section 5a(b)(3) of the Act, as implemented by Commission regulations and orders;

(iii) Systems capable of reviewing, and used to review, trading data effectively on a regular basis to detect, and other measures designed to prevent, rule violations attributable to dual trading committed in the execution of trades and customer orders on the floor or subject to the rules of the contract market, including:

(A) Trading ahead of customer orders directly or indirectly;

(B) Trading against customer orders directly or indirectly in violation of contract market rules;

(C) Disclosing, misallocating or withholding customer orders;

(D) Failing to resolve errors, unmatched trades or outtrades properly and promptly; and

(E) Crossing customer orders by matching or "offsetting" customer orders directly or indirectly in violation of contract market rules;

(iv) The use of information gathered through such systems on a consistent basis to bring appropriate disciplinary actions against violators;

(v) The commitment of resources necessary for such systems to be effective in detecting and deterring violations attributable to dual trading, including adequate staff to investigate and prosecute disciplinary actions; and

(vi) The assessment of meaningful penalties against violators and the referral of appropriate cases to the Commission.

(3) *Alternative requirements.* If a contract market believes that its trade monitoring system does not meet the standards set forth in paragraph (d)(1) of this section, the contract market's petition must include, in addition to the information required to be provided under paragraph (d)(2) of this section:

(i) A specific description of the corrective actions the contract market will take that it believes to be sufficient and appropriate to meet the standards in paragraph (d)(1) of this section, together with an explanation of the sufficiency and appropriateness of such actions, including specific implementation dates, any related changes in systems, operations, staffing, policies, rules, procedures, and budget allocations; and

(ii) Data and an economic analysis of that data to demonstrate any adverse impact of a dual trading prohibition on hedging and price basing at the contract market.

(4) *Remittal.* The Director of the Division of Trading and Markets (or an employee of the Commission under the supervision of such Director as may be designated by the Director) may remit to the contract market, with an appropriate explanation, and not accept pursuant to paragraph (d) of this section, any petition for exemption that does not comply with the content requirements of paragraphs (d)(2) and (3) of this section, as identified in the remittal letter. The affected contract market must resubmit its exemption petition with deficiencies corrected no more than 20 days after receipt of the remittal notice. If the exemption petition is not resubmitted within the prescribed 20-day period, the Commission, at its discretion, may permit the dual trading prohibition provided for in paragraph (b) of this section to become effective as to any such affected contract market. The Commission's review period shall be calculated from the date of resubmission.

(5) *Deferred application of the prohibition.* If a contract market submits a petition for exemption that satisfies the content requirements of paragraphs (d)(2) and (3) of this section prior to the effective date of the dual trading prohibition, the Commission will suspend application of the prohibition against the contract market unless and until the petition is denied, pursuant to the effective date set forth in the denial order.

(6) *Publication.* A notice of the submission of each exemption petition deemed complete under paragraphs

(d)(2) and (3) of this section will be published promptly by the Commission or the Director of the Division of Trading and Markets (or by an employee of the Commission under the supervision of the Director, as may be designated by the Director) in the **Federal Register**. Upon publication of such notice, copies of each petition, with the exception of any information or materials determined by the Commission to be subject to confidential treatment, will be publicly available through the Office of the Secretariat in accordance with the provisions of part 145 of this chapter.

(7) *Grant of exemption without conditions*—(i) *Findings and order.* A contract market's exemption petition will be granted without conditions by Commission order if the Commission finds that, based on the information, views and arguments placed before it by the contract market in writing in its petition and any attachments or supplements thereto, and orally in any presentation pursuant to paragraph (d)(8)(iii) of this section, and other relevant information identified by the Commission, the contract market has demonstrated conformity with the standards contained in paragraph (d)(1) of this section. The Commission's order will state the Commission's findings.

(ii) *Publication.* A Commission order granting an exemption pursuant to this paragraph (d)(7) of this section will be published promptly in the **Federal Register**.

(iii) *Effective date.* A Commission order granting an exemption without conditions pursuant to this paragraph (d)(7) shall be effective upon issuance.

(8) *Proposed conditional exemption or petition denial*—(i) *Notice.* If the Commission intends to deny an exemption petition or to exempt a contract market subject to conditions, the Commission will notify the contract market in writing that it intends to deny or condition the petition and state:

(A) Specific deficiencies in the contract market's trade monitoring system;

(B) Any corrective actions to the trade monitoring system that the Commission believes the affected contract market must take to satisfy the standards of paragraph (d)(1) of this section, and a timetable for such corrective actions; and

(C) Any conditions or limitations that the Commission proposes to attach to an exemption under paragraph (d) of this section.

(ii) *Publication.* A notice issued to a contract market under this paragraph (d)(8) will be published promptly in the **Federal Register**.

(iii) *Opportunity for written submission and oral presentation.* Within five days of receipt of the notice from the Commission, the contract market may request in writing the opportunity to make an oral presentation to the Commission. The contract market will be notified promptly by the Commission of the date and the terms under which the contract market may make an oral presentation. The contract market must submit any written supplemental data, views, or arguments within 20 days of receipt of the Commission's notice, unless the Commission notifies the contract market otherwise.

(9) *Grant of conditional exemption*—(i) *Findings and order.* A contract market's exemption petition will be granted subject to conditions by Commission order if the Commission determines, based on the information, views and arguments placed before it by the contract market in writing in its petition and any attachments or supplements thereto, and orally in any presentation pursuant to paragraph (d)(8)(c)(iii) of this section and other relevant information identified by the Commission, that:

(A) The contract market's trade monitoring system does not satisfy the standards set forth in paragraph (d)(1) of this section, but other corrective actions are sufficient and appropriate to meet the standards in paragraph (d)(1) of this section;

(B) There is a substantial likelihood that a dual trading prohibition would harm the public interest in hedging or price basing at the contract market; and

(C) The conditions or limitations being attached to the grant of exemption by the Commission are appropriate in light of the purposes of this section.

The Commission's order will state the Commission's findings and the conditions or limitations placed upon the contract market.

(ii) *Publication.* A Commission order granting a conditional exemption pursuant to this paragraph (d)(9) will be published promptly in the **Federal Register**.

(iii) *Effective date.* A Commission order granting a conditional exemption pursuant to this paragraph (d)(9) shall become effective 20 days after issuance, unless the Commission determines that more immediate action is appropriate in the public interest and states an earlier effective date in the order.

(10) *Denial of petition.*—(i) *Findings and order.* A contract market's exemption petition will be denied by Commission order if the Commission determines, based on the information, views and arguments placed before it in connection with the petition and other relevant information, that:

(A) The contract market has not demonstrated that its trade monitoring system satisfies the standards set forth in paragraph (d)(1) of this section, and there is not a substantial likelihood that a dual trading prohibition would harm the public interest in hedging or price basing at the contract market; or

(B) The contract market has demonstrated that there is a substantial likelihood that a dual trading prohibition may harm the public interest in hedging or price basing at the contract market, but has not demonstrated that other corrective actions are sufficient or appropriate to meet the standards in paragraph (d)(1) of this section.

The Commission's order denying the exemption will state the Commission's findings and the date on which the dual trading prohibition will take effect on the contract market.

(ii) *Publication.* A Commission order denying an exemption pursuant to this paragraph (d)(10) will be published promptly by the Commission in the **Federal Register**.

(iii) *Effective date.* A Commission order denying a contract market's petition for an exemption pursuant to this paragraph (d)(10) of this section shall become effective at least 20 days after issuance, unless the Commission determines that more immediate action is appropriate in the public interest.

(e) *Exemption revocation.* An exemption may be revoked if the Commission determines that the standards in paragraph (d)(1) of this section are not being met or if any condition of the exemption has not been met. The Commission shall notify the contract market in writing of its intent to issue an order to revoke the contract market's exemption. Such notice shall include the reasons for the proposed revocation and the procedures under which the contract market shall have the opportunity to be heard. After considering information relevant to the proposed revocation, the Commission shall determine whether to revoke the exemption. Any Commission revocation order shall state findings in support of the revocation and be effective at least 20 days after issuance unless the Commission determines that more immediate action is appropriate in the public interest. Such order shall state the date on which the dual trading prohibition shall take effect.

Appendix A to Regulation 155.5 — Guidelines regarding Contract Market Petition for Exemption from Dual Trading

Prohibition Based on Sufficiency of the Trade Monitoring System.

Regulation 155.5 permits a contract market to petition the Commission for exemption from the dual trading prohibition on the basis that its trade monitoring system satisfies certain standards. Appendix A is intended to provide additional guidance to a contract market as to what is necessary to demonstrate that the components of a contract market's trade monitoring system, as enumerated in the regulation, are sufficient to detect and deter violations attributable to dual trading. Although these guidelines include certain standards that the Commission intends to apply in determining whether a particular contract market's trade monitoring system meets the exemption standards in Regulation 155.5, the Commission may, in its discretion, consider a contract market's trade monitoring system as a whole, including contract market rules and other regulatory measures designed to prevent trading abuses attributable to dual trading.

I. Physical Observation of Trading Areas

Demonstrate (*e.g.*, by daily floor surveillance log) that compliance staff performs floor surveillance:

(1) To the extent practicable, on each open and close;

(2) Randomly at other times during each trading session; and

Demonstrate further that information developed through such surveillance is integrated into other compliance activities as appropriate.

(3) When special market conditions warrant.

II. Audit Trail System

Provide a detailed description of the methodology and procedures followed to generate and assure the accuracy of recorded trade execution times. Demonstrate the highest degree of accuracy practicable (but in no event less than 90% accuracy) of trade execution times required under regulation 1.35(g) (within one minute, plus or minus, of execution) during four consecutive months within the 12-month period ending with the month preceding the submission of the exemption petition. Demonstrate the effective integration of such trade timing data into the contract market's surveillance system with respect to dual trading-related abuses.

If trade execution times are recorded manually or independently time-stamped at the contract market, demonstrate accuracy rate through, at a minimum, a comparison of the times recorded for both the buying and selling sides of each trade, or the time stamp for the sides required to be time-stamped, to the times reported in the price change register.

If trade execution times are imputed for recordation at the contract market, demonstrate accuracy rate through, at a minimum, accuracy of the data inputted and a description of the contract market's trade imputation algorithm, including how and why it reliably establishes the accuracy of the imputed trade execution times.

If trade execution times are recorded through electronic hand-held trading cards, demonstrate accuracy rate through, at a minimum, the accuracy of the timing mechanism (such as an internal clock), including a description of how the timing mechanism is set and the uniformity of the time set for all the electronic hand-held trading cards used on the contract market, and the unalterability of the trade execution times recorded.

III. Recordkeeping System

Demonstrate that a "representative sample" of documentation required to be prepared and maintained by each floor member and member firm regarding the execution of customer orders and other trading is reviewed for regulation 1.35 compliance at least once each year. Provide checklist used in the review of the documentation. Demonstrate that information developed regarding inadequate or violative recordkeeping is incorporated into other compliance activities as appropriate.

IV. Surveillance Systems to Detect Dual Trading-Related Abuses

Demonstrate (*e.g.*, by description of procedures and by logs) that the contract market, on a daily basis, reviews trade registers and computerized surveillance reports to detect dual trading-related abuses. The contract market also must describe:

A. The extent to which available trade data, including account numbers, are reviewed; and

B. The cycle and generic content of such computerized reports.

V. Use, on Consistent Basis, of Information to Bring Dual Trading-Related Disciplinary Actions and Assessment of Meaningful Penalties

Provide a list of each investigation and disciplinary proceeding involving one or more dual trading-related abuses, which investigation or disciplinary proceeding was in an open status at any time during the 12-month period ending with the month preceding the submission of the exemption petition. Include in list:

A. Source of investigation (*e.g.*, customer complaint or inquiry; automated report; manual review; floor surveillance);

B. Type of abuse alleged or found; and

C. Disposition at each level of the process. For each settlement or adjudication, state any penalties (monetary or other) assessed.

VI. Commitment of Resources

Include statistics regarding the timeliness of the completion of investigations and the initiation of disciplinary proceedings.

Issued in Washington, DC, on July 22, 1993, by the Commission.

Jean A. Webb,

Secretary.

[FR Doc. 93–17965 Filed 7–27–93; 8:45 am]

BILLING CODE 6351–01–M

DEPARTMENT OF THE TREASURY

Customs Service

19 CFR Part 101

[T.D. 93–59]

Customs Field Organization—Portland, ME

AGENCY: Customs Service, Department of the Treasury.

ACTION: Final rule.

SUMMARY: This document amends the Customs Regulations by updating the list of Customs stations under the jurisdiction of the district director, Portland, Maine. Customs has removed from the list the station at Knoxford Line (Mars Hill), no longer in operation, and added the stations at Daaquam, Estcourt, Ste. Aurelie and St. Pamphile, which are operational but unlisted.

EFFECTIVE DATE: August 27, 1993.

FOR FURTHER INFORMATION CONTACT: Bob Jones, Office of Workforce Effectiveness and Development, Office of Inspection and Control, (202–927–0540).

SUPPLEMENTARY INFORMATION:

Background

As part of Customs continuing program to obtain more efficient use of its personnel, facilities, and resources, and to provide better service to carriers, importers, and the public, Customs published a document in the **Federal Register** on July 29, 1992 (57 FR 33461), which proposed to amend the list of Customs stations contained in § 101.4(c), Customs Regulations (19 CFR 101.4(c)). The list shows a station located at Knoxford Line (Mars Hill), under the jurisdiction of the district director, Portland, Maine. The building at this location was demolished many years ago, and the road that the station was located on now serves no useful purpose. Inasmuch as the station at Knoxford Line (Mars Hill) is no longer operational, Customs proposed to remove this station from its list of Customs stations. By contrast, four locations which primarily service woodcutting operations in the area are operational and manned. Customs proposed that these four locations be added to the list of Customs stations under the supervision of the district director, Portland. The stations are located at Ste. Aurelie, Daaquam, St. Pamphile and Estcourt, Maine.

No comments from the public were received in response to this proposal, the comment period for which expired on September 28, 1992, and Customs has determined to adopt the amendments without modification.

Executive Order 12291 and Regulatory Flexibility Act

In that this rule relates to agency organization and management, it is not subject to E.O. 12291. Likewise, although Customs solicited public comment, no notice of proposed rulemaking was required pursuant to 5 U.S.C. 553(a)(2). Accordingly, the rule is not subject to the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*). Nevertheless, it is asserted that it will not have a significant economic impact on a substantial number of small entities as contemplated by that Act.

Drafting Information

The principal author of this document was Russell Berger, Regulations and Disclosure Law Branch, U.S. Customs Service. However, personnel from other offices participated in its development.

List of Subjects in 19 CFR Part 101

Customs duties and inspection, Exports, Imports, Organizations and functions (Government agencies).

Amendment

Part 101, Customs Regulations (19 CFR part 101), is amended as set forth below.

PART 101—GENERAL PROVISIONS

1. The authority citation for part 101 continues to read as follows:

Authority: 5 U.S.C. 301, 19 U.S.C. 2, 66, 1202 (General Note 8, Harmonized Tariff Schedule of the United States), 1623, 1624, unless otherwise noted.

2. Section 101.4(c), Customs Regulations (19 CFR 101.4(c)), is amended by removing "Knoxford Line (Mars Hill) * * * Bridgewater" from the columns headed, respectively, "Customs stations" and "Port of entry having supervision" for the Portland, Maine District, and inserting in appropriate alphabetical order under these column headings the following four Customs stations and corresponding ports of entry having supervision: "Daaquam, Maine * * * Jackman"; "Estcourt, Maine * * * Fort Kent"; "Ste. Aurelie, Maine * * * Jackman"; and "St. Pamphile, Maine * * * Jackman".

George J. Weise,

Commissioner of Customs.

Approved: July 12, 1993.

Ronald K. Noble,

Assistant Secretary of the Treasury.

[FR Doc. 93–17989 Filed 7–27–93; 8:45 am]

BILLING CODE 4820–02–P

Bureau of Alcohol, Tobacco and Firearms

27 CFR Parts 4, 5, 7, 9, 19, 24, 53, 178, 194, 251, and 252

[T.D. ATF–344]

Technical Amendments

AGENCY: Bureau of Alcohol, Tobacco and Firearms (ATF), Treasury.

ACTION: Final rule, Treasury decision.

SUMMARY: This Treasury decision makes technical amendments and conforming changes to chapter I of title 27 Code of Federal Regulations (CFR). All changes are to provide clarity and uniformity throughout title 27 Code of Federal Regulations.

EFFECTIVE DATES: July 28, 1993.

FOR FURTHER INFORMATION CONTACT: Angela R. Shanks, Revenue Programs Division, Wine and Beer Branch, 650 Massachusetts Avenue, NW., Washington, DC 20091, (202–927–8230).

SUPPLEMENTARY INFORMATION: The Bureau of Alcohol, Tobacco and Firearms administers regulations published in chapter I of title 27 Code of Federal Regulations. These regulations are updated April 1 of each year to incorporate new or revised regulations that were published by ATF in the **Federal Register** during the preceding year. Upon reviewing title 27 for the annual revision ATF and the CFR Unit of the Office of the Federal Register identified several amendments and conforming changes that are needed to provide uniformity in chapter I of title 27, Code of the Federal Regulations.

These amendments do not make any substantive changes and are only intended to improve the clarity of title 27.

Paperwork Reduction Act

The provisions of the Paperwork Reduction Act of 1980, Public Law 96–511, 44 U.S.C. chapter 25, and its implementing regulations, 5 CFR part 1320, do not apply to this final rule because no requirement to collect information is imposed.

Regulatory Flexibility Act

Because no notice of proposed rulemaking is required for this rule, the provisions of the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*) do not apply.

Executive Order 12291

Because this is a rule of agency management, it is not subject to Executive Order 12291.

Administrative Procedures Act

Because this final rule merely makes technical amendments and conforming changes to improve the clarity of the regulations, it is unnecessary to issue this final rule with notice and public procedure under 5 U.S.C. 553(b). Similarly it is unnecessary to subject this final rule to the effective date limitation of 5 U.S.C. 553(d).

Drafting Information

The principal author of this document is Angela R. Shanks, Wine and Beer Branch, Bureau of Alcohol, Tobacco and Firearms.

List of Subjects

27 CFR Part 4

Advertising, Consumer protection, Custom duties and inspection, Imports, Labeling, Packaging and containers, Wine.

27 CFR Part 5

Advertising, Consumer protection, Customs duties and inspection, Imports, Labeling, Liquors, Packaging and containers, Reporting and recordkeeping requirements.

27 CFR Part 7

Advertising, Beer, Consumer protection, Customs duties and inspection, Imports, Labeling, Reporting and recordkeeping requirements.

27 CFR Part 9

Administrative practice and procedure, Consumer protection, Viticultural area, Wine.

27 CFR Part 19

Administrative practice and procedure, Alcohol and alcoholic beverages, Authority delegations, Chemicals, Claims, Customs duties and inspection, Electronic funds transfers, Excise taxes, Exports, Gasohol, Imports, Labeling, Liquors, Packaging and containers, Puerto Rico, Reporting and recordkeeping requirements, Research, Security measures, Spices and flavorings, Surety bonds, Transportation, U.S. Possession, Virgin Islands, Warehouses, Wine.

27 CFR Part 24

Administrative practice and procedure, Authority delegations, Claims, Electronic fund transfer, Excise taxes, Exports, Food additives, Fruit juices, Labeling, Liquors, Packaging and containers, Reporting and recordkeeping requirements, Research, Scientific equipment, Spices and flavoring, Surety bonds, Taxpaid wine bottling house, Transportation, Vinegar, Warehouses, Wine.

27 CFR Part 53

Administrative practice and procedure, Arms and munitions, Authority delegation, Exports, Imports, Penalties, Reporting and recordkeeping requirements.

27 CFR Part 178

Administrative practice and procedure, Arms and munitions, Export, Imports, Intergovernmental relations, Penalties, Reporting and recordkeeping requirements, Research, Seizures and forfeitures, Transportation.

27 CFR Part 194

Alcohol and alcoholic beverages, Authority delegations, Beer, Claims, Excise taxes, Exports, Labeling, Liquors, Packaging and containers, Penalties, Reporting and recordkeeping requirements, Wine.

27 CFR Part 251

Alcohol and alcoholic beverages, Beer, Cosmetics, Customs duties and inspection, Electronic funds transfers, Excise taxes, Imports, Labeling, Liquors, Packaging and containers, Reporting and recordkeeping requirements, Wine.

27 CFR Part 252

Aircraft, Alcohol and alcoholic beverages, Armed forces, Authority delegations, Beer, Claims, Excise taxes, Exports, Fishing vessel, Foreign trade zones, Liquors, Reporting and recordkeeping requirements, Surety bonds, Vessels, Warehouses, Wine.

Authority and Issuance

Title 27, Code of Federal Regulations is amended as follows:

PART 4—LABELING AND ADVERTISING OF WINE

1. The authority citation for part 4 continues to read as follows:

Authority: 27 U.S.C. 205.

2. In § 4.40(b) a heading is added to paragraph (b) to read as follows:

§ 4.40 Label approval and release.

* * * * *

(b) *Release.* * * *

§ 4.50 [Amended]

3. In § 4.50(a) the second and the third sentence are removed.

PART 5—LABELING AND ADVERTISING OF DISTILLED SPIRITS

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

Authority: 26 U.S.C. 5301, 7805, 27 U.S.C. 205.

§ 5.32 [Amended]

5. Section 5.32(c) is amended by removing "§ 5.48(a)," and adding "§ 5.46(d),".

PART 7—LABELING AND ADVERTISING OF MALT BEVERAGES

6. The authority citation for part 7 continues to read as follows:

Authority: 27 U.S.C. 205.

§ 7.10 [Amended]

7. Section 7.10 is amended by removing "§ 7.10" and adding "§ 7.51" in the definition of Advertisement.

PART 9—AMERICAN VITICULTURAL AREAS

8. The authority citation for part 9 continues to read as follows:

Authority: 27 U.S.C. 205.

§ 9.74 [Amended]

9. Section 9.74(c) introductory text is amended by revising the word "Fery," on the fourth line to read "Ferry," and the word "Gillman," on the eighth line to read "Gilliman,".

§ 9.101 [Amended]

10–11. Section 9.101(c) introductory text is amended by removing the word "Eastern" and adding "eastern" in the first sentence.

§ 9.136 [Amended]

12. Section 9.136(c) introductory text is amended by removing the word "Guadalure," and adding the word "Guadalupe," on the seventh line.

PART 19—DISTILLED SPIRITS PLANTS

13. The authority citation for part 19 is revised to read as follows:

Authority: 19 U.S.C. 81c, 1311; 26 U.S.C. 5001, 5002, 5004–5006, 5008, 5010, 5041, 5061, 5062, 5066, 5081, 5101, 5111–5113, 5142, 5143, 5146, 5171–5173, 5175, 5176, 5178–5181, 5201–5204, 5206, 5207, 5211–5215, 5211–5223, 5231, 5232, 5235, 5236, 5241–5243, 5271, 5273, 5301, 5311–5313, 5362, 5370, 5373, 5501–5505, 5551–5555, 5559, 5561, 5562, 5601, 5612, 5682, 6001, 6065, 6109, 6302, 6311, 6676, 6806, 7011, 7510, 7805; 31 U.S.C. 9301, 9303, 9304, 9306.

§ 19.203 [Amended]

14. Section 19.203(b)(1) is amended by removing "698 (5120.25)" and adding "5120.25".

§ 19.204 [Amended]

15. Section 19.204(b)(1) is amended by removing "2975 (5140.2)" and adding "5120.25".

PART 24—WINE

16. The authority citation for part 24 continues to read as follows:

Authority: 5 U.S.C. 552(a) 26 U.S.C. 5001, 5008, 5041, 5042, 5044, 5061, 5062, 5081, 5111–5113, 5121, 5122, 5142, 5143, 5173, 5206, 5214, 5215, 5351, 5353, 5354, 5356, 5357, 5361, 5362, 5364–5373, 5381–5388, 5391, 5392, 5511, 5551, 5552, 5661, 5662, 5684, 6065, 6091, 6109, 6301, 6302, 6311, 6651, 6676, 7011, 7302, 7342, 7502, 7503, 7606, 7805, 7851; 31 U.S.C. 9301, 9304, 9306.

§ 24.75 [Amended]

17. Section 24.75(f) is amended by removing the word "homemakers" and adding the phrase "home winemaker's" in the first sentence.

§ 24.137 [Amended]

18. Section 24.137(a) is amended by removing "§ 24.86." and adding "§ 24.92." in the last sentence.

§ 24.295 [Amended]

19. Section 24.295(a) is amended by removing the word "of" in the last sentence.

PART 53—MANUFACTURES EXCISE TAXES—FIREARMS AND AMMUNITION

20. The authority citation for part 53 continues to read as follows:

Authority: 26 U.S.C. 4181, 4182, 4216–4219, 4221–4223, 4225, 6001, 6011, 6020, 6021, 6061, 6071, 6081, 6091, 6101–6104, 6109, 6151, 6155, 6161, 6301–6303, 6311, 6402, 6404, 6416.

21. In § 53.62(b)(3) the first sentence is revised to read as follows:

§ 53.62 Exemptions.

* * * * *

(b) * * *

(3) *Supporting evidence.* Any manufacturer, producer, or importer claiming an exemption from the tax imposed by section 4181 of the Code by reason of section 4182(b) and section 655, title 14 of the Code must maintain such records and be prepared to produce such evidence as will establish the right to the exemption. * * *

§ 53.93 [Amended]

22. Section 53.93(b) is amended by removing "§ 53.134(b)(2)" and adding "§ 53.174(b)" in the last sentence.

23. Section 53.133(a)(2)(ii) is amended by adding a sentence and Examples (1) and (2) at the end to read as follows:

§ 53.133 Tax-free sale of articles for export, or for resale by the purchaser to a second purchaser for export.

(a) * * *

(2) * * *

(i) * * *

(ii) * * * The provisions of this paragraph (a)(2) of this section may be illustrated by the following examples:

Example (1). Q, a U.S. manufacturer of shells and cartridges, previously sold shells and cartridges to R, a company in Canada. The sale was tax free under section 4221(a)(2). Prior to use, R sold the shells and cartridges to S, who imports the articles into the United States and sells them. The sale of the shells and cartridges subjects S to an excise tax liability under section 4181.

Example (2). X, a U.S. firearms manufacturer, sold a rifle to Y company in France. The sale was tax free under section 4221(a)(2). The rifle was sold by Y to W, an individual in the City of Nice, France. After initial use, W resold the rifle to X. X returned the rifle to the United States where it was resold. The resale of the rifle by X does not subject X to an excise tax liability under section 4181.

* * * * *

PART 178—COMMERCE IN FIREARMS AND AMMUNITION

24. The authority citation for part 178 is revised to read as follows:

Authority: 5 U.S.C. 552(a); 18 U.S.C. 847, 921–930; 44 U.S.C. 3504(h).

PART 194—LIQUOR DEALERS

25. The authority citation for part 194 continues to read as follows:

Authority: 26 U.S.C. 5001, 5002, 5111–5117, 5121–5124, 5142, 5143, 5145, 5146, 5206, 5207, 5301, 5352, 5555, 5613, 5681, 5691, 6001, 6011, 6061, 6065, 6071, 6091, 6109, 6151, 6311, 6314, 6402, 6511, 6601, 6621, 6651, 6657, 7011, 7805.

26. In § 194.11 the definition for "wine" is revised to read as follows:

§ 194.11 Meaning of terms.

* * * * *

Wine. When used without qualification, the term includes every kind (class and type) of product produced on bonded wine premises from grapes, other fruit (including berries), or other suitable agricultural products and containing not more than 24 percent of alcohol by volume. The term includes all imitation, other than standard, or artificial wine and compounds sold as wine. A wine product containing less than one-half of one percent alcohol by volume is not taxable as wine when removed from the bonded wine premises.

* * * * *

27. Section 194.134 is amended by revising the last sentence to read as follows:

§ 194.134 Errors disclosed by taxpayers.

* * * On receipt of the amended Form 5630.5 and a satisfactory explantation of the error, the regional director (compliance) will make the proper correction on the stamp and return it to the taxpayer.

§ 194.291 [Amended]

28. Section 194.291 is amended by removing "part 240" and adding "part 24".

§ 194.292 [Amended]

29. Section 194.292 is amended by removing "part 231" and adding "part 24" in the first sentence.

PART 252—EXPORTATION OF LIQUORS

30. The authority citation for part 252 continues to read as follows:

Authority: 5 U.S.C. 552(a); 19 U.S.C. 81c, 1309, 1311; 26 U.S.C. 5008, 5051, 5053, 5055, 5056, 5062, 5066, 5114, 5173, 5175–5177, 5204–5207, 5214, 5223, 5301, 5354, 5362, 5367, 5370, 5371, 5401, 5415, 5551, 5552, 5555, 6065, 7302, 7805; 31 U.S.C. 9301, 9303, 9304, 9306; 44 U.S.C. 3504(h).

§ 252.219 [Amended]

31. Section 252.219 is amended by removing "27 CFR part 240:" and adding "27 CFR part 24:".

Signed June 28, 1993.

Daniel R. Black,

Acting Director.

Approved: July 9, 1993.

Ronald K. Noble,

Assistant Secretary (Enforcement).

[FR Doc. 93–17835 Filed 7–27–93; 8:45 am]

BILLING CODE 4810–31–M

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27 CFR Parts 25 and 252

[T.D. ATF–345; Ref. Notice No. 755]

Change in the Frequency of Filing Brewer's Reports of Operations and Additional Listing of Case and Keg Sizes

AGENCY: Bureau of Alcohol, Tobacco and Firearms (ATF), Department of the Treasury.

ACTION: Final rule; Treasury decision.

SUMMARY: ATF is revising regulations to allow certain small brewers to submit reports of operations quarterly instead of monthly. ATF is also revising the conversion table used to calculate the tax liability on removals in containers to include new bottle and keg sizes used by the brewing industry. The table of conversions is being reorganized for ease of use.

The reporting change will result in fewer forms being filed by brewers and fewer documents being processed by the government. The new sizes will simplify the tax computation process and eliminate special requests to use certain case and keg sizes. ATF believes these changes will result in cost savings both for the brewing industry and for the government, and will slightly reduce the regulatory burden on small brewers.

EFFECTIVE DATES: This final rule is effective August 27, 1993.

FOR FURTHER INFORMATION CONTACT: Charles N. Bacon or Marjorie Ruhf, Wine and Beer Branch, 650 Massachusetts Avenue, NW., Washington, DC 20226; Telephone (202) 927–8230.

SUPPLEMENTARY INFORMATION:

Background

On September 28, 1992, as part of a regulatory review, ATF published Notice No. 755 (57 FR 44525), proposing changes to the beer regulations to allow certain brewers to file operations reports quarterly instead of monthly and to expand the conversion instructions to include other commercial case and keg sizes currently in use.

Comments

ATF received eight comments on Notice No. 755. Five respondents, including the Beer Institute, the Institute for Brewing Studies, Crested Butte Brewery & Pub, Rowlands Calumet Brewing Co., Inc., and Fox Classic Brewing Co., supported the proposed changes. The Hudepohl-Schoenling Brewing Company commented that a package size they commonly use, a case of 24–24 oz. cans, was omitted from the proposed expansion of the conversion instructions. That case size is added to the listing in § 25.158. Another respondent, Temecula Valley Brewing, noted that ATF's proposals were a "good start," but asked why we did not reduce the requirements further, such as annual reports. As stated in the preamble to the notice of proposed rulemaking, ATF seeks to reduce the reporting burden on the smallest brewers without jeopardizing the revenue or depriving the industry and other interested persons of statistical information which is useful to them. Additionally, the internal revenue laws impose various regulatory requirements which ATF cannot change or reduce administratively.

The eighth respondent, Thomas P. Kerester, Chief Counsel for Advocacy of the Small Business Administration (SBA), did not comment on the substance of the proposal, but objected to ATF's certification under the Regulatory Flexibility Act, 5 U.S.C. 605, in the notice of proposed rulemaking. In

particular, SBA questioned whether certain statements in the supplementary information (that ATF expects the proposed rule to result in cost saving to both the brewing industry and the government and that the proposal will reduce the regulatory burden on small brewers) triggered the need for a regulatory flexibility analysis.

After a complete consideration of the SBA comment, ATF believes that SBA misinterpreted these statements in the supplementary information. A regulatory flexibility analysis is not required if the final rule will not have "a significant economic impact on a substantial number of small entities." 5 U.S.C. 605(b), emphasis added. While the reduction in reporting frequency may affect a substantial number of small breweries, the overall reduced regulatory burden is slight and does not constitute a significant economic impact. Accordingly, as certified below, a regulatory flexibility analysis is not required in promulgating the final rule.

Brewer's Report of Operations. ATF is adopting the proposed amendments to the regulations. As proposed, § 25.297 is revised to allow small brewers to file quarterly the Brewer's Report of Operations, Form 5130.9, if, during the previous calendar year, the brewer produced less than 10,000 barrels of beer. Production is defined in § 25.297(b) as the amount of beer brewed, liquids added to beer, and beer received from other breweries of the same ownership in the previous year. New brewers may file quarterly reports if they do not anticipate producing more than 10,000 barrels of beer in their first year.

Quarterly reports will be filed within 15 days after the close of the calendar quarter; i.e., by January 15, for October through December reports, and by April 15, July 15, and October 15 for other calendar quarter reports. A definition of "calendar quarter" is added to § 25.11.

Brewers who are eligible to file the Brewer's Report of Operations, Form 5130.9, on a quarterly basis may file their first quarterly report on January 15, 1994 for the period October through December, 1993.

Finally, as proposed in Notice No. 755, the regional director (compliance) may require any brewer filing reports of brewery operations quarterly to file such reports monthly if there is a jeopardy to the revenue.

The Brewer's Monthly Report of Operations, ATF F 5130.9, is being revised to conform with these regulatory amendments and to make the form easier for brewers to use. The most important revision is the inclusion of a new line entitled "Tax Determined for Use at Tavern." This change will allow brewpubs to show removals in tanks or by pipeline from tanks in the brewery cellar, to a tavern operated on the brewery premises. When the form was originally designed, no provision was made for this activity, and brewpubs have reported such removals on a line which does not accurately describe the disposition. Therefore, this change does not require any new information, but simply changes the location on the form where the information will be reported.

ATF received no suggestions for other changes to the form during the comment period.

Authorized Bottle, Case and Keg Sizes. As explained in Notice No. 755, with the growth of the microbrewing industry, and the introduction of innovative packaging by many brewers, new bottle, case and keg sizes have come into common use; many of these are European in origin and reflect net contents in metric measure. As a result, individual brewers have requested permission to use keg sizes not prescribed by § 25.156 and advice as to the proper fractional barrel equivalents of bottles and cases.

ATF is adopting the proposal to amend § 25.156 by adding 5 gallon, 30 liter and 50 liter kegs as authorized keg sizes. In addition, this section is amended to include a barrelage equivalent for these keg sizes for the purpose of taxpayment and recordkeeping. ATF received no requests for other keg sizes during the comment period.

Additionally, as proposed, ATF is adding a number of bottle and case sizes to the table in § 25.158. Metric sizes, including 500 and 750 milliliter bottles, and 1 liter, 2 liter, and 5 liter bottles are now listed separately. Barrelage equivalents are prescribed for all case sizes. As noted previously, a new listing for 24–24 oz. bottles is added to the list as the result of a comment from one brewer. ATF is also adding a listing for a case of 48–8 oz. bottles to this section.

Executive Order 12291

In compliance with Executive Order 12291 issued February 17, 1981, ATF has determined that this document does not constitute a "major rule" since it will not result in:

(a) An annual effect on the economy of $100 million or more;

(b) A major increase in costs or prices for consumers, individual industries, Federal, State, or local government agencies, or geographic regions; and,

(c) Significant adverse effects on competition, employment, investment, productivity, innovation, or on the ability of United States-based enterprises to compete with foreign-based enterprises in domestic or export markets.

Regulatory Flexibility Act

It is hereby certified that this regulation will not have a significant economic impact on a substantial number of small entities. As discussed elsewhere in this supplementary information, this final rule will slightly reduce the reporting burden on certain small proprietors and will not:

(1) Impose, or otherwise cause, any increase in recordkeeping or other compliance burdens on small entities, or

(2) Have significant secondary or incidental effects on a substantial number of small entities. Accordingly, a regulatory flexibility analysis is not required.

Paperwork Reduction Act

The provisions of the Paperwork Reduction Act of 1980, Pub. L. No. 96–511, 44 U.S.C. Chapter 35, and its implementing regulations, 5 CFR Part 1320, do not apply to this final rule because it does not impose any new reporting requirements. This rule will eliminate some of the reporting and filing requirements applicable to certain brewers.

Drafting Information

The principal authors of this document are Charles N. Bacon and Marjorie Ruhf, Wine and Beer Branch, Bureau of Alcohol, Tobacco and Firearms.

List of Subjects

27 CFR Part 25

Administrative practice and procedure, Authority delegations, Beer, Claims, Electronic fund transfers, Excise taxes, Labeling, Packaging and containers, Reporting and recordkeeping requirements, Research, Surety bonds, Transportation.

List of Subjects

27 CFR 252

Aircraft, Alcohol and alcoholic beverages, Armed Forces, Authority delegations (Government agencies), Beer, Claims, Excise taxes, Exports, Fishing vessels, Foreign trade zones, Labeling, Liquors, Packaging and containers, Reporting and recordkeeping requirements, Surety bonds, Vessels, Warehouses, Wine.

Authority and Issuance

Accordingly, title 27, Code of Federal Regulations is amended as follows:

PART 25—BEER

Paragraph 1. The authority citation for part 25 continues to read as follows:

Authority: 19 U.S.C. 81c, 26 U.S.C. 5002, 5051–5054, 5056, 5061, 5091, 5111, 5113, 5142, 5143, 5146, 5222, 5401–5403; 5411–5417, 5551, 5552, 5555, 5556, 5671, 5673, 5684, 6011, 6061, 6065, 6091, 6109, 6151, 6301, 6302, 6311, 6313, 6402, 6651, 6656, 6676, 6806, 7011, 7342, 7606, 7805; 31 U.S.C. 9301, 9303–9308.

Par. 2. The table of contents for part 25 is amended by revising the title of § 25.297 to read as follows: sec.

* * * * *

§ 25.297 Brewer's Report of Operations, Form 5130.9.

* * * * *

Par. 3. Section 25.11 is amended by revising the definition of the term "barrel" and by adding a definition of the term "calendar quarter" to read as follows:

§ 25.11 Meaning of terms.

* * * * *

Barrel. When used as a unit of measure, the quantity equal to 31 U.S. gallons. When used as a container, a consumer package or keg containing a quantity of beer listed in § 25.156, or other size authorized by the regional director (compliance).

* * * * *

Calendar quarter. A 3-month period during the year as follows: January 1 through March 31; April 1 through June 30; July 1 through September 30; and October 1 through December 31.

* * * * *

§ 25.152 [Amended]

Par. 4. Section 25.152(b)(2) is amended by removing the words "monthly report" and replacing them with the words "Brewer's Report of Operations."

Par. 5. Section 25.156 is revised to read as follows:

§ 25.156 Determination of tax on keg beer.

(a) In determining the tax on beer removed in kegs, a barrel is regarded as a quantity of not more than 31 gallons. The authorized fractional parts of a barrel are whole barrels, halves, thirds, quarters, sixths, and eighths, and beer may be removed in kegs rated at those capacities. The following keg sizes are also authorized at the stated barrel equivalents:

Size of keg	Barrel equivalent
5 gallons	0.16129
30 liter	0.25565
50 liter	0.42608

(b) If any barrel or authorized size keg contains a quantity of beer more than 2 percent in excess of its rated capacity, tax will be determined and paid on the actual quantity of beer (without benefit of any tolerance) contained in the keg.

(c) The quantities of keg beer removed subject to tax will be computed to 5 decimal places. The sum of the quantities computed for any one day will be rounded to 2 decimal places and the tax will be calculated and paid on the rounded sum.

(26 U.S.C. 5051)

Par. 6. Section 25.158 is revised to read as follows:

§ 25.158 Tax computation for bottled beer.

Barrel equivalents for various case sizes are as follows:

(a) *For U.S. measure bottles.*

Bottle size (net contents in fluid ounces)	Number of bottles per case	Barrel equivalent
6	12	0.01815
6	24	0.03629
7	12	0.02117
7	24	0.04234
7	32	0.05645
7	35	0.06174
7	36	0.06351
7	40	0.07056
7	48	0.08468
8	12	0.02419
8	24	0.04839
8	36	0.07258
8	48	0.09677
10	12	0.03024
10	24	0.06048
10	48	0.12097
11	12	0.03327
11	24	0.06653
11.5	24	0.06956
12	12	0.03629
12	15	0.04536
12	20	0.06048
12	24	0.07258
12	30	0.09073
12	48	0.14516
12	50	0.15121
14	12	0.04234
14	24	0.08468
16 (1 pint)	12	0.04839
16 (1 pint)	24	0.09677
22	12	0.06653
22	24	0.13306
24	12	0.07258
24	24	0.14516
30	12	0.09073
32 (1 quart)	12	0.09677
40	12	0.12097
64	1	0.01613
64	4	0.06452
64	6	0.09677
128 (1 gallon)	1	0.03226
288	1	0.07258

(b) *For metric measure bottles.*

Bottle size (metric net contents)	Number of bottles per case	Barrel equivalent
500 milliliters	24	0.10226
750 milliliters	12	0.07670
1 liter	12	0.10226
2 liters	6	0.10226
5 liters	1	0.04261

(c) *For other case sizes.* If beer is to be removed in cases or bottles of sizes other than those listed in the above tables, the brewer shall notify the regional director (compliance) in advance and request to be advised of the fractional barrel equivalent applicable to the proposed case size.

(26 U.S.C. 5412)

§ 25.186 [Amended]

Par. 7. Section 25.186(d) is amended by removing the words "monthly report" wherever they appear, and replacing them with the words "Brewer's Report of Operations."

§ 25.192 [Amended]

Par. 8. Section 25.192(c) is amended by removing the words "monthly report" and replacing them with the words "Brewer's Report of Operations."

§ 25.195 [Amended]

Par. 9. Section 25.195 is amended by removing the words "monthly report" and replacing them with the words "Brewer's Report of Operations."

§ 25.196 [Amended]

Par. 10. Section 25.196(c) is amended by removing the words "monthly report" and replacing them with the words "Brewer's Report of Operations."

§ 25.276 [Amended]

Par. 11. Section 25.276(b) is amended by removing the words "monthly reports" and replacing them with the words "the Brewer's Report of Operations, Form 5130.9."

Par. 12. Section 25.286 is amended by revising paragraph (a) and the information, citation at the end of the section to read as follows:

§ 25.286 Claims for remission of tax on beer lost in transit between breweries.

(a) *Filing of claim.* Claims for remission of tax on beer lost in transit between breweries of the same ownership shall be prepared on Form 2635 (ATF F 5620.8) by the brewer or the brewer's authorized agent and submitted with the Form 5130.9 of the receiving brewery for the reporting period in which the shipment is received. When the loss is by casualty, the claim will be submitted with the Form 5130.9 for the reporting period in

which the loss is discovered. When, for valid reason, the required claim cannot be submitted with Form 5130.9, the brewer shall attach a statement to Form 5130.9 stating the reason why the claim cannot be filed at the time and stating when it will be filed. A claim will not be allowed unless filed with the regional director (compliance) within 6 months of the date of the loss.

* * * * *

(27 U.S.C. 5056, 5414)

Par. 13. Section 25.296 is amended by revising paragraphs (b) introductory text, (b)(1) and (b)(2) and the informational cite at the end of the section to read as follows:

§ 25.296 Record of beer concentrate.

* * * * *

(b) *Summary report of operations.* A brewer who produces concentrate or reconstitutes beer shall report by specific entries on Form 5130.9, the quantity of beer entered into the concentration process, and the quantity of beer reconstituted from concentrate. In addition, the brewer shall prepare on Form 5130.9, a summary accounting of all concentrate operations at the brewery for the reporting period. This summary accounting will show, in barrels of 31 gallons with fractions rounded to 2 decimal places:

(1) Concentrate on hand beginning of the reporting period;

(2) Concentrate on hand end of the reporting period;

* * * * *

(26 U.S.C. 5415)

Par. 14. Section 25.297 is revised to read as follows:

§ 25.297 Brewer's Report of Operations, Form 5130.9.

(a) *Monthly report of operations.* Except as provided in paragraph (b) of this section, each brewer shall prepare and submit a monthly report of brewery operations on Form 5130.9 to the regional director (compliance) not later than the 15th day of the month following the close of the month for which prepared.

(b) *Quarterly report of operations.* (1) For calendar quarters commencing on or after October 1, 1993, a brewer who produces less than 10,000 barrels of beer per calendar year may file the report of brewery operations quarterly. The report will be filed on Form 5130.9 with the regional director (compliance) not later than the 15th day of the month following the close of the calendar quarter for which prepared. For the purpose of establishing whether a quarterly report may be filed, the brewer will determine annual production of beer by adding up the quantities of beer produced, water/liquids added in cellars, and beer received from other breweries and from pilot brewing plants for all months of the previous calendar year.

(2) To begin the quarterly filing of a Brewer's Report of Operations, a brewer will state such intent in the "Remarks" section when filing the last monthly Form 5130.9 before the calendar quarter during which the brewer will commence quarterly filings. A brewer beginning business may file Form 5130.9 quarterly if the brewer states in the "Remarks" section of its initial monthly Form 5130.9 that the annual production of beer is not likely to exceed 10,000 barrels.

(3) If a brewer determines that the 10,000 barrel quantity for a calendar year will be exceeded in any month, the brewer shall file a Form 5130.9 for that month and for all subsequent months of the calendar year.

(4) The regional director (compliance) may at any time require a brewer who is filing a Brewer's Report of Operations quarterly to file such report monthly if there is a jeopardy to the revenue.

(c) *Retention.* The brewer shall retain a copy of the Form 5130.9 as part of the brewery records.

(26 U.S.C. 5415, 5555)

PART 252—EXPORTATION OF LIQUORS

Par. 15. The authority citation for part 252 continues to read as follows:

Authority: 5 U.S.C. 552(a); 19 U.S.C. 81(c), 1309, 1311; 26 U.S.C. 5008, 5051, 5053, 5055, 5056, 5062, 5066, 5114, 5173, 5175–5177, 5204–5207, 5214, 5223, 5301, 5354, 5362, 5367, 5370, 5371, 5401, 5415, 5551, 5552, 5555, 6065, 7302, 7805; 31 U.S.C. 9301, 9303, 9304, 9306; 44 U.S.C. 3504(h).

Par. 16. Section 252.148 is amended by revising the second sentence to read as follows:

§ 252.148 Brewer's report.

* * * The total quantity of beer or beer concentrate involved in all export shipments returned during any reporting period will be reported as a separate entry on Form 5130.9.

* * * * *

Signed: June 22, 1993.

Stephen E. Higgins,

Director.

Approved: July 9, 1993.

Ronald K. Noble,

Assistant Secretary (Enforcement).

[FR Doc. 93–17834 Filed 7–27–93; 8:45 am]

BILLING CODE 4810–31–P

DEPARTMENT OF TRANSPORTATION

Coast Guard

33 CFR Part 100

[CGD01–93–076]

Special Local Regulations: Portland Grand Prix, Portland, ME

AGENCY: Coast Guard, DOT.

ACTION: Temporary final rule.

SUMMARY: The Coast Guard is establishing temporary special local regulations for the Portland Grand Prix offshore powerboat race. The race will be held on Saturday, August 7, 1993, in the waters of Casco Bay adjacent to Cape Elizabeth and South Portland, Maine. This regulation is needed to restrict access to the area of the race course and provide for the safety of life during the event.

EFFECTIVE DATES: This temporary regulation is effective from 12 p.m. to 4 p.m. on August 7, 1993. In case of postponement, this regulation will be in effect on August 8, 1993 during the same time period.

FOR FURTHER INFORMATION CONTACT: Lieutenant Eric G. Westerberg, Chief Boating Safety Affairs Branch, (617) 223–8311.

SUPPLEMENTARY INFORMATION:

Drafting Information

The drafters of these regulations are LT E.G. Westerberg, Project Officer, First Coast Guard District Boating Safety Affairs Branch, and LCDR J.D. Stieb, Project Attorney, First Coast Guard District Legal Office.

Regulatory History

Pursuant to 5 U.S.C. 553, a notice of proposed rulemaking (NPRM) has not been published for these regulations and good cause exists for making them effective less than 30 days from the date of publication. Following normal rulemaking procedures would have been impracticable. The application to hold the event was not received until July 1, 1993. After adjusting the position of the race course and exclusionary zone to best accommodate the needs of the boating public, insufficient time remained to publish proposed rules prior to the event or to provide for a delayed effective date. Publishing a NPRM and delaying its effective date would be contrary to the public interest since immediate action is needed to respond to any potential hazards associated with this type of marine event. The Portland Grand Prix has been conducted annually for the past five

years. The event is of such local popularity that delay or cancellation to provide for a NPRM would be against the public interest.

Background and Purpose

The Portland Grand Prix is a high speed powerboat race which will be held in the waters of Casco Bay, Maine adjacent to Cape Elizabeth. This event will include up to 25 powerboats competing on a triangular course at speeds approaching 100 mph. This regulation establishes an exclusionary zone for the race course and an anchorage area for spectator craft. The regulated area will be patrolled by the Coast Guard, Coast Guard Auxiliary, sponsor-provided patrols, and state and local law enforcement officials. No vessel, other than participants, spectator craft or those vessels authorized by the Coast Guard Patrol Commander, shall enter the regulated area. Other vessels will be able to transit around the regulated area without interference or delay. The potential hazards to participants, spectators, and transiting vessels are such that in the interest of safety, the Coast Guard District Commander is issuing special local regulations governing the regatta.

Regulatory Evaluation

These regulations are not major under Executive Order 12291 and not significant under Department of Transportation Regulatory Policies and Procedures (44 FR 11040; February 26, 1979). Although the regulated area partially obstructs the commercial shipping approaches to South Portland, the Coast Guard will attempt to minimize any delays for commercial vessels. Weekend commercial traffic is anticipated to be minimal. Deep draft commercial traffic must proceed with caution while transiting the regulated area East of Cape Elizabeth. Due to the limited duration of the event, and the extensive marine advisories which will be made, the economic impact of this proposal is expected to be so minimal that a Regulatory Evaluation is unnecessary.

Small Entities

Under the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*), the Coast Guard must consider whether this proposal will have a significant economic impact on a substantial number of small entities. "Small entities" include independently owned and operated small businesses that are not dominant in their field and that otherwise qualify as "small business concerns" under section 3 of the Small Business Act (15 U.S.C. 632). For the reasons outlined above in the Regulatory Evaluation section, the Coast Guard certifies under section 605(b) of the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*) that this final rule will not have a significant economic impact on a substantial number of small entities.

Collection of Information

This rule contains no collection of information requirements under the Paperwork Reduction Act (44 U.S.C. 3501).

Federalism

The Coast Guard has analyzed this action in accordance with the principles and criteria contained in Executive Order 12612 and has determined that this proposal does not raise sufficient federalism implications to warrant the preparation of a Federalism Assessment.

Environment

The Coast Guard has considered the environmental impact of this regulation and has concluded under section 2.B.2.c of Commandant Instruction M16475.1B, that it is an action to protect public safety and is categorically excluded from further environmental documentation. A written Categorical Exclusion Determination is available in the docket.

List of Subjects in 33 CFR Part 100

Marine safety, Navigation (water), Reporting and recordkeeping requirements, Waterways.

Regulations

In consideration of the foregoing, 33 CFR part 100 is amended as follows:

1. The authority citation for part 100 continues to read as follows:

Authority: 33 U.S.C. 1233; 49 CFR 1.46 and 33 CFR 100.35.

2. A temporary § 100.35T01–76 is added to read as follows:

§ 100.35T01–76 Portland Grand Prix, Portland, Maine.

(a) *Regulated area.* The regulated area includes the coastal Atlantic waters of Casco Bay between the Portland Head Light and High Head of Cape Elizabeth, with a northern boundary extending from the Portland Head Light Eastward to Red Nun Buoy "6" at 43°37'07" N., 70°11'16" W., a southerly boundary extending from 43°33'25" N., 70°12'02" W., in the vicinity of High Head on Cape Elizabeth to the Red Nun Buoy "28AR" marking Alden Rock at 43°33'05" N. and 70°09'34" W. The eastern boundary of the regulated area consists of an approximate North/South line between Red Nun Buoy "6" and the Red Nun Buoy "2AR" at Alden Rock. The western boundary of the regulated area is the shoreline of South Portland and Cape Elizabeth. The triangular race course will be located within the regulated area approximately ½ nautical mile offshore. A designated spectator area in the vicinity of Red Nun Buoy "6" will be marked by the sponsor, subject to approval of the Commander, Coast Guard Group Portland.

(b) *Special local regulations.* (1) Commander, U.S. Coast Guard Group Portland reserves the right to delay, modify or cancel the race as conditions or circumstances require.

(2) The regulated area will be closed to all traffic except participants, patrol craft, and spectator vessels. The Commanding Officer, Coast Guard Group Portland or designee may, allow vessels to transit the regulated area. Spectator vessels may operate in the designated spectator area only.

(3) All persons and vessels shall comply with the instructions of Coast Guard patrol personnel. Upon hearing five or more blasts from a U.S. Coast Guard vessel, the operator of a vessel shall stop immediately and proceed as directed. U.S. Coast Guard personnel include commissioned, warrant and petty officers of the Coast Guard. Members of the Coast Guard Auxiliary may be present to inform vessel operators of this regulation and of other applicable laws.

(c) *Effective period.* This regulation will be effective between the hours of 12 p.m. and 4 p.m. on August 7, 1993. In case of inclement weather, the regulations will be effective between the hours of 12 p.m. and 4 p.m. on August 8, 1993.

Dated: July 19, 1993.

Kent H. Williams,

Rear Admiral, U.S. Coast Guard, Commander, First Coast Guard District.

[FR Doc. 93–18012 Filed 7–27–93; 8:45 am]

BILLING CODE 4910–14–M

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33 CFR Part 165

[COTP St. Louis Regulation 93–028]

Safety Zone Regulation: Kaskaskia River Between Mile 0.0 to Mile 30.0

AGENCY: Coast Guard, DOT.

ACTION: Temporary final rule.

SUMMARY: The Coast Guard is establishing a safety zone on the Kaskaskia River from mile 0.0 to mile 30.0. This regulation is needed to control vessel traffic in the regulated area to prevent further wake damage to levees and property along the river.

EFFECTIVE DATES: This regulation becomes effective on July 14, 1993 and will remain in effect until August 15, 1993.

FOR FURTHER INFORMATION CONTACT: Coast Guard Maine Safety Office, St. Louis Missouri at 314–539–3823.

SUPPLEMENTARY INFORMATION: In accordance with 5 U.S.C. 553, a notice of proposed rulemaking was not published for this regulation and good cause exists for making it effective in less than 30 days after Federal Register publication. Publishing an NPRM and delaying its effective date would be contrary to the public interest since immediate action is necessary to ensure the safety of structures and vessels operating in the regulated area.

Drafting Information

The drafter of this regulation is YN2 Johnnie S. Fritts, project officer for the Captain of the Port and Lieutenant Commander A.O. Denny, project attorney, Second Coast Guard District Legal Office.

Regulatory History

In accordance with 5 U.S.C. 553, a notice of proposed rulemaking has not been published for this regulation and good cause exists for making it effective in less than 30 days from the date of publication. Following normal rulemaking procedures would have been impracticable. Specifically, the recent rainfall in the Upper Mississippi drainage area has caused unanticipated flood conditions on the Kaskaskia River leaving insufficient time to publish a notice of proposed rulemaking. The Coast Guard deems it to be in the public's best interest to issue a regulation without waiting for a comment period since the flood conditions are presenting immediate hazards.

Background and Purpose

The Upper Mississippi River and its tributaries have been suffering from high water conditions for 114 days. This has contributed to unusually wet conditions along the river with the resultant softening of the earth levees which protect the adjacent lowlands. Although the water levels in the river had fallen below flood stage during late June 1993, the levees have not had the opportunity to dry out before the recent rainfall over the midwest pushed the rivers back above the flood stage. As a result, the waters of the Kaskaskia River have overflowed its banks and some levees in the area have failed. The Army Corps of Engineers has reported that additional levees will erode, presenting an imminent danger to ongoing flood relief efforts and to life and property along the river, if they are subjected to the wake damage from passing vessels.

The present flood conditions also present a hazard to navigation in that the area's rivers are filled with a mass of trees and other debris which have been washed from the river banks and the inundated lowlands, once visible obstructions to navigation are now submerged, river currents are not following normal patterns, and insufficient clearances exist for vessels to pass under certain bridges. Taken a whole, these conditions present hazards which greatly hinder the safe navigation of recreational and commercial traffic.

Given expected rainfall patterns, the rivers are not expected to crest until on or after July 19, 1993. The Army Corps of Engineers anticipates that the Mississippi River will crest at 45 feet—this is 15 feet above flood stage and may establish a record for flood waters in the area—and that it may take another four weeks for the waters to recede to normal levels.

Regulatory Evaluation

This regulation is not major under Executive Order 12291 and not significant under Department of Transportation Regulatory Policies and Procedures (44 FR 11040; February 26, 1979), it will not have a significant economic impact on a substantial number of small entities, and it contains no collection of information requirements. A full regulatory analysis is unnecessary because the Coast Guard expects the impact of this regulation to be minimal when compared to the overriding nature of the damage which the flood conditions on the western rivers has caused and is expected to produce. To avoid any unnecessary adverse economic impact on businesses which use the river for commercial purposes, Captain of the Port, St. Louis, Missouri will monitor river conditions and will terminate the safety zones for specific areas as river conditions allow.

Fedralism Assessment

Under the principles and criteria of Executive Order 12612, this regulation does not raise sufficient federalism implications to warrant the preparation of a Federalism Assessment.

Environmental Assessment

The Coast Guard considered the environmental impact of this proposal and concluded that preparation of an environmental impact statement is not necessary because the regulation is categorically excluded from further environmental documentation. The regulation serves to avoid further damage to the environment beyond that which will result from naturally occurring flood conditions. A Categorical Exclusion Determination has been prepared and placed in the rulemaking docket.

List of Subjects in 33 CFR Part 165

Harbors, Marine safety, Navigation (Water), Security measures, Vessels, Waterways.

Temporary Regulation

In consideration of the foregoing, subpart C of part 165 of title 33, Code of Federal Regulations, is amended as follows:

PART 165—[AMENDED]

1. The authority citation for part 165 continues to read as follows:

Authority: 33 U.S.C. 1231; 50 U.S.C. 191; 49 CFR 1.46 and 33 CFR 1.05–1(g), 6.04–1, 6.04–6, and 160.5.

2. A temporary section 165.T0255 is added, to read as follows:

§ 165.T0255 Safety zone: Upper Mississippi River Basin.

(a) *Location.* The Kaskaskia River between mile 0.0 and 30.0 is established as a safety zone.

(b) *Effective dates.* This regulation becomes effective on July 14, 1993 and will terminate on August 15, 1993.

(c) *Regulations.* The general regulations under § 165.23 of this part which prohibit entry into the described zone without authority of the Captain of the Port apply.

(d) The Captain of the Port, St. Louis, Missouri will notify the maritime community of river conditions affecting the areas covered by these safety zones by Marine Safety Information Radio Broadcast on VHF Marine Band Radio, Channel 22 (157.1 MHZ).

Dated: July 14, 1993.

Scott P. Cooper,

Commander, U.S. Coast Guard, Captain of the Port, St. Louis, Missouri.

[FR Doc. 93–18009 Filed 7–27–93; 8:45 am]

BILLING CODE 4910–14–M

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33 CFR Part 165

[CGD02–93–005]

RIN 2115–AA97

Safety Zone; Monongahela River, From Mile 96.0 to Mile 97.5

AGENCY: Coast Guard, DOT.

ACTION: Temporary final rule.

SUMMARY: The Coast Guard is establishing a safety zone on the

Monongahela River from mile 96.0 to mile 97.5. This regulation is needed to control vessel traffic in the regulated area due to a restriction in channel width caused by a widening of the barge fleeting area at mile 96.5, left descending bank, Monongahela River. This regulation will restrict navigation in the regulated area for the safety of vessel traffic and the protection of life and property along the river.

EFFECTIVE DATES: This regulation is effective on July 16, 1993 and will terminate on August 31, 1993, unless terminated at an earlier date by the Captain of the Port, Pittsburgh, Pennsylvania.

FOR FURTHER INFORMATION CONTACT: Lt. John Meeham, Operations Officer, Captain of the Port, Pittsburgh, Pennsylvania at (412) 644–5808.

SUPPLEMENTARY INFORMATION:

Drafting Information

The drafters of these regulations are LT John Meehan, Project Officer, Marine Safety Office, Pittsburgh, Pennsylvania and LCDR A. O. Denny, Project Attorney, Second Coast Guard District Legal Office.

Regulatory History

In accordance with 5 U.S.C. 553, a notice of proposed rulemaking has not been published for this regulation and good cause exists for making it effective in less than 30 days from the date of publication. Following normal rulemaking procedures would have been impracticable. Specifically, the recent labor urrest associated with a coal miner's strike in the Upper Monongahela River Valley has led to an unanticipated need to consolidate and widen the barge fleet located within the regulated area to better provide for its protection, leaving insufficient time to publish a notice of proposed rulemaking. The Coast Guard deems it to be in the public's best interest to issue a regulation now, as the widened barge fleet presents an immediate hazard to vessels transitting the area.

Background and Purpose

A strike involving members of the United Mine Workers of America (UMWA) against certain member companies of the Bituminous Coal Operators Association (BCOA) has been ongoing at selected mines in the Upper Monongahela River Valley since March, 1993. Labor unrest, and associated acts of property damage, have been reported at several mines. On two separate occasions, unidentified individuals have reportedly set (or attempted to set) strings of coals barges moored at a BCOA member company mine adrift on the Monongahela River. In an effort to better protect its barges from these acts of vandalism, this company asked for and received permission from the Army Corps of Engineers Pittsburgh District and the Coast Guard Captain of the Port Pittsburgh to consolidate its barge fleet near company security posts at mile 96.5, left descending bank, Monongahela River. The resulting barge fleet is to standard barge widths wider than normally permitted by the Army Corps of Engineers for that location and has significantly reduced adjacent navigable channel width on the Monongahela River. This condition presents hazards which hinder the safe navigation of vessels at this location and warrant the imposition of certain vessel traffic restrictions.

Regulatory Evaluation

This regulation is not major under Executive Order 12291 and not significant under Department of Transportation Regulatory Policies and Procedures (44 FR 11040; February 26, 1979), it was not have a significant economic impact on a substantial number of small entities, and it contains no collection of information requirements. A full regulatory analysis is unnecessary because the Coast Guard expects the impact of this regulation to be minimal due to the limited number of vessels transitting the area and the non-exclusionary nature of the vessel traffic restrictions applicable to the regulated area.

Federalism Assessment

Under the principles and criteria of Executive Order 12612, this regulation does not raise sufficient federalism implications to warrant the preparation of a Federalism Assessment.

Environmental Assessment

Under section 2.B.2.c, of Commandant Instruction M16475.1B, this regulation is categorically excluded from further environmental documentation.

List of Subjects in 33 CFR Part 165

Harbors, Marine safety, Navigation (Water), Security measures, Vessels, Waterways.

Temporary Regulation

In consideration of the foregoing, subpart C of part 165 of title 33, Code of Federal Regulations, is amended as follows:

PART 165—[AMENDED]

1. The authority citation for part 165 continues to read as follows:

Authority: 33 U.S.C. 1231; 50 U.S.C. 191; 49 CFR 1.46 and 33 CFR 1.05–1(g), 6.04–1, 6.04–6, and 160.5.

2. A temporary § 165.T0264 is added, to read as follows:

§ 165–T0264 Safety zone; Monongahela River.

(a) *Location.* The following area is a safety zone: The Monongahela River from mile 96.0 to mile 97.5.

(b) *Effective date.* This regulation becomes effective July 16, 1993. It will terminate on August 31, 1993, unless terminated at an earlier date by the Captain of the Port Pittsburgh.

(c) *Regulations.* Transit through the safety zone may be made only under the following conditions:

(1) Recreational vessels have blanket permission to enter and transit through the safety zone.

(2) Commercial vessels have permission to enter the safety zone provided they do not pass, meet, or overtake another vessel in the safety zone.

(3) Upbound vessels shall give way to downbound vessels and, when approaching mile 96.0, shall contact any downbound vessels to arrange transit of the area.

(4) All vessels transmitting the area shall steer to mid-channel to the maximum extent possible.

(5) Deviation from these requirements requires pre-authorization from the Captain of the Port Pittsburgh.

Dated: July 16, 1993.

M.W. Brown,

Commander, U.S. Coast Guard, Captain of the Port Pittsburgh, PA.

[FR Doc. 93–18013 Filed 7–27–93; 8:45 am]

BILLING CODE 4910–14–M

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33 CFR Part 165

[COTP Los Angeles/Long Beach, CA, Regulation 93–06]

Safety Zone Regulations: Pacific Ocean, Gaviota, CA

AGENCY: Coast Guard, DOT.

ACTION: Temporary final.

SUMMARY: The Coast Guard is establishing a moving safety zone within a 500 yard radius of tank ships enroute to or departing from the Gaviota Marine Terminal. It encompasses the vessel's transit out to three nautical miles off the coast. This safety zone is needed to ensure the safe arrival and departure of tank ships and to protect the boating public which may be attracted by the arrival of the first tankers to use this offshore marine terminal. Entry into this zone is

prohibited unless authorized by the Captain of the Port.

EFFECTIVE DATES: This regulation becomes effective on July 12, 1993. It terminates on November 1, 1993. Comments must be received by September 13, 1993.

ADDRESSES: Comments should be mailed to Commanding Officer, U.S. Coast Guard Marine Safety Office/Group Los Angeles-Long Beach, 165 North Pico Avenue, Long Beach, CA 90802. The comments will be available for inspection and copying at MSO LA–LB. Normal office hours are between 7:30 a.m. and 4 p.m., Monday through Friday, except holidays.

FOR FURTHER INFORMATION CONTACT: Lieutenant Curtis Gray, Marine Safety Office Los Angeles/Long Beach at (310) 980–4455.

SUPPLEMENTARY INFORMATION: In accordance with 5 U.S.C. 553, a notice of proposed rulemaking was not published for this regulation and a good cause exists for making it effective less than 30 days after **Federal Register** publication. Publishing an NPRM and delaying its effective date would be contrary to the public interest since immediate action is needed to protect tank ships from being placed in extremis whether unintentionally by the general boating public or deliberately by water craft operated by special interest environmental groups or other similar activist organizations.

Although this regulation is published as an extended temporary rule without prior notice, an opportunity for public comment is nevertheless desirable to ensure that the regulation is both reasonable and workable. Accordingly, persons wishing to comment may do so by submitting written comments to the office listed under "ADDRESSES" in this preamble. Commenters should include their names and addresses, identify the docket number for the regulations, and give their comments. Based upon comments received, the regulation may be changed.

Drafting Information

The drafters of this regulation are Lieutenant Curtis Gray, project officer for the Captain of the Port, and Captain Bruce Weule, Project Attorney, Eleventh District Coast Guard Legal Office.

Discussion of the Regulation

The situation requiring this regulation is the continued need to safeguard specified tank vessels from being placed in extremis during transit to or from the Gaviota Marine Terminal. It is anticipated that protestors may demonstrate and possibly try to interfere or impede tank vessel movement. Particularly during approach and departure from the offshore moorage, it is imperative that a tanker's movement not be restricted. The tank vessel itself may be put into jeopardy, with possible loss of cargo or fuel, resulting in damage to nearby environmentally sensitive areas.

Federalism

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

List of Subjects in 33 CFR Part 165

Harbors, Marine safety, Navigation (water), Security measures, Vessels, Waterways.

Regulation

In consideration of the foregoing, subpart C of part 165 of title 33, Code of Federal Regulations, is amended as follows:

PART 165—[AMENDED]

1. The authority citation for part 165 continues to read as follows:

Authority: 33 U.S.C. 1231; 50 U.S.C. 191; 49 CFR 1.46 and 33 CFR 1.05–1(g), 6.04–1, 6.04–6, and 160.5.

2. A new § 165.T1106 is added to read as follows:

§ 165.T1106 Safety zone: Pacific Ocean, California, Gaviota Marine Terminal.

(a) *Location.* The temporary safety zone, when activated by the Captain of the Port, Los Angeles-Long Beach, is established within a 500 yard radius of specified tank ships enroute to or departing from Gaviota Marine Terminal. The safety zone moves with the vessel out to three nautical miles from shore.

(b) *Effective date.* This regulation becomes effective on July 12, 1993. It terminates on November 1, 1993.

(c) *Regulations.* (1) The Captain of the Port Los Angeles-Long Beach, California will activate the temporary safety zone described in paragraph (b) by issuing a local broadcast notice to mariners.

(2) All persons and vessels in the vicinity of the safety zone shall immediately obey any direction or order of on-scene representatives of the Captain of the Port.

(3) The general regulations governing safety zones contained in 33 CFR 165.23 apply. No person or vessel may enter or remain within the designated zone without the permission of the Captain of the Port Los Angeles-Long Beach, California.

Dated: July 12, 1993.

J.B. Morris,

Captain, U.S. Coast Guard, Captain of the Port, Los Angeles-Long Beach, CA.

[FR Doc. 93–18011 Filed 7–27–93; 8:45 am]

BILLING CODE 4910–14–M

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33 CFR Part 165

[CGD–09–93–028]

Safety Zone Regulations: Woodlawn Beach, NY

AGENCY: Coast Guard, DOT.

ACTION: Temporary final rule.

SUMMARY: The Coast Guard is establishing a safety zone on Lake Erie off Woodlawn Beach, NY. The zone is needed to ensure the safety of people, vessels, and aircraft participating in a joint military service airborne/seaborne amphibious assault exercise. It is also needed to protect spectator craft and other vessels from the hazards associated with the exercise. Entry into this zone is prohibited unless authorized by the Captain of the Port, Buffalo, New York, or his designated representative.

EFFECTIVE DATES: This regulation is effective from 9 a.m. to 1 p.m. on August 7, 1993 unless otherwise terminated by Captain of the Port, Buffalo, New York.

FOR FURTHER INFORMATION CONTACT: QM1 P. H. O'Keefe, c/o Commanding Officer, U.S. Coast Guard Marine Safety Office, 111 W. Huron Street, Buffalo, NY 14202–2395; telephone (716) 846–4168.

SUPPLEMENTARY INFORMATION: In accordance with 5 U.S.C. 553, a notice of proposed rule making (NPRM) was not published for this regulation and good cause exists for making it effective in less than 30 days after **Federal Register** publication. Earlier publication of an NPRM for this regulation was not possible since the actual date of the exercise was only recently confirmed. Publishing an NPRM and delaying its effective date would be contrary to the public interest since immediate action is needed to prevent potential danger to the vessels involved and to other waterway users. In preparing this regulation, local recreational fisherman were consulted.

Drafting Information

The drafters of this regulation are QM1 P. H. O'Keefe, project officer for the Captain of the Port, Buffalo, New York, and CDR J. M. Collins, project

attorney, Ninth Coast Guard District Legal Office.

Discussion of Regulation

The event requiring this regulation is a joint service airborne/seaborne amphibious assault exercise centered around the USS BOULDER and simulating the assault of Woodlawn Beach on Lake Erie just south of Buffalo, NY. Amphibious assault vehicles launched from the USS BOULDER, Navy SEALS conducting water landings via parachute, and helicopters delivering additional troops to the beach are several evolutions that will be included in the exercise. A safety zone is needed to protect spectator craft and other vessels from the hazards inherent with this level and type of activity. It is also needed to ensure that the safety of the exercise is not compromised by wakes and other hazards associated with transiting vessels.

This regulation is issued pursuant to 33 U.S.C. 1231 as set out in the authority citation for all of part 165.

Federalism

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

List of Subjects in 33 CFR Part 165

Harbors, Marine safety, Navigation (water), Security measures, Vessels, Waterways.

Regulation

In consideration of the foregoing, Subpart C of part 165 of title 33, Code of Federal Regulations, is amended as follows:

1. The authority citation for part 165 continues to read as follows:

Authority: 33 U.S.C. 1231; 50 U.S.C. 191; 33 CFR 1.05–1(g), 6.04–1, 6.04–6 and 160.5; 49 CFR 1.46.

2. A new temporary § 165.T0982 is added to read as follows:

§ 165.T0982 Safety zone: Woodlawn Beach, NY.

a. *Location.* The waters of Lake Erie within an areas encompassed by the following boundaries is a safety zone: A southern boundary from the shoreline at position 42°46'48" N, 78°51'42" W running due west on a bearing of 270° true to position 42°46'48" N, 78°55' W. A western boundary from position 42°46'48" N, 78°55' W running due north on a bearing of 000° true to position 42°48'24" N, 78°55' W. A northern boundary from position 42°48'24" N, 78°55' W running due east on a bearing of 090° true to the intersection with the shoreline at position 42°48'24" N, 78°51'45" W, and an eastern boundary formed by the Woodlawn Beach Shoreline.

(b) *Effective date.* This regulation is effective from 9 a.m. to 1 p.m. on August 7, 1993 unless otherwise terminated or revised by the Captain on the Port, Buffalo, New York.

(c) *Regulations.* In accordance with the general regulations in § 165.23 of this part, entry into this zone is prohibited unless authorized by the Captain of the Port, Buffalo, New York.

Dated: July 2, 1993.

M. G. VanHaverbeke,

Commander, U.S. Coast Guard Captain of the Port, Buffalo, NY.

[FR Doc. 93–18014 Filed 7–27–93; 8:45 am]

BILLING CODE 4910–14–M

LIBRARY OF CONGRESS

Copyright Office

37 CFR Part 201

[Docket No. RM 86-7c]

Cable Compulsory License: Status of Multichannel Multipoint Distribution Services (MMDS)

AGENCY: Copyright Office; Library of Congress.

ACTION: Final rule; extension of effective date; policy decision.

SUMMARY: The Copyright Office is extending the effective date of its regulation denying satellite carriers, multipoint distribution services (MDS) and multichannel multipoint distribution services (MMDS) eligibility for the cable compulsory license. The new effective date for that regulation is January 1, 1995.

EFFECTIVE DATE: The effective date of § 201.17(k) published at 57 FR 3284, January 29, 1992, is extended from January 1, 1994 to January 1, 1995.

FOR FURTHER INFORMATION CONTACT: Dorothy Schrader, General Counsel, U.S. Copyright Office, Library of Congress, Washington, DC 20559, (202) 707-8380.

SUPPLEMENTARY INFORMATION: On January 29, 1992, the Copyright Office issued a final regulation in its proceeding on the definition of a cable system. 57 FR 3284 (1992). The Office concluded that neither satellite carriers, MDS operators nor MMDS operators are cable systems within the meaning of the title 17, U.S.C., section 111(f) definition of a cable system and are therefore not eligible for compulsory licensing under section 111. 37 CFR 201.17(k). The Office stated that the effective date of the rulemaking is January 1, 1994, at which time the Office will no longer accept royalty filings from either satellite carriers, MDS or MMDS operators who claim compulsory licensing under section 111 for the retransmission of broadcast signals.

The purpose of the January 1, 1994 effective date is to permit sufficient time for legislative action providing a copyright solution for licensing of broadcast retransmissions by satellite carriers, MDS and MMDS operators. Several bills have already been introduced in this Congress addressing this issue. H.R. 1103 extends indefinitely the section 119 satellite carrier compulsory license, due to expire on December 31, 1994, and would expand the section 111 definition of a cable system to include broadcast retransmission providers such as MDS and MMDS. H.R. 759 would likewise broaden the section 111 definition of a cable system. Although there are currently no Senate bills pending, proposals addressing these issues are likely to soon be introduced. In short, the legislative climate is bright for satisfying the copyright needs of satellite carriers, MDS, MMDS and other providers with respect to retransmission of broadcast programming.

In order to foster the opportunity for congressional action, the Copyright Office is extending the effective date of its cable definition regulation, § 201.17(k), to January 1, 1995. Until that date, the Office will continue its policy of receiving and filing royalty submissions from MDS and MMDS operators under section 111 without ruling as to their sufficiency. Satellite carriers should continue to file under section 119.

List of Subjects 37 CFR Part 201

Cable systems, Cable compulsory license.

Dated: July 14, 1993.

Ralph Oman,

Register of Copyrights.

Approved by:

James H. Billington,

The Librarian of Congress.

[FR Doc. 93-17916 Filed 7-27-93; 8:45 am]

BILLING CODE 1410-08-F

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 180

[OPP–300288A; FRL–4632–8]

RIN 2070–AB78

Polyvinyl Acetate-Polyvinyl Alcohol Copolymer and Vinyl Acetate-Vinyl Alcohol-Alkyl Lactone Copolymer; Tolerance Exemptions

AGENCY: Environmental Protection Agency (EPA).

ACTION: Final rule.

SUMMARY: EPA is establishing an exemption from the requirement of a tolerance for residues of polyvinyl acetate-polyvinyl alcohol copolymer (CAS Reg. No. 25213-24-5) and vinyl acetate-vinyl alcohol-alkyl lactone copolymer when used as inert ingredients (components of water-soluble film) in pesticide formulations applied to growing crops only. This regulation was requested by Chris Craft Industrial Products, Inc.

EFFECTIVE DATE: This regulation becomes effective on July 28, 1993.

ADDRESSES: Written objections, identified by the document control number [OPP-300288A], may be submitted to the: Hearing Clerk (A-110), Environmental Protection Agency, Rm. 3708M, 401 M St., SW., Washington, DC 20460.

FOR FURTHER INFORMATION CONTACT: Connie Welch, Registration Support Branch, Registration Division (H7505W), Office of Pesticide Programs, Environmental Protection Agency, 401 M St., SW., Washington, DC 20460. Office location and telephone number: 6th Floor, North Tower, Crystal Station #1, 2800 Jefferson Davis Hwy., Arlington, VA 22202, (703)-308-8320.

SUPPLEMENTARY INFORMATION: In the **Federal Register** of May 26, 1993 (58 FR 30131), EPA issued a proposed rule announcing that Chris Craft Industrial Products, Inc., 407 County Line Rd., Gary, IN 46403-2699, had submitted a pesticide petition (PP 3E4217) to EPA requesting that the Administrator, pursuant to section 408(e) of the Federal Food, Drug, and Cosmetic Act, 21 U.S.C. 346a(e), propose to amend 40 CFR 180.1001(d) by establishing an exemption from the requirement of a tolerance for residues of polyvinyl acetate-polyvinyl alcohol copolymer (CAS Reg. No. 25213-24-5) and vinyl acetate-vinyl alcohol-alkyl lactone copolymer when used as inert ingredients (components of water-soluble film) in pesticide formulations applied to growing crops only.

Inert ingredients are all ingredients that are not active ingredients as defined in 40 CFR 153.125, and include, but are not limited to, the following types of ingredients (except when they have a pesticidal efficacy of their own): Solvents such as alcohols and hydrocarbons; surfactants such as polyoxyethylene polymers and fatty acids; carriers such as clay and diatomaceous earth; thickeners such as carrageenan and modified cellulose; wetting, spreading, and dispersing agents; propellants in aerosol dispensers; microencapsulating agents; and emulsifiers. The term "inert" is not intended to imply nontoxicity; the ingredient may or may not be chemically active.

There were no comments or requests for referral to an advisory committee received in response to the proposed rule. The scientific data submitted in the petition and other relevant material have been evaluated and discussed in the proposed rule.

Based on the information cited above, the Agency has determined that when used in accordance with good agricultural practice, these ingredients are useful and tolerances are not necessary to protect the public health. Therefore, EPA is establishing the exemptions from the requirement of a tolerance as set forth below.

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

The Office of Management and Budget has exempted this rule from the requirements of section 3 of Executive Order 12291. Pursuant to the requirements of the Regulatory Flexibility Act (Pub. L. 96-354, 94 Stat. 1164, 5 U.S.C. 601-612), the Administrator has determined that regulations establishing new tolerances or food additive regulations or raising tolerance levels or food additive regulations or establishing exemptions from tolerance requirements do not have a significant economic impact on a substantial number of small entities. A certification statement to this effect was published in the **Federal Register** of May 4, 1981 (46 FR 24950).

List of Subjects in 40 CFR Part 180

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

Dated: July 15, 1993.

Douglas D. Campt,

Director, Office of Pesticide Programs.

Therefore, 40 CFR part 180 is amended as follows:

PART 180—[AMENDED]

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

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

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

§ 180.1001 Exemptions from the requirement of a tolerance.

* * * * *

(d) * * *

Inert ingredients	Limits	Uses
* * * * * * *		
Polyvinyl acetate-polyvinyl alcohol copolymer (CAS Reg. No. 25213-24-5).	Minimum number average molecular weight 50,000.	Component of water-soluble film

Inert ingredients	Limits	Uses
• • •	• • •	• • •
Vinyl acetate-vinyl alcohol-alkyl lactone copolymer	Minimum estimated number average molecular weight 40,000; minimum viscosity of 18 centipoise.	Component of water-soluble film
• • •	• • •	• • •

* * * * *

[FR Doc. 93–17860 Filed 7–27–93; 8:45 am]
BILLING CODE 6560–50–F

FEDERAL COMMUNICATIONS COMMISSION

47 CFR Part 73

[MM Docket No. 93–104; RM–8209]

Radio Broadcasting Services; Greenwood, MS

AGENCY: Federal Communications Commission.

ACTION: Final rule.

SUMMARY: This document substitutes Channel 282C2 for Channel 282C3 at Greenwood, Mississippi, and modifies the construction permit for Station WGNL(FM) to specify operation on Channel 282C2 in response to a petition filed by Team Broadcasting Co., Inc. See 58 FR 26089, April 30, 1993. The coordinates for Channel 282C2 are 33–28–50 and 90–09–35. With this action, this proceeding is terminated.

DATES: Effective September 7, 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. 93–104, adopted June 30, 1993, and released July 21, 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 Mississippi, is amended by removing Channel 282C3 and adding Channel 282C2 at Greenwood.

Federal Communications Commission.

Michael C. Ruger,

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

[FR Doc. 93–17907 Filed 7–27–93; 8:45 am]
BILLING CODE 6712–01–M

47 CFR Part 73

[MM Docket No. 92–120; RM–7968]

Radio Broadcasting Services; Hartford, VT

AGENCY: Federal Communications Commission.

ACTION: Final rule.

SUMMARY: This document denies the petition for rule making filed by Family Broadcasting, Inc., permittee of Station WGLV–FM, Channel 282A, Hartford, Vermont, requesting the substitution of Channel 282C3 for Channel 282A at Hartford and modification of Station WGLV–FM's construction permit to specify operation on the higher powered channel. See 57 FR 23188, June 2, 1992. With this action, this proceeding is terminated.

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

SUPPLEMENTARY INFORMATION: This is a synopsis of the Commission's Report and Order, MM Docket No. 92–120, adopted June 29, 1993, and released July 21, 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, ITS, Inc., (202) 857–3800, 2100 M Street, NW., suite 140, Washington, DC 20037.

List of Subjects in 47 CFR Part 73

Radio broadcasting.

Federal Communications Commission.

Michael C. Ruger,

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

[FR Doc. 93–17908 Filed 7–27–93; 8:45 am]
BILLING CODE 6712–01–M

47 CFR Part 73

[MM Docket No. 92–227; RM–8070; RM–8072; RM–8166]

Radio Broadcasting Services; Eatonton, Fayetteville, Greenville, Griffin, Hogansville, Sparta, and Thomaston, GA, and Ashland and Valley, AL

AGENCY: Federal Communications Commission.

ACTION: Final rule.

SUMMARY: The Commission, at the request of Good Medicine Radio Georgia, Inc., and Design Media, Inc., substitutes Channel 249C3 for Channel 249A at Sparta, Georgia, and reallots Channel 249C3 from Sparta to Eatonton, Georgia, and at the request of Orchon Broadcasting Company substitutes Channel 248C3 for Channel 249A at Griffin, Georgia, and reallots Channel 248C3 from Griffin to Fayetteville, Georgia, in accordance with § 1.420(i) of the Commission's Rules. The Commission also substitutes Channel 239C3 for Channel 239A at Greenville, Georgia; substitutes Channel 251C3 for Channel 248A at Hogansville, Georgia; substitutes Channel 266A for Channel 237A at Thomaston, Georgia; substitutes Channel 238A for Channel 237A at Ashland, Alabama; and substitutes Channel 237A for Channel 251A at Valley, Alabama. See 57 FR 49057, October 29, 1992, and **SUPPLEMENTAL INFORMATION**, *infra*.

EFFECTIVE DATE: September 10, 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. 92–227,

adopted July 6, 1993, and released July 22, 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.

Channel 249C3 can be reallotted to Eatonton with a site restriction of 8.6 kilometers (5.4 miles) northeast of the community, in order to avoid a short-spacing to Station WFOX(FM), Channel 246C, Gainesville, Georgia, and to avoid a short-spacing to a construction permit for Station WKXK(FM), Channel 250C3, Fort Valley, Georgia. The coordinates for Channel 249C3 at Eatonton are North Latitude 33–23–03 and West Longitude 83–19–22. Channel 248C3 can be reallotted to Fayetteville with a site restriction of 2.7 kilometers (1.7 miles) southwest, in order to avoid a short-spacing to Station WFOX(FM), Channel 246C, Gainesville, Georgia. The coordinates for Channel 248C3 at Fayetteville are North Latitude 33–25–42 and West Longitude 84–28–22. Channel 239C3 can be allotted to Greenville with a site reduction of 5.2 kilometers (3.2 miles west, in order to avoid a short-spacing to Station WNGC(FM), Channel 238C, Athen, Georgia. The coordinates for Channel 239C3 at Greenville are North Latitude 33–01–11 and West Longitude 84–46–06. Channel 251C3 can be allotted to Hogansville with a site restriction 16.0 kilometers (9.9 miles) west, in order to avoid a short-spacing to a construction permit for Station WVOK(FM), Channel 250A, Oxford, Alabama, to Station WAGH(FM), Channel 252A, Fort Mitchell, Alabama, and Station WSB(FM), Channel 253C, Atlanta, Georgia. The coordinates for Channel 251C3 at Hogansville are North Latitude 33–09–56 and West Longitude 85–05–11. Channel 266A can be allotted to Thomaston in compliance with the Commission's minimum distance separation requirements with a site restriction 5.7 kilometers (3.5 miles) west, in order to avoid a short-spacing to Station WPGA(FM), Channel 265A, Perry, Georgia, and Station WCJM(FM), Channel 265A, West Point, Georgia. The coordinates for Channel 266A at Thomaston are North Latitude 32–54–08 and West Longitude 84–23–13. Channel 238A can be allotted to Ashland, Alabama, in compliance with the Commission's minimum distance separation requirements at its currently licensed transmitter site. The coordinates for Channel 238A at Ashland are North Latitude 33–18–30 and West Longitude 85–50–58. Channel 237A can be allotted to Valley, Alabama, in compliance with the Commission's minimum distance separation requirements at its construction permit site. The coordinates for Channel 237A at Valley are North Latitude 32–55–12 and West Longitude 85–13–04. With this action, this proceeding is terminated.

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 Alabama, is amended by removing Channel 237A and adding Channel 238A at Ashland, and by removing Channel 251A and adding Channel 237A at Valley.

3. Section 73.202(b), the Table of FM Allotments under Georgia, is amended by removing Channel 249A, Griffin and adding Channel 248C3, Fayetteville, by removing Channel 249A at Sparta and adding Channel 249C3, Eatonton, by removing Channel 239A and adding Channel 239C3 at Greenville, by removing Channel 248A and adding Channel 251C3 at Hogansville, by removing Channel 237A and adding Channel 266A at Thomaston.

Federal Communications Commission.

Michael C. Ruger,

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

[FR Doc. 93–17913 Filed 7–27–93; 8:45 am]

BILLING CODE 6712–01–M

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47 CFR Part 73

[MM Docket No. 93–98; RM–8207]

Radio Broadcasting Services; Rushford, MN

AGENCY: Federal Communications Commission.

ACTION: Final rule.

SUMMARY: This document substitutes Channel 257C3 for Channel 257A at Rushford, Minnesota, and modifies the license for Station KWNO–FM to specify operation on Channel 257C3 in response to a petition filed by Wheeler Broadcasting of Minnesota, Inc. See 58 FR 25592, April 27, 1993. The coordinates for Channel 257C3 at Rushford are 43–50–51 and 91–42–11. With this action, this proceeding is terminated.

DATES: Effective September 7, 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. 93–98, adopted June 29, 1993, and released July 21, 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 257A and adding Channel 257C3 at Rushford.

Federal Communications Commission.

Michael C. Ruger,

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

[FR Doc. 93–17909 Filed 7–27–93; 8:45 am]

BILLING CODE 6712–01–M

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47 CFR Part 76

[MM Docket Nos. 92–259; FCC 93–354]

Cable Act of 1992—Must-Carry and Retransmission Consent Provisions

AGENCY: Federal Communications Commission.

ACTION: Final rule; petitions for reconsideration.

SUMMARY: By this *Order*, the Commission amends certain provisions of the must-carry rules adopted to implement the Cable Television Consumer Protection and Competition Act of 1992. The additional rules provided in this *Order* will facilitate the orderly transition between must-carry and retransmission consent.

EFFECTIVE DATE: August 30, 1993.

FOR FURTHER INFORMATION CONTACT: Elizabeth W. Beaty, Mass Media Bureau, Policy and Rules Division, (202) 634–6530.

SUPPLEMENTARY INFORMATION: This is a synopsis of the Commission's *Order* in MM Docket No. 92–259, FCC 93–354, adopted July 15, 1993, and released July 16, 1993. The complete text of this document is available for inspection and copying during normal business hours in the FCC Reference Center, 1919 M Street, NW., Washington, DC, and also may be purchased from the Commission's copy contractor, International Transcription Service (ITS), at (202) 857–3800, 2100 M Street, NW., Washington, D.C. 20037.

Synopsis of the Order

1. On March 11, 1993, the Commission adopted a *Report and Order* in this proceeding, 58 FR 17350 (April 2, 1993), to implement the mandatory television broadcast signal carriage ("must-carry") and retransmission consent provisions of the Cable Television Consumer Protection and Competition Act of 1992 ("1992 Act"). The rules adopted in the *Report and Order* required cable systems to commence carriage of local broadcast television stations entitled to must-carry status beginning on June 2, 1993. On June 17, 1993, local broadcast stations were required to make their initial election of must-carry or retransmission consent status and were required to notify cable systems of their election. Those broadcast stations which elected must-carry status were required to notify the cable system of their preferred channel position. Those broadcast stations which failed to elect either must-carry or retransmission consent status are deemed must-carry stations by default.

2. The Association of Independent Television Stations, Inc. ("INTV") and the National Association of Broadcasters ("NAB") filed Petitions for Reconsideration which seek clarification that local commercial stations electing retransmission consent retain their must-carry rights until October 6, 1993. National Cable Television Association ("NCTA"), and Time Warner Entertainment Company, L.P. ("TWE") oppose this request and argue that such an interpretation contradicts the language of Section 325(3)(B) of the 1992 Act which states that must-carry rights shall not apply to stations which elect retransmission consent status.

3. The *Order* clarifies that local broadcast stations which are otherwise entitled to mandatory carriage and which have elected retransmission consent may not have their carriage discontinued by any cable system prior to October 6, 1993, the effective date of their retransmission consent elections. As we stated in the *Report and Order*, the implementation schedule was adopted to reduce the number of changes to which the cable operator and subscribers would be subjected. We rejected cable commenter's suggestions that retransmission consent and must-carry (except for channel positioning requirements) take effect on the same date because we believed Congressional intent precluded us from delaying implementation of must-carry until October 6, 1993. It was our intent that, during the transition period, all eligible signals continue to be carried until such time as the cable operator must discontinue carriage of the signal due to a lack of consent from the broadcast television station. We believe that this approach is consistent with the language of the 1992 Act which provides that must-carry rights are not available to stations that elect retransmission consent. See 47 U.S.C. 325(b)(4). Section 325(b)(3)(B), however, provides that the Commission's retransmission consent regulations shall require that television stations make an election between must-carry and retransmission consent "within one year after the date of enactment" of the 1992 Act and every three years thereafter. Reading these two sections together, and based on the reasons set forth in the *Report and Order*, we believe it reasonable to delay the effectiveness of stations' retransmission consent election (and thus their forfeiture of must-carry rights) until October 6, 1993. Accordingly, a station choosing retransmission consent is entitled to must-carry until that date. We reaffirm that this approach will be the least disruptive to subscribers and will ensure an orderly transition to retransmission consent. We are amending § 76.56 of our rules to reflect this clarification.

4. In an effort to assist cable systems in establishing the channel line-up changes which will be required on October 6, 1993, we also take this opportunity to clarify the channel positioning rights of local commercial broadcast stations which failed to elect must-carry or retransmission consent and which, therefore, default to must-carry status. We continue to believe that the channel positioning rights of all television broadcast stations were intended by Congress to be determined by the broadcaster and not determined by the cable system. However, in those instances where the broadcaster has failed to make an election and to notify the cable system, we believe it is unfair to leave the cable system uninformed as to where to place the signal.

5. As stated in the *Report and Order*, the default election was to be self-executing without need for interaction between the cable system and the broadcaster. We thus clarify that, after October 6, 1993, cable systems which are required to carry the signal of a default commercial must-carry broadcaster shall place that signal on one of the statutorily defined positions, at the system's discretion. We believe that this will preserve Congress' intent that must-carry stations be carried on their over-the-air, historical or current channel position while allowing the cable system to decide which of the statutory channel positions will be used. We are amending § 76.57 of our rules to reflect the channel position options of a default must-carry station.

6. In the *Report and Order*, we declined to establish any rules governing conflicts among must-carry stations' requests for specific channels. We now conclude that such rules are necessary to resolve conflicts between local commercial stations that affirmatively elected carriage and those receiving carriage by default. Specifically, in the event of such a conflict, the request from the local commercial station which made an affirmative election should be given priority. In the event this station has selected the only statutory channel position available to the station carried by default, the cable system may place that station on a channel of the cable system's choice, so long as that channel is included on the basic service tier. We believe this approach is fair to all parties since the default must-carry station could have protected its channel positioning rights by affirmatively electing must-carry and a specific channel position.

Ordering Clauses

7. Accordingly, *it is ordered* pursuant to sections 4(i), 4(j) and 303(r) of the Communications Act of 1934, as amended, 47 U.S.C. 154(i), 154(j) and 303(r), that §§ 76.56 and 76.57 are amended as set forth below.

8. *It is ordered* that the Petitions for Reconsideration filed by the National Association of Broadcasters and the Association of Independent Television Stations, Inc., are granted in part, and the Petition filed by the Community Antenna Television Association is denied in part, only to the extent specified in this Order.

9. *It is ordered* that the rules set forth in this *Order* will be effective on August 30, 1993.

List of Subjects in 47 CFR Part 76

Cable television.

Federal Communications Commission.

William F. Caton,

Acting Secretary.

Amendatory Test

Part 76 of Chapter I of Title 47 of the Code of Federal Regulations is amended as follows:

PART 76—CABLE TELEVISION SERVICE

1. The authority citation for part 76 continues to read as follows:

Authority: Secs. 2, 3, 4, 301, 303, 307, 308, 309, 48 Stat., as amended, 1064, 1065, 1066, 1081, 1082, 1083, 1084, 1085, 1101; 47 U.S.C. Secs. 152, 153, 154, 301, 303, 307, 308, 309, 532, 533, 535, 542, 543, 552 as amended, 106 Stat, 1460.

2. Section 76.56 is amended by adding a paragraph (b)(7) to read as follows:

§ 76.56 Signal carriage obligations.

* * * * *

(b) * * *

(7) A local commercial television station carried to fulfill the requirements of this paragraph, which subsequently elects retransmission consent pursuant to § 76.64, shall continue to be carried by the cable system until the effective date of such retransmission consent election.

* * * * *

3. Section 76.57 is amended by adding a paragraph (e) following the note to read as follows:

§ 76.57 Channel positioning.

* * * * *

(e) Pursuant to § 76.64(f)(3), a local commercial broadcast television station that fails to make an election is deemed a must-carry station. A cable operator shall carry such a television station on the cable system channel number on which the local commercial television station is broadcast over the air, or on the channel on which it was carried on July 19, 1985, or on the channel on which it was carried on January 1, 1992. In the event that none of these specified channel positions is available due to a channel positioning request from a commercial television station affirmatively asserting its must-carry rights or such a request from a qualified local noncommercial educational station, the cable operator shall place the signal of such a television station on a channel of the cable system's choice, so long as that channel is included on the basic service tier.

[FR Doc. 93–17931 Filed 7–27–93; 8:45 am]

BILLING CODE 6712–01–M

47 CFR Part 90

[PR Docket No. 93–38; FCC 93–330]

Private Land Mobile Radio Services; Private Carrier Paging Service to Individuals

AGENCY: Federal Communications Commission.

ACTION: Final rule.

SUMMARY: The Commission has adopted rule changes that will enable private carrier paging (PCP) licensees to provide service to individuals. Specifically, we are adding individuals to the list of eligible users of PCP services set forth in our rules. This action responds to a petition for rule making by the Association for Private Carrier Paging Section of the National Association of Business and Educational Radio, Inc., and is intended to increase service alternatives available to individual paging users and to eliminate unnecessary regulation.

EFFECTIVE DATE: August 27, 1993.

FOR FURTHER INFORMATION CONTACT: David L. Furth, Policy & Planning Branch, Private Radio Bureau, (202) 634–2443.

SUPPLEMENTARY INFORMATION: This is a summary of the Commission's *Report and Order* in PR Docket No. 93–38 (FCC 93–330), adopted June 24, 1993, and released July 16, 1993. The full text of the *Report and Order* is available for inspection and copying during normal business hours in the FCC Dockets Branch, room 230, 1919 M St., NW., Washington, DC. The complete text may be purchased from the Commission's copy contractor, International Transcription Service, Inc., 2100 M St., NW., suite 140, Washington, DC 20037, (202) 857–3800.

Summary of Report and Order

1. In this Report and Order, we amend §§ 90.75 and 90.494 of the Commission's rules, 47 CFR 90.75, 90.494, to enable private carrier paging (PCP) licensees at 929–930 MHz and in the Business Radio Service to provide private carrier paging service to individuals as well as other currently eligible users. The proceeding was initiated by a Notice of Proposed Rule Making, 8 FCC Rcd 1716, published at 58 FR 15131 (March 19, 1993).

2. Part 90 of our rules previously authorized PCP licensees to offer paging services only to end users who are themselves eligible for licensing under part 90 and to the federal government. Thus, because private individuals (other than those who qualify as business licensees) are not eligible for a part 90 license, they could not obtain paging service from a PCP system, but could only do so from a common carrier paging system.

3. The Report and Order provides that private individuals, like business and government users, are now eligible to use PCP services. As paging technology becomes less costly and more widely available, increasing numbers of individual users are seeking service for private as well as business purposes. We conclude that these individuals will benefit from being able to choose between private and common carrier alternatives. In some instances, PCP operators may be able to provide technically superior service at a lower cost, or to offer specialized service tailored to the user's particular needs.

4. This action also removes an unnecessary barrier to competition in the paging marketplace. The prior rules required PCP licensees to screen customers to guard against ineligible users, and to similarly restrict resale to individuals. Because of the difficulty of enforcing these restrictions, some licensees were reluctant to serve any individual customers, including eligible business users, and many distributors were unwilling to resell PCP services. We conclude that eliminating these restrictions will make PCP services more widely available to the public.

5. Balanced against the competitive benefits that flow from allowing PCP licensees to serve individuals, there is no public interest benefit to retaining the existing rule. Current paging technology can readily accommodate additional users on existing PCP systems. Thus, the rule is not needed to prevent frequency overuse or degradation of service to existing customers. In the absence of an affirmative reason to retain the previous rule, we conclude that it should be eliminated.

6. Some commenters in this proceeding question whether our action blurs the distinction between common and private carrier paging, and suggest that we should look more broadly at our paging regulations in this proceeding. We conclude that such an inquiry is beyond the scope of this proceeding. The Report and Order is consistent with prior Commission decisions in which we have held that private carriers may serve individuals without affecting their private carrier status. However, we do not rule out the possibility of addressing

broader regulatory issues at a later time as circumstances warrant.

Final Regulatory Flexibility Analysis

7. Pursuant to the Regulatory Flexibility Act of 1980, a Final Regulatory Flexibility Analysis has been prepared. It is available for public viewing as part of the full text of this decision, which may be viewed at the Commission's offices or obtained from its copy contractor.

Ordering Clauses

8. Accordingly, it is ordered that, pursuant to the authority of sections 4(i), 303(g), 303(r), and 332(a) of the Communications Act of 1934, as amended, 47 U.S.C. 154(i), 303(g), 303(r), and 332(a), Part 90 of the Commission's Rules, 47 CFR part 90, is amended as set forth below.

9. *It is further ordered* that this *Report and Order* will be effective thirty days after publication in the **Federal Register.**

10. *It is further ordered* that this proceeding is terminated.

List of Subjects in 47 CFR Part 90

Business and industry, Eligible and users, Private carrier paging, Private land mobile radio services.

Federal Communications Commission.

William F. Caton,

Acting Secretary.

Amendatory Text

Part 90 of chapter I of title 47 of the Code of Federal Regulations is amended as follows:

PART 90—PRIVATE LAND MOBILE RADIO SERVICES

1. The authority citation for part 90 continues to read as follows:

Authority: Sections 4, 303, 48 Stat. 1066, 1082, as amended; 47 U.S.C. 154, 303 and 332, unless otherwise noted.

2. Section 90.75 is amended by revising paragraph (c)(10) to read as follows:

§ 90.75 Business radio service.

(c) * * *

(10) This frequency is assigned only for one-way paging communications to mobile receivers. Only A1D, A2D, A3E, F1D, F2D, F3E, or G3E emissions may be authorized. Licensees may provide one-way paging communications on this frequency to individuals, persons eligible for licensing under subpart B, C, D, or E of this part, and representatives of Federal Government agencies.

* * * * *

3. Section 90.494(a) is amended by revising the third sentence of footnote 1 to read as follows:

§ 90.494 One-way paging operations in the 929–930 MHz band.

(a) * * *

Frequencies listed in Pool 2 are available only for shared use by private carrier paging (PCP) licensees in providing one-way paging communications to individuals, persons eligible for licensing under subpart B, C, D, or E of this part, and representatives of Federal Government agencies.

[FR Doc. 93–17930 Filed 7–27–93; 8:45 am]

BILLING CODE 6712–01–M

OFFICE OF PERSONNEL MANAGEMENT

48 CFR Chapter 21

RIN 3206–AE04

Federal Employees' Group Life Insurance Federal Acquisition Regulation

AGENCY: Office of Personnel Management.

ACTION: Final rulemaking.

SUMMARY: The Office of Personnel Management (OPM) is issuing a final regulation that describes the method by which the OPM implements and supplements the Federal Acquisition Regulation (FAR) for the Federal Employees' Group Life Insurance (FEGLI) Program. The regulation identifies basic and significant acquisition policies unique to the FEGLI program.

EFFECTIVE DATE: August 27, 1993.

FOR FURTHER INFORMATION CONTACT: Abby L. Block, (202) 606–0191.

SUPPLEMENTARY INFORMATION: On June 10, 1992, OPM issued a proposed regulation in the **Federal Register** (57 FR 24704) to provide direction and uniformity in the agency's procurement of life insurance coverage for Federal employees, retirees, and survivors, and to assist life insurance carriers and other interested parties in understanding OPM's application of the Federal Acquisition Regulation (FAR) (48 CFR chapter 1) to the FEGLI Program. The regulation is referred to as the Federal Employees' Group Life Insurance Federal Acquisition Regulation (LIFAR). The LIFAR describes the methods by which OPM will implement and supplement the FAR for the specific purpose of acquiring and administering contracts with life insurance carriers in the FEGLI Program.

OPM received comments from one insurance company during the 30-day comment period. The company wished to clarify that the deferred acquisition tax ("DAC" tax) referred to in the Supplementary Information portion of the proposed rule is neither a tax on assets nor a tax on net profit. OPM agrees. For a detailed description of the tax, interested parties should refer to Section 11301 of Title XI of the Omnibus Budget Reconciliation Act of 1990. The LIFAR provisions on taxes have been rewritten for clarity; however, OPM has made no substantial changes.

With respect to the cost control factor at 2115.905(a)(5) for consideration in setting the contractor's prenegotiation objective (specifically, cost containment accomplishments that will benefit the FEGLI Program), the commenter objected to OPM's limiting consideration to the contractor's "success" at preventing waste, loss, unauthorized use, or misappropriation of FEGLI Program assets and at limiting and recovering erroneous benefit payments. The commenter suggested substituting the word "efforts" for "success" in order to recognize activities aimed at correcting situations that may not necessarily result in reducing costs because of other factors, such as, erroneous benefit payments caused by an agency error or incorrect certification. We believe the comment is unfounded because OPM is able to identify erroneous benefit payments caused by agency error and will take this into consideration in determining the service charge. The contractor's detection of agency errors will be given positive consideration in determining the cost control factor, while agency errors undetected by the contractor that reasonably should have been detected will be given negative consideration. We believe the "success" standard is achievable and, therefore, have not adopted the commenter's suggestion.

The commenter also requested a clarifying example of how an unauthorized use of FEGLI Program assets might differ from misappropriation of FEGLI Program assets. An example of unauthorized use would be the contractor's use of FEGLI Program funds to purchase capital equipment that was not authorized under the contract, but which was used under the contract. An example of misappropriation of FEGLI Program assets would be the contractor's using FEGLI funds to its own advantage (i.e., stealing).

The commenter believes the weight ranges at 2115.905(b) assigned to the profit factors severely limit the contractor's profit opportunity,

particularly since the weights are to be applied to the contractor's Basic and Family Optional insurance claims paid in the previous contract year. The commenter points out that the dollar claim volume for basic and family optional coverage has grown at a rate less than the rate of inflation for the past few years and that the weights are lower than those generally used by other Federal agencies. Consequently, the commenter believes that the maximum weighting for contractor performance should be raised from .0005 to a minimum of .0008. We have not adopted this suggestion. The FAR states that the profit prenegotiation objectives represent that element of the total remuneration that contractors *may* receive for contract performance over and above allowable costs [FAR 15.901]. The FAR also states that it is in the Government's interest to offer contractors opportunities for financial rewards. However, the FAR does not state that the standards should increase the general level of profits currently being awarded under the contract. The guidelines are merely intended to give structure to the process of determining the service charge and to provide justification and documentation of the profits paid.

The commenter suggested insertion of language at the beginning of paragraph 2131.205–41(b), concerning taxes on FEGLI premiums, to enable the contractor to claim as allowable costs state taxes on FEGLI premiums in the event the Federal law prohibiting the imposition of state taxes on FEGLI premiums is either amended or repealed. We have adopted this suggestion.

The commenter suggested referencing 26 U.S.C. 848 in paragraph 2131.205–41(c) (now 2131.205–41(e)] on the Deferred Acquisition Tax. We agree and have inserted the reference in the regulation.

Section 2131.205–3 (formerly 2131.205–71] refers to the recovery of benefit payments made by a contractor in error. It authorizes the contracting officer to allow a contractor's unrecovered erroneous benefit payments to be charged to the contract if the contractor demonstrates that payment was made in accordance with an approved system of internal control under 2146.270(b). The provision deems the contractor's use of a system approved for the purposes of 2146.270(b) to be a diligent effort by the contractor to recover overpaymemts. The commenter questions whether a contractor may consider a procedure filed with OPM as satisfying this requirement in the absence of OPM's written notice to the contrary. The contractor may consider a procedure as satisfying this requirement only after OPM provides the contractor with written notice. If OPM has not completed a review of the contractor's internal control system prior to the beginning of the contract year, OPM will issue an interim approval notice until a final study can be completed.

Sections 2131.205–32 and 2131.205–71 (formerly 2131.205–75 and 2131.205–77 respectively) set forth specific dollar amounts that may be allowed in connection with nonrecurring costs and reinsurer reimbursement costs. The commenter recommends that an adjustment factor be built into the provisions to recognize changes in relative cost levels over time. OPM expects to amend the LIFAR periodically to conform with new or amended FAR policies. Fixed dollar amounts such as these will be considered for adjustment when the LIFAR is updated.

Section 2131.205–70 (formerly 2131.205–76) limits the service charge on major subcontracts when the subcontract service charge costs exceed the subcontracts' allowable costs. The commenter suggested that OPM define or limit the types of subcontracts to which this section applies. We have accommodated the commenter by limiting the subcontracts for purposes of this section to subcontracts for enrollment and eligibility determinations, administration of claims, payment of benefits, and any other function for which prior subcontractor approval is necessary.

Section 2137.102 (formerly 2137.102–70) provides for continuation of the FEGLI Program contract without interruption in the event the contract is terminated. It is based on the reality that the continuation of life insurance coverage for Federal employees is of vital interest to the Government and that a phase-out period would give OPM the necessary time to find a new contractor. Paragraph (c) addresses the contractor's profit for the period after contract termination during which services are continued. The commenter objects to the provision that the profit paid can not exceed a pro rata portion of the profit for the final contract year and believes that the amount of profit during a phase-out period should be negotiated and set by contract at the beginning of the contract year. The commenter further objects to the use of subjective standards in paragraph (d) which OPM proposes to apply in determining the amount of profit during the continuation of services period. The commenter believes the standards do not take into consideration additional expenses associated with shut-down of the losing contractor's FEGLI office. We have considered the commenter's suggestions and understand the concerns. Nevertheless, we will continue to follow the continuation of services profit provisions in the FAR and FEGLI Program-specific criteria set forth in the proposed regulation in establishing the service charge, and will give due consideration to obstacles faced by the contractor during the phase-out period, as stated in paragraph (d).

OPM understands the commenter's overall concern with Section 2137.102, and believes that the contract clause at 2152.237–70 (formerly FAR 52.237–3, which was included by reference and amended by former 2137.102–70) may be misinterpreted. OPM believes that both the phase-in and the phase-out contractors must provide, in good faith, sufficient experienced personnel during the phase-in and phase-out period. OPM believes that the clause is primarily intended to prevent the phase-out contractor from switching experienced personnel to other projects at the expense of the continuity of the services under the contract. OPM understands that the phase-out contractor may lose some experienced personnel prior to the end of the phase-out period due to personnel accepting job offers by new employers. Nevertheless, the phase-out contractor must provide sufficient experienced personnel in light of the transition plan negotiated with the successor contractor. The reasonable costs necessary to provide those personnel, including, for example, bonuses to retain otherwise terminating personnel until the end of the phase-out period, the additional cost of temporary personnel or of overtime for personnel, and the expenses incurred in the use of personnel from the contractor's other lines of business, are costs reimbursable under the contract clause. The duties imposed by this contract clause terminate upon the termination of the phase-in, phase-out period, which may extend for as long as 10 months after the expiration of the contract.

One method of transition with the successor contractor that may minimize phase-in, phase-out problems, is the successor contractor's employment of the phase-out contractor's personnel who are experienced and proficient with the contract. The clause at 2152.237–70 encourages this method. The phase-out contractor, however, need disclose only necessary personnel records, including work-performance evaluations, but not medical records. OPM recommends that permission for

disclosure of the personnel records be obtained from affected personnel before the records are released. Any disagreement between the contractors on what personnel records must be disclosed would then be referred to the contracting officer for resolution. The reasonable expense of litigation or administrative action necessary to carry out or resulting from the contracting officer's direction is a legitimate phase-in, phase-out cost.

The contractors must negotiate in good faith the transfer of fringe benefits of personnel accepting employment with the successor contractor. However, this requirement to negotiate in good faith does not require either contractor to take any actions which may result in disqualification of any employee benefit plan under the Employee Retirement Income Security Act of 1974, as amended, or loss of any tax benefit under the Internal Revenue Code. The reasonable expense of any litigation or administrative action arising from the contractors' good faith negotiations or the transfer of fringe benefits is a phase-in, phase-out cost.

We believe part of the commentator's concerns are caused by a misunderstanding of the Changes Clause (formerly incorporated by reference, but now at 2152.243–70). Any change required by the contracting officer may not only change the fee or service charge, but may also change the time for performance of the services necessary under the contract, as required by equity, so long as the change is within the scope of the contract. Whether a change is within the contract's scope, and what is considered a modification to the price or time limitations, have been subjects of numerous decisions of the General Accounting Office, courts, and boards of contract appeals. OPM believes that this clause adequately protects the contractor from adverse effects of changes and notes that after a change ordered by the contracting officer equity may require that processing standards, quality standards, cost levels, and complaint levels, both during the time necessary to implement the change and after the change, be modified to protect the contractor.

The commenter suggested that OPM amend section 2143.171 (now 2143.205) to affirm that it would not make effective new regulations that would increase the contractor's liabilities or obligations under the contract until the following contract period. We have amended this section by referencing LIFAR 2101.370, "Effective date of LIFAR amendments," and by tailoring the clauses at FAR 52.243–1 to FEGLI Program contracts [see 2152.243–70]. We believe the changes will mitigate the commenter's concerns and more closely conform to the formatting scheme of the FAR.

Paragraph 2149.002(a)(1) (formerly 2149.002–70(a)(1)) references the statutory and regulatory provisions that govern termination of the FEGLI Program contract. The commenter believes that the termination provisions of the contract should also be referenced. We cannot agree to reference the contract until the current contract termination provisions are amended to conform to the LIFAR.

LIFAR 2149.002(a)(2) (formerly 2149.002–70(a)(2)) pertains to termination for default. It follows the FAR termination for default provisions, which authorize the Government to terminate a contract for default if the contractor does not cure a problem within 10 days after receipt of the notice from the contracting officer specifying the failure to comply. The contracting officer may authorize a longer time period in writing. The commenter believes that OPM should give the contractor 31-days' notice of termination in the event of default. OPM will follow FAR requirements. However, if the contractor can show good cause for requiring additional time to cure the problem, the contracting officer will consider a request for extension.

The commenter recommends adding a statement to paragraph 2149.002–70(a) (now 2149.002(a)) addressing the effective date of OPM's imposition of new regulatory requirements that increase the contractor's cost or obligation under the contract. The LIFAR does address this subject. However, because new regulations would result in a contract amendment, the effective date of new regulatory requirements is provided for under Subpart 2143.1, Contract Modifications.

The commenter suggests adding a reference to 2131.205–71 (now 2131.205–3) (contract cost principle—erroneous benefit payments) after the word "overpayments" in paragraph 2152.216–70(b)(2)(i) (now 2152.231–70(b)(2)(i)) on allowable costs to clarify that benefit overpayments made through no fault of the contractor and on which the contractor makes a diligent but unsuccessful effort to recover from the recipient are considered allowable benefit costs. We have adopted the commenter's suggestion.

In addition to the above substantive changes, we have reorganized parts of the LIFAR in order to more closely conform to the FAR. We have also made a number of minor technical changes and have added a new subpart 2109.4 to supplement FAR Subpart 9.4, Debarment, Suspension, and Ineligibility. The new subpart adds a clause for contractors and a certification for potential contractors based on the FAR provision in 52.209–5, substitutes the term "contractor" for the term "offeror," and makes minor adjustments to reflect the fact that, in accordance with the statutory exemption provided by 5 U.S.C. 8709, 8714a, 8714b, and 8714c, the FEGLI Program does not issue solicitations.

Executive Order 12291, Federal Regulation

OPM has determined that this is not a major rule as defined under section 1(b) of E.O. 12291, Federal Regulation.

Regulatory Flexibility Act

I certify that this regulation will not have a significant economic impact on a substantial number of small entities. This regulation implements and supplements the Federal Acquisition Regulation, which has already been established for entities contracting with the Federal Government.

List of Subjects in 48 CFR Chapter 21

Administrative practice and procedure, Government contracts, Life insurance.

Office of Personnel Management.

Patricia W. Lattimore,

Acting Deputy Director.

Accordingly, OPM is amending title 48, Code of Federal Regulations, by adding chapter 21 (parts 2100–2199) to read as follows:

CHAPTER 21—OFFICE OF PERSONNEL MANAGEMENT, FEDERAL EMPLOYEES GROUP LIFE INSURANCE FEDERAL ACQUISITION REGULATION

SUBCHAPTER A—GENERAL

SUBCHAPTER B—ACQUISITION PLANNING

SUBCHAPTER C—CONTRACTING METHODS AND CONTRACT TYPES

Authority: 5 U.S.C. 8716; 40 U.S.C. 486(c); 48 CFR 1.301.

Subpart 2101.1—Purpose, Authority, Issuance

2101.101 Purpose.

(a) This subpart establishes Chapter 21, Office of Personnel Management Federal Employees' Group Life Insurance Federal Acquisition Regulation, within title 48, the Federal Acquisition Regulations System, of the Code of Federal Regulations. The short title of this regulation shall be LIFAR.

(b) The purpose of the LIFAR is to implement and supplement the Federal Acquisition Regulation (FAR) specifically for acquiring and administering a contract, or contracts, for life insurance under the Federal Employees' Group Life Insurance (FEGLI) Program.

2101.102 Authority.

(a) The LIFAR is issued by the Director of the Office of Personnel Management in accordance with the authority of 5 U.S.C. Chapter 87 and other applicable laws and regulations.

(b) The LIFAR does not replace or incorporate regulations found at 5 CFR Parts 870 through 874, which provide the substantive policy guidance for administration of the FEGLI program under 5 U.S.C. chapter 87. The following is the order of precedence in interpreting a contract provision under the FEGLI Program:

(1) 5 U.S.C. chapter 87.
(2) 5 CFR parts 870 through 874.
(3) 48 CFR chapters 1 and 21.
(4) The FEGLI Program contract.

2101.103 Applicability.

The FAR is generally applicable to contracts negotiated in the FEGLI Program pursuant to 5 U.S.C. chapter 87. The LIFAR implements and supplements the FAR where necessary to identify basic and significant acquisition policies unique to the FEGLI Program.

2101.104 Issuance.

2101.104–1 Publication and code arrangement.

(a) The LIFAR and its subsequent changes are published in:

(1) Daily issues of the **Federal Register**; and

(2) The Code of Federal Regulations, in cumulative form.

(b) The LIFAR is issued as chapter 21 of title 48 of the Code of Federal Regulations.

2101.104–2 Arrangement of regulations.

(a) *General.* The LIFAR conforms with the arrangement and numbering system prescribed by FAR 1.104 and 1.303. However, when a FAR part or subpart is adequate for use without further OPM implementation or supplementation, there will be no corresponding LIFAR part, subpart, etc. The LIFAR is to be used in conjunction with the FAR and the order for use is:

(1) FAR;

(2) LIFAR.

(b) *Citation.* (1) In formal documents, such as legal briefs, citation of Chapter 21 material that has been published in the **Federal Register** will be to title 48 of the Code of Federal Regulations.

(2) In informal documents, any section of chapter 21 may be identified as "LIFAR" followed by the section number.

Subpart 2101.3—Agency Acquisition Regulations

2101.301 Policy.

(a) Procedures, contract clauses, and other aspects of the acquisition process for contracts in the FEGLI Program shall be consistent with the principles of the FAR. Changes to the FAR that are otherwise authorized by statute or applicable regulation, dictated by the practical realities associated with certain unique aspects of life insurance, or necessary to satisfy specific needs of the Office of Personnel Management, to the extent not otherwise regulated in the FAR, shall be implemented as amendments to the LIFAR and published in the **Federal Register**, or as deviations to the FAR in accordance with FAR subpart 1.4.

(b) Internal procedures, instructions, and guides which are necessary to clarify or implement the LIFAR within OPM may be issued by agency officials designated by the Director, OPM. Normally, such designations will be specified in the OPM Administrative Manual, which is routinely available to agency employees and will be made available to interested outside parties upon request. Clarifying or implementing procedures, instructions, and guides issued pursuant to this section of the LIFAR must:

(1) Be consistent with the policies and procedures contained in this regulation as implemented and supplemented from time to time; and

(2) Follow the format, arrangement, and numbering system of this regulation to the extent practicable.

2101.370 Effective date of LIFAR amendments.

(a) Except as provided in paragraphs (b) and (c) of this section, an amendment to the LIFAR is effective when promulgated or as provided in the amendment.

(b) Except as provided in paragraphs (c) and (d) of this section, if the LIFAR is amended in a manner which would increase the contractor's(s') costs or liabilities under the contract(s), the amendment will be made effective the October 1 subsequent to the amendment's promulgation, unless the contractor(s) agree(s) in writing to an earlier date.

(c) Except as provided for in paragraph (d) of this section, if the LIFAR is amended between July 31 and October 1 in a manner which would increase the contractor's(s') costs or liabilities under the contract(s), the amendment will not be effective until the October 1 in the year following the amendment's promulgation, unless the

contractor(s) agree(s) in writing to an earlier date.

(d) Paragraphs (b) and (c) of this section are not applicable to amendments that are necessary to implement new or existing legislation.

PART 2102—DEFINITIONS OF WORDS AND TERMS

Subpart 2102.1—Definitions

Sec.
2102.101 Definitions.

Authority: 5 U.S.C. 8716; 40 U.S.C. 486(c); 48 CFR 1.301.

Subpart 2102.1—Definitions

2102.101 Definitions.

In this chapter, unless otherwise indicated, the following terms have the meaning set forth in this subpart.

Contract means a policy or policies of group life and accidental death and dismemberment insurance to provide the benefits specified by 5 U.S.C. chapter 87.

Contractor means an insurance company contracted to provide the benefits specified by 5 U.S.C. chapter 87.

Director means the Director of the Office of Personnel Management.

Employees' Life Insurance Fund means the trust fund established under 5 U.S.C. 8714.

FEGLI Program means the Federal Employees' Group Life Insurance Program.

Fixed price with limited cost redetermination plus fixed fee contract means a contract which provides for:

(1) A fixed price during the contract year with a cost element that is adjusted at the end of the contract term based on costs incurred under the contract; and

(2) A profit or fee that is fixed at the beginning of the contract term. The amount of adjustment for costs is limited to the amount in the Employees' Life Insurance Fund. The fee will be in the form of either a risk charge or a service charge.

Insurance company, as provided in 5 U.S.C. 8709, means a company licensed to transact life and accidental death and dismemberment insurance under the laws of all the States and the District of Columbia. It must have in effect, on the most recent December 31 for which information is available to the Office of Personnel Management, an amount of employee group life insurance equal to at least 1 percent of the total amount of employee group life insurance in the United States in all life insurance companies.

OPM means the Office of Personnel Management.

Reinsurer means a company that reinsures portions of the total amount of insurance under the contract as specified in 5 U.S.C. 8710 and is not an agent or representative of the contractor.

Subcontract means a contract entered into by any subcontractor that furnishes supplies or services for performance of a prime contract under the FEGLI Program. Except for the purpose of FAR Subpart 22.8—Equal Employment Opportunity, the term "subcontract" does not include a contract with a reinsurer under the FEGLI Program.

Subcontractor means any supplier, distributor, vendor, or firm that furnishes supplies or services to or for a prime contractor under the FEGLI Program contract. Except for the purpose of FAR Subpart 22.8—Equal Employment Opportunity, the term "subcontractor" does not include reinsurers under the FEGLI Program.

PART 2103—IMPROPER BUSINESS PRACTICES AND PERSONAL CONFLICTS OF INTEREST

Subpart 2103.5—Other Improper Business Practices

Sec.
2103.570 Misleading, Deceptive, or Unfair Advertising.
2103.571 Contract clause.

Authority: 5 U.S.C. 8716; 40 U.S.C. 486(c); 48 CFR 1.301.

Subpart 2103.5—Other Improper Business Practices

2103.570 Misleading, Deceptive, or Unfair Advertising.

(a) OPM prepares and makes available to enrolled Federal employees a booklet describing the provisions of the FEGLI Program which includes information about eligibility, enrollment, and general procedures. The booklet also operates as a certification of the employee's enrollment in the FEGLI Program. Because all necessary information is made available by OPM, advertising directed specifically at Federal employees and life insurance agent contacts with Federal employees for the purpose of selling FEGLI Program coverage are prohibited.

(b) The contractor is prohibited from making incomplete, incorrect comparisons or using disparaging or minimizing techniques to compare its other products or services to the benefits of the FEGLI Program. The contractor agrees that any advertising material authorized and released by the contractor which mentions the FEGLI Program shall be truthful and not misleading, and shall present an accurate statement of FEGLI Program benefits. The contractor will use its best efforts to assure that its life insurance agents are aware of and abide by this prohibition.

(c) The contractor's failure to conform to the requirements of this subpart shall be considered by OPM in the determination of the service charge prenegotiation objective.

2103.571 Contract clause.

The clause at 2152.203–70 shall be inserted in FEGLI Program contracts and in subcontracts.

PART 2104—ADMINISTRATIVE MATTERS

Subpart 2104.7—Contractor Records Retention

Sec.
2104.703 Policy.

Subpart 2104.70—Designation of Authorized Personnel

2104.7001 Designation of authorized personnel.

Authority: 5 U.S.C. 8716; 40 U.S.C. 486(c); 48 CFR 1.301.

Subpart 2104.7—Contractor Records Retention

2104.703 Policy.

In view of the unique payment schedules of FEGLI Program contracts and the compelling need for records retention periods sufficient to protect the Government's interest, contractors shall be required to maintain records for periods determined in accordance with the provisions of FAR 4.703(b)(1) and LIFAR 2115.106–270.

Subpart 2104.70—Designation of Authorized Personnel

2104.7001 Designation of authorized personnel.

The contractor shall notify the contracting officer in writing of the name(s), title(s), and address(es) of the individual(s) authorized to act on behalf of the contractor regarding a LIFAR Program contract. The notice shall include any restriction(s) upon the authority of the individual(s). Any change to the notice must also be provided to the contracting officer in writing.

SUBCHAPTER B—ACQUISITION PLANNING

PART 2105—PUBLICIZING CONTRACT ACTIONS

Subpart 2105.70—Applicability

Sec.
2105.7001 Applicability.

Authority: 5 U.S.C. 8709; 40 U.S.C. 486(c); 48 CFR 1.301.

Subpart 2105.70—Applicability

2105.7001 Applicability.

FAR part 5 has no practical application to the FEGLO Program because OPM does not issue solicitations. Eligible contractors (i.e., qualified life insurance companies) are identified in accordance with 5 U.S.C. 8709.

PART 2106—COMPETITION REQUIREMENTS

Subpart 2106.70—Applicability

Sec.
2106.7001 Applicability.

Authority: 5 U.S.C. 8709; 40 U.S.C. 486(c); 48 CFR 1.301.

Subpart 2106.70—Applicability

2106.7001 Applicability.

FAR part 6 has no practical application to the FEGLI Program in view of the statutory exception provided by 5 U.S.C. 8709.

PART 2109—CONTRACTOR QUALIFICATIONS

Subpart 2109.4—Debarment, Suspension, and Ineligibility

Sec.
2109.408 Certification regarding debarment, suspension, proposed debarment, and other responsibility matters.
2109.409 Certification and contract clause.

Subpart 2109.70—Minimum Standards for FEGLI Program Contractors

2109.7001 Minimum standards for FEGLI Program contractors.

Authority: 5 U.S.C. 8716; 40 U.S.C. 486(c); 48 CFR 1.301.

Subpart 2109.4—Debarment, Suspension, and Ineligibility

2109.408 Certification regarding debarment, suspension, proposed debarment and other responsibility matters.

FAR subpart 9.4 is implemented by changing the FAR offeror's certification at FAR 52.209–5 (which is part of a solicitation) to a pre-contract certificate and a contract clause. These provisions reflect the FEGLI Program's statutory exemption from competitive bidding (5 U.S.C. 8709), which obviates the issuance of solicitations.

2109.409 Certification and contract clause.

(a) The contracting officer may require the precontract certificate in 2152.209–70 to be filed prior to or during negotiations.

(b) The contracting officer shall insert the clause at 2152.209–71 in all FEGLI Program contracts.

Subpart 2109.70—Minimum Standards for FEGLI Program Contractors

2109.7001 Minimum standards for FEGLI Program contractors.

(a) The contractor must meet the requirements of chapter 87 of title 5, United States Code; parts 870, 871, 872, 873, and 874 of title 5, Code of Federal Regulations; chapter 1 of title 48, Code of Federal Regulations, and the standards in this subpart. The contractor shall continue to meet these and the following statutory and regulatory requirements while under contract with OPM. Failure to meet these requirements and standards is cause for OPM's termination of the contract in accordance with part 2149 of this chapter.

(b) The contractor must actually be engaged in the life insurance business and must be licensed to transact life and accidental death and dismemberment insurance under the laws of all the States and the District of Columbia at the time of application.

(c) The contractor must not be a Federal, State, local or territorial government entity.

(d) The contractor must not be debarred, suspended or ineligible to participate in Government contracting or subcontracting for any reason.

(e) The contractor must keep statistical and financial records regarding the FEGLI Program separate from that of all its other lines of business.

(f) The contractor must enter into rate redeterminations as deemed necessary by OPM.

(g) The contractor must furnish such reasonable reports as OPM determines are necessary to administer the FEGLI Program.

(h) The contractor must establish and maintain a system of internal control that provides reasonable assurance that:

(1) The payment of claims and other expenses is in compliance with legal, regulatory, and contractual guidelines;

(2) Funds, property, and other FEGLI Program assets are safeguarded against waste, loss, unauthorized use, or misappropriation;

(3) Revenues and expenditures applicable to FEGLI Program operations are properly recorded and accounted for to permit the preparation of reliable financial reporting and to maintain accountability over assets; and,

(4) Data are accurately and fairly disclosed in all reports required by OPM.

(i) The contractor must permit representatives of OPM and of the General Accounting Office to audit and examine records and accounts pertaining to the FEGLI Program at such reasonable times and places as may be designated by OPM or the General Accounting Office.

PART 2110—SPECIFICATIONS, STANDARDS, AND OTHER PURCHASE DESCRIPTIONS

Subpart 2110.70—Contract Specifications

Sec.
2110.7000 Scope of subpart.
2110.7001 Definitions.
2110.7002 Contractor investment of FEGLI Program funds.
2110.7003 Significant events.
2110.7004 Contract clauses.

Authority: 5 U.S.C. 8716; 40 U.S.C. 486(c); 48 CFR 1.301.

Subpart 2110.70—Contract Specifications

2110.7000 Scope of subpart.

This subpart prescribes mandatory specifications for performance under FEGLI Program contracts.

2110.7001 Definitions.

Investment income, as used in this subpart, means the net amount on an investment of FEGLI Program funds earned by the contractor after deducting reasonable, necessary, and properly allocated investment expenses.

Significant event, as used in this subpart, means any occurrence or anticipated occurrence that might reasonably be expected to have a material effect upon the contractor's ability to meet its obligations under the LIFAR.

2110.7002 Contractor investment of FEGLI Program funds.

(a) The contractor is required to invest and reinvest all FEGLI Program funds on hand, including any attributable to the special contingency reserve (as used in 5 U.S.C. 8712), until needed to discharge promptly the obligations incurred under the contract. Within the constraints of safety and liquidity of investments, the contractor shall seek to maximize investment income.

(b) The contractor is required to credit income earned from its investment of FEGLI Program funds to the FEGLI Program. Thus, the contractor must be able to allocate investment income to the FEGLI Program in an appropriate manner. If the contractor fails to invest funds on hand, properly allocate investment income, or credit any income due to the contract, for whatever reason, it shall return or credit any investment income lost to OPM or the FEGLI Program, retroactive to the date that such funds should have been originally invested in accordance with 2152.210–70.

2110.7003 Significant events.

The contractor is required to inform the contracting officer of all significant events.

2110.7004 Contract clauses.

(a) The clause at 2152.210–70 shall be inserted in all FEGLI Program contracts.

(b) The clause at 2152.210–71 shall be inserted in all FEGLI Program contracts.

SUBCHAPTER C—CONTRACTING METHODS AND CONTRACT TYPES

PART 2114—SEALED BIDDING

Subpart 2114.70—Applicability

Sec.
2114.7001 Applicability.

Authority: 5 U.S.C. 8709; 40 U.S.C. 486(c); 48 CFR 1.301.

Subpart 2114.70—Applicability

2114.7001 Applicability.

FAR part 14 has no practical application to the FEGLI Program in view of the statutory exemption provided by 5 U.S.C. 8709, 8714a, 8714b, and 8714c.

PART 2115—CONTRACTING BY NEGOTIATION

Subpart 2115.1—General Requirements for Negotiation

Sec.
2115.106 Contract clauses.
2115.106–270 Specific retention periods.
2115.170 Negotiation authority.

Subpart 2115.4—Solicitation and Receipt of Proposals and Quotations

2115.401 Applicability.

Subpart 2115.6—Source Selection

2115.602 Applicability.

Subpart 2115.8—Price Negotiation

2115.802 Policy.

Subpart 2115.9—Profit

2115.902 Policy.
2115.905 Profit analysis factors.

Authority: 5 U.S.C. 8716; 40 U.S.C. 486(c); 48 CFR 1.301.

Subpart 2115.1—General Requirements for Negotiation

2115.106 Contract clauses.

2115.106–270 Specific retention periods.

Unless the contracting officer determines that there exists a compelling reason to include only the contract clause specified by FAR 52.215–2, "Audit—Negotiation," the contracting officer shall also insert the clause at 2152.215–70 in all FEGLI Program contracts.

2115.170 Negotiation authority.

The authority to negotiate FEGLI Program contracts is conferred by 5 U.S.C. 8709.

Subpart 2115.4—Solicitation and Receipt of Proposals and Quotations

2115.401 Applicability.

(a) FAR Subpart 15.4 has no practical application to the FEGLI Program because OPM does not issue solicitations.

(b) OPM will announce any opportunities to submit applications to provide life insurance through the FEGLI Program in insurance industry periodicals and other publications as deemed appropriate by OPM. The announcement will contain information on the address to which requests for application packages should be submitted and on deadline dates for submission of completed applications.

(c) Eligible contractors (i.e., qualified life insurance companies) are identified in accordance with 5 U.S.C. 8709. Offerors voluntarily come forth in accordance with procedures provided in 2115.602.

(d) OPM may approve one or more life insurance companies that, in its judgment, are best qualified to provide life insurance coverage to Federal enrollees.

Subpart 2115.6—Source Selection

2115.602 Applicability.

FAR Subpart 15.6 has no practical application to the FEGLI Program because prospective contractors (insurance companies) are considered for inclusion in the FEGLI Program in accordance with criteria provided in 5 U.S.C. chapter 87, LIFAR 2109.7001, and the following:

(a) Applications must be signed by an individual with legal authority to enter into a contract on behalf of the company for the dollar level of claims and expenses anticipated.

(b) Applications will be reviewed for evidence of substantial compliance in the following areas:

(1) *Management:* Stable management with experience pertinent to the life insurance industry and, in particular, large group management; sufficient operating experience to enable OPM to evaluate past and expected future performance.

(2) *Marketing:* Past ability to attract and retain large group contracts; steady or increasing amount of group life insurance in force.

(3) *Legal expertise:* Demonstrated competence in researching, compiling, and implementing various Federal and State laws that may impact payment of benefits; ability to defend legal challenges to payment of benefits.

(4) *Financial condition:* Establishment of firm budget projections and demonstrated success in keeping costs at or below those projections on a regular basis; evidence of the ability to sustain operations in the future and to meet obligations under the contract OPM might enter into with the company; adequate reserve levels; assets exceeding liabilities.

(5) *Establishment of office:* Ability to establish an administrative office capable of assessing, tracking, and paying claims.

(6) *Internal controls:* Ability to establish and maintain a system of internal control that provides reasonable assurance that the payment of claims and other expenses will be in compliance with legal, regulatory, and contractual guidelines; funds, property, and other FEGLI Program assets will be safeguarded against waste, loss, unauthorized use, or misappropriation; and revenues and expenditures applicable to FEGLI Program operations will be properly recorded and accounted for to permit the preparation of timely and accurate financial reporting and to maintain accountability over assets.

Subpart 2115.8—Price Negotiation

2115.802 Policy.

Pricing of FEGLI Program premium rates is governed by 5 U.S.C. 8707, 8708, 8711, 8714a, 8714b, and 8714c. FAR Subpart 15.8 shall be implemented by applying cost analysis policies and procedures. To the extent that reasonable or good faith actuarial estimates are used for pricing, such estimates will be deemed acceptable and, if inaccurate, will not constitute defective pricing.

Subpart 2115.9—Profit

2115.902 Policy.

(a) *Risk charge.* (1) Section 8711(d) of title 5, United States Code, provides for payment of a risk charge to FEGLI Program contractors as compensation for the risk assumed under the FEGLI Program. It is appropriate to pay such a charge when substantial risk is borne by the contractor; that is, when the balance in the Employees' Life Insurance Fund is no larger than five times annual claims.

(2) The risk charge is determined by agreement between the contractor and OPM. The amount of risk charge shall be specified in the contract.

(b) *Waiver of the risk charge.* (1) When the Fund balance is greater than five

times annual claims, OPM and the contractor may agree that the contractor will relinquish the risk charge in favor of a profit opportunity in the form of a service charge for the contractor. The service charge so determined shall be the total service charge that may be negotiated for the contract and shall encompass any service charge (whether entitled service charge, profit, fee, contribution to surpluses, etc.) that may have been negotiated by the prime contractor with any subcontractor. At no time may both a risk charge and a service charge be paid for the same portion of a policy year.

(2) Once agreement to relinquish the risk charge is made, the agreement may not be cancelled unless OPM and the contractor mutually agree to reinstitute payment of a risk charge; or unless the Fund balance falls below the level defined in 2115.902(a) and 30 days notice of cancellation is provided; or unless the contractor or OPM provide notice of cancellation for any reason 1 year prior to the date cancellation is sought.

(c) Any profit prenegotiation objective (service charge) will be determined on the basis of a weighted guidelines structured approach.

2115.905 Profit analysis factors.

(a) The OPM contracting officer will apply a weighted guidelines method when developing the prenegotiation objective (service charge) for the FEGLI Program contract. In accordance with the factors defined in FAR 15.905–1, OPM will apply the appropriate weights derived from the ranges specified in paragraph (b) of this section and will determine the prenegotiation objective based on the contractor's Basic and Family Optional insurance claims paid in the previous contract year.

(1) *Contractor performance.* OPM will consider such elements as the accurate and timely processing of benefit claims, the volume and validity of complaints received by OPM, effectiveness of internal controls systems in place, the timeliness and adequacy of reports on operations, and responsiveness to OPM offices, enrollees, beneficiaries, and Congress as measures of economical and efficient contract performance. This factor will be judged apart from the contractor's *basic* responsibility for contract compliance and will be a measure of the extent and nature of the contractor's contribution to the FEGLI Program through the application of managerial expertise and effort. Evidence of effective contract performance will receive a plus weight, and poor performance or failure to comply with contract terms and conditions a zero weight. Innovations of benefit to the FEGLI Program will generally receive a plus weight; documented inattention or indifference to effective operations, a zero weight.

(2) *Contract cost risk.* OPM will evaluate the contractor's risk annually in relation to the amount in the Employees' Life Insurance Fund and will evaluate this factor accordingly.

(3) *Federal socioeconomic programs.* OPM will consider documented evidence of successful, contractor-initiated efforts to support such Federal socioeconomic programs as drug and substance abuse deterrents, and other concerns of the type enumerated in FAR 15.905–1(c) as a factor in negotiating profit. This factor will be related to the quality of the contractor's policies and procedures and the extent of unusual effort or achievement demonstrated. Evidence of effective support of Federal socioeconomic programs will result in a plus weight; indifference to Federal socioeconomic programs will result in a zero weight; and only deliberate failure to provide opportunities to persons and organizations that would benefit from these programs will result in a negative weight.

(4) *Capital investments.* This factor is generally not applicable to FEGLI Program contracts because facilities capital cost of money may be an allowable administrative expense. Generally, this factor shall be given a weight of zero. However, special purpose facilities or investment costs of direct benefit to the FEGLI Program that are not recoverable as allowable or allocable administrative expenses may be taken into account in assigning a plus weight.

(5) *Cost Control.* This factor is based on the contractor's previously demonstrated ability to perform effectively and economically. In addition, consideration will be given to measures taken by the contractor that result in productivity improvements and other cost containment accomplishments that will be of future benefit to the FEGLI Program. Examples are containment of costs associated with processing claims; success at preventing waste, loss, unauthorized use, or misappropriation of FEGLI Program assets; and success at limiting and recovering erroneous benefit payments.

(6) *Independent Development.* Consideration will be given to independent contractor-initiated efforts, such as the development of a unique and enhanced customer support system, that are of demonstrated value to the FEGLI Program and for which developmental costs have not been recovered directly or indirectly through allowable or allocable administrative expenses. This factor will be used to provide additional profit opportunities based upon an assessment of the contractor's investment and risk in developing techniques, methods, practices, etc., having viability to the Program at large. Improvements and innovations recognized and rewarded under any other profit factor cannot be considered.

(b) The weight ranges for each factor to be used in the weighted guidelines approach are set forth below:

Profit factor	Weight ranges
1. Contractor performance	0 to +.0005
2. Contract cost risk	+.000001 to +.00001
3. Federal socio-economic programs	−.00003 to +.00003
4. Capital investment	0 to +.00001
5. Cost control	−.0002 to +.0002
6. Independent development	0 to +.00003

PART 2116—TYPES OF CONTRACTS

Subpart 2116.1—Selecting Contract Types

Subpart 2116.2—Fixed-Price Contracts

Authority: 5 U.S.C. 8709; 5 U.S.C. 8716; 40 U.S.C. 486(c); 48 CFR 1.301.

Subpart 2116.1—Selecting Contract Types

2116.105 Solicitation provision.

FAR 16.105 has no practical application because the statutory provisions of 5 U.S.C. chapter 87 obviate the issuance of solicitations.

Subpart 2116.2—Fixed-Price Contracts

2116.270 FEGLI Program contracts.

FEGLI Program contracts will be fixed price with limited cost redetermination plus fixed fee. The premium to the contractor will be based on an estimate of benefits and administrative costs, plus the fixed service or risk charge, and will be determined annually. Claims costs, including benefits and administrative expenses, in excess of premiums will be paid up to the amount in the Employees' Life Insurance Fund. Payment for costs exceeding the amount in the Fund are the responsibility of the contractor and reinsurers. The fee is fixed at the inception of each contract year. The fee does not vary with the actual costs, but may be adjusted as a

result of changes in the work to be performed under the contract. The fee will be in the form of either a risk charge or a service charge.

(a) *Risk charge.* The risk charge will be determined as prescribed in 5 U.S.C. 8711(d) and paragraph 2115.902(a)(2) of this subchapter. It will consist of a negotiated amount which will reflect the risk assumed by the contractor and the reinsurers and may be adjusted as a result of increased or decreased risk under the contract. When the applicable fee is a risk charge, no service charge shall be payable for the same period of time.

(b) *Service charge.* The amount of the service charge will be determined using a weighted guidelines structured approach in accordance with 2115.905 and negotiated with the contractor at the beginning of the contract term. When the applicable fee is a service charge, no risk charge will be paid for the same portion of a policy year in which a service charge is paid.

2116.270–1 Contract clauses.

(a) The clause at 2152.216–70 shall be inserted in all FEGLI Program contracts when a risk charge is negotiated.

(b) The clause at 2152.216–71 shall be inserted in all FEGLI Program contracts when a service charge is negotiated.

SUBCHAPTER D—SOCIOECONOMIC PROGRAMS

PART 2122—APPLICATION OF LABOR LAWS TO GOVERNMENT ACQUISITIONS

Subpart 2122.1—Basic Labor Policies.

Sec.
2122.170 Contract clauses.

Authority: 5 U.S.C. 8709; 40 U.S.C. 486(c); 48 CFR 1.301.

Subpart 2122.1—Basic Labor Policies

2122.170 Contract clauses.

The provisions at FAR sections 52.222–21, 52.222–22, 52–222.25 are implemented by changing the word "offeror" to "Contractor" and the word "solicitation" to "contract" wherever they appear in the text to reflect the FEGLI Program's statutory exemption from competitive bidding (5 U.S.C. 8709), which obviates the issuance of solicitations.

PART 2124—PROTECTION OF PRIVACY AND FREEDOM OF INFORMATION

Subpart 2124.1—Protection of Individual Privacy

Sec.
2124.102 General.
2124.102–70 Policy.
Sec.
2124.104 Contract clauses.
2124.104–70 Contract clause.

Authority: 5 U.S.C. 8716, 40 U.S.C. 486(c); 48 CFR 1.301.

Subpart 2124.70—Protection of Individual Privacy

2124.102 General.
2124.102–70 Policy.

Records retained by FEGLI Program contractors on Federal insureds and members of their families serve the contractors' own commercial function of paying FEGLI Program claims and are not maintained to accomplish an agency function of OPM. Consequently, the records do not fall within the provisions of the Privacy Act. Nevertheless, OPM recognizes the need for the contractors to keep certain records confidential. The clause at 2152.224–70 addresses this concern.

2124.104 Contract Clauses.

2124.104–70 Contract clause.

The clause at 2152.224–70 shall be inserted in all FEGLI Program contracts.

SUBCHAPTER E—GENERAL CONTRACTING REQUIREMENTS

PART 2128—BONDS AND INSURANCE

Subpart 2128.3—Insurance

Sec.
2128.370 Contract clause.

Authority: 5 U.S.C. 8716; 40 U.S.C. 486(c); 48 CFR 1.301.

Subpart 2128.3—Insurance

2128.370 Contract clause.

The contract clause at FAR 52.228–7 is a mandatory clause in FEGLI Program contracts, except paragraph (d) is modified as follows:

(d) The Government's liability under paragraph (c) of this clause is limited to the amount available in the Employee's Life Insurance Fund. Nothing in this contract shall be construed as implying that the Government will make additional funds available later or that Congress will appropriate funds later sufficient to meet deficiencies.

PART 2129—TAXES

Subpart 2129.1—General

Sec.
2129.170 Policy.

Subpart 2129.3—State and Local Taxes

2129.302 Application of State and local taxes to the Government.
2129.305 State and local tax exemptions.

Subpart 2129.4—Contract Clauses

2129.401 Domestic contracts.
2129.401–70 FEGLI Program Contract clauses.

Authority: 5 U.S.C. 8716; 40 U.S.C. 486(c); 48 CFR 1.301.

Subpart 2129.1—General

2129.170 Policy.

(a) OPM shall consider taxes as a FEGLI Program cost under 2131.205–41.

(b) For purposes of the limited cost redetermination of a FEGLI Program contract, taxes are not limited to those in effect as of the contract date, but shall include any taxes enacted, modified, or repealed, by legislative, judicial, or administrative means, during the contract year.

Subpart 2129.3—State and Local Taxes

2129.302 Application of State and local taxes to the Government.

(a) 5 U.S.C. 8714(c)(1) prohibits the imposition of taxes, fees, or other monetary payment on FEGLI Program premiums by any State, the District of Columbia, the Commonwealth of Puerto Rico, or any political subdivision or governmental authority of those entities.

(b) Paragraph (a) of this section shall not be construed to exempt the contractor from the imposition, payment, or collection of a tax, fee, or other monetary payment on the net income or profit accruing to or realized by it from business conducted under the FEGLI Program if the tax, fee, or payment is applicable to a broad range of business activity.

2129.305 State and local tax exemptions.

(a) FAR 29.305 is modified for the FEGLI Program by substituting paragraph (b) of this section in the place of paragraph (b) of FAR 29.305.

(b) *Furnishing proof of exemption.* If a reasonable basis to sustain a claimed exemption exists, the seller will be furnished evidence of exemption if requested by the contractor and approved by the contracting officer or at the discretion of the contracting officer.

Subpart 2129.4—Contract Clauses

2129.401 Domestic contracts.

2129.401–70 FEGLI Program contract clauses.

The fixed-price contract clauses in FAR subpart 29.4 are inappropriate for the FEGLI Program because of the limited cost-redetermination of FEGLI Program contracts. The clauses at FAR 52.229–1, 52.229–2, 52.229–3, and 52.229–4 shall not be inserted into FEGLI Program contracts.

PART 2131—CONTRACT COST PRINCIPLES AND PROCEDURES

Subpart 2131.1—Applicability

Sec.
2131.103 Contracts with commercial organizations.
2131.109 Advance Agreements.

Subpart 2131.2—Contracts With Commercial Organizations

2131.201 General.
2131.206–5 Credits.
2131.203 Indirect costs.
2131.205 Selected costs.
2131.205–1 Public relations and advertising costs.
2131.205–3 Bad debts.
2131.205–6 Compensation for personal services.
2131.205–32 Precontract costs.
2131.205–38 Selling costs.
2131.205–41 Taxes.
2131.205–43 Trade, business, technical and professional activity costs.
2131.205–70 Major subcontractor service charge.
2131.205–71 Reinsurer administrative expense costs.
2131.270 Contract clauses.

Authority: 5 U.S.C. 8716; 40 U.S.C. 486(c); 48 CFR 1.301.

Subpart 2131.1—Applicability

2131.103 Contracts with Commercial Organizations.

The contracting officer shall incorporate the cost principles and procedures of FAR subpart 31.2 and this part by reference in all FEGLI Program contracts because of the nature of a fixed price with limited cost redetermination plus fixed fee contract.

2131.109 Advance agreements.

FAR 31.109 is applicable to FEGLI Program contracts, except that precontract costs and nonrecurring costs that exceed $25,000 shall not be allowed in the absence of an advance agreement.

Subpart 2131.2—Contracts With Commercial Organizations

2131.201 General.

2131.201–5 Credits.

The provisions of FAR 31.201–5 shall apply to income, rebates and other credits resulting from benefit payments that include, but are not limited to—

(a) Uncashed and returned checks.

(b) Refunds attributable to litigation with regard to payments of FEGLI Program life insurance monies.

(c) Erroneous benefit payment, refunds, overpayment, and duplicate payment recoveries.

(d) Escheatments.

2131.203 Indirect costs.

The provisions of FAR 31.203 apply to the allocation of indirect costs by means of a "dividend or retention formula."

2131.205 Selected costs.

2131.205–1 Public relations and advertising costs.

The provisions of FAR 31.205–1 shall be modified to include the following:

(a) Costs of media messages are allowable if approved by the contracting officer and all of the following criteria are met:

(1) The primary objective of the message is to disseminate information on general health and fitness or encouraging healthful lifestyles;

(2) The costs of the contractor's messages are allocated to all underwritten and non-underwritten lines of business; and

(3) The contracting officer approves the total dollar amount of the contractor's messages to be charged to the FEGLI Program in advance of the policy year.

(b) Costs of media messages that inform enrollees about the FEGLI Program are allowable if approved by the contracting officer.

(c) In those instances where contracting officer approval of the total dollar amount is not solicited in advance, it is incumbent upon the contractor to show the contracting officer, for subsequent approval, that the costs are reasonable and do not unduly burden the administrative cost to the contract.

(d) Costs of messages that are intended to, or which have the primary effect of, calling favorable attention to the contractor or subcontractor for the purpose of enhancing its overall image or selling its product or services are not allowable.

2131.205–3 Bad debts.

Erroneous benefit payments. If the contractor or OPM determines that a FEGLI Program benefit has been paid in error for any reason, the contractor shall make a diligent effort to recover such erroneous payment from the recipient. The contracting officer shall allow an unrecovered erroneous payment to be charged to the contract provided the contractor demonstrates that the recovery of the erroneous payment was attempted in accordance with a system that is approved under 2146.270(b) and that either a diligent effort was made to recover the erroneous overpayment or it would not be cost effective to recover the erroneous overpayment. The contractor's compliance with a system that is approved under 2146.270(b) will be deemed to be a diligent effort to recover the erroneous overpayment.

2131.205–6 Compensation for personal services.

FAR 31.205–6 is supplemented as follows: Overtime on a FEGLI Program contract normally would meet the conditions specified in FAR 22.103. Advance approval of the contracting officer is not required for overtime, extra-pay shifts, and multi-shifts.

2131.205–32 Precontract costs.

Precontract costs shall be allowable in accordance with FAR Part 31, but precontract costs that exceed $25,000 shall not be allowable except to the extent allowable under an advance agreement negotiated in accordance with 2131.109.

2131.205–38 Selling costs.

Selling costs are not allowable costs to FEGLI contracts except to the extent that they are attributable to conducting contract negotiations with the Government and for liaison activities involving ongoing contract administration, including the conduct of informational and enrollment activities as directed by the contracting officer.

2131.205–41 Taxes.

(a) FAR 31.205–41, as modified in paragraphs (b) through (e), is applicable to contracts in the FEGLI Program.

(b) As long as 5 U.S.C. 8714(c) or other Federal law prohibits the imposition of taxes, fees, or other monetary payments on FEGLI Program premiums by any State, the District of Columbia, the Commonwealth of Puerto Rico, or any other political subdivision or governmental authority of those entities, payment of such preempted tax is an unallowable expense under FAR 31.205–41(b)(3).

(c) Paragraph (b)(1) of FAR 31.205–41 is not applicable to the FEGLI Program.

(d) Notwithstanding any other provision in FAR 31.205–41, the portion of the contractor's income or excess profits taxes allocated to the FEGLI Program, except those allocated to the risk charge or the service charge, are allowable costs under the FEGLI Program, including any income or excess profit taxes that arise from the operation of this paragraph. Income or excess profits taxes allocated to the risk charge or the service charge are not allowable costs.

(e) Notwithstanding any other provision in FAR 31.205–41, an amount equal to the "DAC Tax" is an allowable tax expense under FAR 31.205–41. "DAC Tax" means an amount equal to: (1) the amount of the contractor's

Federal, state, and local income tax allocated to payments under the FEGLI Program, less (2) the amount of the contractor's Federal, state, and local income tax allocated to payments under the FEGLI Program computed without regard to the operation of 26 U.S.C. 848, which requires that certain policy acquisition expenses be capitalized over a 60- or 120-month period, plus (3) the amount of the increase, if any, in the contractor's Federal, state, and local income tax that results from the operation of this section 2131.205–41(e).

2131.205–43 Trade, business, technical and professional activity costs.

(a) FEGLI Program contractors shall seek the advance written approval of the contracting officer for allowability of all or part of the costs associated with trade, business, technical, and professional activities when the allocable costs of such participation to the FEGLI Program will exceed $2,500 annually and the contractor allocates more than 50 percent of the membership cost of a trade, business, technical, or professional organization to the FEGLI Program.

(b) When approval of costs for membership in an organization is required, the contractor must demonstrate conclusively that membership in such an organization and participation in its activities extend beyond the contractual relationship with OPM, have a reasonable relationship to providing services to FEGLI Program insureds, and that the organization is not engaged in activities such as those cited in FAR 31.205–22 (lobbying costs) for which costs are not allowable.

2131.205–70 Major subcontractor service charge.

In a subcontract for enrollment and eligibility determinations, administration of claims and payment of benefits and any other subcontract for which prior approval is necessary, when costs are determined on the basis of actual costs incurred, any amount that exceeds the allowable cost of a major subcontract (whether entitled service charge, incentive fee, profit, fee, surplus, or any other title) is not allowable under the contract. Amounts which exceed allowable costs may be paid to a major subcontractor only from the risk charge or service charge negotiated between OPM and the contractor.

2131.205–71 Reinsurer administrative expense costs.

A charge of $500 per policy year per reinsurer of the FEGLI Program as set forth in the contract is an allowable cost when documented through an internal accounting entry of the contractor and actually paid. This amount is deemed to be sufficient to reimburse reinsurers for the minor administrative expenses incurred in reinsuring the FEGLI Program.

2131.270 Contract clauses.

The clause at 2152.231–70 shall be inserted in all FEGLI Program contracts.

PART 2132—CONTRACT FINANCING

Subpart 2132.1—General

Sec.
2132.170 Recurring premium payments to contractors.
2132.171 Contract clause.

Subpart 2132.6—Contract Debts

2132.607 Tax credit.
2132.617 Contract clause.

Subpart 2132.7—Contract Funding

2132.770 Insurance premium payments and special contingency reserve.
2132.771 Non-commingling of FEGLI Program funds.
2132.772 Contract clause.

Subpart 2132.8—Assignment of Claims

2132.806 Contract clause.

Authority: 5 U.S.C. 8716; 40 U.S.C. 486(c); 48 CFR 1.301.

Subpart 2132.1—General

2132.170 Recurring premium payments to contractors.

OPM and the contractor will concur on an estimate of benefits and administrative costs plus the fixed service or risk charge for the forthcoming contract year, as specified in the contract. The annual premium to the contractor will be determined based on this estimate. The premium will be determined annually and will be provided to the contractor in 12 equal monthly installments due on the first day of each month. Following the close of the contract year, a reconciliation of premiums, benefits, and other costs will be performed as a limited cost redetermination.

2132.171 Contract clause.

The clause at 2152.232–70 shall be inserted in all FEGLI Program contracts.

Subpart 2132.6—Contract Debts

2132.607 Tax credit.

FAR 32.607 has no practical application to FEGLI Program contracts. The statutory provisions at 5 U.S.C. 8707 and 8708 authorize joint enrollee and Government contributions to the Employees' Life Insurance Fund. Because the Fund is comprised of contributions by enrollees as well as the Government, contractors may not offset debts to the Fund by a tax credit that is solely a Government obligation.

2132.617 Contract clause.

The clause at FAR 52.232–17 is modified in FEGLI Program contracts to exclude the parenthetical phrase "(net of any applicable tax credit under the Internal Revenue Code (26 U.S.C. 1481))."

Subpart 2132.7—Contract Funding

2132.770 Insurance premium payments and special contingency reserve.

Insurance premium payments and a special contingency reserve are made available to FEGLI Program contractors in accordance with 5 U.S.C. 8712 and 8714.

2132.771 Non-commingling of FEGLI Program funds.

(a) FEGLI Program funds shall be maintained in such a manner as to be separately identifiable from other assets of the contractor. Cash and investment balances reported on the FEGLI Program Annual Accounting Statement must be supported by the contractor's books and records.

(b) This requirement may be modified by the contracting officer in accordance with the clause at 2152.232–71 when adequate accounting and other controls are in effect. If the requirement is modified, such modification will remain in effect until rescinded by OPM.

2132.772 Contract clause.

The clause at 2152.232–71 shall be inserted in all FEGLI Program contracts.

Subpart 2132.8—Assignment of Claims

2132.806 Contract clause.

The clause set forth in 2152.232–72 shall be inserted in all FEGLI Program contracts.

PART 2133—PROTESTS, DISPUTES, AND APPEALS

Subpart 2133.2—Disputes and Appeals

Sec.
2133.270 Designation of Board of Contract Appeals.

Authority: 5 U.S.C. 8716; 40 U.S.C. 486(c); 48 CFR 1.301.

Subpart 2133.2—Disputes and Appeals

2133.270 Designation of Board of Contract Appeals.

The Armed Services Board of Contract Appeals [ASBCA] serves as the board of contract appeals for the FEGLI Program. The rules of procedure followed in a dispute shall be those prescribed by the ASBCA.

SUBCHAPTER F—SPECIAL CATEGORIES OF CONTRACTING

PART 2137—SERVICE CONTRACTING

Subpart 2137.1—Service Contracts—General

Sec.
2137.102 Policy.
2137.110 Contract clause.

Authority: 5 U.S.C. 8716; 40 U.S.C. 486(c); 48 CFR 1.301.

Subpart 2137.1—Service Contracts—General

2137.102 Policy.

(a) The services under this contract are of vital interest to the Government and must be continued without interruption in the event the contract is terminated.

(b) The contractor shall be reimbursed for all reasonable phase-in and phase-out costs (i.e., costs incurred within the agreed upon period after contract termination that result from phase-in and phase-out operations). The contractor also shall receive a risk or service charge for the full period after contract termination during which services are continued, not to exceed a pro rata portion of the risk or service charge for the final contract year. The amount of risk or service charge shall be based upon the accurate and timely processing of benefit claims, the volume and validity of complaints received by OPM, the timeliness and adequacy of reports on operations, and responsiveness to OPM offices, enrollees, beneficiaries, and Congress.

2137.110 Contract clause.

The clause at 2152.237–70 shall be inserted in all FEGLI Program contracts in lieu of the clause at 52.237–3 that is prescribed by FAR 37.110(c).

SUBCHAPTER G—CONTRACT MANAGEMENT

PART 2143—CONTRACT MODIFICATIONS

Subpart 2143.1—General

Sec.
2143.101 Definitions.

Subpart 2143.2—Change Orders

2143.205 Contract clause.

Authority: 5 U.S.C. 8716; 40 U.S.C. 486(c); 48 CFR 1.301.

Subpart 2143.1—General

2143.101 Definitions.

The effective date of a FEGLI contract modification is as defined in FAR 43.101, except to the extent that the definition conflicts with LIFAR 2101.370.

Subpart 2143.2—Change Orders

2143.205 Contract clause.

The clause at 2152.243–70 shall be inserted in all FEGLI Program contracts in lieu of the clauses in FAR 52.243–1 that are prescribed by FAR 43.205(a).

PART 2144—SUBCONTRACTING POLICIES AND PROCEDURES

Subpart 2144.1—General

Sec.
2144.102 Policy.

Subpart 2144.2—Consent to Subcontracts

2144.204 Contract clause.

Authority: 5 U.S.C. 8716; 40 U.S.C. 486(c); 48 CFR 1.301.

Subpart 2144.1—General

2144.102 Policy.

For all FEGLI Program contracts, advance approval shall be required on subcontracts or modifications to subcontracts when the cost of that portion of the subcontract that is charged the FEGLI Program contract exceeds $200,000, but only if more than 25 percent of the subcontract cost is charged to the FEGLI Program contract.

Subpart 2144.2—Consent to Subcontracts

2144.204 Contract clause.

The clause set forth at 2152.244–70 shall be inserted in all FEGLI Program contracts.

PART 2146—QUALITY ASSURANCE

Subpart 2146.2—Contract Quality Requirements

Sec.
2146.201 General.
2146.270 FEGLI Program quality assurance requirements.
2146.270–70 Contract clause.

Authority: 5 U.S.C. 8716; 40 U.S.C. 486(c); 48 CFR 1.301.

Subpart 2146.2—Contract Quality Requirements

2146.201 General.

(a) This part prescribes policies and procedures to ensure that services acquired under the FEGLI Program contract conform to the contract's quality requirements.

(b) OPM shall evaluate the contractor's system of internal controls under the quality assurance program required by 2146.270 prior to each contract year and will acknowledge in writing whether or not the system is consistent with the requirements set forth in this Subpart. After the initial review, each annual review may be limited to changes in the contractor's internal control guidelines. However, a limited review does not diminish the contractor's obligation to apply the full internal control system.

2146.270 FEGLI Program quality assurance requirements.

(a) The contractor shall develop and apply a quality assurance program specifying procedures for assuring contract quality, as directed by the contracting officer. At a minimum, the program should include procedures to address:

(1) Accuracy of payments and recovery of overpayments;

(2) Timeliness of payments to beneficiaries;

(3) Quality of services and responsiveness to beneficiaries;

(4) Quality of service and responsiveness to OPM; and

(5) Detection and recovery of fraudulent claims.

(b) The contractor shall prepare overpayment recovery guidelines to include a system of internal control for approval annually by the contracting officer. The contracting officer may withdraw such approval with 90 days' notice of prospective withdrawal.

(c) The contracting officer may order the correction of a deficiency or a modification in the contractor's services and/or quality assurance program. The contractor shall take the necessary action promptly to implement the contracting officer's order. If the contracting officer orders the correction of a deficiency or a modification of the contractor's services and/or quality assurance program pursuant to this paragraph after the contract year has begun, the costs incurred in correcting the deficiency or making the modification will not be considered to the contractor's detriment in the cost control factor of the service charge [if applicable] for the following contract year. However, if there is a deficiency, the deficiency itself may be taken into consideration.

2146.270–1 Contract clause.

The clause at 2152.246–70 shall be inserted in all FEGLI Program contracts.

PART 2149—TERMINATION OF CONTRACTS

Sec.
2149.002 Applicability.

Subpart 2149.5—Contract Termination Clauses

2149.505 Other termination clauses.
2149.505–70 FEGLI Program contract termination clause.

Authority: 5 U.S.C. 8716; 40 U.S.C. 486(c); 48 CFR 1.301.

2149.002 Applicability.

(a) *Termination.* (1) Termination of FEGLI Program contracts is controlled by 5 U.S.C. 8709(c) and this chapter. The procedures for termination of FEGLI Program contracts shall be those contained in FAR part 49. For the purpose of this part, terminate means to "discontinue" as used in 5 U.S.C. 8709(c).

(2) A life insurance contract entered into by OPM may be terminated by OPM at any time for default by the contractor. A life insurance contract entered into by OPM may be terminated at the end of the 31st day after default for nonpayment by OPM [see 2152.232–70, Payments].

(3) A life insurance contract entered into by OPM may be terminated for convenience of the Government 60 days after the contractor's receipt of OPM's notice to terminate.

(4) The contractor may terminate its contract with OPM at the end of any policy year when notice of intent to terminate is given to OPM in writing at least 60 days prior to the end of the policy year (i.e., no later than July 31).

(b) *Continuation of services.* The services under this contract are of vital interest to the Government and must be continued without interruption in the event the contract is terminated. Consequently, the contract termination procedures contained in this paragraph must be used in conjunction with 2137.102, 2137.110, and the provisions of the "Continuity of Services" clause at 2152.237–70.

(c) *Settlement.* The procedures for settlement of contracts after they are terminated shall be those contained in FAR Part 49.

Subpart 2149.5—Contract Termination Clauses

2149.505 Other termination clauses.

2149.505–70 FEGLI Program contract termination clause.

The clause in 2152.249–70 shall be inserted in all FEGLI Program contracts.

SUBCHAPTER H—CLAUSES AND FORMS

PART 2152—PRECONTRACT PROVISIONS AND CONTRACT CLAUSES

Sec.

Authority: 5 U.S.C. 8716; 40 U.S.C. 486(c), 48 CFR 1.301.

2152.070 Applicable clauses.

The clauses of FAR subpart 52.2 specified below shall be applicable to FEGLI Program contracts. The most recent edition of the clause in the FAR shall be applied unless otherwise provided in the contract.

Section and Clause Title

52.202–1 Definitions
52.203–1 Officials Not to Benefit
52.203–3 Gratuities
52.203–5 Covenant Against Contingent Fees
52.203–6 Restrictions on Subcontractor Sales to the Government
52.203–7 Anti-Kickback Procedures
52.203–9 Requirement for Certificate of Procurement Integrity—Modification
52.203–10 Price or Fee Adjustment for Illegal or Improper Activity
52.203–12 Limitation on Payments to Influence Certain Federal Transactions
52.209–6 Protecting the Government's Interest When Subcontracting With Contractors Debarred, Suspended, or Proposed for Debarment
52.215–1 Examination of Records by Comptroller General
52.215–2 Audit—Negotiation
52.215–22 Price Reduction for Defective Cost or Pricing Data
52.215–24 Subcontractor Cost or Pricing Data
52.215–27 Termination of Defined Benefit Pension Plans
52.215–30 Facilities Capital Cost of Money
52.215–31 Waiver of Facilities Capital Cost of Money
52.215–39 Reversion or Adjustment of Plans for Postretirement Benefits (PRB) Other Than Pensions
52.219–8 Utilization of Small Business Concerns and Small Disadvantaged Business Concerns
52.219–13 Utilization of Women-Owned Small Businesses
52.220–3 Utilization of Labor Surplus Area Concerns
52.222–1 Notice to the Government of Labor Disputes
52.222–3 Convict Labor
52.222–4 Contract Work Hours and Safety Standards Act—Overtime Compensation-General
52.222–21 Certification of NonSegregated Facilities
52.222–22 Previous Contracts and Compliance Reports
52.222–25 Affirmative Action Compliance
52.222–26 Equal Opportunity
52.222–28 Equal Opportunity Preaward Clearance of Subcontracts
52.222–29 Notification of Visa Denial
52.222–35 Affirmative Action for Special Disabled and Vietnam Era Veterans
52.222–36 Affirmative Action for Handicapped Workers
52.222–37 Employment Reports on Special Disabled Veterans and Veterans of the Vietnam Era
52.222–41 Service Contract Act of 1965, as Amended
52.223–2 Clean Air and Water
52.223–6 Drug-Free Workplace
52.227–1 Authorization and Consent
52.227–2 Notice and Assistance
52.232–9 Limitation on Withholding of Payments
52.232–17; 2132.617 Interest
52.232–23 Assignment of Claims
52.232–28 Electronic Funds Transfer Payment Method
52.233–1 Disputes (Alternate I)
52.242–1 Notice of Intent to Disallow Costs
52.242–13 Bankruptcy
52.244–5 Competition in Subcontracting
52.245–2 Government Property (Fixed-Price Contracts)
52.246–4 Inspection of Services—Fixed Price
52.246–25 Limitation of Liability—Services
52.247–63 Preference for U.S.-Flag Air Carriers
52.249–2 Termination for Convenience of the Government (Fixed-Price)
52.249–8 Default (Fixed Price Supply and Service)
52.251–1 Government Supply Sources
52.252–4 Alterations in Contract
52.252–6 Authorized Deviations in Clauses

Subpart 2152.2—Text of Provisions and Clauses

2152.203–70 Misleading, deceptive, or unfair advertising

As prescribed in 2103.571, insert the following clause:

MISLEADING, DECEPTIVE, OR UNFAIR ADVERTISING (OCT 1993)

The Contractor agrees that any advertising material authorized and released by the Contractor which mentions the FEGLI Program shall be truthful and not misleading, and shall present an accurate statement of FEGLI Program benefits. The Contractor is prohibited from making incomplete, incorrect comparisons or using disparaging or minimizing techniques to compare its other products or services to the benefits of the FEGLI Program. The Contractor agrees to use its best efforts to assure that its agents are aware of and abide by this provision.

The Contractor agrees to incorporate this clause in all subcontracts as defined at LIFAR 2102.101.

(End of Clause)

2152.209–70 Certification regarding debarment, suspension, proposed debarment and other responsibility matters during negotiations.

As prescribed in 2109.409(a), the contracting officer may require a potential contractor to provide the following certification:

CERTIFICATION REGARDING DEBARMENT, SUSPENSION, PROPOSED DEBARMENT, AND OTHER RESPONSIBILITY MATTERS (OCT 1993)

(a)(1) The undersigned certifies, to the best of its knowledge and belief, that—

(i) The undersigned and/or any of its Principals—

(A) Are ( ) are not ( ) presently debarred, suspended, proposed for debarment, or declared ineligible for the award of contracts by any Federal agency;

(B) Have ( ) have not ( ), within a 3-year period preceding this certification, been convicted of or had a civil judgment rendered against them for: Commission of fraud or a criminal offense in connection with obtaining, attempting to obtain, or performing a public (Federal, state, or local) contract or subcontract; violation of Federal or state antitrust statutes relating to the submission of offers; or commission of embezzlement, theft, forgery, bribery, falsification or destruction of records, making false statements, or receiving stolen property; and

(C) Are ( ) are not ( ) presently indicted for, or otherwise criminally or civilly charged by a governmental entity with, commission of any of the offenses enumerated in subdivision (a)(2) of this clause.

(ii) The undersigned has ( ) has not ( ), within a 3-year period preceding this certification, had one or more contracts terminated for default by any Federal agency.

(2) "Principals," for the purposes of this certification, means officers; directors; owners; partners; and persons having primary management or supervisory responsibilities within a business entity (e.g., general manager; plant manager; head of a subsidiary, division, or business segment, and similar positions).

This certification concerns a matter within the jurisdiction of an agency of the United States and the making of a false, fictitious, or fraudulent certification may render the undersigned subject to prosecution under section 1001, title 18, United States Code.

(b) The undersigned shall provide immediate written notice to the Contracting Officer if, at any time prior to the contract award, the undersigned learns that its certification was erroneous when submitted or has become erroneous by reason of changed circumstances.

(c) A certification that any of the actions mentioned in paragraph (a) of this provision exists will not necessarily result in the withholding of an award under a contract under the FEGLI Program. However, the certification, or the undersigned's failure to provide such additional information as requested by the Contracting Officer will be considered in connection with a determination of the undersigned's responsibility under LIFAR subpart 2109.70, Minimum Standards for FEGLI Program Contractors.

(d) Nothing contained in this certification shall be construed to require establishment of a system of records in order to render, in good faith, the certification required by paragraph (a). The knowledge and information of the undersigned is not required to exceed that which is normally possessed by a prudent person in the ordinary course of business dealings.

(e) The certification in (a) is a material representation of fact upon which reliance is placed during negotiation of a FEGLI Program contract. If it is later determined that the undersigned knowingly rendered an erroneous certification, in addition to other remedies available to the Government, the Contracting Officer may terminate the contract resulting from this certification for default.

_____

(Name of Company)

By: _____

(Signature)

_____

(Name and Title of Signatory)

Date signed: _____

(End of Certificate)

2152.209–71 Certification regarding debarment, suspension, proposed debarment, and other responsibility matters.

As prescribed in 2109.409(b), insert the following clause:

CERTIFICATION BY FEGLI PROGRAM CONTRACTOR REGARDING DEBARMENT, SUSPENSION, PROPOSED DEBARMENT, AND OTHER RESPONSIBILITY MATTERS (OCT 1993)

(a)(1) The Contractor certifies, to the best of its knowledge and belief, that—

(i) The Contractor and/or any of its Principals—

(A) Are ( ) are not ( ) presently debarred, suspended, proposed for debarment, or declared ineligible for the award of contracts by any Federal agency;

(B) Have ( ) have not ( ), within a 3-year period preceding this certification, been convicted of or had a civil judgment rendered against them for: Commission of fraud or a criminal offense in connection with obtaining, attempting to obtain, or performing a public (Federal, state, or local) contract or subcontract; violation of Federal or state antitrust statutes relating to the submission of offers; or commission of embezzlement, theft, forgery, bribery, falsification or destruction of records, making false statements, or receiving stolen property; and

(C) Are ( ) are not ( ) presently indicted for, or otherwise criminally or civilly charged by a governmental entity with, commission of any of the offenses enumerated in subdivision (a)(2) of this clause.

(ii) The Contractor has ( ) has not ( ), within a 3-year period preceding this certification, had one or more contracts terminated for default by any Federal agency.

(2) "Principals," for the purposes of this certification, means officers; directors; owners; partners; and persons having primary management or supervisory responsibilities within a business entity (e.g., general manager; plant manager; head of a subsidiary, division, or business segment, and similar positions).

This certification concerns a matter within the jurisdiction of an agency of the United States and the making of a false, fictitious, or fraudulent certification may render the Contractor subject to prosecution under section 1001, title 18, United States Code.

(b) The Contractor shall provide immediate written notice to the Contracting Officer if, at any time, the Contractor learns that its certification was erroneous when submitted or has become erroneous by reason of changed circumstances.

(c) A Contractor's certification that any of the actions mentioned in the certification exists will not necessarily result in termination of the contract. However, the certification, or the Contractor's failure to provide such additional information as requested by the Contracting Officer will be considered in connection with a determination of the Contractor's responsibility under LIFAR subpart 2109.70, Minimum Standards for FEGLI Program Contractors.

(d) Nothing contained in the certification shall be construed to require establishment of a system of records in order to render, in good faith, the certification required by this section. The knowledge and information of the Contractor is not required to exceed that which is normally possessed by a prudent person in the ordinary course of business dealings.

(e) The certification in this section is a material representation of fact upon which reliance is placed by the Contracting Officer in making this contract. If it is later determined that the Contractor knowingly rendered an erroneous certification, in addition to other remedies available to the Government, the Contracting Officer may terminate the contract for default.

(End of Clause)

2152.210–70 Investment income.

As prescribed in 2110.7004(a), insert the following clause:

INVESTMENT INCOME (OCT 1993)

(a) The Contractor shall invest and reinvest all FEGLI Program funds on hand until needed to discharge promptly the obligations incurred under the contract. Within the constraints of safety and liquidity of investments, the Contractor shall seek to maximize investment income.

(b) All investment income earned on FEGLI Program funds shall be credited to the FEGLI Program.

(c) When the Contracting Officer concludes that the Contractor failed to comply with paragraphs (a) or (b) of this clause, the Contractor shall pay to the Office of Personnel Management (OPM) the investment income that would have been earned, at the rate(s) specified in paragraph (d) of this clause, had it not been for the Contractor's noncompliance. "Failed to comply with paragraphs (a) or (b)" means: (1) Making any charges against the contract which are not allowable, allocable, or reasonable; or (2) failing to credit any income due the contract and/or failing to place funds on hand, including premium payments and payments from OPM not needed to discharge promptly the obligations incurred under the contract, tax refunds, credits, deposits, investment income earned, uncashed checks, or other amounts owed OPM in income-producing investments and accounts.

(d)(1) Investment income lost as a result of unallowable, unallocable, or unreasonable charges against the contract shall be paid from the 1st day of the contract term following the contract term in which the unallowable charge was made and shall end on the earlier of: (i) The date the amounts are returned to OPM; (ii) the date specified by the Contracting Officer; or, (iii) the date of the Contracting Officer's Final Decision.

(2) Investment income lost as a result of failure to credit income due the contract or failure to place funds on hand in income-producing investments and accounts shall be paid from the date the funds should have been invested or appropriate income was not credited and shall end on the earlier of: (i) The date the amounts are returned to OPM; (ii) the date specified by the Contracting Officer; or, (iii) the date of the Contracting Officer's Final Decision.

(3) The Contractor shall credit to the FEGLI Program income that is due in accordance with this clause. All amounts payable shall bear lost investment income compounded semiannually at the rate established by the Secretary of the Treasury as provided in section 12 of the Contract Disputes Act of 1978 (Pub. L. 95–563), *during* the periods specified in paragraphs (d)(1) and (d)(2).

(4) All amounts due and unpaid *after* the periods specified in paragraphs (d)(1) and (d)(2) shall bear simple interest at the rate applicable for each 6-month period as fixed by the Secretary of the Treasury until the amount is paid [see FAR 32.614–1].

(End of Clause)

2152.210–71 Notice of significant events.

As prescribed in 2110.7004(b), insert the following clause:

NOTICE OF SIGNIFICANT EVENTS (OCT 1993)

(a) The Contractor agrees to notify OPM of any significant event within 10 working days after the Contractor becomes aware of it. As used in this section, a "significant event" is any occurrence of anticipated occurrence that might reasonably be expected to have a material effect upon the Contractor's ability to meet its obligations under this contract, including, but not limited to, any of the following:

(1) Disposal of 25 percent or more of the Contractor's assets within a six-month period;

(2) Termination or modification of any contract or subcontract if such termination or modification might have a material effect on the Contractor's obligations under this contract;

(3) Loss of 20 percent or more of FEGLI Program reinsurers in a policy year;

(4) The imposition of, or notice of the intent to impose, a receivership, conservatorship, or special regulatory monitoring;

(5) The withdrawal of, or notice of intent to withdraw, by any State, its license to do business or any other change of status under Federal or State law;

(6) The Contractor's default on a loan or other financial obligation;

(7) Any actual or potential labor dispute that delays or threatens to delay timely performance or substantially impairs the functioning of the Contractor's facilities or facilities used by the Contractor in the performance of the contract;

(8) Any change in its charter, constitution, or by-laws which affects any provision of this contract or the Contractor's participation in the Federal Employees' Group Life Insurance Program;

(9) Any significant changes in policies and procedures or interpretations of the contract which would affect the benefits payable under the contract or the costs charged to the contract;

(10) Any fraud, embezzlement or misappropriation of FEGLI Program funds; or

(11) Any written exceptions, reservations or qualifications expressed by the independent accounting firm (which ascribes to the standards of the American Institute of Certified Public Accountants) contracted with by the Contractor to provide an opinion on the annual accounting statements required by OPM for the FEGLI Program.

(b) Upon learning of a significant event, OPM may institute action, in proportion to the seriousness of the event, to protect the interest of insureds, including, but not limited to—

(1) Directing the Contractor to take corrective action;

(2) Making a downward adjustment to the weight in the "Contractor Performance" factor of the service charge; or,

(3) Withholding payments of the service charge.

(c) Prior to taking action as described in paragraph (b) of this clause, OPM will notify the Contractor and offer an opportunity to respond.

(d) The Contractor agrees to insert this clause in any subcontract or subcontract modification if the amount of the subcontract or modification that is charged to the FEGLI Program exceeds $200,000, but only if more than 25 percent of the subcontract cost is charged to the FEGLI contract.

(End of Clause)

2152.215–70 Contractor records retention.

As prescribed in 2115.106–270, insert the following clause:

CONTRACTOR RECORDS RETENTION (OCT 1993)

Notwithstanding the provisions of FAR 52.215–2(d), "Audit-Negotiation," the Contractor will retain and make available all records applicable to a contract term that support the annual statement of operations for a period of 5 years after the end of the contract term to which the records relate. Individual enrollee and/or beneficiary claim records shall be maintained for 10 years after the end of the policy year to which the claim records relate.

(End of Clause)

2152.216–70 Fixed price with limited cost redetermination—risk charge.

As prescribed in 2116.270–1(a), insert the following clause when a risk charge is negotiated:

FIXED PRICE WITH LIMITED COST REDETERMINATION PLUS FIXED FEE CONTRACT—RISK CHARGE (OCT 1993)

(a) This is a fixed price with limited cost redetermination plus fixed fee contract, with the fixed fee in the form of a risk charge.

(b) OPM shall pay the Contractor the risk charge specified in Appendix _____for the risk assumed in performing this contract.

(End of clause)

2152.216–71 Fixed price with limited cost redetermination—service charge.

As prescribed in 2116.270–1(b), insert the following clause when a service charge is negotiated:

FIXED PRICE WITH LIMITED COST REDETERMINATION PLUS FIXED FEE CONTRACT—SERVICE CHARGE (OCT 1993)

(a) This is a fixed price with limited cost redetermination plus fixed fee contract, with the fixed fee in the form of a service charge.

(b) OPM shall pay the Contractor the service charge specified in Appendix _____.

(End of clause)

2152.224–70 Confidentiality of records.

As prescribed in 2124.104–70, insert the following clause:

CONFIDENTIALITY OF RECORDS (OCT 1993)

(a) The Contractor shall use the personal data on employees and annuitants that is provided by agencies and OPM, including social security numbers, for only those routine uses stipulated for the data and published annually in the **Federal Register** as a part of OPM's notice of systems of records.

(b) The Contractor shall also hold all medical records, evidence of insurability for insurance coverage, designations of

beneficiaries, amounts of insurance, and information relating thereto, of the insured and family members confidential except for disclosure as follows:

(1) as may be reasonably necessary for the administration of this contract;

(2) as authorized by the insured or his or her estate;

(3) as necessary to permit Government officials having authority to investigate and prosecute alleged civil or criminal actions; and

(4) as necessary to audit the contract.

(End of Clause)

2152.231–70 Accounting and allowable cost.

As prescribed in 2131.270, insert the following clause:

ACCOUNTING AND ALLOWABLE COST (OCT 1993)

(a) *Annual Accounting Statement.* (1) The Contractor shall prepare annually an accounting statement summarizing the financial results of the FEGLI Program for the previous contract year. This statement shall be prepared in accordance with the requirements issued annually by OPM and shall be due to OPM in accordance with a date established by those requirements.

(2) The Contractor shall have the most recent financial statement for the FEGLI Program audited by an accounting firm that ascribes to the standards of the American Institute of Certified Public Accountants. The report shall be submitted to OPM along with the annual accounting statement.

(3) Based on the results of either the independent audit or a Government audit, the annual accounting statements for the FEGLI Program may be (i) adjusted by amounts found not to constitute properly allocable or allowable costs; or (ii) adjusted for prior overpayments or underpayments.

(b) *Definition of costs.* (1) The allowable costs chargeable to the contract for a policy year shall be the actual, necessary, reasonable, and allocable amounts incurred with proper justification and accounting support, determined in accordance with Subpart 31.2 of the Federal Acquisition Regulation (FAR) and Subpart 2131.2 of the Federal Employees Group Life Insurance Program Acquisition Regulation (LIFAR) applicable on October 1 of each year, and the terms of this contract.

(2) In the absence of specific contract terms to the contrary, contract costs shall be classified in accordance with the following criteria:

(i) *Benefits.* Claims costs consist of payments made and costs incurred for life insurance and accidental death and dismemberment insurance on behalf of FEGLI Program subscribers, including interest paid on delayed claims, less any overpayments (subject to the terms of 2131.205–3), refunds, or other credits received.

(ii) *Administrative expenses.* Administrative expenses consist of all allocable, allowable, and reasonable expenses incurred in the adjudication of beneficiary claims or incurred in the Contractor's overall operation of the business. Unless otherwise provided in the contract, FAR, or LIFAR, administrative expenses include, but are not limited to, taxes, insurance and reinsurance premiums, the cost of investigation and settlement of policy claims, the cost of maintaining files regarding payment of claims, and legal expenses incurred in the litigation of benefit payments. Administrative expenses exclude the expenses related to investment income in paragraph (b)(2)(iii) of this clause.

(iii) *Investment income.* Investment income represents the amount earned by the Contractor after deducting reasonable, necessary, and properly allocable investment expenses as a result of investing of FEGLI Program funds. The direct or allocable indirect expenses incurred with respect to the investment of Program funds, such as brokerage fees, are netted against investment income earned rather than as part of administrative expenses.

(c) *Certification of Annual Accounting Statement.* (1) The Contractor shall certify the annual accounting statement in the form set forth in paragraph (c)(2) of this clause. The certificate shall be signed by the chief executive officer for the Contractor's FEGLI Program operations and the chief financial officer for the Contractor's FEGLI Program operations and shall be returned with the annual accounting statement.

(2) The certification required shall be in the following form:

Certification of Annual Accounting Statement

This is to certify that I have reviewed this accounting statement and, to the best of my knowledge and belief, attest that:

1. The statement was prepared in conformity with the guidelines issued by the Office of Personnel Management and fairly presents the financial results of this policy year in conformity with those guidelines;

2. The costs included in the statement are allowable and allocable in accordance with the terms of the contract and with the cost principles of the Federal Employees' Group Life Insurance Program Acquisition Regulation (LIFAR) and the Federal Acquisition Regulation (FAR);

3. Income, overpayments, refunds, and other credits made or owed in accordance with the terms of the contract and applicable cost principles have been included in the statement.

Contractor Name: _____
(Chief Executive Officer for FEGLI Operations)
Date signed: _____
(Chief Financial Officer for FEGLI Operations)
Date signed: _____
(Type or print and sign)
(End of Certificate)
(End of Clause

2152.232–70 Payments.

As prescribed in 2132.171, insert the following clause:

Payments (OCT 1993)

(a) OPM will provide to the Contractor, in full settlement of its obligations under this contract, subject to adjustment based on actual claims and administrative cost or for Contractor fraud, a fixed premium once per month on the first business day of the month. The premium will be determined by an estimate of costs for the contract year as provided in Section _____, and will be redetermined annually. In addition, an annual reconciliation of premiums and actual costs will be performed, and additional payment by OPM or reimbursement by the Contractor will be paid as necessary.

(b) If OPM fails to provide the premium in full by the due date, a grace period of 31 days shall be granted to OPM for providing any premium due, unless OPM has previously given written notice to the Contractor that the contract is to be discontinued on the premium due date. The contract shall continue in force during the grace period.

(c) If OPM fails to provide any premiums within the grace period, the contract shall be discontinued at the end of the 31st day of the grace period, unless the Contractor and OPM agree to continue the contract. OPM shall be liable to the Contractor for all premiums then due and unpaid. If during the grace period OPM presents written notice to the Contractor that the contract is to be discontinued before the expiration of the grace period, the contract shall be discontinued the later of the date of receipt of such written notice by the Contractor or the date specified by OPM for discontinuance. OPM shall be liable to the Contractor for all premiums then due and unpaid.

(d) The specific premium rates, charges, allowances and limitations applicable to the contract are set forth in 5 CFR Parts 870 through 874, 48 CFR chapter 1, LIFAR, and this contract.

(e) In accordance with FAR 52.243–2, if a change is made to the contract that increases or decreases the cost of performance of the work under this contract, the Contracting Officer shall make an equitable adjustment to the estimate on which the monthly premiums are based.

(f) In the event this contract is terminated in accordance with LIFAR Part 2149, the special contingency reserve held by the Contractor shall be available to pay the necessary and proper charges against this contract after other Program assets held by the Contractor are exhausted.

(End of Clause)

2152.232–71 Non-commingling of FEGLI Program funds.

As prescribed in 2132.772, insert the following clause:

NON–COMMINGLING OF FUNDS (OCT 1993)

(a) FEGLI Program funds shall be maintained in such a manner as to be separately identifiable from other assets of the Contractor. Cash and investment balances reported on the FEGLI Program Annual Accounting Statement must be supported by the Contractor's books and records.

(b) The Contractor may request a modification of this requirement from the Contracting Officer. The modification shall be requested in advance and the Contractor shall demonstrate that accounting techniques have been established that will clearly

measure FEGLI Program cash and investment income (i.e., subsidiary ledgers). Reconciliations between amounts reported and actual amounts shown in accounting records shall be provided as supporting schedules to the Annual Accounting Statements.

(End of Clause)

2152.232–72 Approval for assignment of claims.

As prescribed in 2132.806, insert the following clause:

APPROVAL FOR ASSIGNMENT OF CLAIMS (OCT 1993)

(a) The Contractor shall not make any assignment of FEGLI Program funds under the Assignment of Claims Act without the prior written approval of the Contracting Officer.

(b) Unless a different period is specified in the Contracting Officer's written approval, an assignment of FEGLI Program funds shall be in force only for a period of 1 year from the date of the Contracting Officer's approval. However, assignments may be renewed upon their expiration.

(End of Clause)

2152.237–70 Continuity of Services.

As prescribed in 2137.110, insert the following clause:

CONTINUITY OF SERVICE (OCT 1993)

(a) The Contractor recognizes that the services under this contract are vital to the Government and must be continued without interruption and that, upon contract expiration or termination, including termination by the Contractor, a successor, either the Government or another contractor, may continue them. The Contractor agrees to (1) furnish phase-in training and (2) exercise its best efforts and cooperation to effect an orderly and efficient transition to a successor.

(b) The Contractor shall, upon the Contracting Officer's written notice, (1) furnish phase-in and phase-out services for up to 10 months after this contract expires and (2) negotiate in good faith a plan with a successor to determine the nature and extent of phase-in and phase-out services required. The plan shall specify a training program and a date for transferring responsibilities for each division of work described in the plan, and shall be subject to the Contracting Officer's approval. The Contractor shall provide sufficient experienced personnel during the phase-in and phase-out period to ensure that the services called for by this contract are maintained at the required level of proficiency.

(c) The Contractor shall allow as many personnel as practicable to remain on the job to help the successor maintain the continuity and consistency of the services required by this contract. The Contractor also shall disclose necessary personnel records and allow the successor to conduct onsite interviews with these employees. If selected employees are agreeable to the change, the Contractor shall release them at a mutually agreeable date and negotiate transfer of their earned fringe benefits to the successor.

(d) The Contractor shall be reimbursed for all reasonable phase-in, phase-out costs (i.e., costs incurred within the agreed period after contract termination that result from phase-in and phase-out operations) and a risk or service charge not to exceed a pro rata portion of the risk or service charge under this contract. The amount of profit shall be based upon the accurate and timely processing of benefit claims, the volume and validity of complaints received by OPM, the timeliness and adequacy of reports on operations, and responsiveness to OPM offices, enrollees, beneficiaries, and Congress. In setting the final profit figure, obstacles overcome by the Contractor during the phase-in and phase-out period will be taken into consideration.

(End of Clause)

2152.243–70 Changes.

As prescribed in 2143.205, insert the following clause:

CHANGES (OCT 1993)

(a) Except as provided in paragraph (f) of this clause, the Contracting Officer may at any time, by written order, and without notice to the sureties, if any, make changes within the general scope of this contract in any one or more of the following:

(1) Description of services to be performed.

(2) Time of performance (i.e.: hours of the day, days of the week, etc.).

(3) Place of performance of the services.

(b) If any such change causes an increase or decrease in the cost of, or the time required for, performance of any part of the work under this contract, or the Contractor's liability under this contract, whether or not changed by the order, the Contracting Officer shall make an equitable adjustment in the contract price, the delivery schedule, or both, and shall modify the contract.

(c) The Contractor must assert its right to an adjustment under this clause with 30 days from the date of receipt of the written order. However, if the Contracting Officer decides that the facts justify it, the Contracting Officer may receive and act upon a proposal submitted before final payment of the contract.

(d) If the Contractor's proposal includes the cost of property made obsolete or excess by the change, the Contracting Officer shall have the right to prescribe the manner of the disposition of the property.

(e) Failure to agree to any adjustment shall be a dispute under the Disputes clause. However, nothing in this clause shall excuse the Contractor from proceeding with the contract as changed.

(f) The Contracting Officer shall not make any changes pursuant to paragraph (a) of this clause to conform this contract to any amendment in the LIFAR before the effective date of the amendment as provided for in LIFAR 2101.370.

(End of Clause)

2152.244–70 Subcontracts.

As prescribed by 2144.204, insert the following clause:

SUBCONTRACTS (OCT 1993)

(a) The Contractor shall notify the Contracting Officer reasonably in advance of entering into any subcontract or subcontract modification, or as otherwise specified by this contract, when the cost of that portion of the subcontract that is charged the FEGLI Program contract exceeds $200,000 and more than 25 percent of the subcontract cost is charged to the FEGLI Program contract.

(b) The advance notification required by paragraph (a) of this clause shall include the following information:

(1) A description of the supplies or services to be subcontracted;

(2) Identification of the type of subcontract to be used;

(3) Identification of the proposed subcontract and an explanation of why and how the proposed subcontractor was selected, including the competition obtained;

(4) The proposed subcontract price and the Contractor's cost or price analysis;

(5) The subcontractor's current, complete, and accurate cost or pricing data and Certificate of Current Cost or Pricing Data, if required by other contract provisions.

(6) The subcontractor's Disclosure Statement or Certificate relating to Cost Accounting Standards when such data are required by other provisions of this contract; and

(7) A negotiation memorandum reflecting—

(i) The principal elements of the subcontract price negotiations;

(ii) The most significant consideration controlling establishment of initial or revised prices;

(iii) The reason cost or pricing data were or were not required;

(iv) The extent, if any, to which the Contractor did not rely on the subcontractor's cost or pricing data in determining the price objective and in negotiating the final price;

(v) The extent to which it was recognized in the negotiation that the subcontractor's cost or pricing data were not accurate, complete, or current; the action taken by the Contractor and the subcontractor; and the effect of any such defective data on the total price negotiated;

(vi) The reasons for any significant difference between the Contractor's price objective and the price negotiated; and

(vii) A complete explanation of the incentive fee or profit plan when incentives are used. The explanation shall identify each critical performance element, management decisions used to quantify each incentive element, reasons for the incentives, and a summary of all trade-off possibilities considered.

(c) The Contractor shall obtain the Contracting Officer's written consent before placing any subcontract for which advance notification is required under paragraph (a) of this clause. However, the Contracting Officer may ratify in writing any such subcontract. Ratification shall constitute the consent of the Contracting Officer.

(d) The Contracting Officer may waive the requirement for advance notification and consent required by paragraph (a), (b), and (c) of this clause where the Contractor and subcontractor submit an application or renewal as a contractor team arrangement as defined in FAR subpart 9.6 and—

(1) The Contracting Officer evaluated the arrangement during negotiation of the contract or contract renewal; and

(2) The subcontractor's price and/or costs were included in the plan's rates that were reviewed and approved by the Contracting Officer during negotiations of the contract or contract renewal.

(e) Unless the consent or approval specifically provides otherwise, consent by the Contracting Office to any subcontract shall not constitute a determination (1) of the acceptability of any subcontract terms or conditions; (2) of the allowability of any cost under this contract; or (3) to relieve the Contractor of any responsibility for performing this contract.

(f) No subcontract placed under this contract shall provide for payment on a cost-plus-a-percentage-of-cost basis. Any fee payable under cost reimbursement type subcontracts shall not exceed the fee limitations in FAR 15.903(d). Any profit or fee payable under a subcontract shall be in accordance with the provisions of Section _____, Service Charge.

(g) The Contractor shall give the Contracting Officer immediate written notice of any action or suit filed and prompt notice of any claim made against the Contractor by any subcontractor or vendor that, in the opinion of the Contractor, may result in litigation related in any way to this contract with respect to which the Contractor may be entitled to reimbursement from the Government.

(End of Clause)

2152.246–70 Quality assurance requirements.

As prescribed by 2146.270–1 insert the following clause:

QUALITY ASSURANCE REQUIREMENTS (OCT 1993)

(a) The Contractor shall develop and apply a quality assurance program as directed by the Contracting Officer pursuant to LIFAR 2146.270.

(b) The Contractor shall keep complete records of its quality assurance procedures and the results of their implementation and make them available to the Government during contract performance and for as long afterwards as the contract requires.

(c) The Contracting Officer or his or her representative has the right to inspect and test all services called for by the contract, to the extent practicable, at all times and places during the term of the contract and for as long afterward as the contract requires. The Contracting Officer or his or her representative shall perform any inspections and tests in a manner that will not unduly delay the work.

(End of Clause)

2152.249–70 Renewal and termination.

As prescribed in 2149.505–70, insert the following clause:

RENEWAL AND TERMINATION (OCT 1993)

(a) This contract renews automatically each October 1st, unless written notice of termination is given by the Contractor not less than 60 calendar days before the renewal date.

(b) This contract may be terminated by OPM at any time for default by the Contractor. This contract terminates at the end of the 31st day after default for nonpayment by the Government, unless the Contractor and OPM agree to continue the contract.

(c) This contract may be terminated for convenience of the Government 60 days after the Contractor's receipt of OPM's written notice of termination.

(d) Upon termination of the contract, the Contractor agrees to assist OPM with an orderly and efficient transition to a successor in accordance with LIFAR 2137.102, 2137.110, and the provisions of the "Continuity of Services" clause at 2152.237–70.

(e) After receipt of a termination notice, the prime Contractor shall, unless directed otherwise by the Contracting Officer, terminate all subcontracts to the extent that they relate to the performance of the FEGLI Program contract. The failure of the prime Contractor to include an appropriate termination clause in any subcontract, or to exercise the clause rights, shall not affect the Contracting Officer's right to require the termination of the subcontract; or increase the obligation of the Government beyond what it would have been if the subcontract had contained an appropriate clause.

(End of Clause)

Subpart 2152.3—Provision and Clause Matrix

2152.370 Use of the matrix.

(a) The matrix in this section lists the FAR and LIFAR clauses to be used with the FEGLI Program contract. The clauses are to be incorporated in the contract in full text.

(b) Certain contract clauses are mandatory for FEGLI Program contracts. Other clauses are to be used only when made applicable by pertinent sections of the FAR or LIFAR. An "M" in the "Use Status" column indicates that the clause is mandatory. An "A" indicates that the clause is to be used only when the applicable conditions are met.

FEGLI PROGRAM CLAUSE MATRIX

Clause No.	Text reference	Title	Use status
FAR 52.202–1	FAR 2.2	Definitions	M
FAR 52.203–1	FAR 3.102–2	Officials Not to Benefit	M
FAR 52.203–3	FAR 3.202	Gratuities	M
FAR 52.203–5	FAR 3.404(c)	Covenant Against Contingent Fees	M
FAR 52.203–6	FAR 3.503–2	Restrictions of Subcontractor Sales to the Government	M
FAR 52.203–7	FAR 3.502–3	Anti-Kickback Procedures	M
FAR 52.203–9	FAR 3.104–10(b)	Requirement for Certificate of Procurement Integrity—Modification	M
FAR 52.203–12	FAR 3.808	Limitation on Payments to Influence Certain Federal Transactions	M
2152.203–70	2103.571	Misleading, Deceptive, or Unfair Advertising	M
FAR 52.209–6	FAR 9.409(b)	Protecting the Government's Interest When Subcontracting With Contractors Debarred, Suspended, or Proposed for Debarment.	M
2152.209–71	2109.409(b)	Certification Regarding Debarment, Suspension, Proposed Debarment, and Other Responsibility Matters.	M
2152.210–70	2110.7004(a)	Investment Income	M
2152.210–71	2110.7004(b)	Notice of Significant Events	M
FAR 52.215–1	FAR 15.106–1(b)	Examination of Records by Comptroller General	M
FAR 52.215–2	FAR 15.106–2(b)	Audit—Negotiation	M
FAR 52.215–22	FAR 15.804–8(a)	Price Reduction for Defective Cost or Pricing Data	M
FAR 52.215–24	FAR 15.804–8(c)	Subcontractor Cost or Pricing Data	M
FAR 52.215–27	FAR 15.804–8(e)	Termination of Defined Benefit Pension Plans	M
FAR 52.215–30	FAR 15.904	Facilities Capital Cost of Money	M
FAR 52.215–31	FAR 15.904	Waiver of Facilities Capital Cost of Money	A
FAR 52.215–39	FAR 15.804–8(f)	Reversion or Adjustment of Plans for Post-retirement Benefits (PRB) Other Than Pensions.	A
2152.215–70	2115.106–270	Contractor Records Retention	
2152.216–70	2116.270–1(a)	Fixed Price With Limited Cost Redetermination—Risk Charge	A

FEGLI PROGRAM CLAUSE MATRIX—Continued

Clause No.	Text reference	Title	Use atus
FAR 52.215–39	FAR 15.804–8(f)	Reversion or Adjustment of Plans for Post-retirement Benefits (PRB) Other Than Pensions	A
2152.215–70	2115.106–270	Contractor Records Retention	
2152.216–70	2116.270–1(a)	Fixed Price With Limited Cost Redetermination—Risk Charge	A
2152.216–71	2116.270–1(b)	Fixed Price With Limited Cost Redetermination—Service Charge	A
FAR 52.219–8	FAR 19.708(a)	Utilization of Small Business Concerns and Small Disadvantaged Business Concerns	M
FAR 52.219–13	FAR 19.902	Utilization of Women-Owned Small Businesses	M
FAR 52.220–3	FAR 21.302(a)	Utilization of Labor Surplus Area Concerns	M
FAR 52.222–1	FAR 22.103–5(a)	Notice to the Government of Labor Disputes	M
FAR 52.222–3	FAR 22.202	Convict Labor	M
FAR 52.222–4	FAR 22.305(a)	Contract Work Hours and Safety Standards Act—Overtime Compensation—General	M
FAR 52.222–21	FAR 22.810(a)(1)	Certification of NonSegregated Facilities	M
FAR 52.222–22	FAR 22.810(a)(2)	Previous Contracts and Compliance Reports	M
FAR 52.222–25	FAR 22.810(d)	Affirmative Action Compliance	M
FAR 52.222–26	FAR 22.810(e)	Equal Opportunity	M
FAR 52.222–28	FAR 22.810(g)	Equal Opportunity Preaward Clearance of Subcontracts	M
FAR 52.222–29	FAR 22.810(h)	Notification of Visa Denial	A
FAR 52.222–35	FAR 22.1308(a)	Affirmative Action for Special Disabled and Vietnam Era Veterans	M
FAR 52.222–36	FAR 22.1408(a)	Affirmative Action for Handicapped Workers	M
FAR 52.222–37	FAR 22.1308(b)	Employment Reports on Special Disabled Veterans and Veterans of the Vietnam Era	M
FAR 52.223–2	FAR 23.105(b)	Clean Air and Water	A
FAR 52.223–6	FAR 23.505(c)	Drug-Free Workplace	M
2152.224–70	2124.104–70	Confidentiality of Records	M
FAR 52.227–1	FAR 27.201–2(a)	Authorization and Consent	M
FAR 52.227–2	FAR 27.202–2	Notice and Assistance	A
FAR 52.228–7	FAR 28.311–2 Modification: 2128.370	Insurance—Liability to Third Persons	M
2152.231–70	2131.270	Accounting and Allowable Cost	M
FAR 52.232–9	FAR 32.111(c)(2)	Limitation on Withholding of Payments (Modified)	M
FAR 52.232–17	FAR 32.617 Modification: 2132.617	Interest	M
FAR 52.232–23	FAR 32.806(a)(1)	Assignment of Claims	A
FAR 52.232–28	FAR 32.908(d)	Electronic Funds Transfer Payment Method	M
2152.232–70	2132.171	Payments	M
2152.232–71	2132.772	Non-Commingling of FEGLI Program Funds	M
2152.232–72	2132.806	Approval for Assignment of Claims	M
FAR 52.233–1	FAR 33.214	Disputes (Alternate I)	M
2152.237–70	2137.110	Continuity of Services	M
FAR 52.242–1	FAR 42.802	Notice of Intent to Disallow Costs	M
FAR 52.242–13	FAR 42.903	Bankruptcy	M
2152.243–70	2143.205	Changes—FEGLI Program Contract	M
FAR 52.244–5	FAR 44.204(e)	Competition in Subcontracting	M
2152.244–70	2144.204	Subcontracts	M
4FAR 52.245–2	FAR 45.106(b)(1)	Government Property (Fixed-Price Contracts)	M
FAR 52.246–4	FAR 46.304	Inspection of Services—Fixed-Price	M
FAR 52.246–25	FAR 46.805(a)(4)	Limitation of Liability—Services	M
2152.246–70	2146.270–1	Quality Assurance Requirements	M
FAR 52.247–63	FAR 47.405	Preference for U.S.-Flag Air Carriers	M
FAR 52.249–2	FAR 49.502(b)(1)	Termination for Convenience of the Government (Fixed Price)	M
FAR 52.249–8	FAR 49.504(a)(1)	Default (Fixed-Price Supply and Service)	M
FAR 52.249–14	FAR 49.505(d)	Excusable Delays	M
2152.249–70	2149.505–70	Renewal and Termination	M
FAR 52.251–1	FAR 51.107	Government Supply Sources	A
FAR 52.252–4	FAR 52.107(d)	Alterations in Contract	M
FAR 52.252–6	FAR 52.107(f)	Authorized Deviations in Clauses	M

[FR Doc. 93–17980 Filed 7–27–93; 8:45 am]
BILLING CODE 6325–01–M

DEPARTMENT OF DEFENSE

48 CFR Part 252

Defense Federal Acquisition Regulation Supplement (DFARS); Correction

AGENCY: Department of Defense (DoD).

ACTION: Correction to final regulation.

SUMMARY: The Department of Defense published miscellaneous amendments to acquisition regulations on November 12, 1992 (57 FR 53596). The revision of § 252.223–7005 inadvertently left out paragraph (e) of the Hazardous waste liability clause.

EFFECTIVE DATE: October 30, 1992.

FOR FURTHER INFORMATION CONTACT:

Lucile Martin at (703) 697–7266.

Claudia L. Naugle,

Executive Editor, Defense Acquisition Regulations Council.

The following correction is made to the rule published on November 12, 1992:

1. On page 53601, in the third column, section 252.223–7005 is corrected by adding paragraph (e) to read as follows:

§ 252.223–7005 Hazardous waste liability.

* * * * *

(e) The Contractor shall include this clause, including this paragraph (e), in each subcontract under which the subcontractor receives hazardous waste from a defense facility.

(End of clause)

[FR Doc. 93–17982 Filed 7–27–93; 8:45 am]

BILLING CODE 3810–01–M

Proposed Rules

Federal Register
Vol. 58, No. 143
Wednesday, July 28, 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 23

[Docket No. 27344; Notice No. 93–10]

RIN 2120–AD27

Airworthiness Standards; Occupant Protection Standards for Commuter Category Airplanes; Correction

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Notice of proposed rulemaking; correction.

SUMMARY: This document corrects an error in the proposed rule on "Occupant Protection Standards for Commuter Category Airplanes", which was published on Wednesday, July 14, 1993 (58 FR 38028).

FOR FURTHER INFORMATION CONTACT: Mr. Michael Downs, Aerospace Engineer, Standards Office (ACE–112), Aircraft Certification Service, Small Airplane Directorate, Federal Aviation Administration, 601 East 12th Street, Kansas City, Missouri 64106, telephone (816) 426–5866.

SUPPLEMENTARY INFORMATION: FR Doc. 93–1665 which was published on July 14, 1993 (58 FR 38028), in the Heading, Notice No. 93–71 should read Notice No. 93–10.

Debbie Swank,

Program Management Staff, Office of Chief Counsel.

[FR Doc. 93–17973 Filed 7–27–93; 8:45 am]

BILLING CODE 4910–13–M

14 CFR Part 39

[Docket No. 93–CE–22–AD]

Airworthiness Directives: Beech Aircraft Corp. 33 and 36 Series Airplanes

AGENCY: Federal Aviation Administration, DOT.

ACTION: Supplemental notice of proposed rulemaking (NPRM); Reopening of the comment period.

SUMMARY: This document proposes to revise an earlier proposed airworthiness directive (AD), which would have required repetitively inspecting the rudder spar on certain Beech Aircraft Corporation (Beech) 33 and 36 series airplanes, and repairing any cracks found; would have provided the option of modifying the rudder spar as terminating action for the repetitive inspections; and would have superseded AD 92–15–06. Based on comments received on this previous proposal and examination of all available information, the Federal Aviation Administration (FAA) has determined that the document should be revised to propose an additional procedure for a modification of a rudder found cracked in the area of the center hinge. The proposed actions are intended to prevent separation of the rudder from the airplane caused by cracks in the forward rudder spar.

DATES: Comments must be received on or before October 4, 1993.

ADDRESSES: Submit comments in triplicate to the FAA, Central Region, Office of the Assistant Chief Counsel, Attention: Rules Docket No. 93–CE–22–AD, room 1558, 601 E. 12th Street, Kansas City, Missouri 64106. Comments may be inspected at this location between 8 a.m. and 4 p.m., Monday through Friday, holidays excepted.

Service information that applies to the proposed AD may be obtained from the Beech Aircraft Corporation, P.O. Box 85, Wichita, Kansas 67201–0085. This information also may be examined at the Rules Docket at the address above.

FOR FURTHER INFORMATION CONTACT: Mr. Larry Engler, Aerospace Engineer, Wichita Aircraft Certification Office, FAA, 1801 Airport Road, Mid-Continent Airport, Wichita, Kansas 67209; Telephone (316) 946–4122; Facsimile (316) 946–4407.

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 should identify the Rules Docket number and be submitted in triplicate to the address specified above. All communications received on or before the closing date for comments, 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 that summarizes 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 No. 93–CE–22–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, Central Region, Office of the Assistant Chief Counsel, Attention: Rules Docket No. 93–CE–22–AD, room 1558, 601 E. 12th Street, Kansas City, Missouri 64106.

Discussion

A proposal to amend part 39 of the Federal Aviation Regulations to include an AD that applies to certain Beech 33 and 36 series airplanes was published in the **Federal Register** on March 25, 1993 (58 FR 16137). The action proposed to supersede AD 92–15–06 with a new AD that would (1) retain the inspection, repair, and optional modification requirements of AD 92–5–06; and (2) incorporate the option of installing an SMP rudder middle-hinge bracket in accordance with STC SA5870NM as one of the modifications that would terminate the need for the repetitive inspection requirement.

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

The commenter states that a rudder middle-hinge bracket alone should not

be allowed as an inspection-terminating modification. This commenter explains that the middle-hinge bracket is designed to serve as a repair for a rudder spar with a crack in the area of the center hinge, and is then installed in conjunction with an upper-hinge bracket. The FAA concurs that the middle-hinge bracket is only necessary if a crack is found at the rudder spar center hinge area and has revised the proposed AD accordingly.

No comments were received concerning the FAA's estimate of the cost impact upon the public.

This additional requirement of installing the upper-hinge bracket in conjunction with the middle-hinge bracket modification if cracks are found at the rudder spar center hinge area was not included in the original proposal. Since it extends beyond the scope of that which was originally proposed, the FAA has (1) revised the document to add this modification procedure; and (2) reopened the comment period to provide additional time for public comment.

Since an unsafe condition has been identified that is likely to exist or develop in other Beech 33 and 36 series airplanes of the same type design, the proposed AD would supersede AD 92–15–06 with a new AD that would (1) retain the inspection, repair, and optional modification requirements of AD 92–15–06; and (2) require installing an SMP rudder spar middle-hinge bracket in accordance with STC SA5870NM if cracks were found in the rudder spar center hinge area in conjunction with the already required upper-hinge bracket.

The FAA estimates that 5,900 airplanes in the U.S. registry would be affected by the proposed AD, that it would take approximately 2 workhours per airplane to accomplish the proposed inspection, and that the average labor rate is approximately $55 an hour. Based on these figures, the total cost impact of the proposed AD on U.S. operators is estimated to be $649,000. AD 92–15–06, which would be superseded by the proposed action, required the same actions as is proposed, except for the addition of a modification if a crack was found in the rudder spar center hinge area. Since this modification only affects airplanes with a crack found in the rudder spar center hinge area, the FAA has no way of knowing how much of an additional cost impact the proposed AD would have on U.S. operators over that which is already required by AD 92–15–06.

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 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) 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 has been placed 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 removing AD 92–15–06, Amendment 39–8300 (57 FR29200, July 1, 1992), and by adding the following new airworthiness directive:

Beech Aircraft Corporation: Docket No. 93–CE–22–AD. Supersedes AD 92–15–06, Amendment 39–8300.

Applicability: The following Beech model and serial numbered airplanes, certificated in any category:

Models	Serial Numbers
35–33, 35–A33, 35–B33, 35–C33, E33, F33, and G33.	CD–1 through CD–1304.
35–C33A, E33A, F33A.	CE–1 through CE–1425.
E33C and F33C	CJ–1 through CJ–179.
36 and A36	E–1 through E–2518
A36TC and B36TC	EA–1 through EA–500.

Compliance: Required as indicated after the effective date of this AD, unless already accomplished (compliance with superseded AD 92–15–06 or superseded AD 91–23–07).

To prevent separation of the rudder from the airplane caused by cracks in the forward rudder spar, accomplish the following:

(a) Upon the accumulation of 1,000 hours time-in-service (TIS) or within the next 100 hours TIS, whichever occurs later, inspect the forward rudder spar for cracks in accordance with the instructions in Beech Service Bulletin (SB) No. 2333, Revision 1, dated November 1991.

(b) If no cracks are found, accomplish one of the following:

(1) Reinspect the rudder forward spar for cracks in accordance with the instructions in Beech SB No. 2333, Revision 1, dated November 1991, at intervals not to exceed 500 hours TIS until either paragraph (b)(2), (b)(3), or (b)(4) of this AD is accomplished;

(2) Install Kit No. 33–6001–1 S in accordance with Beech SB No. 2333, Revision 1, dated November 1991;

(3) Install a Spacecraft Machine Products (SMP) reinforcement bracket in accordance with Supplemental Type Certificate (STC) SA4899NM; or

(4) Replace the rudder assembly with either part number 33–630000–137, -139, -141, -167, or -169, as applicable, in accordance with the instructions in Beech SB No. 2333, Revision 1, dated November 1991.

(c) If cracks are found, prior to further flight, accomplish one of the following:

(1) Replace the rudder assembly with either part number 33–630000–137, -139, -141, -167, or -169, as applicable, in accordance with the instructions in Beech SB No. 2333, Revision 1, dated November 1991;

(2) Install Kit No. 33–6001–1 S in accordance with Beech SB No. 2333, Revision 1, dated November 1991;

(3) If the cracks are only in the area of the upper hinge around the rivets and fasteners as illustrated in Figure 1 of Beech SB No. 2333, Revision 1, dated November 1991, then stop drill the cracks and install an SMP reinforcement bracket in accordance with SA4899NM; or

(4) If the cracks are only in the area of the middle hinge around the rivets and fasteners as illustrated in Figure 1 of Beech SB No. 2333, Revision 1, dated November 1991, then stop drill the cracks, install an SMP rudder spar middle-hinge bracket in accordance with STC SA5870NM, and install an SMP reinforcement bracket in accordance with SA4899NM.

(d) If a modification or replacement has been accomplished in accordance with either paragraph (b)(2), (b)(3), (b)(4), (c)(1), (c)(2), (c)(3), or (c)(4) of this AD, then no repetitive inspections are required by this AD.

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

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

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

(g) Service information that applies to this AD may be obtained from the Beech Aircraft Corporation, P.O. Box 85, Wichita, Kansas 67201–0085. This information may also be inspected at the FAA, Central Region, Office of the Assistant Chief Counsel, room 1558, 601 E. 12th Street, Kansas City, Missouri.

(h) This amendment supersedes AD 92–15–06, Amendment 39–8300.

Issued in Kansas City, Missouri, on July 21, 1993.

Barry D. Clements,

Manager, Small Airplane Directorate, Aircraft Certification Service.

[FR Doc. 93–17944 Filed 7–27–93; 8:45 am]

BILLING CODE 4910–13–U

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14 CFR Part 39

[Docket No. 93–CE–32–AD]

Airworthiness Directives: Piper Aircraft Corp. PA31 Series Airplanes

AGENCY: Federal Aviation Administration, DOT.

ACTION: Notice of proposed rulemaking (NPRM).

SUMMARY: This document proposes to supersede Airworthiness Directive (AD) 93–02–13, which currently requires repetitively inspecting the engine baffle seals on Piper Aircraft Corporation (Piper) PA–31 series airplanes, and, if found improperly positioned, either reinforcing these seals or installing thicker material. That AD also allows for the termination of the repetitive inspections if the thicker baffle seal material is installed. The Federal Aviation Administration (FAA) has found that the baffle seal reinforcement is not preventing the seals from becoming improperly positioned, and that other baffle seal installations are available. This action incorporates these installations into the current AD, and eliminates the baffle seal reinforcement. The actions specified by the proposed AD are intended to prevent improper sealing of these seals to the engine cowling, which could result in high engine operating temperatures.

DATES: Comments must be received on or before September 30, 1993.

ADDRESSES: Submit comments in triplicate to the Federal Aviation Administration (FAA), Central Region, Office of the Assistant Chief Counsel, Attention: Rules Docket No. 93–CE–32–AD, room 1558, 601 E. 12th Street, Kansas City, Missouri 64106. Comments may be inspected at this location between 8 a.m. and 4 p.m., Monday through Friday, holidays excepted.

Service information and parts that apply to the proposed AD may be obtained from the Piper Aircraft Corporation, 2926 Piper Drive, Vero Beach, Florida 32960; Telephone (407) 567–4361; or Brown Aircraft Supply, Inc, 4123 Muncy Road, Jacksonville, Florida 32207; Telephone (904) 396–6655, as applicable. This information also may be examined at the Rules Docket at the address above.

FOR FURTHER INFORMATION CONTACT: Ms. Juanita Craft-Lloyd, Aerospace Engineer, Propulsion Branch, Atlanta Aircraft Certification Office, 1669 Phoenix Parkway, suite 210C, Atlanta, Georgia 30349; Telephone (404) 991–3810; Facsimile (404) 991–3606.

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 should identify the Rules Docket number and be submitted in triplicate to the address specified above. All communications received on or before the closing date for comments, 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 that summarizes 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 No. 93–CE–32–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, Central Region, Office of the Assistant Chief Counsel, Attention: Rules Docket No. 93–CE–32–AD, room 1558, 601 E. 12th Street, Kansas City, Missouri 64106.

Discussion

AD 93–02–13, Amendment 39–8496 (58 FR 7737, February 9, 1993), currently requires repetitively inspecting the engine baffle seals on Piper Aircraft Corporation (Piper) PA–31 series airplanes, and, if found improperly positioned, either reinforcing the baffle seals or installing thicker baffle material. AD 93–02–13 also allows for the termination of the repetitive inspections if the thicker baffle seal material is installed. The baffle seal reinforcement is accomplished in accordance with Piper Service Bulletin No. 693, dated July 28, 1980; and the referenced baffle seal installation is accomplished in accordance with Piper Kit 764 093 as referenced by Piper Service Letter No. 875, dated May 11, 1981. AD 93–02–13 superseded AD 92–26–02, Amendment 39–8429 (57 FR 57096, December 3, 1992), which superseded AD 80–20–04, Amendment 39–3925 (45 FR 64168, September 29, 1980).

The FAA's continuous review of the conditions that prompted these ADs related to the Piper PA–31 series airplane baffle seals reveals that the current baffle seal reinforcement is not preventing the seals from blowing back (becoming improperly positioned). In addition, the following baffle seal installations are available:

- Brown Aircraft Supply Engine Baffle Material, part number (P/N) BA71646–1 and BA71646–2, temperature range −40 to 300 degrees Fahrenheit.
- Brown Aircraft Supply, Fiber Reinforced High Temperature Silicone Engine Baffle Material (red), P/N T–95182, temperature range −65 to 550 degrees Fahrenheit; and
- Brown Aircraft Supply, Engine Baffle Material, P/N T–8071, temperature range −40 to 300 degrees Fahrenheit.

After examining the circumstances and reviewing all available information related to the incidents described above, the FAA has determined that: (1) The current baffle seal reinforcement is ineffective and should be eliminated; (2) the referenced installations provide an equivalent level of safety to that installation specified in AD 93–02–13; and (3) AD action should be taken in order to prevent improper sealing of

these seals to the engine cowling, which could result in high engine operating temperatures.

Since an unsafe condition has been identified that is likely to exist or develop in other Piper PA-31 series airplanes of the same type design, the proposed AD would supersede AD 93-02-13 with a new AD that would: (1) Retain the inspection and installation requirements of AD 93-02-13; (2) eliminate the reinforcement option; and (3) incorporate the three additional installation options (referenced earlier) into the current AD. The Piper baffle seal installation would continue to be accomplished in accordance with Piper Kit 764 093 as referenced by Piper Service Letter No. 875, dated May 11, 1981. Either of the Brown Aircraft Supply baffle seal installations would be accomplished in accordance with procedures includad in Figure 1 of the proposed AD.

The FAA estimates that 2,448 airplanes in the U.S. registry would be affected by the proposed AD, that it would take approximately 1 workhour per airplane to accomplish the proposed inspection, and that the average labor rate is approximately $55 an hour. Since an owner/operator who holds a private pilot certificate as authorized by FAR 43.7 is allowed to accomplish the proposed inspection, the only cost impact upon the public would be the time it takes to accomplish this inspection.

The airplane operator would have the option of installing thicker baffle seals and then eliminating the repetitive inspections. The proposed installation would take approximately 8 workhours to accomplish at an average labor rate of $55 an hour. Piper parts cost approximately $1,568, and Brown Aircraft Supply parts cost approximately $65. The cost difference is due to the Piper parts consisting of a kit that not only includes the baffle seals, but also new baffles. Based on these figures, the cost impact upon any U.S. operator who wishes to accomplish this baffle seal installation would be $2,008 (with Piper parts) per airplane, or $505 (with Brown Aircraft Supply parts) per airplane. The only difference between the proposed AD and AD 93-02-13, which would be superseded by the proposed action, is the addition of the Brown Aircraft Supply installations. These installations cost less than the other additions, so, if this option is accomplished, the proposed AD would actually cost less than the current inspection-terminating modification specified in AD 93-02-13.

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 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) 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 has been placed 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 removing AD 93-02-13, Amendment 39-8496 (58 FR 7737, February 9, 1993), and by adding the following new airworthiness directive:

Piper Aircraft Corporation: Docket No. 93-CE-32-AD. Supersedes AD 93-02-13, Amendment 39-8496.

Applicability: Model PA-31, PA-31-300, and PA-31-325 airplanes (serial numbers 31-2 through 31-8012089), and Model PA-31-350 airplanes (serial numbers 31-5001 through 31-8052199), certificated in any category. Compliance: Required initially within the next 50 hours time-in-service (TIS) after the effective date of this AD, unless already accomplished (compliance with AD 80-20-04, Amendment 39-3925, AD 92-26-02, Amendment 39-8429, or AD 93-02-13, Amendment 39-8496), and thereafter as indicated.

To prevent improper sealing of the baffle seals to the engine cowling, which could result in high engine operating temperatures, accomplish the following:

(a) Visually inspect the engine baffle seals for proper positioning by using a light and looking in air inlets and access doors to ensure that forward seals and lower aft seals are all facing forward and not blown back.

(b) If baffle seals are improperly positioned (blown back), prior to further flight, accomplish one of the following:

(1) Install thicker baffle seals in accordance with Piper Kit 764 093 as referenced in Piper Service Letter 875, dated May 11, 1981; or

Note 1: Piper Kit 764 093 includes the entire baffle assembly consisting of both baffles and baffle seals. Replacing the baffle seals included in this kit is the only requirement of paragraph (b)(1) or (c)(2) of this AD.

(2) Install baffles of one of the following materials in accordance with Figure 1 of this AD:

(i) Brown Aircraft Supply Engine Baffle Material, part number (P/N) BA71646-1 and BA71646-2, temperature range −40 to 300 degrees Fahrenheit.

(ii) Brown Aircraft Supply, Fiber Reinforced High Temperature Silicone Engine Baffle Material (red), P/N T-95182, temperature range −65 to 550 degrees Fahrenheit; and

(iii) Brown Aircraft Supply, Engine Baffle Material, P/N T-8071, temperature range −40 to 300 degrees Fahrenheit.

Figure 1

Brown Aircraft Supply Baffle Seal Installation Procedures

1. Inspect the existing baffle seals through the front of the cowl to ensure existing seals are of sufficient length to provide at least 1-inch of contact with upper and lower cowls when properly positioned. Mark areas that need lengthening, and note the minimum length needed to meet requirements.

2. Remove the cowls in accordance with the applicable maintenance manual. Remove rivets, wire, and screws, as applicable, that secure baffle seals (fabric) to the engine baffles (metal). Retain any metal strips that are used to secure seals to the engine baffles.

3. Remove existing baffle seals and lay against Brown Aircraft Supply baffle seal material.

4. Cut new seals around the layout, ensuring that seals are lengthened as noted in procedure 1.

5. Reattach new seals to the engine baffles with the original screws, rivets, and wires, as applicable, or new hardware of the same part number.

Note: The front upper cowl baffle seal is most critical, especially at the inboard and outboard corners. If the old material can be removed intact, and the curve can be transferred to the new flat material, then it may not be necessary to slit the material where it curves from vertical to horizontal contact with the cowl. If the curve requires a slit in the material at the corner, then it is recommended that the slit be tied with ty-raps or safety wire to ensure contact with the cowl around the radius.

(c) If baffle seals are properly positioned (not blown back), within the next 50 hours TIS, accomplish one of the following:

(1) Reinspect the engine baffle seals as specified in paragraph (a) of this AD, and continue to reinspect thereafter at intervals not to exceed 50 hours TIS; or

(2) Install thicker baffle seals as specified in either paragraph (b)(1) or (b)(2) of this AD. This installation terminates the inspection requirements of this AD.

(d) The inspections required by this AD may be performed by the owner/operator holding at least a private pilot certificate as authorized by FAR 43.7, and must be entered into the aircraft records showing compliance with this AD in accordance with FAR 43.11.

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

(f) An alternative method of compliance or adjustment of the initial or repetitive compliance times that provides an equivalent level of safety may be approved by the Manager, Atlanta Aircraft Certification Office, 1669 Phoenix Parkway, Suite 210C, Atlanta, Georgia 30349. The request shall be forwarded through an appropriate FAA Maintenance Inspector, who may add comments and then send it to the Manager, Atlanta Aircraft Certification Office.

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

(g) All persons affected by this directive may obtain the parts and service instructions necessary to accomplish the required installation from the Piper Aircraft Corporation, 2926 Piper Drive, Vero Beach, Florida 32960; or Brown Aircraft Supply, Inc, 4123 Muncy Road, Jacksonville, Florida 32207, as applicable. The service instructions may be examined at the FAA, Central Region, Office of the Assistant Chief Counsel, room 1558, 601 E. 12th Street, Kansas City, Missouri 64106.

(h) This amendment supersedes AD 93-02-13, Amendment 39-8496.

Issued in Kansas City, Missouri, on July 20, 1993.

Barry D. Clements,

Manager, Small Airplane Directorate, Aircraft Certification Service.

[FR Doc. 93-17946 Filed 7-27-93; 8:45 am]

BILLING CODE 4910-13-U

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

21 CFR Ch. I

[Docket No. 93N-0178]

RIN 0905-AD90

Regulation of Dietary Supplements; Correction

AGENCY: Food and Drug Administration, HHS.

ACTION: Advance notice of proposed rulemaking; correction.

SUMMARY: The Food and Drug Administration (FDA) is correcting an advance notice of proposed rulemaking that appeared in the **Federal Register** of June 18, 1993 (58 FR 33690). The document announced that FDA is reviewing the manner in which it regulates dietary supplements, including products containing vitamins, minerals, amino acids, herbs, and other similar nutritional substances. This document was published with some inadvertent errors. This document corrects those errors.

FOR FURTHER INFORMATION CONTACT: Judith S. Kraus, Center for Food Safety and Applied Nutrition (HFS-456), Food and Drug Administration, 200 C St. SW., Washington, DC 20204, 202-205-5233.

In FR Doc. 93-14271, appearing on page 33690, in the **Federal Register** of Friday, June 18, 1993, the following corrections are made:

1. On page 33695, in the 2d column, in the 3d full paragraph, in line 15, the acronym "(RDI's)" is removed and in the 3d column, in the 3d line from the top, the citation "(Ref. 3)" is removed.

2. On page 33699, in the 3d column, for the fifth item in the list of references, the number "15" is corrected to read "5".

Dated: July 22, 1993.

Michael R. Taylor,

Deputy Commissioner for Policy.

[FR Doc. 93-17922 Filed 7-27-93; 8:45 am]

BILLING CODE 4160-01-F

DEPARTMENT OF AGRICULTURE

Forest Service

36 CFR Part 242

DEPARTMENT OF THE INTERIOR

Fish and Wildlife Service

50 CFR Part 100

Alaska Federal Subsistence Board Meeting

AGENCY: Forest Service, USDA; Fish and Wildlife Service, Interior.

ACTION: Notice of Meeting.

SUMMARY: This notice informs the public that the Federal Subsistence Board (Board) will hold a public meeting on August 10, 1993. The public is invited to attend and to provide oral testimony before the Board.

DATES: August 10, 1993.

ADDRESSES: Anchorage, Alaska. The specific time and location of the meeting will be announced through the local media.

FOR FURTHER INFORMATION CONTACT: Chair, Federal Subsistence Board, c/o Richard S. Pospahala, Office of Subsistence Management, U.S. Fish and Wildlife Service, 1011 E. Tudor Road, Anchorage, Alaska 99503; telephone (907) 786-3467. For questions related to subsistence management issues on National Forest Service lands inquires may also be directed to Norman Howse, Assistant Director, Subsistence, USDA, Forest Service, Alaska Region, P.O. Box 21628, Juneau, Alaska 99802-1628; telephone (907) 586-8890.

SUPPLEMENTARY INFORMATION: Board discussion during the meeting will be largely devoted to the evaluation and analysis of three requests for reconsideration. These requests relate respectively to subsistence uses of moose and caribou in Unit 15, subsistence uses of moose in Unit 1(B), and the subsistence uses of moose in Unit 25(D)(West).

Ronald B. McCoy,

Interim Chair, Federal Subsistence Board.

[FR Doc. 93-18025 Filed 7-27-93; 8:45 am]

BILLING CODE 3410-11-M; 4310-55-M

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 180

[OPP-300291; FRL-4632-6]

RIN 2070-AC18

2-Butenedioic Acid (Z)-, Polymer With Ethenol and Ethenyl Acetate, Sodium Salt; Tolerance Exemption

AGENCY: Environmental Protection Agency (EPA).

ACTION: Proposed rule.

SUMMARY: This document proposes that an exemption from the requirement of a tolerance be established for residues of 2-butenedioic acid (Z)-, polymer with ethenol and ethenyl acetate, sodium salt (CAS Reg. No. 139871-83-3) when used as an inert ingredient (component of water-soluble film) in pesticide formulations applied to growing crops only. This proposed regulation was requested by Nippon Gohsei (U.S.A.) Co., Ltd.

DATES: Comments, identified by the document control number [OPP-300291], must be received on or before August 27, 1993.

ADDRESSES: By mail, submit written comments to: Public Response and Program Resources Branch, Field Operations Division (H7506C), Office of Pesticide Programs, Environmental Protection Agency, 401 M St., SW., Washington, DC 20460. In person, deliver comments to: Rm. 1132, Crystal Mall Bldg. #2, 1921 Jefferson Davis Hwy., Arlington, VA 22202. Information submitted as a comment concerning this document may be claimed confidential by marking any part or all of that information as "Confidential Business Information" (CBI).

Information so marked will not be disclosed except in accordance with procedures set forth in 40 CFR part 2. A copy of the comment that does not contain CBI must be submitted for inclusion in the public record. Information not marked confidential will be included in the public docket by EPA without prior notice. The public docket is available for public inspection in Rm. 1132 at the address given above, from 8 a.m. to 4 p.m., Monday through Friday, excluding legal holidays.

FOR FURTHER INFORMATION CONTACT: By mail: Connie Welch, Registration Support Branch, Registration Division (H7505W), Office of Pesticide Programs, Environmental Protection Agency, 401 M St., SW., Washington, DC 20460. Office location and telephone number: Westfield Building North, 6th Floor, 2800 Crystal Drive, Arlington, VA 22202, (703)-308-8320.

SUPPLEMENTARY INFORMATION: Nippon Gohsei (U.S.A.) Co., Ltd., 1002 Pennsylvania Ave., SE., Washington, DC 20003, has submitted pesticide petition (PP) 3E4208 to EPA requesting that the Administrator, pursuant to section 408(e) of the Federal Food, Drug, and Cosmetic Act, 21 U.S.C. 346a(e), propose to amend 40 CFR 180.1001(d) by establishing an exemption from the requirement of a tolerance for residues of 2-butenedioic acid (Z)-, polymer with ethenol and ethenyl acetate, sodium salt when used as an inert ingredient (component of water-soluble film) in pesticide formulations applied to growing crops only.

Inert ingredients are all ingredients that are not active ingredients as defined in 40 CFR 153.125, and include, but are not limited to, the following types of ingredients (except when they have a pesticidal efficacy of their own): Solvents such as alcohols and hydrocarbons; surfactants such as polyoxyethylene polymers and fatty acids; carriers such as clay and diatomaceous earth; thickeners such as carrageenan and modified cellulose; wetting, spreading, and dispersing agents; propellants in aerosol dispensers; microencapsulating agents; and emulsifiers. The term "inert" is not intended to imply nontoxicity; the ingredient may or may not be chemically active.

The data submitted in the petition and other relevant material have been evaluated. As part of the EPA policy statement on inert ingredients published in the Federal Register of April 22, 1987 (52 FR 13305), the Agency established data requirements which will be used to evaluate the risks posed by the presence of an inert ingredient in a pesticide formulation. Exemptions from some or all of the requirements may be granted if it can be determined that the inert ingredient will present minimal or no risk. The Agency has decided that the data normally required to support the proposed tolerance exemption for 2-butenedioic acid (Z)-, polymer with ethenol and ethenyl acetate, sodium salt will not need to be submitted. The rationale for this decision is described below:

In the case of certain chemical substances which are defined as "polymers," the Agency has established a set of criteria which identify categories of polymers that present low risk. These criteria (described in 40 CFR 723.250) identify polymers that are relatively unreactive and stable compared to other chemical substances as well as polymers that typically are not readily absorbed. These properties generally limit a polymer's ability to cause adverse effects. In addition, these criteria exclude polymers about which little is known. The Agency believes that polymers meeting the criteria noted above will present minimal or no risk. The chemical substance 2-butenedioic acid (Z)-, polymer with ethenol and ethenyl acetate, sodium salt conforms to the definition of a polymer given in 40 CFR 723.250(b)(11) and meets the following criteria which are used to identify low-risk polymers:

1. The minimum number average molecular weight of the above-mentioned polymer is 75,000. Substances with molecular weights greater than 400 are generally not readily absorbed through the intact skin, and substances with molecular weights greater than 1,000 are generally not absorbed through the intact gastrointestinal (GI) tract. Chemicals not absorbed through the skin or GI tract are generally incapable of eliciting a toxic response.

2. The above-mentioned polymer is not a cationic polymer, nor is it reasonably anticipated to become a cationic polymer in a natural aquatic environment.

3. The above-mentioned polymer does not contain less than 32.0 percent by weight of the atomic element carbon.

4. The above-mentioned polymer contains as an integral part of its composition the atomic elements carbon, hydrogen, nitrogen, and oxygen.

5. The above-mentioned polymer does not contain as an integral part of its composition, except as impurities, any elements other than those listed in 40 CFR 723.250(d)(3)(ii).

6. The above-mentioned polymer is not a biopolymer, a synthetic equivalent of a biopolymer, or a derivative or modification of a biopolymer that is substantially intact.

7. The above-mentioned polymer is not manufactured from reactants containing, other than as impurities, halogen atoms or cyano groups.

8. The above-mentioned polymer does not contain reactive functional groups that are intended or reasonably anticipated to undergo further reaction.

9. The above-mentioned polymer is not designed or reasonably anticipated to substantially degrade, decompose, or depolymerize.

Based upon the above information and review of its use, EPA has found that, when used in accordance with good agricultural practice, this ingredient is useful and a tolerance is not necessary to protect the public health. Therefore, EPA proposes that the exemption from the requirement of a

tolerance be established as set forth below.

Any person who has registered or submitted an application for registration of a pesticide, under the Federal Insecticide, Fungicide, and Rodenticide Act (FIFRA) as amended, which contains any of the ingredients listed herein, may request within 30 days after publication of this document in the Federal Register that this rulemaking proposal be referred to an Advisory Committee in accordance with section 408(e) of the Federal Food, Drug, and Cosmetic Act.

Interested persons are invited to submit written comments on the proposed regulation. Comments must bear a notation indicating the document control number, [OPP-300291]. All written comments filed in response to this petition will be available in the Public Response and Program Resources Branch, at the address given above from 8 a.m. to 4 p.m. Monday through Friday, except legal holidays.

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

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

List of Subjects in 40 CFR Part 180

Administrative practice and procedure, Agricultural commodities, Pesticides and pests, Recording and recordkeeping requirements.

Dated: July 18, 1993.

Stephanie R. Irene,

Acting Director, Registration Division, Office of Pesticide Programs.

Therefore, it is proposed that 40 CFR part 180 be amended as follows:

PART 180—[AMENDED]

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

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

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

§ 180.1001 Exemptions from the requirements of a tolerance.

* * * * *

(d) * * *

Inert ingredients	Limits	Uses
* * *	* *	* *
2-Butenedioic acid (Z)-, polymer with ethenol and ethenyl acetate, sodium salt (minimum number average molecular weight 75,000; CAS No. 139871-83-3).	.....	Component of water-soluble film
* * *	* *	* *

* * * * *

[FR Doc. 93-17862 Filed 7-27-93; 8:45 am]

BILLING CODE 6560-50-F

40 CFR Part 180

[PP 0E3821/P562; FRL-4628-5]

RIN 2070-AC18

Pesticide Tolerance for Sodium Salt of Acifluorfen

AGENCY: Environmental Protection Agency (EPA).

ACTION: Proposed rule.

SUMMARY: This document proposes that a tolerance be established for the combined residues of the herbicide sodium salt of acifluorfen (also referred to in this document as acifluorfen) and its metabolites in or on the raw agricultural commodity strawberries. The proposed regulation to establish a maximum permissible level for residues of the herbicide in or on the commodity was requested in a petition submitted by the Interregional Research Project No. 4 (IR-4).

DATES: Comments, identified by the document control number [PP 0E3821/P562], must be received on or before August 27, 1993.

ADDRESSES: By mail, submit written comments to: Public Response and Program Resources Branch, Field Operations Division (H7506C), Office of Pesticide Programs, Environmental Protection Agency, 401 M St., SW., Washington, DC 20460. In person, bring comments to: Rm. 1132, CM #2, 1921 Jefferson Davis Highway, Arlington, VA 22202.

Information submitted as a comment concerning this document may be claimed confidential by marking any part or all of that information as "Confidential Business Information" (CBI). Information so marked will not be disclosed except in accordance with procedures set forth in 40 CFR part 2. A copy of the comment that does not contain CBI must be submitted for inclusion in the public record. Information not marked confidential may be disclosed publicly by EPA without prior notice. All written comments will be available for public inspection in Rm. 1132 at the address given above, from 8 a.m. to 4 p.m., Monday through Friday, excluding legal holidays.

FOR FURTHER INFORMATION CONTACT: By mail: Hoyt L. Jamerson, Emergency Response and Minor Use Section (H7505W), Registration Division, Environmental Protection Agency, 401 M St., SW., Washington, DC 20460. Office location and telephone number: Sixth Floor, Crystal Station #1, 2800 Jefferson Davis Hwy., Arlington, VA 22202, (703)-308-8783.

SUPPLEMENTARY INFORMATION: The Interregional Research Project No. 4 (IR-4), New Jersey Agricultural Experiment Station, P.O. Box 231, Rutgers University, New Brunswick, NJ 08903, has submitted pesticide petition 0E3821 to EPA on behalf of the Agricultural Experiment Stations of Alabama, Arkansas, California, Connecticut, Florida, Indiana, Maryland, Michigan, New York, North Carolina, Oklahoma, Oregon, Tennessee, Virginia, and Washington. This petition requested that the Administrator, pursuant to section 408(e) of the Federal Food, Drug, and Cosmetic Act (21 U.S.C. 346a(e)), propose to establish a tolerance for combined residues of the sodium salt of acifluorfen (sodium 5-[2-chloro-4-(trifluoromethyl)phenoxy]-2-nitrobenzoic acid) and its metabolites (the corresponding acid, methyl ester.

and amino analogues) in or on the raw agricultural commodity strawberry at 0.05 part per million (ppm).

The data submitted in the petition and other relevant material have been evaluated. The toxicological data considered in support of the proposed tolerance include:

1. A 2-year feeding study in dogs fed diets containing 0, 50, 300, or 1,800 ppm with a no-observed-effect-level (NOEL) of 50 ppm (equivalent to 1.25 mg/kg/day). Blood coagulation was observed in test animals at the 300-ppm dose level (lowest-effect level).

2. A two-generation reproduction study in rats fed diets containing 0, 25, 500 or 2,500 ppm with no adverse effect on adult reproductive performance observed under the conditions of the study. A NOEL was established at 25 ppm (equivalent to 1.25 mg/kg of body weight/day) based on decreased viability and increased incidence of kidney lesions in high-dose offspring.

3. A developmental toxicity study in rabbits given gavage doses of 0, 3, 12, or 36 mg/kg/day with no developmental toxicity observed at any of the dose levels tested.

4. A developmental toxicity study in rats given gavage doses of 0, 20, 90, or 180 mg/kg/day with an NOEL for developmental toxicity of 20 mg/kg/day based on reduced mean fetal weight and a maternal NOEL of 90 mg/kg/day based on reduced body weight.

5. A 2-year carcinogenicity study in rats fed diets containing 0, 25, 150, 500, 2,500, or 5,000 ppm with a NOEL of 500 ppm (equivalent to 25 mg/kg/day) based on increased liver enzyme changes in male and female rats and renal changes (nephritis) in male rats.

6. Acifluorfen produced positive results for gene mutation in a mitotic recombination assay in yeast cells and a dominant-lethal assay in fruit fly. The chemical was negative in a structural chromosome aberration test in bone marrow cells and an unscheduled DNA synthesis test in rat hepatocytes.

7. A metabolism study in mice showed that acifluorfen is excreted primarily as the parent compound within 4 days of ingestion.

8. An 18-month carcinogenicity study in B6C3F1 mice fed diets containing 0, 625, 1,250, or 2,500 ppm with statistically significant positive trends for liver tumors (adenomas, carcinomas, and adenomas/carcinomas combined) and stomach tumors (papillomas) in both male and female mice. These tumor types were significantly increased at the highest dose level tested (2,500 ppm) in male and female mice, and liver tumors were also significantly increased at the lowest dose level tested (625 ppm) in male mice.

9. A 2-year carcinogenicity study in CD-1 mice fed diets containing 0, 7.5, 45, or 270 ppm with a statistically significant increase in the total number of liver tumors (primarily adenomas) in high-dose (270 ppm) female mice. No significant increase in liver tumors was observed in male mice at any feeding level tested. The highest dose tested (270 ppm) did not approximate a maximum tolerated dose in male and female mice.

Based on a weight-of-evidence determination, the Agency has classified acifluorfen as a Group B2 carcinogen (probable human carcinogen). This decision, which is in accordance with proposed Agency guidelines published in the **Federal Register** of November 23, 1984 (49 FR 46294), was based primarily on evidence of an increased number of malignant, or combined benign and malignant, liver tumors in multiple experiments involving two different strains of mice. Acifluorfen also produced uncommon stomach tumors in male and female B6C3F1 mice. Other structurally related diethyl-ether pesticides have been shown to produce liver tumors in mice. In addition, mutagenicity studies show evidence of mutagenic activity, but not in mammalian cell systems.

Carcinogenic risk assessments have been completed for acifluorfen which indicate that carcinogenic risk from the proposed use on strawberries would be extremely low and that the risks from established uses and the proposed use on strawberries are well below EPA's negligible risk standard for carcinogenic pesticides of 1×10^{-6}. The potential carcinogenic risk to the general population from dietary exposure resulting from existing uses of acifluorfen is calculated at 5×10^{-7}. The proposed use on strawberries would increase the risk by 6×10^{-8}. The total carcinogenic risk for existing uses and the proposed use on strawberries is calculated at 6×10^{-7}.

The carcinogenic risk assessments are based on a potency estimator (Q^*) of 3.55×10^{-2} $(mg/kg/day)^{-1}$. Dietary exposure was calculated using anticipated residue data and percent of crop treated information available to EPA.

The Reference Dose (RfD) for acifluorfen is established at 0.013 mg/kg of body weight/day, based on a NOEL of 1.25 mg/kg body weight/day and an uncertainty factor of 100. The NOEL is taken from the two-generation rat reproduction study in which decreased survival and increased incidence of kidney lesions were observed in the offspring of rats fed higher dose levels. The anticipated residue contribution (ARC) for the overall U.S. population from established tolerances and the proposed use on strawberries utilizes 0.1 percent of the RfD. In addition, less than 1 percent of the RfD is utilized for the population subgroups for which the Agency has dietary consumption data.

The nature of the residue is adequately understood for the purpose of the proposed tolerance and an adequate analytical method, gas chromatography, is available for enforcement purposes. An analytical method for enforcing this tolerance has been published in the Pesticide Analytical Manual (PAM), Vol. II. No secondary residues in meat, milk, poultry, or eggs are expected since strawberries are not considered a livestock feed commodity. There are currently no actions pending against the continued registration of this chemical.

Based on the above information considered by the Agency the tolerance established by amending 40 CFR 180.383 would protect the public health. Therefore, it is proposed that the tolerance be established as set forth below.

Any person who has registered or submitted an application for registration of a pesticide, under the Federal Insecticide, Fungicide, and Rodenticide Act (FIFRA) as amended, which contains any of the ingredients listed herein, may request within 30 days after publication of this document in the **Federal Register** that this rulemaking proposal be referred to an Advisory Committee in accordance with section 408(e) of the Federal Food, Drug, and Cosmetic Act.

Interested persons are invited to submit written comments on the proposed regulation. Comments must bear a notation indicating the document control number, [PP 0E3821/P562]. All written comments filed in response to this petition will be available in the Public Response and Program Resources Branch, at the address given above from 8 a.m. to 4 p.m., Monday through Friday, except legal holidays.

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

Pursuant to the requirements of the Regulatory Flexibility Act (Pub. L. 96-354, 94 Stat. 1164, 5 U.S.C. 601-612), the Administrator has determined that regulations establishing new tolerances or raising tolerance levels or establishing exemptions from tolerance requirements do not have a significant economic impact on a substantial number of small entities. A certification

statement to this effect was published in the Federal Register of May 4, 1981 (46 FR 24950).

List of Subjects in 40 CFR Part 180

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

Dated: June 29, 1993.

Lawrence E. Culleen,

Acting Director, Registration Division, Office of Pesticide Programs.

Therefore, it is proposed that 40 CFR part 180 be amended as follows:

PART 180—[AMENDED]

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

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

2. By amending § 180.383 in the table therein by adding and alphabetically inserting the commodity, to read as follows:

§ 180.383 Sodium salt of acifluorfen; tolerances for residues.

* * * * *

Commodity	Parts per million
* * * * *	
Strawberry	0.05

[FR Doc. 93–17710 Filed 7–27–93; 8:45 am]

BILLING CODE 6560–50–F

40 CFR Part 721

[OPPTS–50601B; FRL–4182–5]

Fluorene Substituted Aromatic Amine; Proposed Modification of Significant New Use Rule

AGENCY: Environmental Protection Agency (EPA).

ACTION: Proposed rule.

SUMMARY: EPA is proposing to modify a significant new use rule (SNUR) promulgated under section 5(a)(2) of the Toxic Substances Control Act (TSCA) for fluorene substituted aromatic amine based on a modification to the TSCA section 5(e) consent order regulating that substance. Data received by the Agency on an analogous substance indicated that a requirement in the SNUR calling for labels and a material safety data sheet (MSDS) were no longer necessary.

DATES: Written comments must be received by EPA by August 27, 1993.

ADDRESSES: All comments must be sent in triplicate to: TSCA Document Receipt Office (TS-790), Office of Pollution Prevention and Toxics, Environmental Protection Agency, Room E-G99, 401 M St., SW., Washington, DC 20460. Comments that are confidential must be clearly marked confidential business information (CBI). If CBI is claimed, three additional sanitized copies must also be submitted. Nonconfidential versions of comments on this proposed rule will be placed in the rulemaking record and will be available for public inspection. Comments should include the docket control number. The docket control number for the chemical substance in this SNUR is OPPTS-50601B. Unit III. of this preamble contains additional information on submitting comments containing CBI.

FOR FURTHER INFORMATION CONTACT: Susan B. Hazen, Director, Environmental Assistance Division (TS–799), Office of Pollution Prevention and Toxics, Environmental Protection Agency, Rm. E543–A 401 M St., SW., Washington, DC 20460, Telephone: (202) 554–1404, TDD: (202) 554–0551.

SUPPLEMENTARY INFORMATION: In the Federal Register of September 23, 1992 (57 FR 44050), EPA issued a SNUR establishing significant new uses for fluorene substituted aromatic amine (P–91–43). Because of the modification to the consent order for this substance, EPA is proposing to modify this SNUR.

I. Background and Rationale for Proposed Modification of the Rule

During review of the PMN submitted for the chemical substance that was the subject of this proposed modification, EPA concluded that regulation was warranted under section 5(e) of TSCA pending the development of information sufficient to make a reasoned evaluation of the health or environmental effects of the substance, and EPA identified the tests considered necessary to evaluate the risks of the substance. Specifically, EPA concluded that regulation under dermal and respiratory protection, hazard communication requirements, industrial use, limit of production volume, and release to surface waters were necessary to control the potential unreasonable risks of the substance. The basis for such findings is referenced in Unit IV. of this preamble. Based on these findings, a section 5(e) consent order was negotiated with the PMN submitter and a SNUR was promulgated. In light of data received for an analogous substance which indicates that the PMN substance is not expected to cause retinopathy, the submitter petitioned, and EPA determined, that the requirement that labels and material safety data sheets (MSDSs) indicate that the PMN substance may cause blindness and that eye protection should be worn when handling the substance was no longer appropriate and hence was unnecessary to protect human health. The section 5(e) order modification eliminated that labeling and MSDS requirement. The proposed modification of SNUR provisions for the substance designated herein is consistent with the modification of the section 5(e) order.

II. Proposed Modification

EPA is proposing to modify the significant new use and recordkeeping requirements for the following chemical substance under 40 CFR part 721 subpart E. Further background information for the substance is contained in the rulemaking record referenced in Unit IV. of this preamble.

PMN Number P–91–43

Chemical name: (generic) Fluorene substituted aromatic amine.

CAS number: Not available.

Effective date of section 5(a) SNUR: November 22, 1992.

Basis for modification to SNUR: After the section 5(e) consent order was issued, EPA received new information which suggested that the PMN substance may not cause retinopathy. More specifically, based on test data recently received by EPA on a structurally similar chemical, the PMN substance is not expected to cause retinopathy as a result of inhaling the PMN substance. Therefore, the Agency is modifying both the applicable consent orders and the SNUR for this substance to remove the requirement that labels and MSDSs indicate that the PMN substance may cause blindness and that eye protection should be worn when handling the substance.

CFR citation: 40 CFR 721.3764.

III. Comments Containing Confidential Business Information

Any person who submits comments claimed as confidential business information must mark the comments as "confidential," "trade secret," or other appropriate designation. Comments not claimed as confidential at the time of submission will be placed in the public file. Any comments marked as confidential will be treated in accordance with the procedures in 40 CFR part 2. Any party submitting comments claimed to be confidential must prepare and submit a non-confidential version of the comments that EPA can place in the public file.

IV. Rulemaking Record

The record for the rule which EPA is proposing to modify was established at OPPTS–50601. This record includes information considered by the Agency in developing this rule and includes the modification to consent order to which the Agency has responded with this proposal.

V. Regulatory Assessment Requirements

A. Executive Order 12291

Under Executive Order 12291, EPA must judge whether a rule is "major" and therefore requires a Regulatory Impact Analysis. EPA has determined that this rule will not be a "major" rule because it will not have an effect on the economy of $100 million or more, and it will not have a significant effect on competition, costs, or prices. While there is no precise way to calculate the total annual cost of compliance with this rule, EPA estimates that the cost for submitting a significant new use notice would be approximately $7,198 to $8,170, including a $2,500 user fee payable to EPA to offset EPA costs in processing the notice. In addition, EPA estimates that the cost of recordkeeping requirements for ongoing uses is $583 per year. EPA believes that, because of the nature of the rule and the substances involved, there will be few SNUR notices submitted. Furthermore, while the expense of a notice and the uncertainty of possible EPA regulation may discourage certain innovation, that impact will be limited because such factors are unlikely to discourage an innovation that has high potential value.

This regulation was submitted to the Office of Management and Budget (OMB) for review as required by Executive Order 12291.

B. Regulatory Flexibility Act

Under the Regulatory Flexibility Act (5 U.S.C. 605(b)), EPA has determined that this rule would not have a significant impact on a substantial number of small businesses. EPA has not determined whether parties affected by this rule would likely be small business. However, EPA expects to receive few SNUR notices for the substances. Therefore, EPA believes that the number of small businesses affected by this rule will not be substantial, even if all of the SNUR notice submitters were small firms.

C. Paperwork Reduction Act

The information collection requirements contained in this rule have been approved by OMB under the provisions of the Paperwork Reduction Act (44 U.S.C. 3501 *et seq.*), and have been assigned OMB control number 2070–0012.

Public reporting burden for this collection of information is estimated to vary from 30 to 170 hours per response, with an average of 100 hours per response, including time for reviewing instructions, searching existing data sources, gathering and maintaining the data needed, and completing and reviewing the collection of information.

Send comments regarding the burden estimate or any other aspect of this collection of information, including suggestions for reducing this burden, to Chief, Information Policy Branch, PM–223, U.S. Environmental Protection Agency, 401 M St., SW., Washington, DC 20460; and to Office of Management and Budget, Paperwork Reduction Project (2070–0012), Washington, D.C. 20503.

List of Subjects in 40 CFR Part 721

Chemicals, Environmental protection, Hazardous materials, Recordkeeping and reporting requirements, Significant new uses.

Dated: July 12, 1993.

Susan H. Wayland,

Assistant Administrator for Prevention, Pesticides and Toxic Substances.

Therefore, it is proposed that 40 CFR Part 721 be amended as follows:

PART 721—[AMENDED]

1. The authority citation for Part 721 will continue to read as follows:

Authority: 15 U.S.C. 2604, 2607, and 2635(c).

2. In § 721.3764 by revising paragraph (a)(2)(ii) to read as follows:

§ 721.3764 Fluorene substituted aromatic amine.

(a) * * *

(2) * * *

(ii) Hazard communication program. Requirements as specified in § 721.72(a), (b), (c), (d), (e) (concentration set at 0.1 percent), (f), (g)(1)(iv), (g)(1)(vi), (g)(1)(vii), (g)(2)(i), (g)(2)(ii), (g)(2)(iii), (g)(2)(iv), (g)(2)(v), (g)(3)(i), (g)(3)(ii), (g)(4)(iii), and (g)(5).

* * * * *

[FR Doc. 93–17423 Filed 7–27–93; 8:45 am]

BILLING CODE 6560–50–F

FEDERAL COMMUNICATIONS COMMISSION

47 CFR Part 73

[MM Docket No. 93–210; RM–8283]

Radio Broadcasting Services; Webster Springs, WV

AGENCY: Federal Communications Commission.

ACTION: Proposed rule.

SUMMARY: The Commission requests comments on a petition field by Cat Radio, Inc., proposing the substitution of Channel 262B for Channel 262A at Webster Springs, West Virginia, and the modification of its construction permit accordingly. Channel 262B can be allotted to Webster Springs in compliance with the Commission's minimum distance separation requirements without the imposition of a site restriction at petitioner's requested site. The coordinates for Channel 262B at Webster Springs are North Latitude 38–28–42 and West Longitude 80–24–54. See **SUPPLEMENTARY INFORMATION**, *infra*.

DATES: Comments must be filed on or before September 17, 1993, and reply comments on or before October 4, 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: Timothy E. Welch, Esq., Dean George Hill & Welch, suite 113, 1330 New Hampshire Ave., NW., Washington, DC 20036 (Counsel for Petitioner).

FOR FURTHER INFORMATION CONTACT: Sharon P. McDonald, Mass Media Bureau, (202) 634–6530.

SUPPLEMENTARY INFORMATION: This is a synopsis of the Commission's Notice of Proposed Rule Making, MM Docket No. 93–210, adopted July 1, 1993, and released July 22, 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.

In accordance with § 1.420(g) of the Commission's Rules, we will not accept competing expressions of interest in the use of Channel 262B at Webster Springs or require the petitioner to demonstrate the availability of an additional

equivalent class channel. Since Webster Springs is located within the protected areas of the National Radio Astronomy Observatory "Quiet Zone" at Green Bank, West Virginia, petitioner will be required to comply with the notification requirements of § 73.1030(a) of the Commission's Rules.

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. 93–17914 Filed 7–27–93; 8:45 am]

BILLING CODE 6712–01–M

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47 CFR Part 73

[MM Docket No. 93–211, RM–8285]

Radio Broadcasting Services; Arizona City, AZ

AGENCY: Federal Communications Commission.

ACTION: Proposed rule.

SUMMARY: This document requests comments on a petition for rule-making filed on behalf of Arizona City Broadcasting Corporation, licensee of Station KONZ(FM), Channel 292A, Arizona City, Arizona, seeking the substitution of Channel 292A and modification of its authorization accordingly. Coordinates for this proposal are 32–45–21 and 111–40–13. Mexican concurrence will be requested for this proposed allotment.

As the petitioner's modification proposal seeks an equivalent channel substitution, we will not accept competing expressions of interest.

DATES: Comments must be filed on or before September 17, 1993, and reply comments on or before October 4, 1993.

ADDRESSES: Secretary, Federal Communications Commission, Washington, DC 20554. In addition to filing comments with the FCC, interested parties should serve the petitioner's counsel, as follows: Nancy L. Wolf, Esq., Dow, Lohnes & Albertson, 1255 23rd Street, NW., suite 500, Washington, DC 20037.

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. 93–211, adopted July 1, 1993, and released July 22, 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 73

Radio broadcasting.

Federal Communications Commission.

Michael C. Ruger,

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

[FR Doc. 93–17915 Filed 7–27–93; 8:45 am]

BILLING CODE 6712–01–M

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47 CFR Part 73

[MM Docket No. 93–208, RM–8281]

Radio Broadcasting Services; Keno, OR

AGENCY: Federal Communications Commission.

ACTION: Proposed rule.

SUMMARY: The Commission requests comments on a petition filed by Brett E. Miller seeking the allotment of Channel 253A to Keno, Oregon, as the community's first local service. Petitioner is requested to provide further information demonstrating that Keno is a community for allotment purposes. Channel 253A can be allotted to Keno in compliance with the Commission's minimum distance separation requirements without the imposition of a site restriction, at coordinates North Latitude 42–07–30 and West Longitude 121–55–42.

DATES: Comments must be filed on or before September 17, 1993, and reply comments on or before October 4, 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: Brett E. Miller, 11608 Blossomwood Court, Morpark, CA 93021 (Petitioner).

FOR FURTHER INFORMATION CONTACT: Leslie K. Shapiro, Mass Media Bureau, (202) 634–6530.

SUPPLEMENTARY INFORMATION: This is a synopsis of the Commission's Notice of Proposed Rule Making, MM Docket No. 93–208, adopted July 1, 1993, and released July 22, 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 Services, 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* contracts 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. 93–17905 Filed 7–27–93; 8:45 am]

BILLING CODE 6712–01–M

47 CFR Part 73

[MM Docket No. 90-66; RM-7139, RM-7369; RM-7369]

Radio Broadcasting Services; Lincoln, Osage Beach, Steelville and Warsaw, MO

AGENCY: Federal Communications Commission.

ACTION: Proposed rule; order to show cause.

SUMMARY: This document directs KRMS-KYLC, Inc., licensee of Station KYLC(FM), Channel 228A, Osage Beach, Missouri, to show cause why its license should not be modified to specify operation on Channel 265A instead of Channel 228A. This action would allow Twenty-One Sound Communications, Inc., permittee of Station KNSX(FM), Channel 227C1, Steelville, Missouri, to upgrade its facility to Channel 227C1. Channel 265A can be substituted for Channel 228A at the current site of Station KYLC(FM), at coordinates 38-07-29 and 92-40-39. This Order does not afford additional opportunity either to comment on the merits of the conflicting proposal or for the acceptance of additional counterproposals.

DATES: Comments must be filed on or before September 13, 1993.

FOR FURTHER INFORMATION CONTACT: Arthur D. Scrutchins, Mass Media Bureau, (202) 634-5630.

SUPPLEMENTARY INFORMATION: This is a summary of the Commission's Order to Show Cause, MM Docket No. 90-66, adopted July 1, 1993, and released July 21, 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 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. 93-17906 Filed 7-27-93; 8:45 am]

BILLING CODE 6712-01-M

47 CFR Part 73

[MM Docket No. 93-206, RM-8264]

Radio Broadcasting Services; Hermantown, MN

AGENCY: Federal Communications Commission.

ACTION: Proposed rule.

SUMMARY: This document requests comments on a petition filed by Bruce F. Elving requested the allotment of Channel 221A to Hermantown, Minnesota, as that community's first local broadcast service. Canadian concurrence will be requested for this allotment at coordinates 46-48-47 and 92-14-51. There is a site restriction 2 kilometers (1.2 miles) northeast of the community.

DATES: Comments must be filed on or before September 13, 1993, and reply comments on or before September 28, 1993.

ADDRESSES: Federal Communications Commission, Washington, DC 20554. In addition to filing comments with the FCC, interested parties should serve the petitioner, as follows: Bruce F. Elving, P.O. Box 336, Esko, Minnesota 55733-03336.

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. 93-206, adopted June 29, 1993, and released July 21, 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.

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. 93-17910 Filed 7-27-93; 8:45 am]

BILLING CODE 6712-01-M

47 CFR Part 73

[MM Docket No. 93-204, RM-8266]

Radio Broadcasting Services; Provincetown, MA

AGENCY: Federal Communications Commission.

ACTION: Proposed rule.

SUMMARY: This document requests comments on a petition filed by Lower Cape Communications, Inc. proposing the substitution of Channel 221A for Channel *220A at Provincetown, Massachusetts, modification of the license for Station WOMR, Channel *220A, to specify operation on Channel 221A and reservation of the channel for noncommercial educational use. The coordinates for Channel *221A are 42-03-54 and 70-09-34.

DATES: Comments must be filed on or before September 13, 1993, and reply comments on or before September 28, 1993.

ADDRESSES: Federal Communications Commission, Washington, DC 20554. In addition to filing comments with the FCC, interested parties should serve the petitioner, as follows: Roger H. Strawbridge, President, Lower Cape Communications, Inc., Radio Station WOMR, 6 Orissa Drive, Box 606, East Orleans, Massachusetts 02643.

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. 93-204, adopted June 28, 1993, and released July 21, 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.

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. 93–17911 Filed 7–27–93; 8:45 am]

BILLING CODE 6712–01–M

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47 CFR Part 73

[MM Docket No. 93–213, RM–7214]

Radio Broadcasting Services; Menomonie, WI

AGENCY: Federal Communications Commission.

ACTION: Proposed rule.

SUMMARY: The Commission requests comments on a petition filed by Jay Lellman seeking the allotment of Channel 285A to Menomonie, Wisconsin, as the community's second local FM commercial service. Channel 285A can be allotted to Menomonie in compliance with the Commission's minimum distance separation requirements with a site restriction of 15.2 kilometers (9.4 miles) west in order to avoid a short-spacing with Station WAXX–FM, Channel 283C, Eau Clair, Wisconsin. The coordinates for Channel 285A at Menomonie are North Latitude 44–56–28 and West Longitude 92–05–51.

DATES: Comments must be filed on or before September 17, 1993, and reply comments on or before October 4, 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: Larry G. Fuss, P. O. Box 159, Fayetteville, Georgia 30214 (Consultant for petitioner).

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

SUPPLEMENTARY INFORMATION: This is a synopsis of the Commission's Notice of Proposed Rule Making, MM Docket No. 93–213, adopted July 6, 1993, and released July 22, 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 contractor, ITS, 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. 93–17912 Filed 7–27–93; 8:45 am]

BILLING CODE 6712–01–M

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47 CFR Part 73

[MM Docket No. 93–214, RM–8287]

Radio Broadcasting Services; Ocracoke, NC

AGENCY: Federal Communications Commission.

ACTION: Proposed rule.

SUMMARY: The Commission requests comments on a petition filed by Ocracoke Broadcasters seeking the substitution of Channel 224C1 for Channel 225A at Ocracoke, North Carolina, and the modification of its construction permit for a new station on the Class A channel to specify operation on the higher class channel. Channel 224C1 can be allotted to Ocracoke with a site restriction of 50 kilometers (31 miles) southwest, at coordinates North Latitude 34–51–15 and West Longitude 76–24–58, to accommodate petitioner's desired transmitter site. In accordance with § 1.420(g) of the Commission's Rules, we will not accept competing expressions of interest in use of the channel at Ocracoke or require the petitioner to demonstrate the availability of an additional equivalent class channel for use by such parties.

DATES: Comments must be filed on or before September 17, 1993, and reply comments on or before October 4, 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: William J. Pennington, III, P.O. Box 2506, Pawleys Island, SC 29585 (Counsel to petitioner).

FOR FURTHER INFORMATION CONTACT: Lesie K. Shapiro, Mass Media Bureau, (202) 634–6530.

SUPPLEMENTARY INFORMATION: This is a synopsis of the Commission's Notice of Proposed Rule Making, MM Docket No. 93–214, adopted July 6, 1993, and released July 22, 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 Services, 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* contracts 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. 93–17928 Filed 7–27–93; 8:45 am]

BILLING CODE 6712–01–M

47 CFR Part 73

[MM Docket No. 93–209; RM–8282]

Radio Broadcasting Services; Rainelle, WV

AGENCY: Federal Communications Commission.

ACTION: Proposed rule.

SUMMARY: The Commission requests comments on a petition filed by R–B Company, Inc., proposing the substitution of Channel 237B1 for Channel 237A at Rainelle, West Virginia, and the modification of Station WRRL–FM's license accordingly. Channel 237B1 can be allotted to Rainelle in compliance with the Commission's minimum distance separation requirements at petitioner's request site with a site restriction of 21 kilometers (13 miles) northeast to avoid a short-spacing to Station WXIL, Channel 236B, Parkersburg, West Virginia. The coordinates for Channel 237B1 at Rainelle are North Latitude 38–07–21 and West Longitude 80–37–37. See **SUPPLEMENTARY INFORMATION**, *infra*.

DATES: Comments must be filed on or before September 17, 1993, and reply comments on or before October 4, 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: David M. Hunsaker, Esq., Putbrese & Hunsaker, 6800 Fleetwood Road, suite 100, P.O. Box 539, McLean, Virginia 22101–0539 (Counsel for Petitioner).

FOR FURTHER INFORMATION CONTACT: Sharon P. McDonald, Mass Media Bureau, (202) 634–6530.

SUPPLEMENTARY INFORMATION: This is a synopsis of the Commission's Notice of Proposed Rule Making, MM Docket No. 93–209, adopted July 1, 1993, and released July 22, 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.

In accordance with § 1.420(g) of the Commission's Rules, we will not accept competing expressions of interest in the use of Channel 237B1 at Rainelle or require the petitioner to demonstrate the availability of an additional equivalent class channel.

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. 93–17929 Filed 7–27–93; 8:45 am]

BILLING CODE 6712–01–M

DEPARTMENT OF TRANSPORTATION

National Highway Traffic Safety Administration

49 CFR Part 579

Defect and Noncompliance Responsibility

AGENCY: National Highway Traffic Safety Administration (NHTSA), DOT.

ACTION: Termination of rulemaking.

SUMMARY: This notice announces that NHTSA has terminated a rulemaking proceeding to amend its regulations setting forth the responsibility of manufacturers for safety-related defects and noncompliance with Federal motor vehicle safety standards in motor vehicles and items of motor vehicle equipment. The amendments would have allocated among manufacturers in the chain of production for motor vehicles built in two or more stages responsibility for the notification and remedy of defects and noncompliances that are determined to exist in those vehicles. In November 1988, the agency granted a petition from the National Truck Equipment Association (NTEA) to commence this rulemaking proceeding. After evaluating the manner in which recent recall campaigns involving multistage vehicles have been conducted, the agency has concluded that the existing regulations provide an appropriate framework for manufacturers to use in exercising their responsibilities in this area, and that the requested amendments are therefore unnecessary.

FOR FURTHER INFORMATION CONTACT: Mr. Jon White, Office of Defects Investigation (NEF–11), National Highway Traffic Safety Administration, 400 Seventh Street, SW., Washington, DC 20590. (202) 366–5226.

SUPPLEMENTARY INFORMATION:

A. Multistage and Altered Vehicles

Unlike passenger cars, which are normally produced by a single manufacturer, trucks, buses, and recreational vehicles are often manufactured in two or more stages, with separate manufacturers responsible for each stage of production. Typically, the basic motive and structural components, consisting at a minimum of the frame, the power train, and the steering, suspension, and braking systems, are first fabricated into the form of a "chassis," or, where a completed occupant compartment is also provided, into the form of a "chassis-cab." This is in turn delivered as an "incomplete vehicle" to a "final stage manufacturer," who adds cargo-carrying, work-performing, or load-bearing components that allow the vehicle to perform its intended function. If the vehicle is manufactured in three or more stages, "intermediate manufacturers" also become involved in its production.

If a previously certified vehicle is modified before it is first purchased in good faith for purposes other than resale, and the modifications consist of anything other than the addition, substitution, or removal of readily attachable components such as mirrors or tire and rim assemblies, or minor finishing operations such as painting, or if the modifications are performed in such a manner that the stated weight ratings for the vehicle are no longer valid, the vehicle is deemed to have been "altered." In such a circumstance, the alterer must certify that the vehicle, as altered, conforms to all applicable Federal motor vehicle safety standards.

B. Statutory and Regulatory Basis for Manufacturers' Recall Responsibilities

Under sections 151 and 152 of the National Traffic and Motor Vehicle Safety Act (the Act), 15 U.S.C. 1411 and 1412, if a motor vehicle or item of

replacement equipment is determined to contain a safety-related defect or not to comply with an applicable Federal motor vehicle safety standard, the manufacturer of that motor vehicle or replacement equipment item must furnish notification to the Secretary of Transportation, and to owners, purchasers, and dealers of the vehicle or equipment involved, and must remedy the defect or noncompliance. Section 159 of the Act, 15 U.S.C. 1419, defines "replacement equipment" as motor vehicle equipment other than "original equipment," which the section in turn defines as that "which was installed in or on a motor vehicle at the time of its delivery to the first purchaser." Section 159 further states that, unless otherwise provided in regulations of the Secretary, "[a] defect in, or failure to comply of, an item of original equipment shall be deemed to be a defect in, or failure to comply of, the motor vehicle in or on which such equipment was installed at the time of its delivery to the first purchaser" and that "[i]f the manufacturer of a motor vehicle is not the manufacturer of original equipment installed in or on such vehicle at the time of its delivery to the first purchaser, the manufacturer of the vehicle (rather than the manufacturer of such equipment) shall be considered the manufacturer of such item of equipment."

Regulations implementing section 159 of the Act are found at 49 CFR part 579. Section 579.5 of those regulations specify manufacturers' defect and noncompliance responsibilities. Paragraph (a) of that section states that "[e]ach manufacturer of a motor vehicle shall be responsible for any safety-related defect or any noncompliance determined to exist in the vehicle or in any item of original equipment."

C. NHTSA's Interpretation That Incomplete Vehicle Is an Original Equipment Item

In its interpretations of the Act before the NTEA petition, NHTSA classified an incomplete vehicle as an original equipment item for which the final stage manufacturer has recall responsibility under section 159. This interpretation renders the final stage manufacturer responsible for the notification and remedy of all defects and noncompliances in a vehicle it completes, including those contained in the incomplete vehicle.

D. NTEA's Petition for Rulemaking

On July 8, 1988, NHTSA received a petition from the NTEA requesting the agency to institute rulemaking to amend 49 CFR Part 579 "to clarify and equitably apportion" between incomplete and final stage vehicle manufacturers responsibility for the notification and remedy of defects and noncompliances. The petition proposed that Part 579 be amended to specify that a final stage manufacturer can elect "to make manufacturers of incomplete vehicles responsible for notification and remedy of noncompliances and safety-related defects inherent in the incomplete vehicle or that arise * * * when the incomplete vehicle is completed in a manner authorized by the incomplete vehicle manufacturer." The NTEA petition also requested that NHTSA amend its regulations to specifically address the recall responsibilities of vehicle alterers.

E. NHTSA's Action on the Petition

NHTSA granted the NTEA's petition on November 10, 1988. Consistent with its rules for processing such petitions, 49 CFR 552.9, NHTSA advised the NTEA that it would begin a rulemaking proceeding, but that this did not signify that the rule in question would ultimately be issued. Before granting the petition, however, NHTSA had determined, pursuant to 49 CFR 552.8, that there was "a reasonable possibility" that such a rule would be issued. This determination was influenced by a conflict between incomplete and final stage vehicle manufacturers that NHTSA had witnessed over the issue of which party would be responsible for recalling vehicles that contained a safety-related defect.

That conflict arose in early 1987, when NHTSA approached Ford Motor Company and an association representing the majority of ambulance manufacturers to address fires caused by fuel expulsion that were being reported in an increasing number of ambulances built on certain Ford E–350 chassis. Initially, both Ford and the ambulance manufacturers raised legal and factual arguments to deny their own fault in the matter, and to attribute the defect to the other's actions. This process consumed time that could otherwise have been devoted to fashioning a remedy for the defect and ensuring the remedy's prompt implementation. Ultimately, Ford conducted a recall. However, because of the delay and uncertainty that preceded this action, NHTSA concluded that there was a need for it to examine whether its regulations should be amended to specifically allocate recall responsibility among the various manufacturers in the chain of production for multistage vehicles.

F. Subsequent Experience With Multistage Vehicle Recalls

The conflicts between incomplete and final stage vehicle manufacturers that NHTSA witnessed in the ambulance recall have not been evident in subsequent enforcement actions involving multistage vehicles. For example, several motorhome manufacturers determined in April 1991 that a safety-related defect existed in certain of their 1978 through 1986 model year micro-mini motorhomes built on chassis manufactured by Toyota Motor Corporation with semi-floating axles that were modified through the addition of "aftermarket" dual rear wheels. Although some of the affected motorhome manufacturers originally suggested that Toyota should be responsible for the recall, they eventually recognized that under the Act, the final stage manufacturer had the responsibility to conduct the notification and remedy campaign. The motorhome manufacturers ultimately instituted their campaigns to recall these vehicles after Toyota agreed to supply them, at a reduced price, with full-floating axles equipped with factory-installed dual rear wheels to replace the defective equipment. In a more recent action, Navistar International Corporation agreed to recall 185,177 school buses that failed to comply with Federal Motor Vehicle Safety Standard No. 301, *Fuel System Integrity*, despite the fact that, as the chassis manufacturer, it did not have the legal responsibility under the Act to do so.

G. NHTSA's Existing Regulations on Multistage Vehicles Permit Recall Responsibility To Be Assumed by Any Manufacturer

NHTSA's existing regulations covering vehicles manufactured in two or more stages do not mandate that responsibility for defects and noncompliances be borne exclusively by final stage manufacturers, but instead permit such responsibility to be assumed by any other manufacturer in the production chain. This is reflected in 49 CFR 568.7, which specifies requirements for incomplete or intermediate stage vehicle manufacturers who assume legal responsibility for all duties and liabilities imposed on manufacturers under the Act. Additionally, 49 CFR 573.3(c) specifies that in the case of a defect or noncompliance determined to exist in a vehicle manufactured in two or more stages, compliance with agency notification and reporting requirements by any manufacturer in the production

chain shall be considered compliance by all such manufacturers. These regulations emphasize the fact that NHTSA is not concerned with which manufacturer in the production chain assumes responsibility for recalling a vehicle built in two or more stages, so long as there is a manufacturer who does so.

H. Means Available for Final Stage Manufacturer To Avoid Recall Responsibility

The fact that an incomplete vehicle manufacturer is not obligated by Federal law to conduct a recall unless it agrees to assume responsibility to do so does not place, in NHTSA's estimation, an insurmountable burden on the final stage manufacturer. In negotiating the purchase of incomplete vehicles, the final stage manufacturer can seek to have the incomplete vehicle manufacturer assume contractual responsibility for any defects and noncompliances inherent in the incomplete vehicle. Even in the absence of such contractual provisions, if the completed vehicles appear to contain a defect or noncompliance that was inherent in the incomplete vehicle, the two manufacturers could enter into an agreement under which the incomplete vehicle manufacturer would take responsibility for the recall campaign (as was done in the Navistar school bus recall noted above). Moreover, even if the incomplete vehicle manufacturer were to refuse to assume such responsibility, the final stage manufacturer would not be left without recourse. If the defect or noncompliance was in fact caused by the incomplete vehicle manufacturer, the final stage manufacturer would most likely be able to obtain reimbursement from the incomplete vehicle manufacturer for any losses it incurred in conducting the recall campaign (including direct expenses and other possible damages) under state commercial law.

I. Leaving Recall Responsibility With the Final Stage Manufacturer Furthers Important Policy Objectives

NHTSA recognizes that in many cases the incomplete vehicle manufacturer will be in the best position to identify a remedy for a defect or noncompliance, and may have a more extensive dealer network at which the remedy may be obtained. However, the agency has concluded that the better policy is to leave recall responsibility with the final stage manufacturer in circumstances where the incomplete or intermediate stage vehicle manufacturer refuses to assume such responsibility. The final stage manufacturer is the party who selects the components, assemblies, and systems that are incorporated into the vehicle as finally manufactured. Additionally, the final stage manufacturer is most likely to be able to identify owners from sales and warranty records, as well as state registration records, which may not be available to incomplete or intermediate stage vehicle manufacturers.

Leaving recall responsibility with the final stage manufacturer if it is not assumed by any other manufacturer in the production chain also provides a degree of certainty that is essential for assuring that defects and noncompliances are remedied as promptly as possible. This avoids delays that could have safety repercussions if the various manufacturers in the production chain were to engage in extended arguments over which one is responsible for the defect or noncompliance that necessitates the recall campaign.

J. Vehicle Alterers

The NTEA petition also proposed that the definition of replacement equipment in 49 CFR 579.4(b) be broadened to include motor vehicle equipment that is added, physically altered, or directly affected by an alteration that had not been expressly authorized by the manufacturer of a previously completed vehicle. In such a situation, the alterer would be considered a manufacturer of replacement equipment, and, under sections 151 and 152 of the Safety Act, 15 U.S.C. 1411 and 1412, be responsible for defects or noncompliance in that equipment. The petition further specified that the manufacturer of the previously completed vehicle that receives the alteration would continue to be regarded as the motor vehicle manufacturer and retain responsibility for any defect or noncompliance present in the vehicle before alteration or introduced through alterations performed with that manufacturer's express authorization.

NHTSA's existing regulations on vehicles manufactured in two or more stages (49 CFR part 568) impose certain requirements on persons who alter certified vehicles. Section 568.8 of those regulations provides that

> [a] person who alters a vehicle that has been previously certified * * * other than by the addition, substitution, or removal of readily attachable components such as mirrors or tire or rim assemblies, or minor finishing operations such as painting, or who alters a vehicle in such a manner that its stated weight ratings are no longer valid, before the first purchase of the vehicle in good faith for purposes other than resale, shall ascertain that the vehicle as altered conforms to the standards which are affected by the alteration and are in effect on the original date of manufacture of the vehicle, the date of final completion, or a date between those two dates. That person shall certify the vehicle in accordance with § 567.7 of this chapter.

NHTSA's vehicle certification regulations at 49 CFR 567.7 provide that a person who alters previously certified vehicle shall allow the original certification label to remain on the vehicle and shall affix an additional label that specifies that the vehicle, as altered, conforms to all applicable Federal motor vehicle safety standards affected by the alteration.

In light of these requirements, before it received the NTEA petition, NHTSA had issued interpretations stating that an alterer is considered a "manufacturer" for the purposes of the Act, and is responsible for the notification and remedy of defects and noncompliances caused by the alteration. The agency has consequently concluded that there is no need for the proposed NTEA amendment to 49 CFR 579.4(b) concerning vehicle alterations.

Authority: 15 U.S.C. 1392, 1407, and 1411-1420; delegations of authority at 49 CFR 1.50 and 501.8(f).

Issued on July 22, 1993.

Barry Felrice,

Associate Administrator for Rulemaking.

[FR Doc. 93-17977 Filed 7-27-93; 8:45 am]

BILLING CODE 4910-59-M

Notices

Federal Register
Vol. 58, No. 143
Wednesday, July 28, 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.

ACTION

Foster Grandparent Program and Senior Companion Program, Income Eligibility Levels

AGENCY: ACTION.

ACTION: 1993 SSI-adjusted income eligibility levels for the Foster Grandparent and Senior Companion Programs.

SUMMARY: This notice adjusts the 1993 income eligibility levels for the Foster Grandparent and Senior Companion Programs published in 58 FR 13735, March 15, 1993.

This adjustment is based on the 1993 state supplementations to Supplemental Security Income (SSI) disseminated by the Social Security Administration in April 1993. The revised income eligibility level for each state adopts the higher amount of either: (a) 125% of the Department of Health and Human Services (DHHS) Poverty Income Guidelines, or (b) 100% of the DHHS Guidelines plus the current amount of each state supplementation to SSI. Amounts are rounded to the next highest multiple of $5.00.

Persons whose income met the eligibility levels published on March 15, 1993, shall remain eligible under the conditions provided in current policy. The adjusted eligibility levels in this notice shall apply to persons enrolling in the Programs on or after its effective date.

SCHEDULES OF INCOME ELIGIBILITY LEVEL: FOSTER GRANDPARENT AND SENIOR COMPANION PROGRAMS

[For the following SSI-Adjusted States]

States	Household units of							
	One	Two	Three	Four	Five	Six	Seven	Eight
Alaska	$13,190	$18,310	$21,390	$24,470	$27,550	$30,630	$33,975	$37,825
California	10,020	16,920	19,380	21,840	24,300	26,760	29,220	31,680
Colorado	8,715	13,310	15,770	18,230	21,015	24,090	27,165	30,240
Connecticut	10,730	14,735	17,195	19,655	22,115	24,575	27,165	30,240
Massachusetts	8,715	11,855	14,865	17,940	21,015	24,090	27,165	30,240

(For household units with more than eight members, add $3,850 in Alaska, add $2,460 in California, and add $3,075 in Connecticut, Colorado and Massachusetts for each additional member.)

The following income eligibility levels reflecting 125% of the DHHS Poverty Income Guidelines were published in the March 15, 1993, Federal Register. They remain in effect for all states, the District of Columbia, Puerto Rico, and the Virgin Islands, with the exception of the SSI-adjusted states shown above.

States	Household units of		
	One	Two	Three
All	$8,715	$11,790	$14,865
Hawaii	10,050	13,575	17,100

(For household units with more than three members, add $3,075 in "All" states and $3,525 in Hawaii for each additional member.)

EFFECTIVE DATE: July 28, 1993.

FOR FURTHER INFORMATION CONTACT: Rey Tejada, Program Officer, Foster Grandparent Program, 1100 Vermont Avenue, NW., Washington, DC 20525 or telephone (202) 606–4849; or Douglas S. Hill, Acting Program Officer, Senior Companion Program, 1100 Vermont Avenue, NW., Washington, DC 20525 or telephone (202) 606–4851.

SUPPLEMENTARY INFORMATION: ACTION programs are authorized pursuant to sections 211 and 213 of the Domestic Volunteer Service Act of 1973, as amended, Public Law 93–113, 87 Stat. 394. The income eligibility levels are determined by the currently applicable guidelines published by DHHS pursuant to sections 652 and 673 (2) of the Omnibus Budget Reconciliation Act of 1981 which requires poverty guidelines to be adjusted for Consumer Price Index changes.

Signed at Washington, DC, this 16th day of July, 1993.

G. Gary Kowalczyk,

Acting Director.

[FR Doc. 93–17923 Filed 7–27–93; 8:45 am]

BILLING CODE 6050–28–M

ADMINISTRATIVE CONFERENCE OF THE UNITED STATES

Committee on Rulemaking; Public Meeting

SUMMARY: Pursuant to the Federal Advisory Committee Act (Pub. L. 92-463), notice is hereby given of the meeting of the Committee on Rulemaking of the Administrative Conference of the United States. The Committee will meet to further discuss a draft recommendation on improving the environment of agency rulemaking.

DATES: Wednesday, August 4, 1993 at 9 a.m.

LOCATION: Office of the Chairman, Administrative Conference, 2120 L Street, NW., suite 500, Washington, DC.

FOR FURTHER INFORMATION CONTACT: Kevin L. Jessar, Office of the Chairman, Administrative Conference of the United States, 2120 L Street, NW., suite 500, Washington, DC 20037. Telephone: (202) 254-7020.

SUPPLEMENTARY INFORMATION: Attendance at the committee meeting is

open to the interested public, but limited to the space available. Persons wishing to attend should notify the Office of the Chairman at least one day in advance. The committee chairman, if he deems it appropriate, may permit members of the public to present oral statements at the meeting. Any member of the public may file a written statement with the committee before, during, or after the meeting. Minutes of the meeting will be available on request.

Dated: July 23, 1993.

Michael W. Bowers,

Deputy Research Director.

[FR Doc. 93–18129 Filed 7–27–93; 8:45 am]

BILLING CODE 6110–01–W

DEPARTMENT OF AGRICULTURE

Forest Service

Reversion of Land from the Jurisdiction of the USDA, Forest Service to the Tennessee Valley Authority

AGENCY: Forest Service, USDA.

ACTION: Notice.

SUMMARY: In 1940 the Tennessee Valley Authority (TVA) transferred to the Forest Service administrative jurisdiction over certain lands the TVA had acquired for various reservoir projects. Some of these lands on Lake Blue Ridge became part of the Chattahoochee National Forest in Georgia. Under the terms of the 1940 agreement between the TVA and the Forest Service, notice is hereby given of the reversion of administrative jurisdiction over these lands back to the TVA. The subject lands are described in appendix A set out at the end of this notice.

EFFECTIVE DATE: The lands will revert to TVA jurisdiction January 1, 1994.

FOR FURTHER INFORMATION CONTACT: Questions about this notice should be addressed to David M. Sherman, Lands Staff, Forest Service, USDA, P.O. Box 96090, Washington, DC 20009–6090, (202) 205–1362.

SUPPLEMENTARY INFORMATION: On August 12, 1940, the U.S. Department of Agriculture, Forest Service, and the Tennessee Valley Authority executed an Agreement of Transfer of land from the Tennessee Valley Authority to the Forest Service. Notice of the agreement was published in the **Federal Register** on November 16, 1940, (5 FR 4512). By this Agreement the Tennessee Valley Authority transferred administrative jurisdiction over certain lands acquired by the TVA pursuant to the Act of May 18, 1933 (16 U.S.C. 831, *et seq.*) to the Department of Agriculture. These lands were included in the Chattahoochee National Forest by President Franklin D. Roosevelt on November 15, 1940, acting pursuant to section 24 of the Act of March 3, 1891 (16 U.S.C. 471) which authorized the creation of forest reserves for watershed protection. Notice of the Presidential action was published in the **Federal Register** on November 16, 1940 along with the transfer agreement (5 FR 4515), which states in part that:

> The assignment and transfer to Department (of Agriculture) of the right of possession and all other right, title, or interest to the above-described property now possessed by the Tennessee Valley Authority shall be effective so long as said property is administered and operated as a part of the national forest to provide a maximum of watershed protection and subject to the terms and conditions herein contained; and in the event said property shall at any time cease so to be administered then the right of possession and all other right, title, and interest herein assigned and transferred by the Tennessee Valley Authority shall thereupon revert to and become the property of the Tennessee Valley Authority automatically and without the necessity for the institution by it of any legal proceedings therefor whatsoever. 5 FR 4514.

Some of the lands transferred to the Department of Agriculture for administration under the 1940 Agreement are narrow strips of land, usually less than 100 feet in width, which constitute a portion of the shores of the reservoirs. Overall land and water management of the reservoir areas has been complicated by the tripartite jurisdiction of the Forest Service, the Corps of Engineers and the TVA. The TVA has managed the water for hydroelectric power and flood control, and some upland areas. The Forest Service has managed the narrow riparian strips constituting the shores of the reservoirs. The Corps of Engineers has had jurisdiction over any structures permitted in these navigable waters. This present inefficient pattern of land administration does not provide for "a maximum of watershed protection," as required in the 1940 Agreement, nor can the riparian lands be effectively administered or operated as part of the National Forest. Therefore, the reversionary terms of the 1940 Agreement previously cited are hereby effected with respect to certain lands, specifically described in appendix A.

Management of the described riparian lands will be improved by the reversion of the administrative jurisdiction over the lands to the TVA. Reversion will also make it more convenient for adjacent property owners who must now deal with multiple agencies in order to obtain permits. The Forest Service has requested of the TVA that any and all permittees occupying reverted lands under any authorization issued by the Forest Service will not have their occupancy unreasonably interrupted by the assumption of jurisdiction over the subject lands by the TVA. The Forest Service will work with the TVA to ensure the continuation of existing uses on the reverted lands until expiration of Forest Service permits. Subsequent authorizations of uses on the reverted land will be at the discretion of the TVA.

Effective January 1, 1994, administrative jurisdiction over the lands identified in appendix A is hereby reverted to the TVA, without consideration of any kind, and the administrative jurisdiction of the Secretary of Agriculture is thereby terminated. The Forest Service is providing written notice to all persons or entities possessing Forest Service permits or other special use authorizations on the lands reverting to the TVA.

Dated: July 15, 1993.

Marvin Meier,

Acting Regional Forester.

Appendix A

All acreages recited herein are approximate.

All those parcels of land lying on the waters of Blue Ridge Lake in Districts 7 and 8, Section 1, and Districts 7 and 8, Section 2, Fannin County, Georgia being all or part of certain of those tracts described by Contract TV 56798 as conveyed from the Tennessee Valley Authority to the Forest Service, Department of Agriculture by Presidential Proclamation dated August 12, 1940 and described as follows:

BRR–9 Wm. Garren, 12.35 acres.

BRR–10 R.C. Miller, 33.73 acres.

BRR–13 Mollie E. Prince—9.4 acres being that part of said tract that lies north of the Morganton Point Boat Ramp.

BRR–14 M.C. Smith, et al., 3.82 acres.

BRR–23 W.H. Collins—25 acres being the parts of said tract in Land Lot 323 District 8, Section 1 which lie between the 1690 and 1700 contour and between the 1690 and 1700 contour plus 150 horizontal feet, and which are not adjacent to other lands administered by the Forest Service.

BRR–24 W.D. Crawford, 3.22 acres.

BRR–26 Wade Allen—9.21 acres being that part of said tract which lies between the 1690 contour and the east line of Land Lot 305, District 8, Section 2.

BRR–30 Wm. B. Lovingood—4 acres being all the islands.

BRR–32 C.L. McClure, 3 acres being all of said tract that lies between the 1690 and 1700 contour in Land Lot 311, District 8, Section 2.

BRR–36 Starkey Flythee, 0.3 acre.

BRR–37 S.H. Green—36.8 acres being all the islands plus all parts of said tract that lie between the 1690 and 1700 contour and between the 1690 and 1700 contour plus 150 horizontal feet, and which are not adjacent to other lands administered by the Forest Service.

BRR–39 Mrs. Mattie Freeman—1.0 acre being all of said tract that lies north of the Morganton Point Boat Ramp.

BRR–40 M.J. Jones—10.1 acres being all the islands and that part of said tract in Land Lot 17, District 7, Section 2 that lies west of the Antioch Cemetery.

BRR–45 W.D. Crawford, 0.67 acre.

BRR–49 T.L. Ray, 4.45 acres.

BRR–68 Willis Wright—0.55 acre being all the islands.

BRR–76 M.J. Green, 0.3 acre.

BRR–80 A.L. Farmer, 0.10 acre.

Total 158.0 acres.

The above listed lands are more particularly delineated on maps which are on file with both the Tennessee Valley Authority and the United States Department of Agriculture, Forest Service.

[FR Doc. 93–17945 Filed 7–27–93; 8:45 am]

BILLING CODE 3410–11–M

Newberry National Volcanic Monument Advisory Council Meeting Notice

AGENCY: Forest Service, USDA.

ACTION: Newberry National Volcanic Monument Advisory Council Meeting.

SUMMARY: The Newberry National Volcanic Monument Advisory Council will meet on August 26 and 27, 1993 at the Bend/Fort Rock Ranger District, 1230 NE 3rd Street in Bend, Oregon. The meetings will begin at 9 am and continue until 4 p.m. each day. Agenda items to be covered include: A tour of the Monument and adjacent areas to better understand the role of fire in this ecosystem, review of alternatives for the management plan, and staff reports on the summer season.

Interested members of the public are encouraged to attend.

FOR FURTHER INFORMATION CONTACT: Direct questions regarding this meeting to Carolyn Wisdom, Project Coordinator, Fort Rock Ranger District USFS, 1230 NE 3rd, Bend, OR 97701, (503) 383–4702 or 383–4704.

Dated: July 16, 1993.

Sally Collins,

Deputy Forest Supervisor.

[FR Doc. 93–17831 Filed 7–27–93; 8:45 am]

BILLING CODE 3410–11–M

DEPARTMENT OF COMMERCE

Bureau of Export Administration

[Docket No. 930775-3175]

Foreign Availability Assessment; Oil Well Perforators

AGENCY: Office of Foreign Availability, Bureau of Export Administration, Commerce.

ACTION: Notice of initiation of an assessment and request for comments.

SUMMARY: Pursuant to section 5(f) of the Export Administration Act of 1979, as amended (EAA), the Office of Foreign Availability (OFA) is providing notice that it has initiated an assessment of foreign availability of oil well perforators to all destinations. Oil well perforators are controlled under paragraph (o) of Export Control Classification Number (ECCN) 1C18A of the Commerce Control List (15 CFR 799.1, Supp. 1). OFA is seeking public comments on the foreign availability of these items worldwide.

DATES: The period for submission of information will close August 27, 1993.

ADDRESSES: Submit information relating to this foreign availability assessment to: Steven C. Goldman, Director, Office of Foreign Availability, Bureau of Export Administration, U.S. Department of Commerce, room 1087, 14th Street and Pennsylvania Avenue, NW., Washington, DC 20230.

The public record concerning this notice will be maintained in the Bureau of Export Administration's Freedom of Information Record Inspection Facility, room 4525, U.S. Department of Commerce, 14th Street and Pennsylvania Avenue, NW., Washington, DC 20230.

FOR FURTHER INFORMATION CONTACT: Ron Rolfe, Office of Foreign Availability, Department of Commerce, Washington, D.C. 20230, Telephone: (202) 482-5953.

SUPPLEMENTARY INFORMATION: Under sections 5(f) and 5(h) of the EAA, OFA assesses the foreign availability of goods and technology whose export is controlled for national security reasons. Part 791 of the Export Administration Regulations (EAR) (15 CFR part 730 *et seq.*) establishes the procedures and criteria for determining the foreign availability of goods and technology. OFA is publishing this notice pursuant to sections 5(f)(3) and 5(f)(9) of the EAA.

On June 21, 1993, OFA accepted a foreign availability submission pursuant to section 5(f) of the EAA relating to the decontrol of oil well perforators to all destinations. These items are controlled for national security reasons under paragraph (o) of ECCN 1C18A of the Commerce Control List (CCL) (15 CFR 799.1, Supp. 1): "Items on the International Munitions List."

The oil well industry uses oil well perforators to open up holes in the rock wall surrounding a drill shaft to allow oil to flow up and out of a well. These small devices typically have an outer case of steel, an interior shaped like a cone that is lined with a small amount of explosive (usually military explosives such as RDX, HMX, HNS, etc.), and a second lining of metal (often copper). By using these explosives, oil well perforators can tolerate the high temperatures encountered in underground wells.

Upon acceptance of the submission, OFA initiated a foreign availability assessment of the item. By November 21, 1993, consistent with the requirements of the EAA, the Department intends to submit for publication in the **Federal Register** its determination of the foreign availability of the item.

To assist OFA in assessing such foreign availability, any person may submit relevant information to OFA at the above address.

The following information would be especially useful:

—Product names and model designations of the U.S. and non-U.S. items;

—Names and locations of non-U.S. sources;

—Key performance elements, attributes, and characteristics of the items on which quality comparisons may be made;

—Non-U.S. sources' production quantities and/or sales of any allegedly comparable item;

—An estimate of market demand and the potential economic impact of the control on the U.S. item;

—Extent to which any allegedly comparable item is based on U.S. technology;

—Product names, model designations, and value of U.S. controlled parts and components incorporated in any allegedly comparable item; and

—Information supporting the proposition that the foreign item is in fact available to the country or countries for which foreign availability is alleged.

Evidence supporting such relevant information may include, but is not limited to: Foreign manufacturers' catalogs, brochures, or operations or maintenance manuals; articles from reputable trade publications; photographs; and depositions based upon eyewitness accounts. Supplement

No. 1 to part 791 of the EAR provides additional examples of evidence that would be helpful to the investigation.

OFA will also accept comments or information accompanied by a request that part or all of the material be treated confidentially because of its proprietary nature or for any other reason. The information for which confidential treatment is requested should be submitted to OFA separately from any non-confidential information. The top of each page should be marked with the term "Confidential Information." Confidential submissions must include a statement from the submitter that the material is commercial or financial information which the submitter does not customarily release to the public. If OFA will not accept the submission in confidence, it will return it. A non-confidential summary must accompany such submissions of confidential information. OFA will make the summary available for public inspection.

Regardless of whether the submitter has requested confidential treatment, OFA will maintain the confidentiality of any information exempt from disclosure under the Freedom of Information Act (5 U.S.C. 522). This may include communications from agencies of the United States Government and foreign governments which are exempt from disclosure under the Freedom of Information Act.

All other information received in response to this notice will be a matter of public record and will be available for public inspection and copying. In the interest of accuracy and completeness, the Department requires written comments. Oral comments must be followed by written memoranda, which also will be a matter of public record and will be available for public review and copying.

The public record of information received in response to this notice will be maintained in the Bureau of Export Administration's Freedom of Information Records Inspection Facility, room 4525, Department of Commerce, 14th Street and Pennsylvania Avenue NW., Washington, DC. 20230. Records in this facility, including written public comments and memoranda summarizing the substance of oral communications, may be inspected and copied in accordance with regulations published in part 4 of title 15 of the Code of Federal Regulations.

Information about the inspection and copying of records at the facility may be obtained from Margaret Cornejo, Bureau of Export Administration, Freedom of Information Officer, at the above address or by calling (202) 482-5653.

Due to the strict statutory time limitations in which Commerce must make its determination, the period for submission of relevant information will close August 27, 1993. The Department will consider all information received before the close of the comment period in developing the assessment. Information received after the end of the period will be considered if possible, but its consideration cannot be assured. Accordingly, the Department encourages persons who wish to provide information related to this foreign availability submission to do so at the earliest possible time to permit the Department the fullest consideration of the information.

Iain S. Baird,

Acting Assistant Secretary for Export Administration.

[FR Doc. 93-17992 Filed 7-27-93; 8:45 am]

BILLING CODE 3510-DT-P

National Oceanic and Atmospheric Administration

Marine Mammals

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

ACTION: Receipt of applications to modify Permits No. 858 (P545) and 801 (P420C).

SUMMARY: Notice is hereby given that James R. Gilbert, Ph.D. Professor, Wildlife Department, University of Maine, Orono, ME 04469-5755 and J. Ward Testa, Ph.D. and Michael Castellini, Ph.D., Institute of Marine Science, University of Alaska 99775-1080, have requested a modification to their Permits No. 858 and 801, respectively.

DATES: Written comments must be received on or before August 27, 1993.

ADDRESSES: The modification request and related documents are available upon written request or by appointment in the Permits Division, Office of Protected Resources, NMFS, 1335 East-West Hwy., suite 7324, Silver Spring, MD 20901 (301/713-2289);

(P545)—Director, Northeast Region, NMFS, One Blackburn Drive, Gloucester, Massachusetts 01930 (508/281-9200); and

(P420C)—Director, Alaska Region, NMFS, P.O. Box 21668, Juneau, AK 99802 (907/586-7221).

Written data or views, or requests for a public hearing on these modification requests should be submitted to the Assistant Administrator for Fisheries, NMFS, NOAA, U.S. Department of Commerce, 1335 East-West Hwy., suite 7324, Silver Spring, MD 20901 within 30 days of the publication of this notice. Those individuals requesting a hearing should set forth the specific reasons why a hearing on these particular requests would be appropriate.

SUPPLEMENTARY INFORMATION: The subject modifications to Permit No. 858 issued on July 6, 1993, and Permit No. 801 issued on October 16, 1992 (57 FR 48512) are requested under the authority of the Marine Mammal Protection Act of 1972, as amended (16 U.S.C. 1361 *et seq.*), and the provisions of § 216.33(d) and (e) of the Regulations Governing the Taking and Importing of Marine Mammals (50 CFR part 216).

Permit No. 858 authorizes Dr. James R. Gilbert to conduct population census on an unspecified number of harbor seals (*Phoca vitulina*) on coastal ledges in New England from Isle of Shoals north to the Canadian border using a fixed-wing aircraft.

The Permittee requests a modification of the Permit to include gray seals in his survey design for determining population estimates since gray seals are sometimes found in the study area.

Permit No. 801 authorizes J. Ward Testa, Ph.D. and Michael Castellini, Ph.D. to take up to 1200 Weddell seals (*Leptonychotes weddelli*) of which 550 may be pups, 400 may be adult females and 250 may be adult males, and up to 30 each of crabeater seal (*Lobodon carcinophagus*), leopard seal (*Hydrurga leptonyx*), Ross seal (*Ommatophoca rossii*), southern elephant seal (*Mirounga leonina*), and Antarctic fur seal (*Arctocephalus gazella*), may be captured, physically restrained and tagged annually with plastic cattle ear tags; up to 2000 Weddell seals may be harassed annually during research activities, approached up to 10 times to read tags, and during ground censuses; and blood samples and salvaged parts from the species authorized that were found dead from natural causes may be obtained and imported.

The Permit Holders request a modification to expand the research protocol on animals already authorized (no increase in the take authority is requested). Of the 1200 Weddell seals authorized, it is requested that: (1) 650 adults be tagged with subcutaneous transponders of which 20 may have satellite tags (SLTDRs) attached to their pelage, 20 may be injected with oxytocin (intramuscularly) to extract milk up to three times, and 50 may have a vibrissa clipped, a claw marked and pulled, and up to 3 blubber biopsies taken; (2) 30 pups may have one vibrissa clipped once, a claw marked once (not pulled) and blubber biopsies taken up to

3 times, 300 pups may be weighed, blood sampled and have body fat determined once, and 40 pups may be captured, tagged and released up to 2–3 times; (3) 30 each of crabeater, leopard, Ross, and Southern elephant seals may be weighed, blood sampled, have a vibrissa clipped, a claw pulled, and a blubber biopsy sample taken. Unused samples will be curated at the University of Alaska Museum.

Dated: July 22, 1993.

Herbert W. Kaufman,

Deputy Director, Office of Protected Resources, National Marine Fisheries Service.

[FR Doc. 93–17947 Filed 7–27–93; 8:45 am]

BILLING CODE 3510–22–M

DEPARTMENT OF DEFENSE

Department of the Army

Performance Review Boards Membership

AGENCY: Office of the Assistant Secretary of the Army (Manpower and Reserve Affairs), DOD.

ACTION: Notice.

SUMMARY: Notice is given of the names of members of the Performance Review Boards for the Department of the Army.

EFFECTIVE DATE: August 16, 1993.

ADDRESS: U.S. Army Senior Executive Service, Office of the Assistant Secretary of the Army (Manpower and Reserve Affairs), SAMR–CPP(SES), 111 Army Pentagon, Washington, DC 20310–0111.

FOR FURTHER INFORMATION CONTACT: Jeanne Raymos, (703) 695–2975.

SUPPLEMENTARY INFORMATION: Section 4314(c) (1) through (5) of title 5, United States Code, requires each agency to establish, in accordance with regulations, one or more Senior Executive Service performance review boards. The boards shall review and evaluate the initial appraisal of senior executives' performance by supervisors and make recommendations to the appointing authority or rating official relative to the performance of these executives.

The members of the Performance Review Board for Army Materiel Command include: Mr. Edward G. Elgart, Director, Command, Control, Communications and Intelligence Acquisition Center, U.S. Army Communications-Electronics Command, Fort Monmouth, NJ.

Kenneth L. Denton,

Army Federal Register Liaison Officer.

[FR Doc. 93–17904 Filed 7–27–93; 8:45 am]

BILLING CODE 3710–08–M

Department of the Navy

Intent to Prepare an Environmental Impact Statement for the Construction of Facilities for Two Future Replacement Nimitz Class Aircraft Carriers at Naval Air Station North Island, San Diego, CA

Pursuant to section 102(2)(c) of the National Environmental Policy Act (NEPA) of 1969 as implemented by the Council on Environmental Quality regulations (40 CFR parts 1500–1508), the Department of the Navy announces its intent to prepare an Environmental Impact Statement (EIS) for the proposed facilities for homeporting of two future replacement Nimitz Class Aircraft Carriers at Naval Air Station (NAS) North Island, San Diego, California.

As part of its long-range planning program, the Navy is studying the feasibility of constructing facilities needed to provide homeport and transient berthing for as many as three nuclear-powered aircraft carriers at NAS North Island. Today, NAS North Island has the capacity to temporarily support one nuclear-powered and two conventionally powered aircraft carriers, or three conventionally powered carriers. The two carriers currently homeported at NAS North Island are conventionally powered. As the Navy changes to a smaller, more modern fleet, older conventionally powered aircraft carriers will be decommissioned and replaced with modern nuclear-powered aircraft carriers, which require additional support facilities.

Mechanical and electrical utilities, additional buildings, pier construction, dredging and bay fill will be required to support the proposed berthing plan.

The alternatives currently identified for consideration in the EIS are (1) no action, (2) alternative sediment disposal sites, (3) alternative pier locations at NAS North Island, and (4) the proposed action. Environmental issues which will be discussed in the EIS include: Methods of dredging; methods of disposal (bay fill, beach replenishment, and open water at LA–S); in-water construction; water quality impacts resulting from dredging and sediment disposal; potential impacts to California least tern, brown pelican, migratory waterfowl, and eelgrass habitat; and potential impacts to local traffic and air quality, socioeconomics, and listed cultural resources. Issue analysis will include an evaluation of direct, indirect, short-term, long-term, and cumulative impacts associated with the proposed action. The decision to implement the proposed action or any alternatives for the proposed action will not be made until the environmental (NEPA) process is complete.

The Navy will hold a public scoping meeting on August 17, 1993, at 7 p.m. in the Coronado High School Auditorium, 650 D Avenue, Coronado, California. This meeting will be advertised in San Diego area newspapers.

A formal presentation will precede public testimony. Navy representatives will be available at the scoping meeting to receive comments from the public. It is important that federal, state, and local agencies, as well as interested individuals take this opportunity to identify environmental concerns that should be addressed during the preparation of the EIS.

Agencies and the public are also invited and encouraged to provide written comments in addition to, or in lieu of, oral comments at the public meeting. To be most helpful, scoping comments should clearly describe specific issues or topics that the EIS should address. Written statements and/or questions regarding the scoping process should be mailed no later than August 31, 1993, to: Commanding Officer, Southwest Division, Naval Facilities Engineering Command, 1220 Pacific Highway, San Diego, California 92132–5178, Attn: Code 232.

Dated: July 23, 1993.

Michael P. Rummel,

LCDR, JAGC, USN, Federal Register Liaison Officer.

[FR Doc. 93–18005 Filed 7–27–93; 8:45 am]

BILLING CODE 3810–AE–M

DEFENSE NUCLEAR FACILITIES SAFETY BOARD

[Recommendation 93–5]

Hanford Waste Tanks Characterization Studies

AGENCY: Defense Nuclear Facilities Safety Board.

ACTION: Notice; recommendation.

SUMMARY: The Defense Nuclear Facilities Safety Board (Board) has made a recommendation to the Secretary of Energy pursuant to 42 U.S.C. 2286a concerning improvements in the waste characterization program for the high level waste storage tanks at the Hanford Site. The Board requests public comments on this recommendation.

DATES: Comments, data, views, or arguments concerning this recommendation are due on or before August 27, 1993.

ADDRESSES: Send comments, data, views, or arguments concerning this recommendation to: Defense Nuclear Facilities Safety Board, 625 Indiana Avenue, NW, Suite 700, Washington, DC 20004.

FOR FURTHER INFORMATION CONTACT: Kenneth M. Pusateri or Carole J. Council, at the address above or telephone (202) 208–6400.

Dated: July 21, 1993.

John T. Conway,

Chairman.

Hanford Waste Tanks Characterization Studies

Dated: July 19, 1993.

Since its beginning almost four years ago, the Board has assigned one of its highest priorities to assurance of safety at the high level nuclear waste storage tanks at the Hanford Site. The Board addressed two of its sets of recommendations (90–3 and 90–7) to potential hazards associated with tanks containing ferrocyanide compounds and pointed to the need for action in connection with tank 101–SY, which periodically vents flammable mixtures of nitrous oxide and hydrogen gas. In Recommendation 90–7, the Board emphasized the urgent need for more rapid and complete sampling and analysis of tank wastes. The wastes in the Hanford tanks differ markedly from tank to tank. Identification of what specifically is in each tank is essential and urgent. Without timely characterization of the wastes, the nature of the risks associated with the tanks cannot be fully assessed and, where necessary, mitigated. Further, until the characteristics of the wastes are known, final methods for tank waste monitoring, retrieval, transport, and treatment cannot be realistically established.

The Board has repeatedly expressed its dismay at the continued slow rate of conduct of this characterization program and has urged a greater rate of progress. At last count only 22 of the 177 tanks on the site have been sampled. Only four of those sampled were among the 54 tanks on the watch list of tanks that generate the greatest safety concerns. The number of samples per tank continues to be insufficient to provide adequate characterization of the full tank. While the published schedules for sampling and analysis promise improvement, they seem optimistic when viewed against the record to date. They appear to present wishes rather than anticipated activities.

Two sets of problems appear to be principal contributors to the slow pace of characterization of the contents of the tanks. The first is a complex of factors acting to impede access to the interiors of the tanks and extraction of samples of their contents. The second is the exhaustive set of measurements made on each sample, along with limitations on laboratory capability for completing these measurements. The Board notes that measurements made for safety purposes do not necessarily receive priority over those done for other reasons, such as satisfaction of formal EPA-related requirements for final waste disposition.

The Board believes that accelerating the pace of the program of characterizing the contents of Hanford's high level nuclear waste tanks is important to nuclear safety at this important defense site. This view is shared by other experts, including DOE's own "Red Team", which reviewed the waste characterization program for the Hanford Tank Farm (DOE–EM, July 1992, Independent Technical Review of Hanford Tank Farm Operations). Characterization is essential for ensuring safety in the near term during custodial management and remedial activities, and also in the long term for advancing the development of permanent solutions to the high level waste problems at Hanford.

In addition to the matter of acceleration and reprioritization of the sampling schedules, the Board is also concerned about the sampling effort itself. The Board notes that a recently released DOE/RL audit (DOE–RL/OPA Audit 93–02, April 1993) of the sampling programs revealed significant weaknesses in the control, management, and technical implementation of core sampling, laboratory, and supporting activities.

Because the failure to vigorously pursue tank waste characterization raises important health and safety issues, DOE needs to take action to accelerate and strengthen the management of the characterization effort to ensure adequate protection of public health and safety.

Therefore, the Board recommends that DOE:

1. Undertake a comprehensive reexamination and restructuring of the characterization effort with the objectives of accelerating sampling schedules, strengthening technical management of the effort, and completing safety-related sampling and analysis of watch list tanks within a target period of two years, and the remainder of the tanks by a year later;

a. In accordance with the above, give priority in the schedule of tanks to be sampled to the watch list tanks and others with identified safety problems, and priority to the chemical analyses providing information important to ensuring safety in the near term during the period of custodial management. Other analyses, required by statutes such as the Resource Conservation and Recovery Act prior to final disposition of the waste, should not be cause for delay of safety-related analyses. In most cases, analyses needed for long-term disposition may be postponed until more pressing safety-related analyses are completed.

b. Reexamine protocols for gaining access to the tanks for sampling with the objective of simplifying documentation and approval requirements.

c. Increase the laboratory capacity and activities dedicated to tank sample analysis:

(i) Expedite efforts to obtain and begin utilizing additional sampling and analytical equipment now being procured, and the training of personnel needed for an enlarged through-put capacity.

(ii) Explore availability and utility of laboratory services on- and off-site, such as Hanford's Fuel Materials and Examination Facility and the INEL and LANL laboratories, for accelerating the waste characterization effort.

2. Integrate the characterization effort into the systems engineering effort for the Tank Waste Remediation System:

a. Schedule tank sampling consistent with engineering and planning for removal, pre-treatment, and vitrification of the tank wastes.

b. Critically examine the list of chemical analyses done on samples to establish the smallest set needed to satisfy safety requirements.

c. Strengthen the management and conduct of the sampling operations.

Appendix—Transmittal Letter to Secretary of Energy

July 19, 1993.

The Honorable Hazel R. O'Leary,
Secretary of Energy, Washington, DC 20585.

Dear Secretary O'Leary: On July 19, 1993, the Defense Nuclear Facilities Safety Board, in accordance with 42 U.S.C. 2286a(5), unanimously approved Recommendation 93–5 which is enclosed for consideration. Recommendation 93–5 deals with Hanford Waste Tanks Characterization Studies.

42 U.S.C. 2286d(a) requires the Board, after receipt by you, to promptly make this recommendation available to the public in the Department of Energy's regional public reading rooms. The Board believes the recommendation contains no information which is classified or otherwise restricted. To the extent this recommendation does not include information restricted by DOE under the Atomic Energy Act of 1954, 42 U.S.C. 2161–68, as amended, please arrange to have this recommendation promptly placed on file in your regional public reading rooms.

The Board will publish this recommendation in the **Federal Register.**

Sincerely,

John T. Conway,

Chairman.

[FR Doc. 93–17940 Filed 7–27–93; 8:45 am]

BILLING CODE 6820–KD–M

Notice of Commission Meeting and Public Hearing

Notice is hereby given that the Delaware River Basin Commission will hold a public hearing on Wednesday, August 4, 1993. The hearing will be part of the Commission's business meeting which is open to the public and scheduled to begin at 1:30 p.m. in room 107/108 of the meeting facility at Penn State Great Valley, 30 East Swedesford Road, Malvern, Pennsylvania.

An informal conference among the Commissioners and staff will be open for public observation at 10 a.m. at the same location and will include discussions of the Delaware Estuary Model and a status report by the Commission's Ground Water Advisory Committee.

The subjects of the hearing will be as follows:

Amendment of Renewal Procedures for Existing Dockets and Protected Areas Permits for Ground Water Withdrawal. On February 17, 1993 the Commission adopted a proposal by its Ground Water Advisory Committee which set renewal periods for new surface and ground water docket approvals including Protected Area permits at a maximum of ten years, with provisions for extension beyond that based on an applicant's satisfactory demonstration of need. Previously, dockets for ground water withdrawal were issued for a maximum of five years. Following further deliberation, the Committee is now recommending that the Commission allow the expiration dates of existing dockets and Protected Area permits for ground water withdrawals issued prior to February 18, 1993 to be extended to a maximum of ten years from the original date of issuance in order to provide for equitable treatment of all ground water users. The proposed docket and Protected Area permit extensions would be subject to public notice and hearing and would be coordinated with the permitting requirements of the individual Basin states. Finally, the proposal calls upon the Executive Director to notify all docket and Protected Area permit holders potentially affected by this amendment to determine their eligibility for extension.

Applications for Approval of the Following Projects Pursuant to Article 10.3, Article 11 and/or Section 3.8 of the Compact

1. *Holdover Project: Wilmington Suburban Water Corporation D–91–72 CP.* A surface water supply project that entails an increase of withdrawal at the applicant's existing White Clay Creek intakes adjacent to its Stanton water treatment plant. The applicant provides water to portions of northern New Castle County and requests an increase in its water withdrawal from 16 million gallons per day (mgd) to 30 mgd. The project is located just off First State Boulevard in Stanton, New Castle County, Delaware. This hearing continues that of June 23, 1993.

2. *South Jersey Port Corporation (Beckett St. Terminal Expansion) D–91–17.* An application for approval to extend the existing Berth No. 4 of the Beckett Street Terminal on the Delaware River by 350 feet to allow berthing of more and larger vessels. The expansion would involve construction of a 100 ft. wide by 350 ft. long high deck pier structure, supported by piles. The outshore area of the extension will be dredged to a depth of 40 feet below mean low water by the removal of 80,000 cubic yards of river sediment. The terminal is located in the City of Camden, Camden County, New Jersey.

3. *New Jersey-American Water Company D–92–77 CP.* A proposed new surface water intake on the Delaware River to withdraw an average of 40 mgd for the design year 2000 projected demand. The water will be treated at a proposed water filtration plant to be located just off Taylor Lane in Delran, Burlington County, New Jersey. Finished water will be conveyed via new water main construction and interconnections to other purveyors, townships, boroughs and cities located in the regional tri-county service area of Burlington, Camden and Gloucester Counties, New Jersey. The proposed raw water intake will be located in Cinnaminson Township, Burlington County, approximately 4000 feet downstream of the Rancocas Creek confluence with the Delaware River and almost directly across the river from the City of Philadelphia's intake for the Baxter Water Treatment Plant at Torresdale. The intake will consist of a series of six wedge-wire type screens and two 54-inch diameter pipelines located approximately 850 feet offshore and 300 feet outside of the river's deep navigation channel. The intake capacity of each pipe is 50 mgd, the projected peak withdrawal rate.

4. *Musconetcong Sewerage Authority D–92–80 CP.* A project to expand the applicant's existing 2.275 mgd capacity tertiary level sewage treatment plant (STP) and increase the total average daily treatment capacity to 3.63 mgd with approximately 0.65 mgd being wastewater imported from the Raritan River Basin. The STP will continue to serve the Boroughs of Stanhope and Netcong, a portion of Mt. Olive Township, and the Landing Shore Hills and Port Morris areas of Roxbury Township. The expansion project will enable the STP to also serve the Borough of Mount Arlington and new demand in Mt. Olive (from which wastewater will be imported) and Roxbury Townships. The STP will continue to discharge to the Musconetcong River and is located in Mt. Olive Township, Morris County, New Jersey.

5. *Borough of Sellersville D–92–84 CP.* A revised notice of application for approval of a ground water withdrawal project to supply up to 7.5 mg/30 days of water to the applicant's distribution system from new Well No. 6, and to reduce the existing withdrawal limit from all wells of 39 mg/30 days to 20.54 mg/30 days. The project is located in West Rockhill Township, Bucks County, in the Southeastern Pennsylvania Ground Water Protected Area.

6. *Riverside Sewerage Authority D–93–2 CP.* A project to upgrade the applicant's existing secondary level 1.0 mgd sewage treatment plant (STP), provide tertiary filtration, and relocate its outfall from Tar Kiln Run, a tributary of Rancocas Creek, to a point discharging directly to Rancocas Creek in Water Quality Zone 2. The STP will continue to serve the Township of Riverside, and a portion of Delran Township, both in Burlington County, New Jersey and is located off Monroe Street, just south of Rancocas Creek in Riverside Township.

7. *Borough of Fleetwood D–93–22 CP.* An application for approval of a ground water withdrawal project to supply up to 9.1 mg/30 days of water to the applicant's distribution system from new Well No. 14, and to increase the existing withdrawal limit of 13.5 mg/30 days from all wells to 22 mg/30 days. The project is located in Ruscombmanor Township, Berks County, Pennsylvania.

8. *East Vincent Municipal Authority D–93–32 CP.* A project to acquire and modify a sewage treatment plant (STP) to serve as the Township Regional Sewage facility for East Vincent Township. The applicant proposes to take over an existing 0.5 mgd STP currently owned by the Southeastern Pennsylvania Veterans Center and

operated by the Commonwealth of Pennsylvania. The modified STP will continue to provide secondary biological treatment at 0.5 mgd and discharge to the Schuylkill River. The STP is situated just south of the Pennsylvania Railroad and north of Commonwealth Drive, in East Vincent Township, Chester County, Pennsylvania.

9. *White Haven Municipal Authority D–93–35 CP.* A project to modify and expand the applicant's existing sewage treatment plant (STP) from a 0.162 mgd trickling filter process to a 0.34 mgd activated sludge process. The expanded STP will continue to serve White Haven Borough and a portion of the adjacent Township of Dennison. The STP is located in the Borough of White Haven, 300 feet south of Route 940 on the west bank of the Lehigh River, to which it will continue to discharge, in Luzerne County, Pennsylvania.

10. *United Corrstack, Inc. D–93–40.* An application for approval of a ground water withdrawal project to supply up to 17.28 mg/30 days of water to the applicant's industrial facility from new Well No. 1, and to limit the withdrawal from all wells to 17.28 mg/30 days. The project is located in the City of Reading, Berks County, Pennsylvania.

Documents relating to these items may be examined at the Commission's offices. Preliminary dockets are available in single copies upon request. Please contact George C. Elias concerning docket-related questions. Persons wishing to testify at this hearing are requested to register with the Secretary prior to the hearing.

Dated: July 20, 1993.

Susan M. Weisman,

Secretary.

[FR Doc. 93–17901 Filed 7–27–93; 8:45 am]

BILLING CODE 6360–01–P

DEPARTMENT OF EDUCATION

[CFDA Nos.: 83.261A, 84.142, 84.094B, 84.251]

Grants and Cooperative Agreements; Dwight D. Eisenhower Leadership Development Program

AGENCY: Department of Education.

ACTION: Extension of closing dates.

SUMMARY: The Department of Education published notices in the **Federal Register** inviting applications for new awards for fiscal year 1993 for the Dwight D. Eisenhower Leadership Development Program, the College Facilities Loan Program, the Patricia Roberts Harris Fellowship Program, and the Foreign Periodicals Program. Detailed information concerning these competitions was included in each notice.

The purpose of this notice is to allow those applicants affected by the recent flooding in the Midwest additional time to submit their applications. Applicants who reside in areas designated by the President as adversely affected by a major disaster under the Robert T. Stafford Disaster Relief and Emergency Assistance Act (42 U.S.C. 5121 *et seq.*) between July 1 and the original closing date may take advantage of this extension. Applicants should indicate in their applications that they reside in an adversely affected area as designated by the President.

The deadline for receipt of applications is extended for the following programs.

Note: Applications must be received by the extended due date—*not* postmarked by that date. Applications received after the extension will not be accepted.

• *CFDA 84.261A.* The notice inviting applications for the Dwight D. Eisenhower Leadership Development Program was published in the **Federal Register** on May 28, 1993 (58 FR 31080–99). The extended deadline for receipt of applications is August 6, 1993.

FOR FURTHER INFORMATION CONTACT: Donald N. Bigelow, U.S. Department of Education, 400 Maryland Avenue, SW., room 3052, ROB–3, Washington, DC 20202–5249. Telephone: (202) 708–8813.

• *CFDA 84.142.* The notice inviting applications for the College Facilities Loan Program was published in the **Federal Register** on June 3, 1993 (58 FR 31616). The extended deadline for receipt of applications is August 6, 1993.

FOR FURTHER INFORMATION CONTACT: John D. Adams or Anne S. Young, U.S. Department of Education, 400 Maryland Avenue, SW., Room 3022, ROB–3, Washington, DC 20202–5339. Telephone: (202) 708–9417 or (202) 708–9241.

• *CFDA 84.094B.* The notice inviting applications for the Patricia Roberts Harris Fellowship Program was published in the **Federal Register** on June 16, 1993 (58 FR 33312–13). The extended deadline for receipt of applications is August 6, 1993.

FOR FURTHER INFORMATION CONTACT: Cosette Ryan, U.S. Department of Education, 400 Maryland Avenue, SW., room 3022, ROB–3, Washington, DC 20202–5251. Telephone: (202) 708–7127.

• *CFDA 84.251.* The notice inviting applications for the Foreign Periodicals Program was published in the **Federal Register** on May 18, 1993 (58 FR 28956). The extended deadline for receipt of applications is August 13, 1993.

FOR FURTHER INFORMATION CONTACT: John Paul, U.S. Department of Education, 400 Maryland Avenue, SW., Room 3052, ROB–3, Washington, DC 20202–5331. Telephone: (202) 708–7283.

Individuals who use a telecommunications device for the deaf 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.

Dated: July 23, 1993.

David A. Longanecker,

Assistant Secretary for Postsecondary Education.

[FR Doc. 93–18067 Filed 7–27–93; 8:45 am]

BILLING CODE 4000–01–P

[CFDA No.: 84.021A]

Fulbright-Hays Group Projects Abroad Program

Notice inviting applications for new awards for fiscal year (FY) 1994.

Purpose of Program: The Group Projects Abroad program provides grants to institutions of higher education, State departments of education, and private nonprofit educational organizations to support overseas projects in training, research, and curriculum development in modern foreign languages and area studies by teachers, students, and faculty engaged in a common endeavor. Projects may include short-term seminars, curriculum development, or group research or study.

Eligible Applicants: Institutions of higher education, State departments of education, private nonprofit educational organizations, and consortia of such institutions, departments, and organizations.

Deadline for Transmittal of Applications: October 22, 1993.

Applications Available: September 2, 1993.

Available Funds: $1,440,000.

Estimated Range of Awards: $35,000 to $70,000.

Estimated Average Size of Awards: $60,000.

Estimated Number of Awards: 24.

Project Period: Five weeks for short-term seminar projects, six to eight weeks for curriculum development projects, and two to twelve months for group research or study projects.

Applicable Regulations: (a) The Education Department General Administrative Regulations (EDGAR) 34 CFR Parts 74, 75, 77, 80, 81, 82, 85, and

86; and (b) The regulations for this program in 34 CFR Part 664.

Priorities

Competitive Priority

Under 34 CFR 75.105(c)(2)(i) and 34 CFR 664.32, the Secretary gives preference to applications that meet the following competitive priority: Short-term seminars that develop and improve foreign language and area studies at elementary and secondary schools. The Secretary awards up to 5 points to an application that meets this competitive priority in a particularly effective way. These points are in addition to any points the application earns under the selection criteria for the program:

Absolute Priorities

Under 34 CFR 75.105(c)(3) and 34 CFR 664.32, the Secretary gives an absolute preference to applications that meet one of the following priorities. The Secretary funds under this program only applications that meet one of these absolute priorities. The priorities are the following world areas:

Absolute Priority 1—Sub-Saharan Africa.

Absolute Priority 2—Latin America and the Caribbean.

Absolute Priority 3—East Asia.

Absolute Priority 4—Southeast Asia and the Pacific.

Absolute Priority 5—East Central Europe. Poland, Czechoslovakia, Hungary, Bulgaria, Albania, Rumania, and the new republics that were formerly part of Yugoslavia, the Baltic States, and other new republics of the former Union of Soviet Socialist Republics.

Absolute Priority 6—The Near East and North Africa.

Absolute Priority 7—South Asia.

For Applications or Information Contact: Lungching Chiao, U.S. Department of Education, 400 Maryland Avenue, SW., room 3052, ROB–3, Washington, DC 20202–5332. Telephone: (202) 708–7283. 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.

Program Authority: 22 U.S.C. 2452(b)(6).

Dated: July 22, 1993.

David A. Longanecker,

Assistant Secretary for Postsecondary Education.

[FR Doc. 93–17957 Filed 7–27–93; 8:45 am]

BILLING CODE 4000–01–U

International Education Programs: Undergraduate International Studies and Foreign Language Program, the International Research and Studies Program, and the Business and International Education Program

AGENCY: Department of Education.

ACTION: Combined notice inviting applications for new awards for fiscal year (FY) 1994.

SUMMARY: Applications are invited for new awards for FY 1994 under title VI of the Higher Education Act of 1965, as amended (the HEA), for the Undergraduate International Studies and Foreign Language Program, the International Research and Studies Program, and the Business and International Education Program. These programs support National Education Goal 5, which calls for all Americans to possess the knowledge and skills necessary to compete in a global economy.

ADDRESSES: The addresses for obtaining applications for, or further information about, these three programs are in the respective announcements for the programs. 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.

INTERNATIONAL EDUCATION PROGRAMS

Title and CFDA number	Applications available	Application deadline date	Deadline for intergovernmental review	Available funds	Estimated range of awards	Estimated average size of awards	Estimated number of awards
Undergraduate International Studies and Foreign Language Program (84.016)	8/27/93	11/5/93	1/7/94	$2,135,000	$30,000–85,000	$61,000	35
International Research and Studies Program (84.017)	9/7/93	11/5/93	N/A	1,000,000	30,000–85,000	70,000	10
Business and International Education Program (84.153)	8/27/93	11/8/93	1/10/94	1,575,000	40,000–100,000	75,000	21

NOTE: The Department is not bound by any estimates in this notice.

CFDA No. 84.016—Undergraduate International Studies and Foreign Language Program

Purpose of Program: Provides grants to strengthen and improve undergraduate instruction in international studies and foreign languages in the United States.

Eligible Applicants: Institutions of higher education, combinations of institutions of higher education, and public and private nonprofit agencies and organizations, including professional and scholarly associations.

Applicable Regulations: (a) The Education Department General Administrative Regulations (EDGAR) in 34 CFR parts 74, 75, 77, 79, 82, 85 and 86; and (b) The regulations for this program in 34 CFR parts 655 and 658, as amended in the **Federal Register** on June 10, 1993 (58 FR 32574-78).

Priority: Under 34 CFR 75.105(c)(2)(i) and section 604(a)(4), title VI of the Higher Education Act of 1965, as amended by the Higher Education Amendments of 1992, the Secretary gives preference to applications that meet the following competitive priority. The Secretary awards 5 points to an application that meets this competitive priority in a particularly effective way. These points are in addition to any points the application earns under the selection criteria for the program:

Applications from institutions of higher education or combinations of institutions that require entering students to have successfully completed at least 2 years of secondary school foreign language instruction or that require each graduating student to earn 2 years of postsecondary credit in a foreign language (or have demonstrated equivalent competence in the foreign language) or, in the case of a two-year degree granting institution, offer 2 years of postsecondary credit in a foreign language.

Project Period: 24 to 36 months.

Matching Requirements: An institutional grantee shall pay a minimum of 50 percent of the cost of the project for each fiscal year. This is a new statutory requirement under the Higher Education Amendments of 1992.

For Applications or Information Contact: Christine Corey, U.S. Department of Education, 400 Maryland Avenue SW., room 3053, ROB–3, Washington, DC 20202–5332. Telephone: (202) 708–7283.

Program Authority: 20 U.S.C. 1124.

CFDA No. 84.017—International Research and Studies Program

Purpose of Program: Provides grants to public and private agencies, organizations, institutions, and individuals to conduct research and studies to improve and strengthen instruction in modern foreign languages, area studies, and other international fields to provide full understanding of the places in which the modern foreign languages are commonly used.

Eligible Applicants: Public and private agencies, organizations, institutions, and individuals.

Applicable Regulations: (a) The Education Department General Administrative Regulations (EDGAR) in 34 CFR parts 74, 75, 77, 80, 82, 85, and 86; and (b) The regulations for this program in 34 CFR Parts 655 and 660, as amended in the **Federal Register** on June 10, 1993 (58 FR 32574-78.

Project Period: 12 to 36 months.

For Applications or Information Contact: Jose L. Martinez, U.S. Department of Education, 400 Maryland Avenue SW., room 3053, ROB–3, Washington, DC 20202–5331. Telephone: (202) 708–9297.

Program Authority: 20 U.S.C. 1125.

CFDA No. 84.153—Business and International Education Program

Purpose of Program: Provides grants to enhance international business education programs and to expand the capacity of the business community to engage in international economic activities.

Eligible Applicants: Institutions of higher education that have entered into agreements with business enterprises, trade organizations or associations engaged in international economic activity.

Applicable Regulations: (a) The Education Department General Administrative Regulations (EDGAR) in 34 CFR parts 74, 75, 77, 79, 82, 85 and 86; and (b) The regulations for this program in 34 CFR parts 655 and 661, as amended in the **Federal Register** on June 10, 1993 (58 FR 32574–78).

Project Period: 24 months.

Matching Requirements: A grantee shall pay a minimum of 50 percent of the cost of the project for each fiscal year.

For Applications or Information Contact: Susanna C. Easton, U.S. Department of Education, 400 Maryland Avenue SW., room 3053, ROB–3, Washington, DC 20202–5332. Telephone: (202) 708–7283.

Program Authority: 20 U.S.C. 1130-1130b.

Dated: July 22, 1993.

David A. Longanecker,

Assistant Secretary for Postsecondary Education.

[FR Doc. 93–17956 Filed 7–27–93; 8:45 am]

BILLING CODE 4000–01–P

(CFDA No.: 84.264A)

Rehabilitation Continuing Education Programs; Notice Inviting Applications for New Awards for Fiscal Year (FY) 1994

Purpose of Program: To support cooperative agreements for training centers that serve either a Federal region or another geographic area and provide a broad, integrated sequence of training activities that focus on meeting recurrent and common training needs of employed rehabilitation personnel throughout a multi-State geographical area.

Eligible Applicants: State agencies and other public or nonprofit agencies and organizations, including institutions of higher education.

Deadline for Transmittal of Applications: September 30, 1993.

Deadline for Intergovernmental Review: November 30, 1993.

Applications Available: August 17, 1993.

Available Funds: $1,000,000.

Estimated Range of Awards: $275,000-$375,000.

Note: Applicants will be subject to a four percent cost-share requirement on awards.

Estimated Average Size of Awards: $325,000.

Estimated Number of Awards: 3.

Note: Applications are invited for the provision of training for Department of Education Regions I and IV only. The Department is not bound by any estimates in this notice.

Project Period: Up to 60 months.

Applicable Regulations: (a) The Education Department General Administrative Regulations (EDGAR) in 34 CFR parts 74, 75, 77, 79, 80, 81, 82, 85, and 86; and (b) The regulations for this program in 34 CFR parts 385 and 389.

The Rehabilitation Act Amendments of 1992, enacted October 29, 1992, also apply. Specifically note that under section 21(b)(5) of the Rehabilitation Act, as amended, applicants are required to demonstrate how they will address, in whole or in part, the needs of individuals with disabilities from minority backgrounds.

For Applications: Telephone (202) 205-9343. 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.

For Further Information Contact: Ellen Chesley, U.S. Department of Education, 400 Maryland Avenue, SW., room 3318, Switzer Building, Washington, DC 20202-2649. Telephone: (202) 205-9481.

Program Authority: 29 U.S.C. 774.

Dated: July 22, 1993.

Judith E. Heumann,

Assistant Secretary, Office of Special Education and Rehabilitative Services.

[FR Doc. 93-17964 Filed 7-27-93; 8:45 am]

BILLING CODE 4000-01-P

Office of Human Resources and Administration

Membership of the Performance Review Board

AGENCY: Department of Education.

ACTION: Notice of Membership of the Performance Review Board (PRB).

SUMMARY: Notice is hereby given of the names of members of the Department of Education's PRB.

FOR FURTHER INFORMATION CONTACT: Althea Watson, Director, Executive Resources Staff, Personnel Management Service, Office of Human Resources and Administration, Department of Education, room 1187-A, FOB-6, 400 Maryland Avenue, SW., Washington DC 20202, Telephone: (202) 401-0546. 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 4314(c) (1) through (5) of title 5, U.S.C. requires each agency to establish, in accordance with regulations prescribed by the Office of Personnel Management, one or more Senior Executive Service (SES) PRBs. The Board shall review and evaluate the initial appraisal of a senior executive's performance along with any comments by senior executives and any higher level executive and make recommendations to the appointing authority relative to the performance of the senior executive.

Membership

The following executives of the Department of Education have been selected to serve on the Performance Review Board of the Department of Education: Veronica Trietsch, Chair, Philip Link, Co-chair, Carol Cichowski, Thomas Skelly, Dick Hays, Jeanne Griffith, Mary Jean LeTendre, Alicia Coro, William Smith, Howard Hjelm, Susan Craig, Maureen McLaughlin, Jeanette Lim, Gretchen Schwarz, Sally Kirkgasler, and Gary Rasmussen. The following executives have been selected to serve as alternate members of the Performance Review Board: Valerie Plisko, Carl O'Riley, John Kristy, Allen Jackson, Charles Hansen, Andrew Pepin, and Therese Dozier.

Dated: July 22, 1993.

Veronica D. Trietsch,

Acting Assistant Secretary for Human Resources and Administration.

[FR Doc. 93-17955 Filed 7-27-93; 8:45 am]

BILLING CODE 4000-01-M

DEPARTMENT OF ENERGY

[Docket EA-63-B]

Application To Amend Export Authorization

AGENCY: Office of Fossil Energy, Department of Energy.

ACTION: Notice of application.

SUMMARY: Northern States Power Company has applied to amend the electricity export authorization contained in Docket No. IE-78-6 in order to increase the capability to export electricity to Canada.

DATES: Comments, protests or requests to intervene must be submitted on or before August 27, 1993.

ADDRESSES: Comments, protests or requests to intervene should be addressed as follows: Office of Coal & Electricity (FE-52), Office of Fuels Programs, Office of Fossil Energy, Department of Energy, 1000 Independence Avenue, SW., Washington, DC 20585. Docket Number EA-63-A should appear clearly on the envelope and the document contained therein.

FOR FURTHER INFORMATION CONTACT: William H. Freeman (Program Office) 202-586-5883 or Lise Howe (Program Attorney) 202-586-2900.

SUPPLEMENTARY INFORMATION: Exports of electricity from the United States to a foreign country are regulated and require authorization under section 202(e) of the Federal Power Act.

On July 16, 1993, Northern States Power Company (NSP) applied to the Office of Fossil Energy of the Department of Energy (DOE) to amend the electricity export authorization contained in Docket No. IE-78-6 authorizing exports of electric energy to Canada. As a part of the application, NSP supplied a copy of a Diversity Exchange Agreement (Agreement) between NSP and Manitoba Hydro dated February 1, 1991, providing for the seasonal exchange of 200 megawatts (MW) of electrical power starting on May 1, 1995, and ending April 30, 2015. Under the terms of the Agreement, Manitoba Hydro will make 200 MW available to NSP at all times during the summer season and NSP will make 200 MW available to Manitoba Hydro at all times during the winter season. NSP's need for amendment of the export authorization is occasioned by this Diversity Exchange Agreement.

Procedural Matters

Any person desiring to be heard or to protest this application should file a petition to intervene or protest at the address provided above in accordance with §§ 385.211 or 385.214 of the Rules of Practice and Procedure (18 CFR 385.211, 385.214).

Any such petitions and protests should be filed with the DOE on or before the date listed above. Additional copies of such petitions to intervene or protests also should be filed directly with James Alders, Manager, New Facility Permitting, and Michael Connelly, Attorney, Northern States Power Company, 414 Nicollet Mall, Minneapolis, Minnesota 55401.

Pursuant to 18 CFR 385.211, protests and comments will be considered by the DOE in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a petition to intervene under 18 CFR 385.214. Section 385.214 requires that a petition to intervene must state, to the extent known, the position taken by the petitioner and the petitioner's interest in sufficient factual detail to demonstrate either that the petitioner has a right to participate because it is a State Commission; that it has or represents an interest which may be directly affected by the outcome of the proceeding, including any interest as a consumer, customer, competitor, or security holder of a party to the proceeding; or that the petitioner's participation is in the public interest.

A final decision will be made on this application after a determination is made by the DOE on whether the proposed action will impair the sufficiency of electric supply within the United States or impede or tend to impede the coordination in the public interest of facilities subject to the jurisdiction of the DOE.

Before an export authorization may be issued or amended, the environmental impacts of the proposed DOE action

must be evaluated pursuant to the National Environmental Policy Act of 1969 (NEPA). The NEPA process is a cooperative, nonadversarial process involving members of the public, state governments and the Federal Government. The process affords all persons interested in or potentially affected by the environmental consequences of a proposed action an opportunity to present their views, which will be considered in the preparation of the environmental documentation for the proposed action. Intervening and becoming a party to this proceeding will not create any special status for the petitioner with regard to the NEPA process. Should a public proceeding be necessary in order to comply with NEPA, notice of such activities and information on how the public can participate in those activities will be published in the **Federal Register**, local newspapers and public libraries and/or reading rooms in the vicinity of the electric transmission facilities.

Copies of this application will be made available, upon request, for public inspection and copying at the address provided above.

Issued in Washington, DC, on July 21, 1991.

Anthony J. Como,

Director, Office of Coal & Electricity, Office of Fuels Programs, Fossil Energy.

[FR Doc. 93–18017 Filed 7–27–93; 8:45 am]

BILLING CODE 6450–01–M

Economic Regulatory Administration

Proposed Consent Order with Revere Petroleum Corporation and Richard E. Dobyns

AGENCY: Economic Regulatory Administration, DOE.

ACTION: Final action on proposed consent order.

SUMMARY: The Department of Energy (DOE) has determined that a proposed Consent Order between DOE and Revere Petroleum Corporation (Revere) and Richard E. Dobyns, which was published for public comment in 58 FR 32923 (June 14, 1993), shall be made final. The Consent Order resolves matters relating to Revere's and Dobyns' compliance with the federal petroleum price and allocation regulations for the period April 1, 1979 through March 31, 1980. To resolve these matters, Revere and Dobyns will pay to the DOE $50,000.00, plus the net proceeds resulting from the liquidation of Revere's assets, provided the latter amount will be at least $800,000; additionally, DOE receives fifty percent (50%) of any liquidation proceeds over $1,200,000.00. The liquidation must occur within nine (9) months of the publication of this notice. Following receipt of the settlement monies, the Economic Regulatory Administration (ERA) will petition the DOE's Office of Hearings and Appeals to implement Special Refund Procedures pursuant to 10 CFR part 205, subpart V. Those procedures provide persons who claim to have suffered injury from the alleged overcharges with the opportunity to submit claims for payment.

FOR FURTHER INFORMATION CONTACT: Dorothy Hamid, Economic Regulatory Administration, Department of Energy, 820 First Street, NE., Suite 810, Washington, DC 20585, (202) 523–3045.

SUPPLEMENTARY INFORMATION: On June 14, 1993, ERA issued a Notice announcing a proposed Consent Order between DOE and Revere and Dobyns, which would resolve matters relating to their compliance with the federal petroleum price and allocation regulations for the period April 1, 1979 through March 31, 1980. 58 FR 32923. That Notice both summarized and contained the complete text of the proposed Consent Order, which requires Revere and Dobyns to pay to DOE (i) $20,000 within fifteen (15) days, and $30,000 within sixty (60) days, of the effective date of the Consent Order, which is the publication date of this notice; and (ii) at least $800,000 from the liquidation of Revere's assets, which must occur within nine (9) months of the effective date of the Consent Order, plus half of any proceeds of the asset liquidation above $1,200,000.

The June 14 Notice provided information regarding Revere's and Dobyns' potential liability for violations of the anti-"layering" rule (10 CFR 212.186) in connection with Revere's resales of crude oil at issue in a Remedial Order issued May 29, 1992. The Notice also detailed the considerations which underlay the ERA's preliminary view that the settlement is favorable to the government and in the public interest. The Notice solicited written comments from the public relating to the terms and conditions of the settlement and whether the settlement should be made final. No comments were received.

Inasmuch as there are no bases proffered for rejecting or modifying the settlement as proposed, the DOE has determined that it is in the best interest of the public to make the proposed Consent Order final without change. By this Notice, and pursuant to 10 CFR 205.199J, the proposed Consent Order between DOE and Revere and Dobyns is made a final Order of the Department of Energy, effective on the date of publication of this Notice in the **Federal Register**.

Issued in Washington, DC, on July 21, 1993.

Milton C. Lorenz,

Chief Counsel for Enforcement Litigation, Economic Regulatory Administration.

[FR Doc. 93–18016 Filed 7–27–93; 8:45 am]

BILLING CODE 6450–01–M

Energy Information Administration

Agency Information Collections Under Review by the Office of Management and Budget

AGENCY: Energy Information Administration, DOE.

ACTION: Notice of request submitted for review by the Office of Management and Budget.

SUMMARY: The energy Information Administration (EIA) has submitted the energy information collection(s) listed at the end of this notice to the Office of Management and Budget (OMB) for review under provisions of the Paperwork Reduction Act (Pub. L. 96–511, 44 U.S.C. 3501 et seq.). The listing does not include collections of information contained in new or revised regulations which are to be submitted under section 3504(h) of the Paperwork Reduction Act, nor management and procurement assistance requirements collected by the Department of Energy (DOE).

Each entry contains the following information: (1) The sponsor of the collection; (2) Collection number(s); (3) Current OMB docket number (if applicable); (4) Collection title; (5) Type of request, e.g., new, revision, extension, or reinstatement; (6) Frequency of collection; (7) Response obligation, i.e., mandatory, voluntary, or required to obtain or retain benefit; (8) Affected public; (9) An estimate of the number of respondents per report period; (10) An estimate of the number of responses per respondent annually; (11) An estimate of the average hours per response; (12) The estimated total annual respondent burden; and (13) A brief abstract describing the proposed collection and the respondents.

DATES: Comments must be filed on or before August 27, 1993. If you anticipate that you will be submitting comments but find it difficult to do so within the time allowed by this notice, you should advise the OMB Desk Officer listed below of your intention to do so, as soon as possible. The Desk Officer may be

telephoned at (202) 395–3084. (Also, please notify the EIA contact listed below.).

ADDRESSES: Address comments to the Department of Energy Desk Officer, Office of Information and Regulatory Affairs, Office of Management and Budget, 726 Jackson Place NW., Washington, DC 20503. (Comments should be addressed to the Office of Statistical Standards at the address below.)

FOR FURTHER INFORMATION AND COPIES OF RELEVANT MATERIALS CONTACT: Jay Casselberry, Office of Statistical Standards, (EI–73), Forrestal Building, U.S. Department of Energy, Washington, DC 20585. Mr. Casselberry may be telephoned at (202) 254–5348.

SUPPLEMENTARY INFORMATION: The energy information collection submitted to OMB for a review was:

1. Emergency Planning and Operations.
2. OE–411
3. 1901–0286
4. Coordinated Regional Bulk Power Supply Program
5. Extension
6. Annually
7. Voluntary
8. State or local governments, Businesses or other for-profit, Federal agencies or employees
9. 795 respondents
10. 1 response
11. 25 hours per response
12. 20,205 hours
13. The OE–411 provides a single, comprehensive source of information on current and planned electric power supply for the U.S. The data are used to evaluate the current and projected reliability of bulk electric power supply, and the effects of unforseen changes in powerplant construction schedules. Ten Regional Electric Reliability Councils submit.

Statutory Authority: Section 2(a) of the Paperwork Reduction Act of 1980, (Pub. L. 96–511), which amended chapter 35 of title 44 United State Code (See 44 U.S.C. 3506(a) and (c)(1)).

Issued in Washington, DC.

Yvonne M. Bishop,

Director, Statistical Standards, Energy Information Administration.

[FR Doc. 93–18018 Filed 7–27–93; 8:45 am]

BILLING CODE 6450–01–M

Office of Fossil Energy

[FE Docket No. 93–57–NG]

The Washington Water Power Co.; Order Granting Long-Term Authorization To Import Natural Gas From Canada

AGENCY: Office of Fossil Energy, DOE.

ACTION: Notice of order.

SUMMARY: The Office of Fossil Energy of the Department of Energy gives notice that it has issued an order granting The Washington Water Power Company authorization to import, at Kingsgate, British Columbia, up to 61,400 Mcf per day of Canadian natural gas over a period of ten years, beginning on the date of first delivery.

A copy of this order is available for inspection and copying in the Office of Fuels Programs Docket Room, 3F–056, Forrestal Building, 1000 Independence Avenue, SW., Washington DC 20585, (202) 586–9478. The docket room is open between the hours of 8 a.m. and 4:30 p.m., Monday through Friday, except Federal holidays.

Issued in Washington, DC, July 19, 1993.

Clifford P. Tomaszewski,

Director, Office of Natural Gas, Office of Fuels Programs, Office of Fossil Energy.

[FR Doc. 93–18015 Filed 7–27–93; 8:45 am]

BILLING CODE 6450–01–M

Federal Energy Regulatory Commission

[Docket Nos. ER93–714–000, et al.]

Great Bay Power Corp. et al.; Electric Rate, Small Power Production, and Interlocking Directorate Filings

July 21, 1993.

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

1. Great Bay Power Corp.

[Docket No. ER93–714–000]

Take notice that on July 6, 1993, Great Bay Power Corporation (Great Bay) tendered for filing its executed copy of the Agreement for Short-Term Sales to Long Island Lighting Company.

Comment date: August 4, 1993, in accordance with Standard Paragraph E at the end of this notice.

2. Montana-Dakota Utilities Co.

[Docket No. ER93–790–000]

Take notice that on July 15, 1993, Montana-Dakota Utilities Company (Montana-Dakota), a Division of MDU Resources Group, Inc., tendered for filing a request for authority to supplement its contract with the United States Department of Energy, Western Area Power Administration (Western) to accommodate the transfer of energy to Montana-Dakota's eastern system through Western's Miles City Converter Station.

Montana-Dakota requests waiver of the notice requirement of § 35.3 of the Commission's Regulations and that the amended contract be made effective as of July 1, 1993.

Comment date: August 6, 1993, in accordance with Standard Paragraph F at the end of this notice.

3. Tucson Electric Power Co.

[Docket No. ER93–355–000]

Take notice that on July 20, 1993, Tucson Electric Power Company (Tucson) tendered for filing certain cost support data, in addition to a related Amendment No. 2 to an Agreement for the Sale/Purchase of Energy (the Agreement) between Tucson and Louis Dreyfus Electric Power Inc. (LDEP). The Agreement provides for the sale and purchase of capacity and energy between Tucson and LDEP under flexible arrangements commencing February 1993.

The filing is being made to (i) include Tucson's response to certain cost support and data requests received from the Commission's Staff and (ii) tender an Amendment No. 2 to the Agreement which reflects a change in the method of determining the ceiling rate under the pricing provisions of the Agreement.

The parties request an effective date of February 3, 1993, and therefore request waiver of the Commission's regulations with respect to notice of filing.

Copies of this filing have been served upon all parties affected by this proceeding.

Comment date: August 6, 1993, in accordance with Standard Paragraph E at the end of this notice.

4. Minnesota Power & Light Co. and Northern States Power Co.

[Docket No. EC93–19–000]

Take notice that on July 14, 1993, Minnesota Power & Light Company and Northern States Power Company tendered for filing a joint application for authorization under section 203 of the Federal Power Act to sell and purchase, respectively, certain 500 kV facilities at the Forbes substation in St. Louis County, Minnesota.

Comment date: August 4, 1993, in accordance with Standard Paragraph E at the end of this notice.

5. Great Bay Power Corp.

[Docket No. ER93–721–000]

Take notice that on July 6, 1993, Great Bay Power Corporation (Great Bay) tendered for filing its executed copy of an Agreement for Short-Term Sales to Bangor Hydro-Electric Company.

Comment date: August 4, 1993, in accordance with Standard Paragraph E at the end of this notice.

6. Pennsylvania Power & Light

[Docket No. ER93-804-000]

Take notice that on July 15, 1993, Pennsylvania Power & Light Company (PP&L) tendered for filing a Fifth Supplement to the Capacity and Energy Sales Agreement between PP&L and Baltimore Gas & Electric Company (BG&E) which Supplement is dated July 13, 1993. The only change made by the Supplement to the Agreement is to lower the rate of return on equity from 12.75% to 11%, which change implements a settlement reached at Docket No. ER93-268-000.

PP&L has requested an effective date of July 15, 1993 for the Supplement pursuant to Commission precedent under the Central Hudson doctrine.

PP&L states that a copy of its filing was served on the Pennsylvania Public Utility Commission, the Maryland Public Service Commission, and BG&E.

Comment date: August 5, 1993, in accordance with Standard Paragraph E at the end of this notice.

7. Madison Gas and Electric Co. and Wisconsin Power and Light Co.

[Docket No. EC93-18-000]

Take notice that on July 12, 1993, Madison Gas and Electric Company and Wisconsin Power and Light Company tendered for filing with the Federal Energy Regulatory Commission an application for disposition of an acquisition of facilities by sale and transfer, respectively. The facilities consist of a 138-69-kV transformer.

Copies of the filing have been provided to the Public Service Commission of Wisconsin.

Comment date: August 5, 1993, in accordance with Standard Paragraph E at the end of this notice.

8. Wisconsin Public Service Corp.

[Docket No. EL93-54-000]

Take notice that on July 12, 1993, Wisconsin Public Service Corporation (WPSC) tendered for filing with the Federal Energy Regulatory Commission a petition for waiver of fuel clause regulations to allow the refund to its wholesale customers of Department of Energy refunds to WPSC for past spent nuclear fuel disposal fees. The customers affected by WPSC's filing are:

Customer	Rate category	Rate schedule or tariff designation
Alger Delta Electric	W-1	Tariff, original vol. 2 service agreement No. 8.
Washington Island Electric Cooperative	W-1	Tariff, original vol. 2 service agreement No. 5.
Village of Daggett	W-1	Tariff, original vol. 2 service agreement No. 3.
City of Stephenson	W-1	Tariff, original vol. 2 service agreement No. 4.
Village of Stratford	W-1	Tariff, original vol. 2 service agreement No. 6.
Wisconsin Public Power, Inc. System	W-1	Tariff, original vol. 2 service agreement No. 1.
City of Wisconsin Rapids	W-1	Tariff, original vol. 2 service agreement No. 7.
Consolidated Water Power	W-3	Tariff, original vol. 3 service agreement No. 1.
City of Manitowoc	W-2	Tariff, original vol. 1 service agreement No. 5.
City of Marshfield		Supplement No. 3 to rate schedule—FERC No. 51.

WPSC requests that the Commission waive the provision of 18 CFR 35.14 of its regulations to permit the refunds to take place. WPSC requests an effective date of the beginning of the first full billing cycle after 60 days after the Commission grants the waiver. WPSC requests that the Commission act on the petition within sixty days of the filing date.

WPSC states that a copy of the filing has been served on the affected customers and on the public service commissions of Michigan and Wisconsin and that the filing has been posted as required by the Commission's regulations.

Comment date: August 6, 1993, in accordance with Standard Paragraph E at the end of this notice.

Standard Paragraphs

E. Any person desiring to be heard or to protest said filing should file a motion to intervene or protest with the Federal Energy Regulatory Commission, 825 North Capitol Street, NE., Washington, DC 20426, in accordance with Rules 211 and 214 of the Commission's Rules of Practice and Procedure (18 CFR 385.211 and 385.214). All such motions or protests should be filed on or before the comment date. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a motion to intervene. Copies of this filing are on file with the Commission and are available for public inspection.

Lois D. Cashell,

Secretary.

[FR Doc. 93-17967 Filed 7-27-93; 8:45 am]

BILLING CODE 6717-01-M

[Docket No. RP93-157-000]

Carnegie Natural Gas Co.; Proposed Changes in FERC Gas Tariff

July 22, 1993.

Take notice that on July 20, 1993, Carnegie Natural Gas Company (Carnegie) tendered for filing as part of its FERC Gas Tariff, Second Revised Volume No. 1 the following revised tariff sheets, with proposed effective date of August 1, 1993:

Second Revised Sheet No. 11
Sixth Revised Sheet No. 138
Third Revised Sheet No. 139

Carnegie states that it is filing the above tariff sheets as a limited application pursuant to section 4 of the Natural Gas Act to permit Carnegie to flow through and bill to its customers, on an as-billed basis, amounts direct billed to Carnegie by Texas Eastern Transmission Corporation (Texas Eastern) as costs associated with Texas Eastern's contract assignment program (CAP), including amounts billed to Carnegie pursuant to Texas Eastern's filing of May 26, 1993, in Docket No. RP93-122-000 which was accepted by the Commission in an order June 30, 1993, citing *Texas Eastern Transmission Corp.*, 63 FERC ¶ 61,350 (1993).

Carnegie states that copies of its filing were served on all jurisdictional customers and interested state commissions.

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 July 29, 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. 93–17936 Filed 7–28–93; 8:45 am]

BILLING CODE 6717–01–M

[Docket No. RP93–156–000]

Iroquois Gas Transmission System, L.P.; Proposed Changes in FERC Gas Tariff

July 22, 1993.

Take notice that on July 20, 1993, Iroquois Gas Transmission System, L.P. (Iroquois) tendered for filing as part of its FERC Gas Tariff, Original Volume No. 1, the following revised tariff sheets, to be effective on August 19, 1993:

Sixth Revised Sheet No. 4
Second Revised Sheet No. 20
Third Revised Sheet No. 21
Fourth Revised Sheet No. 22
Second Revised Sheet No. 22–A
Third Revised Sheet No. 35
Second Revised Sheet No. 36

Because Iroquois has filed its compliance filing in Docket No. RS92–17 and anticipates an effective date of September 3, 1993, Iroquois also tendered for filing the following revised tariff sheets in First Revised Volume No. 1 of its FERC Gas Tariff to be effective September 1, 1993:

First Revised Sheet No. 4
First Revised Sheet No. 5
First Revised Sheet No. 45
First Revised Sheet No. 46
First Revised Sheet No. 47
First Revised Sheet No. 48
First Revised Sheet No. 63
First Revised Sheet No. 118
First Revised Sheet No. 187
First Revised Sheet No. 188
First Revised Sheet No. 189

Iroquois states that these tariff sheets permit Iroquois to recover its system fuel and the fuel that it reimburses to third-party transporters.

Iroquois states that copies of its filing have been mailed to all jurisdictional customers and affected state commissions.

Any person desiring to be heard or to protest said filing should file a motion to intervene or a protest with the Federal Energy Regulatory Commission, 825 North Capitol Street, NE., Washington, DC 20426, in accordance with Rules 211 and 214 of the Commission's Rules of Practice and Procedure (18 CFR 385.211 and 385.214). All such motions or protests should be filed on or before July 29, 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.

Lois D. Cashell,

Secretary.

[FR Doc. 93–17937 Filed 7–27–93; 8:45 am]

BILLING CODE 6717–01–M

[Docket Nos. RP91–203–000 and RP92–132–000 (Phase I, and Phase II PCB Issues)]

Tennessee Gas Pipeline Co., Informal Conference

July 22, 1993.

Take notice that an informal conference will be convened in this proceeding on July 27, 1993, at the offices of the Federal Energy Regulatory Commission, 810 First Street, NE., Washington, DC, at 1 p.m. or at the conclusion of the technical conference in Docket No. RS92–23–000, whichever is later, for the purpose of attempting to agree on procedures for the referenced dockets.

Any party, as defined by 18 CFR 385.102(c), or any participant, as defined by 18 CFR 385.102(b), is invited to attend. Persons wishing to become a party must move to intervene and receive intervener status pursuant to the Commission's regulations (18 CFR 385.214).

For additional information, contact Donald Williams (202) 208–0743 or Dennis H. Melvin at (202) 208–0042.

Lois D. Cashell,

Secretary.

[FR Doc. 93–17939 Filed 7–27–93; 8:45 am]

BILLING CODE 6717–01–M

[Docket No. RP93–139–001]

Transwestern Pipeline Co.; Proposed Changes in FERC Gas Tariff

July 22, 1993.

Take notice that Transwestern Pipeline Company (Transwestern) on July 16, 1993 tendered for filing as part of its FERC Gas Tariff, Second Revised Volume No. 1, the following tariff sheet, proposed to be effective August 1, 1993:

Substitute Original Sheet No. 5E(vi)

On June 9, 1993 Transwestern filed tariff sheet in which it sought to modify its take-or-pay, buy-out and buy-down mechanism (Transition Cost Recovery or TCR mechanism) in order to recover certain take-or-pay, buy-out, buy-down, and contract reformation costs. Transwestern states the above-referenced tariff sheet is being filed to correct TCR amount #13, which inadvertently included a monthly amortization amount for July, 1993. This amount is hereby deleted, consistent with the effective date of the tariff sheet. Transwestern states that the deletion of this amount does not change any of the totals or calculations on other tariff sheets included in the original filing. Transwestern requests that the Commission grant any and all waivers of its rules, regulations and/or orders that may be necessary so as to permit the instant tariff sheet to become effective August 1, 1993.

Transwestern states that copies of the filing were served on its gas utility customers, interested state commissions, and all parties to this proceeding.

Any person desiring to protest said filing should file a protest with the Federal Energy Regulatory Commission, 825 North Capitol Street, NE., Washington, DC 20426, in accordance with Rule 211 of the Commission's Rules of Practice and Procedure 18 CFR 385.211. All such protests should be filed on or before July 29, 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. 93–17938 Filed 7–27–93; 8:45 am]

BILLING CODE 6717–01–M

Office of Hearings and Appeals

Cases Filed During the Week of July 2 Through July 9, 1993

During the Week of July 2 through July 9, 1993, the appeals and applications for exception or other relief listed in the Appendix to this Notice were filed with the Office of Hearings and Appeals of the Department of Energy.

Under DOE procedural regulations, 10 CFR part 205, any person who will be aggrieved by the DOE action sought in these cases may file written comments on the application within ten days of service of notice, as prescribed in the procedural regulations. For purposes of the regulations, the date of service of notice is deemed to be the date of publication of this Notice or the date of receipt by an aggrieved person of actual notice, whichever occurs first. All such comments shall be filed with the Office

of Hearings and Appeals, Department of Energy, Washington, DC 20585.

Dated: July 22, 1993.

George B. Breznay,

Director, Office of Hearings and Appeals.

LIST OF CASES RECEIVED BY THE OFFICE OF HEARINGS AND APPEALS

[Week of July 2 through July 9, 1993]

Date	Name and location of applicant	Case No.	Type of submission
7/6/93	Carl Weissman & Sons, Great Falls, MT	LFA–0308	Appeal of an Information Request Denial. If granted: The June 29, 1993 Freedom of Information Request Denial issued by the Richland Field Office would be rescinded, and Carl Weissman & Sons would receive a tabulation of bids received for RFP No. W–181155–FJ and any documents where bidders have extenuating circumstances in their bids, showing alternate prices and reasons.
7/6/93	Energy Refunds, Inc., Hardin, KY	LFR–0012	Modification/Rescission. If granted: The June 4, 1993 Decision and Order (Case No. LFX–0010) which barred Energy Refunds, Inc. from representing refund applicants would be modified.
7/7/93	Albuquerque Tribune, Cleveland, OH	LFA–0309	Appeal of an Information Request Denial. If granted: The May 26, 1993 Freedom of Information Request Denial issued by the Office of Reference and Information Management Division would be rescinded, and the Albuquerque Tribune would receive access to a complete copy of DOE records pertaining to experiments conducted from 1945 to 1947 in which plutonium was injected into 18 human subjects and a fee waiver.

REFUND APPLICATIONS RECEIVED

[Week of July 2 through July 9, 1993]

Date received	Name of firm	Case No.
6/29/93	Farmers Petroleum Coop, Inc	RF344–1
6/30/93	Pride Terminals, Inc	RF351–3
6/30/93	City of Pasadena	RF347–7
7/2/93	Tri-City Gas, Inc	RF340–186
7/2/93	Fairfield Gulf	RF300–21747
7/2/93	Western Brassworks	RF347–9
7/2/93 thru 7/9/93	Atlantic Richfield Applications Received	RF304–14183 thru RF304–14223
7/2/93 thru 7/9/93	Beacon Oil Refund Applications Received	RF238–113 thru RF238–129
7/2/93 thru 9/9/93	Texaco Refund Applications Received	RF321–19789 thru RF321–19793
7/6/93	Cargill, Inc	RF347–8
7/6/93	Shell Chemical Co	RF351–4
7/6/93	Inland Reclamation	RF272–94781
7/6/93	Hooker Equity Exchange	RD272–94782
7/6/93	Farmers Oil Co., of Outlook	RF272–94783
7/7/93	Rod Steinheiser Bottle Gas	RF340–187
7/7/93	Silverock Baking Corp	RF272–94784
7/7/93	State Line Grain Co	RF272–94785

[FR Doc. 93–18019 Filed 7–27–93; 8:45 am]

BILLING CODE 6450–01–P

Issuance of Decisions and Orders; During the Week of May 17 Through May 21, 1993

During the week of May 17 through May 21, 1993, the decisions and orders summarized below were issued with respect to appeals and applications for other relief filed with the Office of Hearings and Appeals of the Department of Energy. The following summary also contains a list of submissions that were dismissed by the Office of Hearings and Appeals.

Appeals

Shapiro, Fussell, Wedge & Smotherman, 5/19/93, LFA–0288

Shapiro, Fussell, Wedge & Smotherman (Shapiro) filed an Appeal from a determination issued to it by the Strategic Petroleum Reserve Project Management Office (SPRMO) of the DOE. The determination denied, in part, a Request for Information which Shapiro had submitted under the Freedom of Information Act (FOIA). Shapiro requested records pertaining to an award made to a subcontractor for

increased costs resulting from various engineering change notices. Shapiro also requested records referring to allegations of improper pricing by the subcontractor. The SPRMO withheld three documents in their entirety, one of which was subsequently released to Shapiro. The remaining two documents, a letter to the DOE Inspector General's Office (IG Letter), and a collection of cost estimates regarding the engineering change notices (Cost Estimates), were withheld pursuant to Exemption 5 of the FOIA. In considering the Appeal, the DOE found that SPRMO had correctly withheld most of the material in the IG Letter, but had incorrectly withheld some segregable factual material. At the same time, the SPRMO requested an opportunity to make a new determination to consider the applicability of Exemption 4 to the Cost Estimates. Consequently, the DOE remanded the matter back to SPRMO to release the segregable material contained in the IG Letter and to issue a new determination regarding the Cost Estimates.

U.S. News & World Report, 5/18/93, LFA–0287

U.S. News & World Report (U.S. News) filed an Appeal from determinations issued to it on February 18, 1993, March 26, 1993, and April 1, 1993, by the Office of Procurement, Assistance, and Program Management (OPA) under the Freedom of Information Act (FOIA). In its Appeal, U.S. News challenged OPA's application of Exemption 4 and Exemption 6 to the requested documents. In considering the Appeal, the DOE found that OPA properly withheld the information at issue under Exemption 4, but improperly applied Exemption 6 to the same material. In view of the Exemption 4 finding, the Appeal was denied.

Refund Applications

Murphy Oil Corporation/Eastern Oil, Imperial Oil, 5/19/93, RR309–2, RR309–3

The DOE issued a Decision and Order denying two Motions for Reconsideration filed in the Murphy Oil Corporation special refund proceeding on behalf of Eastern Oil Co., Inc. (Eastern), and Imperial Oil Co., Inc. (Imperial). In the Motions, Mr. Jack J. Ceccarelli of Joy Enterprises, Inc., parent company to Eastern and Imperial, requested that the DOE reconsider its previous determination in which it limited the combined refund which the two affiliates and their subsidiaries could receive $50,000 in principal. Mr. Ceccarelli asserted that the two firms should be eligible to receive two $50,000 maximum presumption refunds because they were separately-operated during the refund period. The two firms, however, currently share the same management, boards of directors, accountants, and headquarters facilities. Therefore, because the *current* degree to which two affiliated firms maintain their separate identities is the determinative factor in deciding whether to approve separate presumption refunds, the DOE denied Mr. Ceccarelli's Motion for Reconsideration.

Murphy Oil Corporation/George E. Davis, 5/17/93, RF309–1365

The DOE issued a Decision and Order denying an Application for Refund filed by Petroleum Funds, Inc. (PFI), in the Murphy Oil Corporation special refund proceeding on behalf of George E. Davis. Mr. Davis requested a refund based upon 1,489,150 gallons of Murphy gasoline and kerosene that he sold as a consignee dealer during the consent order period. Consignees, however, are presumed to have been uninjured by Murphy's alleged overcharges. In an attempt to rebut the consignee presumption of non-injury, Mr. Davis contended that he was, in fact, injured by Murphy's alleged overcharges because he was unable to compete with other retail stations in his marketing area. His assertions alone, however, were insufficient to rebut the consignee presumption. In the absence of any evidence that he was injured by Murphy's pricing practices, the DOE denied the Application for Refund.

Murphy Oil Corp./Kickapoo Oil Co., 5/17/93, RF309–1281

Kickapoo Oil Company, Inc. (Kickapoo) filed an Application for Refund with the DOE in the Murphy Oil Corp. Subpart V refund proceeding. In considering Kickapoo's Application for an above-volumetric refund based on its allegations that the Murphy Oil Corp. (Murphy) had violated the DOE's Allocation regulations, the DOE found that Kickapoo had failed to show that it had contemporaneously complained to the DOE about the allocation violations alleged in its Application. In addition, the DOE found that Kickapoo's failure to purchase all of the petroleum products allocated to it was often explained by factors other than Murphy's alleged violations of the allocation regulations. Accordingly, Kickapoo's Application for an above-volumetric refund based upon Murphy alleged allocation violations was rejected by the DOE. However, since the DOE determined that Kickapoo had adequately documented its purchases of 322,023,768 gallons of refined petroleum products from Murphy during the consent order period, it granted Kickapoo a volumetric refund of $50,000 in principal and $24,875 in interest.

Shell Oil Company/ Firestone Tire and Rubber Co., 5/19/93, RF315–7217

This Decision and Order considered the Application for Refund filed by Firestone Tire and Rubber Company (Firestone) that purchased substantial quantities of butadiene, styrene, bunker fuel, diesel fuel and motor gasoline from Shell Oil Company during the consent order period. The volume of purchases that formed the basis for the refund request was reduced because (1) styrene was not a covered product at any time during the consent order period and (2) butadiene was decontrolled on January 31, 1974. Therefore, 4,378,890 gallons of styrene and 81,621,253 gallons of butadiene (the sum of its post-decontrol butadiene purchases) were subtracted from Firestone's claimed purchase volume. The total refund granted in this Decision and Order was $2,188 (comprised of $1,422 in principal and $696 in interest) based on its purchase of 6,293,206 gallons of Shell refined product.

Texaco Inc./College Center Texaco Service, 5/19/93, RR321–79

The DOE issued a Decision and Order granting a Motion for Reconsideration filed by Wilson, Keller & Associates, Inc., in the Texaco Inc. Subpart V special refund proceeding on behalf of College Center Texaco Service. The DOE had previously denied two Applications for Refund filed on behalf of College Center Texaco Service by Wilson, Keller & Associates, Inc., and by Federal Refunds, Inc., because those Applications appeared to be deliberate duplicates. However, in the Motion for Reconsideration, Dale K. Hollick, owner of College Center Texaco Service and Wilson, Keller & Associates, Inc., provided reasonable explanations for the duplicate filings. The DOE, as a discretionary matter, reviewed the Motion and determined that it should be granted. Accordingly, the applicant was granted a refund in the amount of $1,137 ($838 principal plus $299 interest).

Texaco Inc./Mapco Inc., 5/18/93, RF321–17068

The DOE issued a Decision and Order approving an Application for Refund filed by MAPCO Inc. in the Texaco Inc. Subpart V special refund proceeding based on purchases of 120,555,041 gallons of refined product made by two of MAPCO Inc.'s subsidiaries, Thermogas Company and MAPCO Gas

Products, Inc. Accordingly, MAPCO Inc. was granted a refund of $67,815 ($50,000 principal plus $17,815 interest). However, the refund was not released to MAPCO Inc.; rather, it was placed in an interest bearing escrow account pending the final resolution of an enforcement proceeding involving another of MAPCO Inc.'s subsidiares MAPCO International Inc.

Texaco Inc./Mike M. Marcello, Inc., 5/18/93, RR321–129

The DOE issued a Decision and Order concerning a Motion for Reconsideration filed in the Texaco Inc. special refund proceeding on behalf of Mike M. Marcello, Inc. (Marcello, Inc.). The original Application for Refund had been denied based upon the president of the firm's involvement with unauthorized Applications for Refund. After reviewing the submission, the DOE found the explanations offered in the Motion for the unauthorized filings to be unpersuasive. Furthermore, the DOE found no basis for reconsideration of the December 2, 1992 Decision and Order issued to Mike M. Marcello, Inc., and the Motion for Reconsideration was denied.

Texaco Inc./Tubb's Oil Company, 5/18/93, RF321–3862

The DOE issued a Decision and Order denying an Application for Refund filed by Lewis C. Gilbert on behalf of Tubb's Oil Company (Tubb's) in the Texaco Inc. special refund proceeding. Mr. Gilbert's claim was based on Tubb's Texaco purchases from March 1973 through March 1978. However, Mr. Gilbert did not purchase the assets of Tubb's until June 1979. After reviewing the documentation regarding the sale, the DOE determined that Mr. Gilbert did not acquire the stock of Tubb's and that the right to a refund was not transferred to him as an asset. Consequently, the DOE found that Mr. Gilbert was not entitled to a refund based on Tubb's Texaco purchases prior to June 1979.

Refund Applications

The Office of Hearings and Appeals issued the following Decisions and Orders concerning refund applications which are not summarized. Copies of the full texts of the Decisions and Orders are available in the Public Reference Room of the Office of Hearings and Appeals.

Anchor Gasoline Corporation/Theriot's Canal *et al*	RF346–22	05/17/93
Atlantic Richfield Company/Fernandes ARCO *et al*	RF304–13349	05/19/93
Atlantic Richfield Company/Ron's ARCO *et al*	RF304–11893	05/21/93
Cumberland Cement & Supply *et al*	RF272–77466	05/18/93
Enron Corp./Coastal States Trading, Inc.	RF340–183	05/18/93
G I Trucking Company	RF272–92624	05/20/93
Gulf Oil Corporation/Dick Cramer's Gulf Service	RF300–14386	05/17/93
Harry's Gulf	RF300–15941	
Gulf Oil Corporation/Newbridge Service Center	RF300–13685	05/20/93
Newbridge Service Center	RF300–13686	
Gulf Oil Corporation/P & B Gulf	RF300–14352	05/18/93
Gulf Oil Corporation/Royster Transport Company	RF300–17198	05/20/93
Gulf Oil Corporation/Simco Sales Service of PA *et al*	RF300–19009	05/18/93
Gulf Oil Corporation/Village Gulf Service *et al*	RF300–17170	05/21/93
Manitowoc School District *et al*	RF272–81401	05/21/93
New York City Transit Authority	RF272–66878	05/20/93
Shell Oil Company/Roger's Oil Company *et al*	RF315–437	05/21/93
Texaco Inc./Anderson's Lakewood Texaco	RF321–19728	05/18/93
Texaco Inc./ Anderson's Lakewood Texaco	RF321–19746	05/20/93
Texaco Inc./Anita's Tortilleria *et al*	RF321–15553	05/18/93
Texaco Inc./Fort Hale Fuel Co. *et al*	RF321–14191	05/21/93
Texaco Inc./ I.B.E. Industries, Inc. *et al*	RF321–16232	05/19/93
Texaco Inc./Lang's Grocery	RF321–19747	05/21/93
Texaco Inc./ Wright-Hulse Oil Co.	RF321–19710	05/20/93
Freeway Texaco Service	RF321–19736	
Town of Madawaska School Dept. *et al*	RF272–80729	05/21/93

Dismissals

The following submissions were dismissed:

Name	Case No.
Americus Wood Preserving	RF300–17485
Anderson Texaco	RF321–17435
Avondale Texaco	RF321–14823
Big Walnut Local School District.	RF272–87293
Borough of Mt. Arlington	RF272–83343
Brooklyn Unit District 188	RF272–87281
Buffalo Center-Rake Community Schools.	RF272–87279
Burbank School District 111	RF272–87275
Burkewitz Oil Company	RF300–21739
Calaveras Cement Company	RF272–25984
Caldwell Schools, U.S.D. 360	RF272–87269
Carbon Cliff-Barstow School District.	RF272–87264
Carver School District	RF272–87261
Cayuga Independent School District.	RF272–87259
Central School District 51	RF272–87253
Central York School District	RF272–87252
Chamberlain School District 7–1.	RF272–87248
Chelsea School District	RF272–87244
Cicero School District 99	RF272–87226
City of Fort Thomas	RF272–83392
City of Oak Harbor	RF272–83423
City of Pendleton	RF272–83349
Contishipping	RF272–25150
Contishipping Division	RD272–25150
Dan Escobedo's Texaco	RF321–10562

Name	Case No.
Dixie Junction	RF300–16484
Dodson's Texaco	RF321–18638
Falls Church County Public Schools.	RF272–87205
Farmers Union Oil Co.	RF272–47459
Farmersville Auto Company, Inc.	RF315–9583
Finneytown Local School District.	RF272–87208
First Midwest Corporation	RF272–91582
Fowler School District 45	RF272–87213
Freesoil Community School District.	RF272–87220
Gifford-Hill & Company, Inc	RF272–38282
Gifford-Hill & Company, Inc	RD272–38282
Gilbert J. Hess	RF272–92159
Gordon Olson Clark Super 100	RF342–228
Hannaford Brothers Company, Inc.	RF272–92812
Jerr-Dan Corporation	RF272–67782
Joe Wilkison	RF272–91922
John Franconia Trucking Co., Inc.	RF300–17438
Krings Motors	RF315–7953
Kwick Way, Inc	RF300–18413
Lonas Construction Company, Inc.	RF272–92134
M & B Metal Products Company.	RF272–90793
M&M Construction Company	RF300–13924
Manson Construction & Engineering Company.	RF272–93242
Mechanics Laundry Company	RF321–17476
Mechanics Laundry Company	RF321–17531
Overland Sand & Gravel Company.	RF272–93791
Polk County Department of Education.	RF272–86112
Ray City Gulf	RF300–18347
Reliance Universal Inc	RF321–17468
Seward Avenue Gulf Service	RF300–17931
St. Peter The Apostle Church	RF272–91929
The Berkline Corporation	RF272–93277
Town of Glocester	RF272–83364
U.S. Elevator Corporation	LFA–0295
Walt's Shell Service	RF315–9455

Copies of the full text of these decisions and orders are available in the Public Reference Room of the Office of Hearings and Appeals, room 1E–234, Forrestal Building, 1000 Independence Avenue, SW., Washington, DC 20585, Monday through Friday, between the hours of 1 p.m. and 5 p.m., except Federal holidays. They are also available in Energy Management: Federal Energy Guidelines, a commercially published loose leaf reporter system.

Dated: July 22, 1993.

George B. Breznay,

Director, Office of Hearings and Appeals.

[FR Doc. 93–18020 Filed 7–27–93; 8:45 am]

BILLING CODE 6450–01–P

ENVIRONMENTAL PROTECTION AGENCY

[OPP–50767; FRL–4633–4]

Receipt of an Application for Notification of a Genetically-Altered Microbial Pesticide

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice.

SUMMARY: EPA has received from American Cyanamid Company a notification of intent to conduct a small-scaled field test of a genetically-altered microbial pesticide. The Agency has determined that the application may be of regional and national significance. Therefore, in accordance with 40 CFR 172.11(a), the Agency is soliciting public comments on this application.

DATES: Written comments must be received on or before August 27, 1993.

ADDRESSES: Comments in triplicate, must bear the docket control number OPP–50767 and be submitted to: Public Docket and Freedom of Information Section, Field Operations Division (H7506C), Office of Pesticide Programs, Environmental Protection Agency, 401 M St., SW., Washington, DC 20460. In person bring comments to: Rm. 246, CM #2, 1921 Jefferson Davis Highway, Arlington, VA. Information submitted in any comment(s) concerning this notice may be claimed confidential by marking any part or all of that information as "Confidential Business Information" (CBI).

Information so marked, will not be disclosed except in accordance with procedures set forth in 40 CFR part 2. A copy of the comment(s) that does not contain CBI must be submitted for inclusion in the public record. Information not marked confidential may be disclosed publicly by EPA without prior notice to the submitter. Information on the proposed test and all written comments will be available for public inspection in Rm. 246 at the Virginia address given above, from 8 a.m. to 4 p.m., Monday through Friday, excluding legal holidays.

FOR FURTHER INFORMATION CONTACT: By mail: Phil Hutton, Product Manager (PM) 18, Registration Division (H7505C), Office of Pesticide Programs, Environmental Protection Agency, 401 M St., SW., Washington, DC 20460. Office location and telephone number: Rm. 213, CM #2, 1921 Jefferson Davis Highway, Arlington, VA (703–305–7690).

SUPPLEMENTARY INFORMATION: An application for a notification has been received from American Cyanamid Company, Agricultural Research Division of Princeton, NJ, 08543–0400. The purpose of this small-scale field trial is to evaluate the efficacy of *Autographa californica* multiple nuclear polyhedrosis virus (AcMNPV) in which a section of the genetic material (EGT) has been deleted vEGTDEL (relative to AcMNPV wild-type and a commercial insecticide) against target lepidopteran pests: cabbage looper, beet armyworm, fall armyworm, southern armyworm, tobacco budworm, corn earworm, diamondback moth, and the cabbage worm. The proposed programs will consist of five test sites: Arizona, California, Florida, New Jersey, and Texas with one field trial per site to occur between August to December 1993. Total acreage for each field trial will consist of less than 1 acre. Each test will be conducted on land which is currently used for growth/production of row crops. Each field trial will consist of eight treatments to include: vEGTFEL @ 1 x 10^9, 10^{11}, and 10^{13} PIBs/acre; AcMNPV @ 1 x 10^9, 10^{11}, and 10^{13} PIBs/acre; local commercial standard insecticide; and untreated control. Within a given test, each treatment will be applied to the crop no more than six times; treatments will be applied using ground equipment. At the conclusion of each test, the test area as well as a 10 ft. wide untreated test perimeter will undergo crop destruction.

Dated: July 14, 1993.

Stephanie R. Irene,

Acting Director, Office of Pesticide Programs.

[FR Doc. 93–17424 Filed 7–27–93; 8:45 am]

BILLING CODE 6560–50–F

[OPP-180897; FRL 4633-6]

Receipt of Application for Emergency Exemption to Use Imidacloprid; Solicitation of Public Comment

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice.

SUMMARY: EPA has received a specific exemption request from the Arizona Department of Agriculture (hereafter referred to as the "Applicant") to use the pesticide imidacloprid (CAS 105827-78-9) to treat up to 7,000 acres of broccoli, 6,100 acres of cauliflower, 3,500 acres of cabbage, 50,000 acres of head lettuce, and 5,500 acres of leaf lettuce to control the sweet potato whitefly *Bemesia tabaci*. The Applicant proposes the use of a new chemical; therefore, in accordance with 40 CFR 166.24, EPA is soliciting public comment before making the decision whether or not to grant the exemption.

DATES: Comments must be received on or before August 12, 1993.

ADDRESSES: Three copies of written comments, bearing the identification notation "OPP-180897," should be submitted by mail to: Public Docket and Freedom of Information Section, Field Operations Division (H7506C), Office of Pesticide Programs, Environmental Protection Agency, 401 M St., SW., Washington, D.C. 20460. In person, bring comments to: Rm. 1132, Crystal Mall #2, 1921 Jefferson Davis Highway, Arlington, VA.

Information submitted in any comment concerning this notice may be claimed confidential by marking any part or all of that information as "Confidential Business Information." Information so marked will not be disclosed except in accordance with procedures set forth in 40 CFR part 2. A copy of the comment that does not contain Confidential Business Information must be provided by the submitter for inclusion in the public record. Information not marked confidential may be disclosed publicly by EPA without prior notice. All written comments filed pursuant to this notice will be available for public inspection in Rm. 1132, Crystal Mall #2, 1921 Jefferson Davis Highway, Arlington, VA, from 8 a.m. to 4 p.m., Monday through Friday, except legal holidays.

FOR FURTHER INFORMATION CONTACT: By mail: Andrea Beard, Registration Division (H7505W), Office of Pesticide Programs, Environmental Protection Agency, 401 M St., SW., Washington, D.C. 20460. Office location and telephone number: 6th Floor, Crystal Station #1, 2800 Jefferson Davis Highway, Arlington, VA, (703-308-8791).

SUPPLEMENTARY INFORMATION: Pursuant to section 18 of the Federal Insecticide, Fungicide, and Rodenticide Act (FIFRA) (7 U.S.C. 136p), the Administrator may, at his discretion, exempt a state agency from any registration provision of FIFRA if he determines that emergency conditions exist which require such exemption. The Applicant has requested the Administrator to issue a specific exemption for the use of imidacloprid on broccoli, cauliflower, cabbage, head lettuce, and leaf lettuce to control the sweet potato whitefly (SPWF). Information in accordance with 40 CFR part 166 was submitted as part of this request.

The Applicant states that a new strain of SPWF, often referred to as the B, or poinsettia strain, was initially found in Arizona in 1988. Since that time, it has steadily spread to new host plants and grown in population size each summer and fall. This strain extracts up to 5 times as much sap as the original strain does. This excess feeding results in the production of elevated levels of honeydew which is deposited onto surfaces where the SPWF is feeding. The SPWF causes damage by feeding, and the honeydew secreted provides a substrate for mold, causing further damage. When SPWFs become numerous, as they did in many areas of the state in the past several years, their direct feeding lowers the yield. The SPWF has also been implicated as a vector of virus.

The Applicant claims that adequate control of the SPWF is not being achieved with currently registered products and alternative cultural practices. Along with this request, the Applicant has also requested a specific exemption for use of a different chemical, bifenthrin, on broccoli, cauliflower, and head lettuce, for control of the same pest, the SPWF. The Applicant justifies requests for two chemicals, by stating that the imidacloprid would be applied at planting, as a soil treatment; since imidacloprid is a systemic, it would be taken up by the seedling as it germinates, and protect the emerging seedling from SPWF feeding. The Applicant states that bifenthrin can only be applied as a foliar spray, which is of little value during the early establishment phase of seedling development, as there is limited leaf area at that time. Thus the Applicant proposed that use of bifenthrin be allowed later in the crop season, as a foliar treatment. The Applicant indicates that imidacloprid would not be of use as both a soil treatment and a foliar spray, because its mode of action is such that resistance development is a concern. The Registrant of imidacloprid will not support the use of this chemical further into the growing season for this reason. The Applicant indicates that without adequate control of the SPWF in broccoli, cauliflower, cabbage, head lettuce, and leaf lettuce, significant economic losses could be suffered.

The Applicant proposes to apply imidacloprid at a maximum rate of 5 oz. (dry) active ingredient (20 fluid oz. of product) per acre with a maximum of one application per crop season on a total of 72,100 acres of the above-listed crops. For each of the crops named, it is possible to produce two crops per calendar year on a given acre, and therefore, the acreage could potentially receive two applications of imidacloprid per calendar year. However, the Applicant proposed to limit the maximum amount which could be applied per calendar year to 32 fluid oz. per acre. Therefore, use under this exemption could potentially amount to a maximum total of 36,050 pounds of active ingredient, or 18,025 gallons of product. This is the first time that the Applicant has applied for the use of imidacloprid on the named crops. However, the Applicant requested, and was granted, specific exemptions for the use of bifenthrin for SPWF control in broccoli, cauliflower, and head lettuce last year (1992).

This notice does not constitute a decision by EPA on the application itself. The regulations governing section 18 require publication of a notice of receipt of an application for a specific exemption proposing use of a new chemical (i.e., an active ingredient not contained in any currently registered pesticide). Such notice provides for opportunity for public comment on the application. Accordingly, interested persons may submit written views on this subject to the Field Operations Division at the address above. The Agency, accordingly, will review and consider all comments received during the comment period in determining whether to issue the emergency exemption requested by the Arizona Department of Agriculture.

Dated: July 1, 1993.

Lawrence E. Culleen,

Acting Director, Registration Division, Office of Pesticide Programs.

[FR Doc. 93-17422 Filed 7-27-93; 8:45 am]

BILLING CODE 6560-50-F

[PP 2G4048 and 2G4049/T647; FRL 4630–7]

Miles Inc.; Establishment of Temporary Tolerances

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice.

SUMMARY: EPA has established temporary tolerances for residues of the insecticide *O*-[2-(1,1-Dimethylethyl)-5-pyrimidinyl] *O*-ethyl *O*-(1-methylethyl)phosphorothioate and for residues of the insecticide cyfluthrin in or on certain raw agricultural commodities. These temporary tolerances were requested by Miles Inc., Agricultural Division.

DATES: These temporary tolerances expire December 31, 1993.

FOR FURTHER INFORMATION CONTACT: By mail: Robert Forrest, Product Manager (PM) 14, Registration Division (H7505C), Office of Pesticide Programs, Environmental Protection Agency, 401 M St., SW., Washington, DC 20460. Office location and telephone number: Rm. 219, CM#2, 1921 Jefferson Davis Highway, Arlington, VA, 703–305–6600.

SUPPLEMENTARY INFORMATION: Miles Inc., Agricultural Division, P.O. Box 4913, Kansas City, MO 64120–0013, has requested in pesticide petition (PP) 2G4048 and 2G4049, the establishment of temporary tolerances for residues of the insecticide O-[2-(1,1-Dimethylethyl)-5-pyrimidinyl] O-ethyl O-(1-methylethyl)phosphorothioate and for residues of the insecticide cyfluthrin (cyano(4-fluoro-3-phenoxyphenyl)methyl 3-(2,2-dichloroethenyl)-2,2-dimethylcyclopropanecarboxylate in or on the raw agricultural commodities corn, sweet (K + CWHR); corn, grain, field and pop; corn, forage and fodder, field, pop, and sweet at 0.01 part per million (ppm). These temporary tolerances will permit the marketing of the above raw agricultural commodities treated in accordance with the provisions of the experimental use permit 3125–EUP–202, which was previously issued under the Federal Insecticide, Fungicide, and Rodenticide Act (FIFRA), as amended (Pub. L. 95–396, 92 Stat. 819; 7 U.S.C. 136).

The scientific data reported and other relevant material were evaluated, and it was determined that establishment of the temporary tolerances will protect the public health. Therefore, the temporary tolerances have been established with the following provisions:

1. The total amount of treated commodities to be covered by these temporary tolerances will not exceed that which was treated under the above-referenced experimental use permit which expired on December 31, 1992.

2. Miles Inc., must immediately notify the EPA of any findings from the experimental use that have a bearing on safety. The company must also keep records of production, distribution, and performance and on request make the records available to any authorized officer or employee of the EPA or the Food and Drug Administration.

These tolerances expire December 31, 1993. Residues not in excess of these amounts remaining in or on the raw agricultural commodities after this expiration date will not be considered actionable if the pesticide was legally applied during the term of, and in accordance with, the provisions of the experimental use permit and temporary tolerances. These tolerances may be revoked if any experience with or scientific data on this pesticide indicate that such revocation is necessary to protect the public health.

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

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

Authority: 21 U.S.C. 346a(j).

Dated: July 18, 1993.

Stephanie R. Irene,

Acting Director, Registration Division, Office of Pesticide Programs.

[FR Doc. 93–17865 Filed 7–27–93; 8:45 am]

BILLING CODE 6560–50–F

[PP 2E4124/T649; FRL 4634–7]

Pseudomonas fluorescens; Establishment of Temporary Exemption from the Requirement of a Tolerance

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice.

SUMMARY: EPA has established a temporary exemption from the requirement of a tolerance for residues of the biological pesticide *Pseudomonas fluorescens* strain NCIB 12089, in or on the raw agricultural commodity mushrooms.

DATES: This temporary exemption from the requirement of a tolerance expires June 30, 1994.

FOR FURTHER INFORMATION CONTACT: By mail: Susan T. Lewis, Product Manager (PM) 21, Registration Division (H7505C), Office of Pesticide Programs, Environmental Protection Agency, 401 M St., SW., Washington, DC 20460. Office location and telephone number: Rm. 227, CM#2, 1921 Jefferson Davis Highway, Arlington, VA, 703–305–6900.

SUPPLEMENTARY INFORMATION: Interregional Research Project No. 4, New Jersey Agricultural Experiment Station, P.O. Box 231, New Brunswick, NJ 08903–0231, has requested in pesticide petition (PP) 2E4124, the establishment of a temporary exemption from the requirement of a tolerance for residues of the biological pesticide *Pseudomonas fluorescens* strain NCIB 12089, in or on the raw agricultural commodity mushrooms.

This temporary exemption from the requirements of a tolerance will permit the marketing of the above raw agricultural commodity when treated in accordance with the provisions of experimental use permit 66204–EUP–1, which is being issued under the Federal Insecticide, Fungicide, and Rodenticide Act (FIFRA), as amended (Pub. L. 95–396, 92 Stat. 819; 7 U.S.C. 136).

The scientific data reported and other relevant material were evaluated, and it was determined that the exemption from the requirement of a tolerance will protect the public health. Therefore, the temporary exemption from the requirement of a tolerance has been established on the condition that the pesticide be used in accordance with the experimental use permit and with the following provisions:

1. The total amount of the active ingredient to be used must not exceed the quantity authorized by the experimental use permit.

2. Sylvan Foods, Inc., must immediately notify the EPA of any findings from the experimental use permit that have a bearing on safety. The company must also keep records of production, distribution, and performance and on request make the records available to any authorized officer or employee of the EPA or the Food and Drug Administration.

This temporary exemption from the requirement of a tolerance expires June 30, 1994. Residues remaining in or on the raw agricultural commodity after this expiration date will not be considered actionable if the pesticide is

legally applied during the term of, and in accordance with, the provisions of the experimental use permit and temporary exemption from the requirement of a tolerance. This temporary exemption from the requirement of a tolerance may be revoked if the experimental use permit is revoked or if any experience with or scientific data on this pesticide indicate that such revocation is necessary to protect the public health.

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

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

Authority: 21 U.S.C. 346a(j).

Dated: July 18, 1993.

Stephanie R. Irene,

Acting Director, Registration Division, Office of Pesticide Programs.

[FR Doc. 93–17864 Filed 7–27–93; 8:45 am]

BILLING CODE 6560–50–F

[PF–578; FRL–4632–5]

Rohm & Haas Co.; Pesticide Petition for 2-Methyl-4-Isothiazolin-3-One and 5-Chloro-2-Methyl-4-Isothiazolin-3-One

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice.

SUMMARY: EPA has received from the Rohm & Haas Co. the filing of a pesticide petition (PP 3E4189) proposing to establish an exemption from the requirement of a tolerance under 40 CFR 180.1001(d) for 2-methyl-4-isothiazolin-3-one and 5-chloro-2-methyl-4-isothiazolin-3-one.

ADDRESSES: By mail, submit written comments, identified by the document control number [PF-578], to: Public Response and Program Resources Branch, Field Operations Division (H7506C), Office of Pesticide Programs, Environmental Protection Agency, 401 M St., SW., Washington, DC 20460. In person, bring comments to: Rm. 1132, CM #2, 1921 Jefferson Davis Hwy., Arlington, VA 22202.

Information submitted as a comment concerning this notice may be claimed confidential by marking any part or all of that information as "Confidential Business Information" (CBI). Information so marked will not be disclosed except in accordance with procedures set forth in 40 CFR part 2. A copy of the comment that does not contain CBI must be submitted for inclusion in the public record. Information not marked confidential may be disclosed publicly by EPA without prior notice. All written comments will be available for public inspection in Rm. 1128 at the address given above, from 8 a.m. to 4 p.m., Monday through Friday, excluding legal holidays.

FOR FURTHER INFORMATION CONTACT: Connie Welch, Registration Support Branch, Registration Division (H-7505C), Office of Pesticide Programs, Environmental Protection Agency, 401 M St., SW., Washington, DC 20460. Office location and telephone number: 6th Floor, North Tower, Crystal Station #1, 2800 Jefferson Davis Hwy., Arlington, VA 22202, (703)-308-8320.

SUPPLEMENTARY INFORMATION: In the **Federal Register** of September 7, 1988 (53 FR 34511), EPA granted an exemption from the requirement of a tolerance under § 180.1001(d) for 2-methyl-4-isothiazolin-3-one and 5-chloro-2-methyl-4-isothiazolin-3-one. This exemption included a limit of "0.00022% (or 2.25 ppm) in the formulation." The Agency's calculated maximum expected residue was based upon a concentration of 2-methyl-4-isothiazolin-3-one and 5-chloro-2-methyl-4-isothiazolin-3-one of 2.25 ppm in the final solution applied to growing crops. Because of confusion concerning what the term "formulation" means, Rohm & Haas Co., Independence Mall West, Philadelphia, PA 19105, has filed a petition (PP 3E4189) with EPA requesting an amendment to the exemption entry under § 180.1001(d) to change the limit to "not more than 0.0022% (22.5 ppm) in the formulation; not more than 0.00022% (2.25 ppm) in the final solution applied to growing crops."

Authority: 7 U.S.C. 346a and 371.

Dated: July 18, 1993.

Stephanie R. Irene,

Acting Director, Registration Division, Office of Pesticide Programs.

[FR Doc. 93–17863 Filed 7–27–93; 8:45 am]

BILLING CODE 6560–50–F

[FRL–4683–9]

Effluent Guidelines Task Force; Open Meeting

AGENCY: Environmental Protection Agency (EPA)

ACTION: Notice of Meeting

SUMMARY: The Effluent Guidelines Task Force, an EPA advisory committee, will hold a meeting to discuss improvements to the Agency's Effluent Guidelines Program. The meeting is open to the public.

DATES: The meeting will be held on August 17, 1993, from 8:30 a.m. to 5 p.m., and August 18, 1993, from 8:30 a.m. to 3 p.m.

ADDRESSES: The meeting will take place at the Capital Hilton Hotel, 16th and K Streets, NW., Washington, DC.

FOR FURTHER INFORMATION CONTACT: Eric Strassler, Effluent Guidelines Task Force Staff Director, Office of Water (WH–552), 401 M Street, SW., Washington, DC. 20460; telephone 202–260–7150, fax 202–260–7185.

SUPPLEMENTARY INFORMATION: Pursuant to the Federal Advisory Committee Act (Pub. L. 92–463), the Environmental Protection Agency gives notice of a meeting of the Effluent Guidelines Task Force (EGTF). The EGTF is a subcommittee of the National Advisory Council for Environmental Policy and Technology (NACEPT), the external policy advisory board to the Administrator of EPA.

The EGTF was established in July of 1992 to advise EPA on the Effluent Guidelines Program, which develops regulations for dischargers of industrial wastewater pursuant to title III of the Clean Water Act (33 U.S.C. 1251 et seq.). The Task Force consists of members appointed by EPA from industry, citizen groups, state and local government, the academic and scientific communities, and EPA regional offices.

The meeting agenda will include Task Force work group discussions and reports from the groups on specific problem areas, including: Selection criteria and methodology for preliminary industry studies, the role of non-water quality impacts and pollution prevention in effluent guidelines, and redesigning the data collection and/or rulemaking processes for effluent guidelines. EPA staff will also discuss economic analysis methodology and subcategorization processes used in developing effluent guidelines.

The meeting will be open to the public. Limited seating for the public is available on a first-come, first-served basis. The public may submit written comments to the Task Force regarding

improvements to the Effluent Guidelines program. Comments should be sent to Eric Strassler at the above address. Comments submitted by August 10 will be considered by the Task Force at or subsequent to the meeting.

Dated: July 19, 1993.

Gordon Schisler,

Acting NACEPT Designated Federal Official.

[FR Doc. 93–18003 Filed 7–27–93; 8:45 am]

BILLING CODE 6560–50–P

[OPPTS–44600; FRL–4635–1]

TSCA Chemical Testing; Receipt of Test Data

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice.

SUMMARY: This notice announces the receipt of test data for commercial hexane (CAS Nos. 96–37–7 and 110–54–3), submitted pursuant to a final test rule. This notice also announces the receipt of test data for sodium cyanide (CAS No. 143–33–9), 1,1,1-trichloroethane (CAS No. 71–55–6), and acrylic acid (CAS No. 79–10–7), submitted pursuant to a testing consent order. All data were submitted under the Toxic Substances Control Act (TSCA). Publication of this notice is in compliance with section 4(d) of TSCA.

FOR FURTHER INFORMATION CONTACT: Susan B. Hazen, Director, Environmental Assistance Division (TS–799), Office of Pollution Prevention and Toxics, Environmental Protection Agency, Rm. E–543B, 401 M St., SW., Washington, DC 20460, (202) 554–1404, TDD (202) 554–0551.

SUPPLEMENTARY INFORMATION: Section 4(d) of TSCA requires EPA to publish a notice in the Federal Register reporting the receipt of test data submitted pursuant to test rules promulgated under section 4(a) within 15 days after it is received. Under 40 CFR 790.60, all TSCA section 4 consent orders must contain a statement that results of testing conducted pursuant to these testing consent orders will be announced to the public in accordance with section 4(d).

I. Test Data Submissions

Test data for commercial hexane were submitted by the American Petroleum Institute on behalf of the test sponsors and pursuant to a test rule at 40 CFR 799.2155. They were received by EPA on June 22, 1993. The submission describes "an inhalation oncogenicity study of commercial hexane in rats and mice: Part II - Mice." This chemical is used as a solvent to extract seed oils.

Test data for sodium cyanide were submitted by DuPont Chemicals on behalf of the test sponsors and pursuant to a testing consent order at 40 CFR 799.5000. They were received by EPA on June 16, 1993. The submission describes the adsorption isotherm of sodium cyanide in soil. This chemical is used in the heap leaching process for mining.

Test data for 1,1,1-trichloroethane were submitted by the Halogenated Solvents Industry Alliance on behalf of the test sponsors and pursuant to a testing consent order at 40 CFR 799.5000. They were received by EPA on June 22, 1993. The submission describes the "examination of rats for developmental neurotoxicologic effects from maternal exposure to 1,1,1-trichloroethane." This chemical is used as a solvent.

Test data for acrylic acid were submitted by Basic Acrylic Monomer Manufacturers on behalf of the test sponsors and pursuant to a testing consent order at 40 CFR 799.5000. They were received by EPA on July 1, 1993. The submission describes the "developmental toxicity dose range-finding study of inhaled acrylic acid vapor in New Zealand white rabbits" and the "developmental toxicity evaluation of inhaled acrylic acid vapor in New Zealand white rabbits." This chemical is used in surface coatings; polyacrylic acid and salts, including superabsorbent polymers, detergents, water treatment and dispersants; textiles and nonwovens; exports; adhesives and sealants; leather and polishes; paper coating; miscellaneous acid and ester uses, including specialty acrylates.

EPA has initiated its review and evaluation process for these data submissions. At this time, the Agency is unable to provide any determination as to the completeness of the submissions.

II. Public Record

EPA has established a public record for this TSCA section 4(d) receipt of data notice (docket number OPPTS–44600). This record includes copies of all studies reported in this notice. The record is available for inspection from 8 a.m. to 12 noon, and 1 p.m. to 4 p.m., Monday through Friday, except legal holidays, in the TSCA Public Docket Office, Rm. ET-G102, 401 M St., SW., Washington, DC 20460.

Authority: 15 U.S.C. 2603.

Dated: July 19, 1993.

Charles M. Auer,

Director, Chemical Control Division, Office of Pollution Prevention and Toxics.

[FR Doc. 93–18002 Filed 7–27–93; 8:45 am]

BILLING CODE 6560–50–F

FEDERAL COMMUNICATIONS COMMISSION

[DA 93–935]

Lottery for Interactive Video and Data Service

AGENCY: Federal Communications Commission.

ACTION: Notice.

SUMMARY: The Commission has announced the date and time for a lottery to be conducted to select two tentative selectees for each of the first nine markets of the Interactive Video and Data Service (IVDS). In addition, a list of the applications that will be the subject of the lottery will be made available for public inspection at various Commission locations around the country. Any applicant that believes that there is an error in this listing will have an opportunity to contact the Commission's licensing facility in Gettysburg, Pennsylvania and provide corrected information.

ADDRESSES: Federal Communications Commission, 1919 M Street, NW. Washington, DC 20554.

FOR FURTHER INFORMATION CONTACT: Corbin Small or Marc S. Martin, Private Radio Bureau, (202) 632–7175.

SUPPLEMENTARY INFORMATION: The Federal Communications Commission will conduct a lottery on September 15, 1993 at 10 a.m. in room 856, 1919 M St., NW., Washington, DC, for the purpose of selecting two tentative selectees for each of the first nine IVDS markets. Applications for these markets were filed in response to a Report and Order adopted January 16, 1992. (Report and Order, PR Docket 91–2, FCC 92–22 (released February 13, 1992), 57 FR 8272 (March 9, 1992). Applications were accepted by the Commission for the first nine IVDS markets during three filing windows. The lottery will be conducted pursuant to authority contained in § 1.972 of the Commission's Rules, 47 CFR 1.972.

A listing of the applications that will be the subject of this lottery is available for public inspection during regular business hours at the following locations: (1) The Mass Media/ Adjudication Reference Room of the Federal Communications Commission,

1919 M Street, NW., room 239, Washington, DC 20554; (2) the Licensing Division Reference Room, Private Radio Bureau Licensing Division, 1270 Fairfield Road, Gettysburg, Pennsylvania 17325–7245; (3) all Field Office Locations of the Federal Communications Commission's Field Operations Bureau (see attachment for Field Location addresses); (4) the Authorization and Evaluation Division of the Office of Engineering and Technology, 7435 Oakland Mills Road, Columbia, Maryland 21046; (5) the Field Office of the Common Carrier Bureau, 90 Church Street, room 1309–X, New York, New York 10007; (6) The Public Services Division of the Associate Managing Director for Public Information and Reference Services, 1919 M Street, NW., room 254, Washington, DC 20554; (7) The Federal Communications Commission Library, 1919 M Street, NW., room 639, Washington, DC 20554.

Copies or excerpts of the list of applications may also be purchased from the Commission's duplicating contractor: International Transcription Service, 2100 M Street, NW., suite 140, Washington, DC 20036, at (202) 857–3800.

The applications are listed by market area and then alphabetically by applicant name. Any applicant that believes there is an error in the listing should contact our Gettysburg licensing facility and provide the correct information. Any proposed corrections will be verified against the information contained in the applicant's original application. Additionally, interested parties may provide information to the Commission that may reflect on the suitability of an applicant to be a licensee. Corrections to the listing and information about the suitability of an applicant to be a licensee must be received within thirty (30) days of the publication of this Public Notice in the **Federal Register** at the following address by 4:30 e.d.t.: Federal Communications Commission, Private Radio Bureau Licensing Division, 1270 Fairfield Road, Gettysburg, Pennsylvania 17325–7245, ATTN: IVDS Lottery. Modifications to applications will not be accepted at this time. Only errors that have arisen in the preparation of this list or matters that reflect on the suitability of an applicant to be a licensee should be brought to the attention of our Gettysburg office. Allegations pertaining to tentative selectees will be investigated and resolved prior to issuance of any license to that applicant.

For a more complete discussion of lottery procedures, see FCC INST 1159.1, released August 13, 1992. Additional information regarding for this lottery session may be obtained from the Private Radio Bureau's Consumer Assistance Branch at (717) 337–1212. Procedural questions regarding the lottery may be directed to William F. Caton at (202) 632–6410.

Ralph A. Haller,

Chief, Private Radio Bureau.

FCC Office Addresses

Alaska

Anchorage Office

Federal Communications Commission, 6721 West Raspberry Road, Anchorage, Alaska 99502–1896, (907) 243–2153

Arizona

Douglas Office

Federal Communications Commission, P.O. Box 6, Douglas Arizona 85608–0006, (602) 364–8414

California

San Diego Office

Federal Communications Commission, 4542 Ruffner Street, Room 370, San Diego, California 92111–2216, (619) 467–0549

Livermore Office

Federal Communications Commission, P.O. Box 311, Livermore, California 94551–0311, (510) 447–3614

Los Angeles Office

Federal Communications Commission, Cerritos Corporate Tower, Room 660, 18000 Studebaker Road, Cerritos, California 90701-3684, (310) 809–2096

San Francisco Office

Federal Communications Commission, 3777 Depot Road, Room 420, Hayward, California 94545–2756, (510) 732–5046

Colorado

Denver Office

Federal Communications Commission, 165 South Union Blvd., Suite 860, Lakewood, Colorado 80228–2213

Florida

Vero Beach Office

Federal Communications Commission, P.O. Box 1730, Vero Beach, Florida 32961–1730, (407) 778–3755

Miami Office

Federal Communications Commission, Rochester Building, Room 310, 8390 N.W. 53rd Street, Miami, Florida 33166–4668, (305) 526–7420

Tampa Office

Federal Communications Commission, 2203 N. Lois Avenue, Room 1215, Tampa, Florida 33607–2356, (813) 228–2872

Georgia

Atlanta Office

Federal Communications Commission, 3575 Koger Blvd., Koger Center-Gwinnett, Suite 320, Duluth, Georgia 30136–4958, (404) 279–4821

Powder Springs Office

Federal Communications Commission, P.O. Box 85, Powder Springs, Georgia 30073–1185, (404) 943–5420

Hawaii

Honolulu Office

Federal Communications Commission, P.O. Box 1030, Waipahu, Hawaii 96797–1030, (808) 677–3318

Illinois

Chicago Office

Federal Communications Commission, Park Ridge Office Center, Room 306, 1550 Northwest Highway, Park Ridge, Illinois 60068–1460, (312) 353–0195

Louisiana

New Orleans Office

Federal Communications Commission, 800 West Commerce Road, Room 505, New Orleans, Louisiana 70123–3333, (504) 589–2095

Maine

Belfast Office

Federal Communications Commission, P.O. Box 470, Belfast, Maine 04915–0470, (207) 338–4088

Maryland

Baltimore Office

Federal Communications Commission, 1017 Federal Building, 31 Hopkins Plaza, Baltimore, Maryland 21201, (301) 962–2729

Laurel Office

Federal Communications Commission, P.O. Box 250, Columbia, Maryland 21045, (301) 725–3474

Massachusetts

Boston Office

Federal Communications Commission, NFPA Building, 1 Batterymarch Park, Quincy, Massachusetts 02169–7495, (617) 770–4023

Michigan

Allegan Office

Federal Communications Commission, P.O. Box 89, Allegan, Michigan 49010–9437, (616) 673–2063

Detroit Office

Federal Communications Commission, 24897 Hathaway Street, Farmington Hills, Michigan 48335–1552, (313) 471–5605

Minnesota

St. Paul Office

Federal Communications Commission, 2025 Sloan Place, Suite 31, Maplewood, Minnesota 55117–2058, (612) 290–3819

Missouri

Kansas City Office

Federal Communications Commission, Brywood Office Tower, Room 320, 8800 East 63rd Street, Kansas City, Missouri 64133–4895, (816) 353–3773

Nebraska

Grand Island Office

Federal Communications Commission, P.O. Box 1586, Grand Island, Nebraska 68802–1588, (308) 382–4296

New York

Buffalo Office

Federal Communications Commission, 111 West Huron Street, Suite 1307, Buffalo, New York 14202–2398, (716) 846–4511

New York Office

Federal Communications Commission, 201 Varick Street, New York, New York 10014–4870, (212) 620–3437

Oregon

Portland Office

Federal Communications Commission, 1220 S.W. Third Avenue, Portland, Oregon 97204–2898, (503) 326–4114

Pennsylvania

Philadelphia Office

Federal Communications Commission, One Oxford Valley Office Building, 2300 East Lincoln Highway, Room 404, Langhorne, Pennsylvania 19047–1859, (215) 752–1324

Puerto Rico

San Juan Office

Federal Communications Commission, 747 Federal Building, Hato Rey, Puerto Rico 00918–1731, (809) 768–5567

Texas

Dallas Office

Federal Communications Commission, 9330 LBJ Expressway, Room 1170, Dallas, Texas 75243–3429, (214) 235–3369

Houston Office

Federal Communications Commission, 1225 North Loop West, Room 900, Houston, Texas 77008, (713) 861–6200

Kingsville Office

Federal Communications Commission, P.O. Box 632, Kingsville, Texas 78364–0632, (512) 592–2531

Virginia

Norfolk Office

Federal Communications Commission, 1200 Communications Circle, Virginia Beach, Virginia 23455–3725, (804) 441–6472

Washington

Ferndale Office

Federal Communications Commission, 1330 Loomis Trail Road, Custer, Washington 98240–9303, (206) 354–4892

Seattle Office

Federal Communications Commission, 11410 N.E., 122nd Way, Suite 312, Kirkland, Washington 98034–6927, (206) 821 9037

[FR Doc. 93–18139 Filed 7–27–93; 8:45 am]

BILLING CODE 6712–01–M

[PR Docket No. 93–130; DA 93–890]

Private Land Mobile Radio Services; Minnesota Public Safety Plan

AGENCY: Federal Communications Commission.

ACTION: Notice.

SUMMARY: The Chief, Private Radio Bureau and the Chief Engineer released this Order accepting the Public Safety Radio Plan for Minnesota (Region 22). As a result of accepting the Plan for Region 22, licensing of the 821–824/866–869 MHz band in that region may begin immediately.

EFFECTIVE DATE: July 19, 1993.

FOR FURTHER INFORMATION CONTACT: Betty Woolford, Private Radio Bureau, Policy and Planning Branch, (202) 632–6497.

SUPPLEMENTARY INFORMATION:

Order

In the Matter of Minnesota Public Safety Plan

Adopted: July 12, 1993.

Released: July 19, 1993.

By the Chief, Private Radio Bureau and the Chief Engineer:

1. On January 14, 1993, Region 22 (Minnesota) submitted its Public Safety Plan to the Commission for review. The Plan sets forth the guidelines to be followed in allotting spectrum to meet current and future mobile communications requirements of the public safety and special emergency entities operating in Minnesota.

2. The Minnesota Plan was placed on Public Notice for comments due on June 14, 1993, 58 FR 28019 (May 12, 1993). The Commission received no comments in this proceeding.

3. We have reviewed the Plan submitted for Minnesota and find that it conforms with the National Public Safety Plan. The plan includes all the necessary elements specified in the Report and Order in Gen. Docket No. 87–112, 3 FCC Rcd 905 (1987), and satisfactorily provides for the current and projected mobile communications requirements of the public safety and special emergency entities in Minnesota.

4. Therefore, we accept the Minnesota Public Safety Radio Plan. Furthermore, licensing of the 821–824/866–869 MHz band in Minnesota may commence immediately.

Federal Communications Commission.

Ralph A. Haller,

Chief, Private Radio Bureau.

[FR Doc. 93–17925 Filed 7–27–93; 8:45 am]

BILLING CODE 6712–01–M

[PR Docket No. 93–131; DA 93–889]

Private Land Mobile Radio Services; Missouri Public Safety Plan

AGENCY: Federal Communications Commission.

ACTION: Notice.

SUMMARY: The Chief, Private Radio Bureau and the Chief Engineer released this Order accepting the Public Safety Radio Plan for Missouri (Region 24). As a result of accepting the Plan for Region 24, licensing of the 821–824/688–869 MHz band in that region may begin immediately.

EFFECTIVE DATE: July 19, 1993.

FOR FURTHER INFORMATION CONTACT: Betty Woolford, Private Radio Bureau, Policy and Planning Branch, (202) 632–6497.

SUPPLEMENTARY INFORMATION:

Order

In the Matter of Missouri Public Safety Plan

Adopted: July 12, 1993.

Released: July 19, 1993.

By the Chief, Private Radio Bureau and the Chief Engineer:

1. On January 27, 1993, Region 24 (Missouri) submitted its Public Safety Plan to the Commission for review. The Plan sets forth the guidelines to be followed in allotting spectrum to meet current and future mobile communications requirements of the public safety and special emergency entities operating in Missouri.

2. The Missouri Plan was placed on Public Notice for comments due on June 14, 1993, 58 FR 28019 (May 12, 1993). The Commission received no comments in this proceeding.

3. We have reviewed the Plan submitted for Missouri and find that it conforms with the National Public Safety Plan. The Plan includes all the necessary elements specified in the Report and Order in Gen. Docket No. 87–112, 3 FCC Rcd 905 (1987), and satisfactorily provides for the current and projected mobile communications requirements of the public safety and special emergency entities in Missouri.

4. Therefore, we accept the Missouri Public Safety Radio Plan. Furthermore, licensing of the 821–824/866–869 MHz band in Missouri may commence immediately.

Federal Communications Commission.

Ralph A. Haller,

Chief, Private Radio Bureau.

[FR Doc. 93–17926 Filed 7–27–93; 8:45 am]

BILLING CODE 6712–01–M

Application for Consolidated Hearing

1. The Commission has before it the following mutually exclusive applications for a new FM station:

Applicant, City and State	File No.	MM Docket
A. Double W, Inc.; Cedar Falls, Iowa.	BPH–920506MD	93–216
B. Don Timmerman Broadcasting, Inc.; Cedar Falls, Iowa.	BPH–920507MA	

2. Pursuant to section 309(e) of the Communications Act of 1934, as amended, the above applications have been designated for hearing in a consolidated proceeding upon the issues whose headings are set forth below. The text of each of these issues has been standardized and is set forth in its entirety under the corresponding headings at 51 FR 19347, May 29, 1986. The letter shown before each applicant's name, above, it used below to signify whether the issue in question applies to that particular applicant.

Issue Heading and Applicants

1. Comparative—A, B
2. Ultimate—A, B

3. If there are any non-standardized issues in this proceeding, the full text of the issue and the applicants to which it applies are set forth in an appendix to this notice. A copy of the complete HDO in this proceeding is available for inspection and copying during normal business hours in the FCC Dockets Branch (room 230), 1919 M Street, NW., Washington, DC. The complete text may also be purchased from the Commission's duplicating contractor, International Transcription Service, 2100 M Street, NW., suite 140, Washington, DC 20037 (telephone 202–857–3800).

W. Jan Gay,

Assistant Chief, Audio Services Division, Mass Media Bureau.

[FR Doc. 93–17927 Filed 7–27–93; 8:45 am]

BILLING CODE 6712–01–M

FEDERAL RESERVE SYSTEM

Federal Reserve Bank Services

AGENCY: Board of Governors of the Federal Reserve System.

ACTION: Notice.

SUMMARY: On October 14, 1992, the Board requested comment on a proposal to change the opening time for the Fedwire funds transfer service from 8:30 a.m. Eastern Time (ET) to 6:30 a.m. ET, effective October 4, 1993. The Board is announcing a delay in taking final action on the proposal pending further analysis of the complex issues raised by commenters. Therefore, no changes in Fedwire operating hours will take place on October 4, 1993. Staff has initiated a study of issues related to the operating hours of the Fedwire funds and book-entry securities transfer services, especially the role of Fedwire in enhancing clearance and settlement practices in financial markets.

FOR FURTHER INFORMATION CONTACT: John H. Parrish, Assistant Director (202/452-2224), Division of Reserve Bank Operations and Payment Systems, Board of Governors of the Federal Reserve System, or Bruce J. Summers, Senior Vice President (804/697-8456), Federal Reserve Bank of Richmond. For the Hearing impaired only, Telecommunication Device for the Deaf (TDD), Dorothea Thompson (202/452-3544), Board of Governors of the Federal Reserve System, 20th and C Streets, NW., Washington, DC 20551.

SUPPLEMENTARY INFORMATION: On October 14, 1992, the Board requested comment on a proposal to change the opening time for the Fedwire funds transfer service from 8:30 a.m. Eastern Time (ET) to 6:30 a.m. ET, effective October 4, 1993. The Board also requested comment on the opening time for the book-entry securities transfer service. In addition, the Board requested comment on the further expansion of Fedwire operating hours in the long-term, including opening the Fedwire funds transfer services earlier than 6:30 a.m. ET and/or closing these services later than the current 6:30 p.m. ET close. Comment on the further expansion of Fedwire operating hours was solicited to help evaluate the potential need for significantly expanded operating hours (i.e., 24-hour payment operations) to facilitate risk reduction associated with certain international financial transactions.

The issues raised by commenters were sufficiently complex as to warrant further analysis and review. Commenters expressed considerable interest in the Federal Reserve's longer term approach regarding Fedwire operating hours and requested the Federal Reserve to share its approach with the public. Toward this end, Federal Reserve staff is undertaking a study of the issues raised and the associated public policy concerns. The Board intends for the staff to discuss with various industry representatives and other interested parties issues related to the future development of Fedwire. The Board plans to communicate to the public the results of the staff efforts in order to stimulate further industry response to the issues associated with expanded operating hours and, more generally, on the potential role of the Fedwire payment system.

By order of the Board of Governors of the Federal Reserve System, July 22, 1993.

William W. Wiles,

Secretary of the Board.

[FR Doc. 93-17966 Filed 7-27-93; 8:45 am]

BILLING CODE 6210-01-F

Gordon Family Investment Limited Partnership; Formation of, Acquisition by, or Merger of Bank Holding Companies

The company listed in this notice has applied for the Board's approval under section 3 of the Bank Holding Company Act (12 U.S.C. 1842) and § 225.14 of the Board's Regulation Y (12 CFR 225.14) to become a bank holding company or to acquire a bank or bank holding company. The factors that are considered in acting on the applications are set forth in section 3(c) of the Act (12 U.S.C. 1842(c)).

The application is available for immediate inspection at the Federal Reserve Bank indicated. Once the application has been accepted for processing, it will also be available for inspection at the offices of the Board of Governors. Interested persons may express their views in writing to the Reserve Bank indicated for that application or to the offices of the Board of Governors. Any comment on an application that requests a hearing must include a statement of why a written presentation would not suffice in lieu of a hearing, identifying specifically any questions of fact that are in dispute and summarizing the evidence that would be presented at a hearing.

Comments regarding this application must be received not later than August 16, 1993.

A. Federal Reserve Bank of Chicago (James A. Bluemle, Vice President) 230 South LaSalle Street, Chicago, Illinois 60690:

1. Gordon Family Investment Limited Partnership, Chicago, Illinois; to become a bank holding company by acquiring 26.42 percent of the voting shares of CNBC Bancorp, Inc., Chicago, Illinois, and thereby indirectly acquire Columbia National Bank of Chicago, Chicago, Illinois.

Board of Governors of the Federal Reserve System, July 22, 1993.

Jennifer J. Johnson,

Associate Secretary of the Board.

[FR Doc. 93-17968 Filed 7-27-93; 8:45 am]

BILLING CODE 6210-01-F

Ralph M. Hall; Change In Bank Control Notice

Acquisition of Shares of Banks or Bank Holding Companies

The notificant listed below has 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 notices are set forth in paragraph 7 of the Act (12 U.S.C. 1817(j)(7)).

The notice is available for immediate inspection at the Federal Reserve Bank indicated. Once the notice has been accepted for processing, it will also be available for inspection at the offices of the Board of Governors. Interested persons may express their views in writing to the Reserve Bank indicated for the notice or to the offices of the Board of Governors. Comments must be received not later than August 11, 1993.

A. Federal Reserve Bank of Dallas (W. Arthur Tribble, Vice President) 400 South Akard Street, Dallas, Texas 75222:

1. Ralph M. Hall, Rockwall, Texas; to acquire 11.1 percent of the voting shares of Lakeside Bancshares, Inc., Rockwall, Texas, and thereby indirectly acquire Lakeside National Bank, Rockwall, Texas.

Board of Governors of the Federal Reserve System, August 11, 1993.

Jennifer J. Johnson,

Associate Secretary of the Board.

[FR Doc. 93-17969 Filed 7-27-93; 8:45 am]

BILLING CODE 6210-01-F

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Administration for Children and Families

Discretionary Grant Program Announcement for Adoption Opportunities, Crisis Nurseries/Respite Care and Child Welfare Training; Correction

AGENCY: Administration on Children, Youth and Families (ACYF), Administration for Children and Families (ACF), Department of Health and Human Services (DHHS).

ACTION: Correction notice; revised eligibility criteria under Adoption Opportunities Priority Area 1.03.

SUMMARY: This notice amends program announcement ACF/ACYF/Adoption Opportunities, Crisis Nurseries/Respite Care and Child Welfare Training, published in the **Federal Register** on July 15, 1993, by correcting an error in the eligible applicants section of Priority Area 1.03, Leadership Development: Adoptive Parent Groups, listed on page 38236.

FOR FURTHER INFORMATION CONTACT: Delmar Weathers (202) 205-8671.

SUPPLEMENTARY INFORMATION: On July 15, 1993, the Administration on Children, Youth and Families published the Adoption Opportunities, Crisis Nurseries/Respite Care and Child Welfare Training Grant Program Announcement in the **Federal Register** (Vol. 58, No. 134, page 38232).

The announcement inadvertently published an incorrect eligibility statement. The announcement solicited applications from States, local government entities, public or private nonprofit licensed child welfare agencies or exchanges. Therefore, we are issuing this amendment to correct the announcement. Eligible applicants under Priority Area 1.03 are: Voluntary or public social service agencies, adoption exchanges or other national, regional or statewide adoption-related organizations.

Dated: July 23, 1993.

Joseph A. Mottola,

Acting Commissioner, Administration on Children, Youth and Families.

[FR Doc. 93-18006 Filed 7-27-93; 8:45 am]

BILLING CODE 4184-01-M

Centers for Disease Control and Prevention

Clinical Laboratory Improvement Advisory Committee; Meeting

In accordance with section 10(a)(2) of the Federal Advisory Committee Act (Pub. L. 92-463), the Centers for Disease Control and Prevention (CDC), announces the following committee meeting.

Name: Clinical Laboratory Improvement Advisory Committee.

Time and Date: 8 a.m.-4:30 p.m., August 12, 1993.

3Place: CDC, Auditorium A, Building 2, 1600 Clifton Road, NE, Atlanta, Georgia 30333.

Status: Open to the public, limited only by the space available.

Purpose: This committee is charged with providing scientific and technical advice and guidance to the Secretary of Health and Human Services and the Assistant Secretary for Health regarding the need for, and the nature of, revisions to the standards under which clinical laboratories are regulated; the impact of proposed revisions to the standards; and the modification of the standards to accommodate technological advances.

Matters to be Discussed: The agenda will include a review and discussion of cytology proficiency testing and the results of the meeting from the Subcommittee on Test Categorization which included criteria for waiver and physician-performed microscopy.

Written comments on the criteria for waiver, the process used in the classification of waived tests, physician-performed microscopy, and cytology proficiency testing are welcome. Comments on the classification of specific tests will not be accepted at this time. Comments should not exceed five single-spaced, typed pages in length and should be received by the contact person listed below no later than 12 noon on August 5, 1993. Copies of comments that are germane to the classification of waived tests, physician-performed microscopy, and cytology proficiency testing will be supplied to the committee members for review prior to the meeting. Public oral comments will be accepted at the discretion of the chairman at the close of the meeting if time permits.

Agenda items are subject to change as priorities dictate.

Contact Person for Additional Information: D. Joe Boone, Ph.D., Assistant Director for Science, Division of Laboratory Systems, Public Health Practice Program Office, CDC, 1600 Clifton Road, NE, Mailstop G-25, Atlanta, Georgia 30333, telephone 404/639-1706.

Dated: July 22, 1993.

Elvin Hilyer,

Associate Director for Policy Coordination, Centers for Disease Control And Prevention (CDC).

[FR Doc. 93-17943 Filed 7-27-93; 8:45 am]

BILLING CODE 4160-18-M

Administration for Children and Families

Statement of Organization, Functions and Delegations of Authority

AGENCY: Administration for Children and Families, DHHS.

SUMMARY: Part K, Chapter K (Administration for Children and Families) of the Statement of Organization, Functions and

Delegations of Authority of the Department of Health and Human Services (56 FR 42332) is amended to reflect the changes in Chapter KL, the Office of Management (58 FR 6994) as last amended, January 29, 1993 and Chapter KJ, the Office of Information Systems Management. Specifically, to transfer the functional responsibility of the Privacy Act from Chapter KL, the Office of Management to KJ, the Office of Information Systems Management.

The changes are as follows:

1. Amend KL.20 Functions. Paragraph D to delete it in its entirety and replace it with the following:

D. *Division of Management Analysis* plans, organizes and conducts management studies, analyses and evaluations of administrative, management and organizational processes. It studies structural, functional and operational problems of interest to the Assistant Secretary for Children and Families. The Division acts as liaison with the Assistant Secretary for Management and Budget to coordinate organizational proposals requiring Secretarial approval; prepares functional statements and official organization charts; maintains official organizational files for ACF; and prepares formal program, administrative and personnel delegations of authority for the Assistant Secretary for Children and Families.

The Division develops, prepares, disseminates and maintains all personnel-related and administrative policies, procedures and manuals that affect ACF components. It provides assistance, training and guidance to ACF staff on establishing and maintaining office files and schedules for disposition of ACF records, and it designs, manages and maintains forms management systems for the Agency. It reviews advisory and assistance services contract proposals, makes recommendations to the Assistant Secretary for Children and Families on their disposition, and prepares required departmental reports.

The Division oversees and coordinates ACF's responsibilities under the Federal Managers' Financial Integrity Act (FMFIA). It is responsible for managing the FMFIA program for the Assistant Secretary for Children and Families and the Internal Control Officer.

2. Amend Chapter KJ.00 Mission to delete it in its entirety and replace it with the following:

KJ.00 Mission. *The Office of Information Systems Management (OISM)/Child Support Information Systems (CSIS)* advises the Assistant Secretary for Children and Families on issues and policies pertaining to the utilization of information resources throughout AFC. The Office approves, monitors and provides technical assistance on automated systems projects for effective and efficient state operations. It oversees and directs ACF's information systems and communications network. The Office provides direction and technical guidance on state automated data processing projects used by state governments to operate the Aid to Families with Dependent Children (AFDC), Job Opportunities and Basic Skills Training (JOBS), Child Support Enforcement, Child Care, Child Welfare, Foster Care, and Refugee Resettlement Programs. It develops, recommends and issues policies, procedures and interpretations on information, computer and telecommunications technologies for all ACF program and staff offices and to the state agencies funded under pertinent titles of the Social Security Act. It establishes policy, requirements, standards and guidelines for information systems for the Department to support programs funded under the Social Security Act and information systems improvement initiatives (e.g., Income Eligibility Verification System—IEVS and Systematic Alien Verification for Entitlement—SAVE) involved in the administration and operation of federally funded programs. It directs and coordinates ACF's implementation of the requirements of the Paperwork Reduction Act of 1980 as amended, the Computer Security Act of 1987, and the Computer Matching and Privacy Act of 1988. It is responsible for ensuring Agency compliance with the requirements of the Privacy Act.

3. Amend Chapter KJ.20 Functions. Paragraph D to delete it in its entirety and replace it with the following:

D. *State Systems Policy Staff* is responsible for developing departmental policies and procedures under which states obtain federal financial participation in the cost of ADP systems to support programs funded under the Social Security Act. It acts as a central receiving point for, and coordinates for the Department review and approval of, state requests for federal funding of the cost of ADP systems acquisition; coordinates with other federal agencies on activities related to state automated systems, including Electronic Benefits Transfer; coordinates the provision of technical assistance to states on information systems projects; and advances the use of computer technology in the administration of welfare and social services programs by states.

The Staff is responsible for planning, designing, coordinating and implementing major departmental and government-wide information systems improvement initiatives (e.g., IEVS, SAVE, National Integrated Quality Control System) involved in the administration and operation of state programs funded by ACF. It serves as the departmental focal point for the development and implementation of strategies and policies related to payment integrity (IEVS), welfare systems integration and related initiatives and programs; provides leadership and guidance to interagency work groups in these areas for the Department; and directs and coordinates ACF's responsibilities under the Computer Security Act of 1987 and the Computer Matching and Privacy Act of 1988. It is responsible for ensuring Agency compliance with the requirements of the Privacy Act.

Effective Date: May 3, 1993.

Laurence J. Love,

Acting Assistant Secretary for Children and Families.

[FR Doc. 93–17948 Filed 7–27–93; 8:45 am]

BILLING CODE 4184–01–M

Food and Drug Administration

[Docket No. 89D–0368]

Revocation of Action Levels for Residues of Endrin in Food and Feed

AGENCY: Food and Drug Administration, HHS.

ACTION: Notice.

SUMMARY: The Food and Drug Administration (FDA) is announcing the revocation of the agency's enforcement levels and action levels for residues of the cancelled pesticide, endrin, in human food and animal feed. The agency has revoked such levels because the Environmental Protection Agency (EPA) has revoked the tolerances for the foods to which FDA had applied its enforcement levels, and because the results of FDA monitoring indicate that endrin residues are no longer occurring as unavoidable contaminants in food and feed for which there were no tolerances established and for which FDA had applied action levels.

DATES: The revocation of the action levels for unavoidable rresidues of endrin in food and feed is effective June 28, 1993.

FOR FURTHER INFORMATION CONTACT: John R. Wessel, Office of Regulatory Affairs (HFC–6), Food and Drug

Administration, 5600 Fishers Lane, Rockville, MD 20857, 301–443–1815.

SUPPLEMENTARY INFORMATION: In accordance with 21 CFR 109.4(c)(2) and 509.4(c)(2), FDA is announcing changes in action levels for an added poisonous or deleterious substance. The changes concern the revocation of all enforcement levels and action levels for residues of the pesticide endrin in food and feed. The agency has taken this action because these limits are no longer required to regulate endrin residues in food and feed.

FDA is responsible under section 402(a)(2)(B) and (a)(2)(C) of the Federal Food, Drug, and Cosmetic Act (the act) (21 U.S.C. 342(a)(2)(B) and (a)(2)(C)) for enforcing the pesticide tolerances established by EPA pursuant to section 408 of the act and the food additive regulations established by EPA pursuant to section 409 of the act (21 U.S.C. 346a and 348). Under section 402(a)(2)(B) and (a)(2)(C) of the act, food or feed is adulterated when it contains a pesticide residue that is unsafe within the meaning of section 408 or 409 of the act. A pesticide residue is unsafe under the act if the residue exceeds an established EPA tolerance or food additive regulation or if it is one for which there is no established EPA tolerance or food additive regulation. Shipment of adulterated food or feed in interstate commerce is prohibited, and food or feed so shipped is subject to FDA enforcement action under sections 301(a) and 304 of the act (21 U.S.C. 331(a) and 334).

When tolerances were established for endrin residues in the late 1950's, they were set by regulation at a zero tolerance level because, at that time, the registered uses of endrin were not expected to result in detectable residues. Determining compliance with a zero tolerance, however, had the potential for a broad range of endrin residue levels being detected and thus triggering FDA enforcement action. To ensure uniformity and consistency in initiating enforcement action against food or feed containing endrin residues, FDA followed a policy of prescribing an enforcement level for endrin residues detected in those commodities that had a zero tolerance for endrin residues. The enforcement levels under this policy appeared in Attachment A of Compliance Policy Guide (CPG) 7141.01 and defined 0.05 part per million (ppm) as a level at which an enforcement action may be considered when endrin residues were found in a commodity having a zero tolerance specified in EPA's regulation in 40 CFR 180.131. The 0.05 ppm enforcement level was established at a level at which FDA laboratories could routinely detect, quantify, and confirm endrin residues.

The registered agricultural uses of endrin were cancelled over a period of years; EPA cancelled the last use in 1971. The zero tolerances in 40 CFR 180.131 that were established for these registered uses, however, continued in effect until June 9, 1993. EPA published a final rule in the **Federal Register** of June 9, 1993 (58 FR 32296), that revoked these zero tolerances for endrin residues. Because the zero tolerances are no longer in effect, FDA has concluded that it no longer needs to specify an enforcement level for endrin residues. Accordingly, FDA has rescinded its policy of having an enforcement level for endrin residues in the commodities that were subject to zero tolerances, effective June 28, 1993. The agency has advised its field offices to remove the enforcement levels for endrin residues listed in Attachment A of CPG 7141.01.

Tolerances and food additive regulations established by EPA generally apply to pesticide residues resulting from the approved, purposeful use of the chemical in agriculture. In some circumstances, however, FDA may encounter pesticide residues in food or feed due to an unavoidable source of contamination and for which there is no tolerance or food additive regulation. The pesticides most commonly associated with unavoidable contamination of food and feed are certain chlorinated hydrocarbon pesticides (e.g., DDT), which persist in the environment even after their uses have been discontinued. It has been the persistence of these pesticides in the environment that result in the unavoidable contamination of nontargeted food (e.g., fish) and feed (e.g., fish byproducts used as a feed ingredients). Generally, no tolerances or food additive regulations are in effect for unavoidable pesticide residues that may be present in nontargeted food or feed.

The act provides that in the absence of a tolerance or food additive regulation, any amount of a pesticide residue in a food or feed is unsafe, and therefore renders the food or feed adulterated under section 402(a)(2)(B) or (a)(2)(C) of the act. FDA has found, however, that the level of unavoidable pesticide residue is frequently so low that it is not of regulatory or public health significance. In these situations of low level, unavoidable contamination, FDA has regularly established action levels to define a level of unavoidable contamination at which food or feed may be regarded as adulterated under the act. FDA action levels are nonbinding guidelines as discussed in FDA's general policy statement that was published in the **Federal Register** of April 17, 1990 (55 FR 14359). The action levels currently in effect for unavoidable pesticide residues are contained in Attachment B of CPG 7141.01.

Endrin was one of the pesticides for which action levels were established. Action levels that appeared in Attachment B.7 of CPG 7141.01, were established for the following commodities: processed animal feed, asparagus, beans, citrus fruit, corn, eggs, figs, fish, fish byproducts (animal feed), guavas, certain leafy vegetables, milk, mangoes, melons, oilseed meal (animal feed), okra, peas, pimentoes, certain root vegetables, small fruits, stone fruits, and byproducts of vegetable oils and fats, including soap stocks (animal feed).

As previously mentioned, all registered uses of endrin were cancelled by EPA in 1971. The EPA tolerances for endrin residues in 40 CFR 180.131 were revoked by EPA on June 9, 1993 (58 FR 32296). Prior to EPA's revocation of the endrin tolerances, FDA reviewed its regulatory monitoring data for endrin residues for 1991 and 1992. These data showed that of the approximate 40,000 samples examined by FDA, only four were found to contain measurable levels of endrin. Several samples of fish contained 0.01 ppm of endrin residue and one cantaloupe sample contained 0.03 ppm of endrin residue. Based upon these limited findings of endrin residues, FDA has concluded that endrin is no longer present in the environment to the extent that it may be contaminating food or feed at levels of regulatory concern. For this reason, coupled with EPA's conclusion that endrin tolerances are no longer necessary, FDA has decided to revoke the action levels for unavoidable residues of endrin in food and feed, effective June 28, 1993. The agency has advised its field offices to remove the endrin action level listing in Attachment B.7 in CPG 7141.01.

Dated: July 19, 1993.

Daniel L. Michels,

Acting Associate Commissioner for Regualtory Affairs.

[FR Doc. 93–17921 Filed 7–27–93; 8:45 am]

BILLING CODE 4160–01–F

Health Care Financing Administration

Statement of Organization, Functions, and Delegations of Authority; Personnel Security Clearances Function

Part F of the Statement of Organization, Functions, and Delegations of Authority for the Department of Health and Human Services, Health Care Financing Administration (HCFA), (Federal Register, Vol. 56, No. 102, p. 24080, dated May 28, 1991, and Vol. 57, No. 169, pp. 39404–39405, dated August 31, 1992) is amended to reflect various changes resulting from the transfer of the personnel security clearance function from the Office of Administrative Services to the Office of Human Resources.

The specific changes to Part F are as follows:

Section FH.20.A.1.b. is amended to add the personnel security clearance function to the division's responsibilities. The new section reads as follows:

b. Division of Staffing and Employee Services (FHA64)

- Provides service to all Central Office HCFA components in the areas of recruitment, in-service staffing, selective placement, and pre-employment investigations for all types of appointments and all occupational classes and levels of work (except Senior Executive Service, Schedule C, and related appointments), and personnel security clearances.
- Provides advice, guidance, and consultation to HCFA supervisory and management officials on such issues as optimal staffing mixes, recruitment sources, and qualification factors.
- Interprets regulations, guides, directives, and bulletins related to staffing and personnel services.
- Establishes and maintains the employment data base for routine and special reports and statistical studies related to the employee population.
- Plans and controls the central system for all personnel and payroll employee transaction processes, (except U.S. Savings Bonds), serves as the official custodian for all personnel folder clearances, confidential reports, employment agreements and other related areas.
- Plans, administers, and evaluates HCFA-wide employee benefits, health, and wellness program activities.
- Provides general employee counseling on such matters as retirement, life insurance, health plans, workers' compensation claims, and related areas.
- Serves as the central HCFA reference point for inquiries, guidance, and interpretation on employee benefits, health, and wellness matters.
- Processes insurance claims and annuity applications for retirees and survivors of deceased employees. Processes the full range of employee benefit and payroll transaction documents, with the exception of U.S. Savings Bonds.
- Directs programs for occupational health services, employee health enhancement, physical fitness, and blood assurance programs. Plans and administers the Agency's contract for the Employee Assistance Program. Directs and administers HCFA's child care initiative. Directs the Agency's Voluntary Leave Transfer and Video Display Terminal Eye Care Programs.
- Under direction of the HCFA Deputy Ethics Officer, plans and administers the entire ethics program for both Central and Regional Offices. Reviews financial disclosure reports prior to departmental submittal and coordinates outside activity requests and approvals.
- Directs and coordinates all Agency medical determinations related to employability programs, such as fitness for duty and reasonable accommodation.

Section FH. 20. A.3.b. is amended to remove the personnel security clearance function from the division's responsibilities. The new section reads as follows:

b. Division of Safety and Property Management (FHA82)

- Provides direct service and establishes/implements policies and procedures for the HCFA personal property and supply management programs.
- Maintains and operates the warehouse and the computerized property management and accountability system.
- Provides direct service and establishes/implements policies and procedures for environmental safety nationwide, emergency preparedness, civil defense, tort claims, and accident and fire prevention.
- Conducts special studies and analyses in the areas of personal property and supply management, and environmental safety and security.

Dated: July 19, 1993.

Robert A. Streimer,

Associate Administrator for Management.

[FR Doc. 93–17935 Filed 7–27–93; 8:45 am]

BILLING CODE 4120–03–P

Health Resources and Services Administration

HIV Care Grant Program

AGENCY: Health Resources and Services Administration, HHS.

ACTION: Notice of grants made to States and territories.

SUMMARY: The Health Resources and Services Administration (HRSA) announces that fiscal year 1993 funds have been awarded to States and territories (hereinafter States) for the HIV Care Grant Program. Although these funds have already been awarded to the States, HRSA is publishing this notice to inform the general public of the existence of the funds. In addition, HRSA determined that it would be useful for the general public to be aware of the structure of the HIV Care Grant Program and the statutory requirements governing the use of the funds.

Funds will be used by the States to improve the quality, availability, and organization of health care and support services for individuals and families with HIV infection. The HIV Care Grant Program was authorized by Title II of the Ryan White Comprehensive AIDS Resources Emergency (CARE) Act of 1990, Public Law 101–381, which amended Title XXVI of the Public Health Service Act. Funds were appropriated under Public Law 102–394.

SUPPLEMENTARY INFORMATION:

Availability of Funds

A total of $102,394,599 was made available for the Title II HIV Care Grant Program. These funds have been allotted to the States according to a formula based on the number of AIDS cases reported to the Centers for Disease Control and Prevention for the 24 months ending September 30, 1992, and a per capita income factor. Below is the distribution of funds by State.

State	Amount
Alabama	$938,176
Alaska	100,000
Arizona	751,528
Arkansas	528,077
California	17,183,378
Colorado	937,655
Connecticut	1,068,399
Delaware	229,208
District of Columbia	1,441,594
Florida	11,228,316
Georgia	3,124,415
Hawaii	371,756
Idaho	100,000
Illinois	3,598,455
Indiana	753,940
Iowa	215,475
Kansas	324,039

State	Amount
Kentucky	467,575
Louisiana	1,844,076
Maine	121,410
Maryland	2,130,393
Massachusetts	1,837,845
Michigan	1,486,048
Minnesota	501,656
Mississippi	546,105
Missouri	1,459,224
Montana	56,197
Nebraska	146,689
Nevada	531,149
New Hampshire	102,372
New Jersey	4,505,948
New Mexico	259,454
New York	17,618,806
North Carolina	1,366,064
North Dakota	19,872
Ohio	1,476,544
Oklahoma	512,925
Oregon	675,020
Pennsylvania	2,849,791
Rhode Island	210,219
South Carolina	763,896
South Dakota	100,000
Tennessee	905,045
Texas	7,078,303
Utah	304,258
Vermont	100,000
Virginia	1,430,800
Washington	1,270,740
West Virginia	135,148
Wisconsin	481,719
Wyoming	44,037
Puerto Rico	6,121,433
Guam	3,379
Virgin Islands	36,048

Eligibility Criteria

In order to receive funding under Title II of the CARE Act, each State was required to develop:

- A detailed description of the HIV-related services provided in the State to individuals and families with HIV disease during the year preceding the year for which the grant was requested, and the number of individuals and families receiving such services; and
- A comprehensive plan for the organization and delivery of HIV health care and support services to be funded with the Title II grant, including a description of the purposes for which the State intends to use such assistance.

Each State was also required to submit an application containing such agreements, assurances, and information as the Secretary determined to be necessary to carry out this program, including an assurance that:

- The public health agency that is administering the grant for the State will conduct public hearings concerning the proposed use and distribution of the Title II grant assistance;
- The State will, to the maximum extent practicable, ensure that HIV-related health care and support services delivered with Title II assistance will be provided without regard to the ability of the individual to pay for such services and without regard to the current or past health condition of the individual; ensure that such services will be provided in a setting that is accessible to low-income individuals with HIV disease, and provide outreach to inform such individuals of the services available; and, in the case of a State that intends to use grant funds for the continuation of health insurance coverage, ensure that it has established a program which assures that (1) such amounts will be targeted to individuals who would not otherwise be able to afford health insurance coverage, and (2) that income, assets, and medical expense criteria will be established and applied by the State to identify individuals who qualify for assistance, and that information concerning such criteria will be made available to the public;
- The State will provide for periodic independent peer review to assess the qualify and appropriateness of health and support services provided by entities that receive Title II funds from the State;
- The State will permit and cooperate with any Federal investigations undertaken regarding programs conducted under Title II;
- The State will maintain HIV-related activities at a level that is equal to not less than the level of such expenditures by the State for the 1-year period preceding the fiscal year for which the State applied to receive a grant under Title II; and
- The State will ensure that grant funds are not utilized to make payments for any item or service to the extent that payment has been made, or can reasonably be expected to be made, with respect to that item or service (1) under any State compensation program, under an insurance policy, or under any Federal or State health benefits program, or (2) by an entity that provides health services on a prepaid basis.

General Use of Grant Funds

States may use the HIV Care Grant funds to:

- Establish and operate HIV care consortia within areas most affected by HIV. The statute defines a consortium as an association of one or more public, and one or more nonprofit private health care and support service providers and community-based organizations operating within areas determined by the State to be most affected by HIV disease. Priority funding must be given to consortia that are receiving assistance from HRSA for adult and pediatric HIV-related care demonstration projects, and then to any other existing HIV care consortia.
- Provide home- and community-based care services for individuals with HIV disease.Funding priorities must be given to entities that provide assurances to the State that they will participate in HIV care consortia if such consortia exist within the State, and will utilize the funds for the provision of home- and community-based services to low-income individuals with HIV disease.
- Provide assistance to assure the continuity of health insurance coverage for low-income (as defined by the State) individuals with HIV disease. The State must establish a program that assures that (1) funds will be targeted to individuals who would not otherwise be able to afford health insurance coverage, and (2) income, asset, and medical expense criteria will be established and applied by the State to identify those individuals who qualify for assistance, and information concerning such criteria shall be made available to the public.
- Provide treatments that have been determined to prolong life or prevent serious deterioration of health for low-income individuals with HIV disease.

A State must use at least 15 percent of its grant funds to provide health and support services to infants, children, women and families with HIV disease.

At least 75 percent of the fiscal year 1993 Title II grant awarded to a State must be obligated to specific programs and projects and made available for expenditure within 120 days of the receipt of the grant by the State.

FOR FURTHER INFORMATION, CONTACT: Individuals interested in the HIV Care Grant Program should contact the appropriate office in their State, and may obtain information on their State contact by calling Dr. Eric Goosby, Director, Division of HIV Services, at (301) 443–6745.

Executive Order 12372

It has been determined that the Title II HIV Care Grant Program is not subject to the provisions of Executive Order 12372 concerning inter-governmental review of Federal programs.

The catalog of Federal Domestic Assistance Number is 93.917.

Dated: July 22, 1993.

William A. Robinson,

Acting Administrator.

[FR Doc. 93–17918 Filed 7–27–93; 8:45 am]

BILLING CODE 4160–15–P

HIV Emergency Relief Grant Program

AGENCY: Health Resources and Services Administration, HHS.

ACTION: Notice of grants made to eligible metropolitan areas.

SUMMARY: The Health Resources and Services Administration (HRSA) announces that fiscal year 1993 funds have been awarded to the 25 eligible metropolitan areas (EMAs) that have been the most severely affected by the HIV epidemic. Although these funds have already been awarded to the EMAs, HRSA is publishing this notice to inform the general public of the existence of the funds. In addition, HRSA determined that it would be useful for the general public to be aware of the structure of the HIV Emergency Relief Grant Program and the statutory requirements governing the use of the funds.

The purposes of these funds are to deliver or enhance HIV-related (1) outpatient and ambulatory health and support services, including case management and comprehensive treatment services, for individuals and families with HIV disease; and (2) inpatient case management services that prevent unnecessary hospitalization or that expedite discharge, as medically appropriate, from inpatient facilities. The HIV Emergency Relief Grant Program was authorized by Title I of the Ryan White Comprehensive AIDS Resources Emergency (CARE) Act of 1990, Public Law 101–381, which amended Title XXVI of the Public Health Service Act. Funds were appropriated under Public Law 102–394.

SUPPLEMENTARY INFORMATION:

Availability of Funds

A total of $182,326,998 was made available for the Title I HIV Emergency Relief Grant Program. Of the amount available, 50 percent was allocated to the 25 EMAs according to a formula based on the number and incidence of AIDS cases reported to the Centers for Disease Control and Prevention (CDC) as of March 31, 1992. The other 50 percent was awarded competitively to the EMAs as supplemental grants. Below is a distribution of grants made to the 25 EMAs.

EMA	Total award
Atlanta, GA	$5,490,571
Baltimore, MD	3,250,343
Boston, MA	4,154,744
Chicago, IL	7,390,763
Dallas, TX	4,542,034
Detroit, MI	2,091,739
Fort Lauderdale, FL	4,591,215
Houston, TX	7,820,319
Jersey City, NJ	3,618,220
Los Angeles, CA	19,190,269
Miami, FL	9,716,264
Nassau-Suffolk, NY	2,012,809
New Orleans, LA	1,796,972
New York, NY	44,469,219
Newark, NJ	3,542,848
Oakland, CA	2,602,816
Orange Co, CA	1,829,726
Philadelphia, PA	4,729,230
Ponce, PR	1,280,364
San Diego, CA	3,761,979
San Francisco, CA	27,217,076
San Juan, PR	4,679,777
Seattle, WA	2,824,570
Tmpa-St Ptrsbrg, FL	2,265,553
Washington, D.C.	7,447,578

Eligible Grantees

Metropolitan areas which were eligible for grant awards under Title I were those areas for which, as of March 31, 1992, there had been reported to and confirmed by the CDC a cumulative total of more than 2,000 cases of AIDS; or, for which the per capita incidence of cumulative cases of AIDS was not less than 0.0025, as computed on the basis of the most recently available data for the population in the area.

Grants were awarded to the chief elected official (CEO) of the city or urban county in each EMA that administers the public health agency providing outpatient and ambulatory services to the greatest number of individuals with AIDS.

To be eligible for assistance under Title I, the CEO was required to establish or designate an HIV health services planning council to: (1) Establish priorities for the allocation of funds within the eligible area; (2) develop a comprehensive plan for the organization and delivery of health services described in the statute that is compatible with any State or local plan regarding the provision of health services to individuals with HIV disease; and (3) assess the efficiency of the administrative mechanism in rapidly allocating funds to the areas of greatest need within the eligible area. The planning council must include representatives of: health care providers; community-based and AIDS service organizations; social services providers; mental health services providers; local public health agencies; hospital planning agencies or health care planning agencies; affected communities, including individuals with HIV disease; non-elected community leaders; State government; grantees receiving categorical grants for early intervention services under Title III of the CARE Act; and the lead agency of any HRSA adult or pediatric HIV-related care demonstration project operating in the area to be served. The allocation of funds and services within the EMA must be made in accordance with the priorities established by the planning council.

To be eligible to receive a grant under Title I, the EMAs were required to submit an application containing such information as the Secretary required, including assurances adequate to ensure:

- That funds received would be utilized to supplement not supplant State funds provided for HIV-related services;
- That the political subdivisions within the EMA would maintain HIV-related expenditures at a level equal to that expended for the 1-year period preceding the first fiscal year for which the grant was received. Funds received under Title I may not be used in maintaining the required level of expenditures;
- That the EMA has an HIV health services planning council and has entered into intergovernmental agreements with the political subdivisions and has developed or will develop a comprehensive plan for the organization and delivery of health services, in accordance with the legislation;
- That entities within the EMA that receive Title I funds will participate in an established HIV community-based continuum of care if such continuum exists within the EMA;
- That Title I funds will not be utilized to make payments for any item or service to the extent that payment has been made, or can reasonably be expected to be made, with respect to that item or service (1) under any State compensation program, under an insurance policy, or under any Federal or State health benefits program, or (2) by an entity that provides health services on a prepaid basis; and
- To the maximum extent practicable, that HIV health care and support services provided with Title I assistance will be provided without regard to the ability of the individual to pay for such services, and without regard to the current or past health condition of the individual. Such services will be provided in a setting that is accessible to low-income individuals with HIV disease, and a program of outreach will be provided to inform such individuals of such services.

General Use of Grant Funds

EMAs must use the Title I HIV Emergency Relief grants to provide financial assistance to public or nonprofit entities, for the purpose of delivering or enhancing—

- HIV-related outpatient and ambulatory health and support services,

including case management and comprehensive treatment services, for individuals and families with HIV disease; and

• HIV-related inpatient case management services that prevent unnecessary hospitalization or that expedite discharge, as medically appropriate, from inpatient facilities.

Services supported by the Title I grant funds must be accessible to low-income individuals and families, including women and children with HIV infection, minorities, the homeless, and persons affected by chemical dependency.

FOR FURTHER INFORMATION CONTACT: Individuals interested in the Title I HIV Emergency Relief Grant Program should contact the Office of the CEO in their locality, and may obtain information on their CEO contact by calling Dr. Eric Goosby, Director, Division of HIV Services, at (301) 443–6745.

Executive Order 12372

Grants awarded for the Title I HIV Emergency Relief Grant Program are subject to the provisions of Executive Order 12372, as implemented under 45 CFR part 100, which allows States the option of setting up a system for reviewing applications within their States for assistance under certain Federal programs. The application packages made available by HRSA to the EMAs contained a listing of States which have chosen to set up such a review system and provided a point of contact in the States for the review.

The catalog of Federal Domestic Assistance Numbers are: Formula Grants—93.915; Supplemental Grants—93.914.

Dated: July 22, 1993.

William A. Robinson,

Acting Administrator.

[FR Doc. 93–17919 Filed 7–27–93; 8:45 am]

BILLING CODE 4160–15–P

Office of Refugee Resettlement

Refugee Resettlement Program: Allocations to States of FY 1993 Funds for Refugee Social Services and for Refugees Who Are Former Political Prisoners From Vietnam

AGENCY: Office of Refugee Resettlement (ORR), ACF, HHA.

ACTION: Final notice of allocations to States of FY 1993 funds for refugee [1] social services and for refugees who are former political prisoners from Vietnam.

SUMMARY: This notice establishes the allocations to States of FY 1993 funds for social services under the Refugee Resettlement Program (RRP). In order to help meet the special needs of former political prisoners from Vietnam, the Director has decided to add to the formula allocation $2,000,000 in funds previously set aside for social services discretionary projects.

EFFECTIVE DATE: July 28, 1993.

ADDRESSES: Office of Refugee Resettlement, Administration for Children and Families, 370 L'Enfant Promenade, SW., Washington, DC 20447.

FOR FURTHER INFORMATION CONTACT: Toyo Biddle (202) 401–9250.

SUPPLEMENTARY INFORMATION: Notice of the proposed social service allocations to States was published in the **Federal Register** on May 21, 1993 (58 FR 29586). The population estimates that were used in the proposed notice have been adjusted as a result of additional population information submitted by 7 States.

I. Allocation Amounts

The Office of Refugee Resettlement (ORR) has available $80,806,336 in FY 1993 refugee social service funds as part of the FY 1993 appropriations for the Department of Health and Human Services (Pub. L. No. 102–394).

Of the total of $80,806,336, the Director of ORR will make available to States $68,685,386 (85%) under the allocation formulas set out in this notice. These funds will be made available for the purpose of providing social services to refugees. In addition, the Director of ORR is making available $2,000,000 from discretionary social service funds to be allocated under the formula in this notice for additional services to former political prisoners from Vietnam.

A. Discretionary Social Service Funds for Vietnamese Political Prisoners

In recognition of the special vulnerability of refugees who are former political prisoners from Vietnam, the Director of ORR has set aside $2,000,000 from discretionary social service funds to be allocated under the formula set forth in this announcement, based on the number of actual political prisoner arrivals in FY 1992. This formula allocation is shown separately in Table 1 (cols. 7 and 8). States are required to use this allocation to provide additional services, as described below, to recent arrivals from Vietnam who are former political prisoners and members of their families.

Allowable services for the above-cited funds for political prisoners include the following direct services: (1) Specialized orientation and adjustment services, including peer support activities; and (2) specialized employment-related services, as needed. Under no circumstances may these funds be used for direct cash payments or stipends, or for the purchase of advertising space or air time.

Allowable services under this allocation for Vietnamese political prisoners are intended to supplement, not to supplant, those services provided to refugees in general under the social service formula allocation, discussed below.

ORR intends to provide technical assistance to States and organizations that request it to assure effective program development and implementation.

Because these funds are being provided specifically for services for former political prisoners from Vietnam, States which allocate social service funds to other local administrative jurisdictions, such as counties, shall do so for these funds, using a formula which reflects recent and anticipated arrivals of this target population only.

ORR strongly encourages States and other contracting jurisdictions, in selecting service providers for the above, to award these funds, to the extent possible, to qualified refugee mutual assistance associations with experience serving the target population and that all contractors receiving these funds will have Vietnamese language capacity and Vietnamese cultural understanding.

States are required to provide to ORR program performance information on the Vietnamese political prisoner program that meets the reporting

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[1] In addition to persons admitted to the United States as refugees under section 207 of the Immigration and Nationality Act (INA) or granted asylum under section 208 of the INA, eligibility for refugee social services also includes: (1) Cuban and Haitian entrants, under section 501 of the Refugee Education Assistance Act of 1980 (Pub. L. No. 96–422); (2) certain Amerasians from Vietnam who are admitted to the U.S. as immigrants under section 584 of the Foreign Operations, Export Financing, and Related Programs Appropriations Act, 1988, as included in the FY 1988 Continuing Resolution (Pub. L. No. 100–202); and (3) certain Amerasians from Vietnam, including U.S. citizens, under title II of the Foreign Operations, Export Financing, and Related Programs Appropriations Acts, 1989 (Pub. L. No. 100–461), 1990 (Pub. L. No. 101–167), and 1991 (Pub. L. No. 101–513). For convenience, the term "refugee" is used in this notice to encompass all such eligible persons unless the specific context indicates otherwise.

Refugees admitted to the U.S. under admissions numbers set aside for private-sector-initiative admissions are not eligible to be served under the social service program (or under other programs supported by Federal refugee funds during their period of coverage under their sponsoring agency's agreement with the Department of State—usually two years from their date of arrival or until they obtain permanent resident alien status, whichever comes first.

requirements contained in 45 CFR 92.40, under the terms and conditions of the social services grant awards to States.

B. Refugee Social Service Funds

The population figures for the social service allocation include refugees, Cuban/Haitian entrants, and Amerasians from Vietnam since these populations may be served through funds addressed in this notice. (A State must, however, have an approved State plan for the Cuban/Haitian Entrant Program in order to use funds on behalf of entrants as well as refugees.)

The Director will allocate $68,685,386 to States in the following manner:

- $65,185,386 will be allocated on the basis of each State's proportion of the national population of refugees who had been in the U.S. 3 years or less as of October 1, 1992 (including a floor amount for States which have small refugee populations).
- $3,500,000 will be allocated on the basis of each State's proportion of the 3-year refugee population (including a floor amount of $5,000 for States with small refugee populations) in order to provide an incentive for States to fund refugee mutual assistance associations (MAAs). A written assurance that these optional funds will be used for MAAs is required in order for a State to receive the funds. Guidance to States regarding this assurance is provided below.

The use of the 3-year population base in the allocation formula is required by section 412(c)(1)(B) of the Immigration and nationality Act (INA) which states that the "funds available for a fiscal year for grants and contract [for social services] * * * shall be allocated among the States based on the total number of refugees (including children and adults) who arrived in the United States not more than 36 months before the beginning of such fiscal year and who are actually residing in each State (taking into account secondary migration) as of the beginning of the fiscal year."

As established in the FY 1991 social services notice published in the **Federal Register** of August 29, 1991, section I, "Allocation amounts" (56 FR 42745), for a variable floor amount for States which have small refugee populations will be calculated as follows: If the application of the regular allocation formula yields less than $100,000, then—

(1) A base amount of $75,000 is provided for a State with a population or 50 or fewer refugees who have been in the U.S. 3 years or less; and

(2) For a State with more than 50 refugees who have been in the U.S. 3 years or less: (a) A floor has been calculated consisting of $50,000 plus the regular per capita allocation for refugees above 50 up to a total of $100,000 (in other words, the maximum under the floor formula is $100,000); (b) if this calculation has yielded less than $75,000, a base amount of $75,000 is provided for the State.

ORR has consistently supported floors for small States in order to provide sufficient funds to carry out a minimum service program. Given the range in numbers of refugees in the small States, we have concluded that a variable floor, as established in the FY 1991 notice, will be more reflective of needs than previous across-the-board floors.

The $12,120,950 in remaining social service funds (15% of the total funds available) will be used by ORR on a discretionary basis to provide funds for individual projects intended to contribute to the effectiveness and efficiency of the refugee resettlement program. The discretionary funds will primarily support specific program activities designed to: (1) Reduce welfare dependency in Sates with large numbers of refugees on welfare; and (2) address the needs of special populations who experience particular difficulty adjusting to life in the U.S. (As indicated earlier, $2,000,000 of these discretionary funds is being allocated to States under this notice for services for former political prisoners from Vietnam.) One announcement of the availability of funding and grant application procedures has been issued: Availability of funding for Planned Secondary Resettlement of Refugees, 57 FR 12130, April 8, 1992. ORR expects to continue emphasis on discretionary grants to address problems of persistent welfare dependency and to promote favorable resettlement opportunities. Announcements will be made when discretionary initiatives are decided on.

Population To Be Served

Although the allocation formula is based on the 3-year refugee population, social service programs are not limited to refugees who have been in the U.S. only 3 years. States may provide services without regard to an individual refugee's length of residence, in accordance with the requirements of 45 CFR part 400 Subpart I—Refugee Social Services, published in the **Federal Register** of February 3, 1989 (54 FR 5481). However, in keeping with 45 CFR 400.147(a), a State must allocate an appropriate portion of its social service funds, based on population and service needs, as determined by the State, for services to newly arriving refugees who have been in the U.S. less than one year. The portion proposed for such use must be specified and justified as part of the State's Annual Services Plan under 45 CFR 400.11(b)(2).

While 45 CFR 400.147(b) requires that in providing employability services, a State must give priority to a refugee who is receiving cash assistance, social service programs should not be limited exclusively to refugees who are cash assistance recipients. Social services may be provided to any refugee in need of services, regardless of whether the refugee is receiving cash assistance.

ORR funds may not be used to provide services to United States citizens, since they are not covered under the authorizing legislation, with the following exceptions: (1) Under current regulations, services may be provided to a U.S.-born minor child in a family in which both parents are refugees or, if only one parent is present, in which that parent is a refugee; and (2) under the FY 1989 Foreign Operations, Export Financing, and Related Programs Appropriations Act (Pub. L. No. 100–461), services may be provided to an Amerasian from Vietnam who is a U.S. citizen and who enters the U.S. after October 1, 1988.

Service Priorities

Reflecting section 412(a)(1)(A)(iv) of the INA, the Director expects States to "insure that women have the same opportunities as men to participate in training and instruction." In addition, States are expected to make sure that services are provided in a manner that encourages the use of bilingual women on service agency staffs to ensure adequate service access by refugee women. In order to facilitate refugee self-support, the Director also expects States to implement strategies which address simultaneously the employment potential of both male and female wage earners in a family unit, particularly in the case of large families. States are expected to make every effort to assure the availability of day care services in order to allow women with children the opportunity to participate in employment services or to accept or retain employment. To accomplish this, day care may be treated as a priority employment-related service under the refugee social services program. States, however, are expected to use day care funding from other publicly funded mainstream programs as a prior resource and are expected to work with service providers to assure maximum access to other publicly funded resources for day care.

In accordance with 45 CFR 400.146, if a State's cash assistance dependency rate for refugees (as defined in section 400.146(b)) is 55% or more, funds

awarded under this notice for the basic and MAA incentive allocations (but not the political prisoner set-aside) are subject to a requirement that at least 85% of the State's award be used for employability services as set forth in section 400.154. ORR expects these funds to be used for services which directly enhance refugee employment potential, have specific employment objectives, and are designed to enable refugees to obtain jobs in less than one year as part of a plan to achieve self-sufficiency. This reflects the Congressional objective that "employable refugees should be placed in jobs as soon as possible after their arrival in the United States" and that social service funds be focused on "employment-related services, English-as-a-second-language training (in non-work hours where possible), and case-management services". (INA, section 412(a)(1)(B).)

Since current welfare dependency data are not available, those States that historically have had dependency rates at 55% and above are invited to submit a request for a waiver of the 85% requirement if they can provide reliable documentation that demonstrates a lower dependency rate.

ORR will consider granting a waiver of the 85% provision if a State meets one of the following conditions:

1. The State demonstrates to the satisfaction of the Director of ORR that the dependency rate of refugees who have been in the U.S. 24 months or less is below 55% in the State.

2. The State demonstrates to the satisfaction of the Director that (a) less than 85% of the State's social service allocation is sufficient to meet all employment-related needs of the State's refugee *and* (b) there are non-employment-related service needs which are so extreme as to justify an allowance above the basic 15%. *Or*

3. In accordance with section 412(c)(1)(C) of the INA, the State submits to the Director a plan (established by or in consultation with local governments) which the Director determines provides for the maximum appropriate provision of employment-related services for, and the maximum placement of, employable refugees consistent with performance standards established under section 106 of the Job Training Partnership Act.

In keeping with Congressional intent with respect to the FY 1993 appropriation, States must use social service funds, to the maximum extent possible, for specialized refugee service programs in addition to and not duplicative of mainstream employment programs. The Report of the House Appropriations Committee (H.R. Rep. No. 102–708, p. 117) states:

> The Committee intends that, to the maximum extent possible, States will use social services funds for specialized refugee services programs that address the specific language, vocational and cultural needs of the refugees, in addition to and not duplicative of other federally funded mainstream employment services that are available for low income and needy persons.

States, therefore, must limit refugee social service funds, to the maximum extent possible, to the provision of refugee-specific services that are in addition to, and not duplicative of, the regular employment services provided to low-income people through State JOBS programs and other mainstream employment programs.

States should also expect to use funds available under this notice to pay for social services which are provided to refugees who participate in alternative projects. Section 412(e)(7)(A) of the INA provides that:

> The Secretary [of HHS] shall develop and implement alternative projects for refugees who have been in the United States less than thirty-six months, under which refugees are provided interim support, medical services, support [social] services, and case management, as needed, in a manner that encourages self-sufficiency, reduces welfare dependency, and fosters greater coordination among the resettlement agencies and service providers.

This provision is generally known as the Wilson/Fish Amendment. The Department has already issued a separate notice in the **Federal Register** with respect to applications for such projects (50 FR 24583, June 11, 1985). The notice on alternative projects does not contain provisions for the allocation of additional social service funds beyond the amounts established in this notice. Therefore a State which may wish to consider carrying out such a project should take note of this in planning its use of social service funds being allocated under the present notice.

MAA Set-Aside

ORR believes that the continued and/or increased utilization of qualified refugee mutual assistance associations (MAAs) in the provision of social services promotes appropriate use of services as well as the effectiveness of the overall service system. Therefore, additional funds which are to be targeted specifically to these organizations have been included as an optional award to States which would use them for this purpose.

ORR believes it is essential to build the capacity of MAAs as community-based organizations in order to enable these organizations to continue serving their communities well into the future. Therefore, ORR considers the MAA incentive allocation to represent the minimum commitment a State should make in social service funding to qualified MAAs. In addition, ORR strongly encourages States when contracting for social services, particularly employment services, to give consideration to the special strengths of MAAs, whenever contract bidders are otherwise equally qualified.

In order to receive the MAA incentive funds, the appropriate State agency official must provide written assurance to the Office of Refugee Resettlement that the following conditions will be observed by the State agency in using funds made available to the State under this special allocation:

1. That such funds will be used to fund qualified refugee mutual assistance associations for the direct provision of services to refugee clients.

2. That the MAA incentive allocation is subject to and included under ORR's expectation that the total amount of social service funds allocated by this notice to a State be used primarily for the provision of employability services, as defined in 45 CFR 400.146 and 400.154.

3. That the State agency will observe the following definition of a mutual assistance association:

a. The organization must be legally incorporated as a nonprofit organization; and

b. Not less than 51% of the composition of the Board of Directors or governing board of the mutual assistance association will be comprised of refugees or former refugees, including both refugee men and women.

4. That the State agency will assist MAAs in seeking other public and/or private funds for the provision of services to refugee clients in subsequent years.

Written assurances should be sent to the Director, Office of Refugee Resettlement, 370 L'Enfant Promenade, SW., Washington, DC 20447. States must respond by 30 days from the date of this notice in order to avail themselves of this special allocation.

State Administration

States are reminded that under current regulations at 45 CFR 400.206 and 400.207, States have the flexibility to charge the following types of administrative costs against their refugee program social service grants, if they so choose: direct and indirect administrative costs incurred for the overall management and operation of

the State refugee program, including its coordination, planning, policy and program development, oversight and monitoring, data collection and reporting, and travel. See also State Transmittal No. 88–40.

II. Discussion of Comments Received

We received four letters of comment in response to the notice of proposed FY 1993 allocations to States for refugee social services. The comments are summarized below and are followed in each case by the Department's response.

Comment: Two commenters requested clarification on ORR's interpretation of Congressional intent, as reflected in the Report of the House Appropriations Committee, that "* * * to the maximum extent possible, States will use social service funds for specialized refugee services programs that address the specific language, vocational and cultural needs of the refugees, in addition to and not duplicative of other federally funded mainstream employment services that are available for low income and needy persons" (H.R. Rep. No. 708, 102d Cong., 2d Sess. 117 (1992)). One commenter wondered what is meant by the phrase "maximum extent possible" and questioned how ORR will be able to determine whether this requirement has been met. The commenter also felt that the term "specialized refugee service" was vague and requested a clear definition of both phrases.

The commenter also requested that the requirement be modified to allow States to use refugee social service funds to provide employment and language training to refugee AFDC recipients in the JOBS program.

Another commenter asked for clarification on whether ORR's interpretation of the Committee language would not allow a social services-funded provider who is also the area JTPA provider to be considered to be providing refugee-specific services even though this provider uses bilingual staff and tailors services to refugees.

Response: Although ORR currently does not have a definition of "maximum extent possible," we strongly encourage States to use their refugee social service funds for specialized refugee services programs. "Specialized refugee services programs" are defined as those which address the specific language, vocational and cultural needs of refugees, as indicated in the Committee Report language, and which are provided in a manner consistent with the employment goals of the Refugee Act.

The Congressional language does not preclude or endorse the use of refugee social service funds to provide employment and language training to refugee AFDC recipients in the JOBS program or to refugees served by the area JTPA provider. At a minimum, however, the language requires that such services be refugee-specific—i.e., they meet the definition above for specific language, vocational and cultural needs within the content of the provisions of the Refugee Act. Mainstream employment services providers, such as the area JTPA provider, may be considered to be providing refugee-specific services to the extent that the services reflect this definition, notwithstanding the presence or absence of bilingual staff.

Comment: One commenter asked for clarification on the MAA set-aside requirement: "That the MAA incentive allocation is subject to and included under ORR's expectation that the total amount of social service funds allocated by this notice to a State be used primarily for the provision of employability services, as defined in 45 CFR 400.146 and 400.154". The commenter wondered whether ORR intends this requirement to apply only to those States with a 55% or higher dependency rate or to all States.

Response: In accordance with 45 CFR 400.146, this requirement applies only to those States with a dependency rate of 55% or higher.

Comment: One commenter cited the language in the notice that states: "However, in keeping with 45 CFR 400.147(a), a State must allocate an appropriate portion of its social service funds for services to newly arriving refugees who have been in the U.S. less than one year." The commenter felt the language should be revised to include key phrases contained in 45 CFR 400.147(a) which allow States to consider population and service needs, as determined by the State, for planning and allocating services to the newly arrived.

Response: We agree. The language in the notice has been changed to include those phrases, as well as the language noting that the portion proposed must be specified and justified in the State's Annual Services plan.

Comment: One commenter suggested that the final notice require organizations that receive social service funds for services to Vietnamese political prisoners to report what services were provided, how many people were served, and what outcomes were obtained.

Response: The commenter's suggestion is well-taken. Since funds for services to Vietnamese political prisoners are included as part of the social services grant awards to States, the reporting requirements contained in 45 CFR 92.40, one of the terms and conditions of the social services grant award, would apply to the Vietnamese political prisoner program, as well as to the social service formula program. This provision requires States to report program performance information such as program accomplishments in relation to program objectives, quantifiable outputs, and per unit costs. We have added language to the notice to clarify for States that the reporting requirements under 45 CFR 92.40 apply also to the Vietnamese political prisoner program.

Comment: One commenter objected to the use of a minimum allocation floor for small States, stating that the use of a floor will result in eight States receiving a larger average per capita in social services than States receiving funds based solely on the 3-year refugee population formula. The commenter recommended that the minimum floor be eliminated and, as an alternative, that ORR use its discretionary funds to maintain a minimum level of funding to small States.

Response: We continue to believe that a minimum allocation for social services is necessary to cover basic costs which a State incurs in providing services, regardless of the number of refugees. Therefore, we view the establishment of a floor as a reasonable approach to allocating funds to States with small refugee populations, where the use of the formula alone would yield too small an amount to be practical.

Comment: One commenter objected to the statement in the notice that ORR expects social service funds to be used for services designed to enable refugees to obtain jobs in less than one year as part of a self-sufficiency plan. Objections were based on the belief that services aimed at removing pre-employment barriers would be precluded from funding, that ORR's policy is in conflict with the philosophy and policies of the Federal Job Opportunities and Basic Skills (JOBS) Training program, and that there is no statutory basis for predicating the use of social service funds on placing a refugee in a job within a specific time period. The commenter recommended elimination of ORR's policy regarding the one-year job placement requirement.

Response: We wish to clarify, as we did in the FY 1991 and FY 1992 final notices on social service allocations, that ORR expects, but does not require, the use of social service funds to result in job placements within one year. We have used the term "expects" rather

than "requires" in order to make that distinction.

While it is true that a time limit in not specified in the statute, we believe that the one-year policy complies with Congressional intent. Section 412(a)(1)(B) of the Act states that "* * * employable refugees should be placed on jobs as soon as possible after their arrival in the United States." We believe that an emphasis on providing services designed to help refugees become employed within one year is a reasonable interpretation of this provision.

We recognize that long-term training and services, such as those available in the JOBS program, may be desirable for many refugees as they continue to build their lives in this country; however, we believe that such long-term training activities are beyond the legislated intent, scope, and funding of the refugee program, whose purpose is to help refugees achieve self-sufficiency through employment as quickly as possible. ORR believes that a program of short or immediate-term training followed by intensive job placement activities is the most productive use of scarce resources.

Comment: One commenter noted that the proposed notice states that ORR "expects" States and counties to use day care funding from other publicly funded mainstream programs as a prior resource, while last year's notice stated that ORR "encourages" States and counties to use such day care funding. The commenter infers from the change in wording that ORR does not consider the training and employment of women as a priority and that States should use refugee social service funding for day care only as a last resort.

Response: ORR considers increased opportunities for refugee women a high priority in the refugee program and an important strategy for increasing refugee self-sufficiency. The change of wording from "encourages" to "expects" does not in any way represent a diminution of emphasis on services to refugee women, but rather adds emphasis to the need for States to use day care funded from other sources, to the extent available, before using limited refugee funds for this purpose.

Comment: One commenter objected to language in the notice that "* * * strongly encourages States to give priority to MAAs in contracting for refugee social services, particularly employment services, whenever bidders are equally qualified, if the ethnic composition of the MAA is the same as the dominant population to be served". The commenter protested that the proposed language implies that ORR believes that service providers can serve only their own ethnic group and that such a policy deters the acculturation process of refugees.

Response: The language in the notice is not meant to imply that MAAs or other service providers can only serve their own ethnic group. We have modified the language in the notice to make clear that ORR is encouraging, but not mandating, the use of MAAs as service contractors.

III. Allocation Formula

Of the funds available for FY 1993 for social services, $65,185,386 is allocated to States in accordance with the formula specified below. A State's allowable allocation will be calculated as follows:

1. The total amount of funds determined by the Director to be available for this purpose; divided by—

2. The total number of refugees and Cuban/Haitian entrants who arrived in the United States not more than 3 years prior to the beginning of the fiscal year for which the funds are appropriated and the number of Amerasians from Vietnam eligible for refugee social services, as shown by the ORR Refugee Data System. The resulting per capita amount will be multiplied by—

3. The number of persons in item 2, above, in the State as of October 1, 1992, adjusted for estimated secondary migration.

The calculation above will yield the formula allocation for each State. Minimum allocations for small States are taken into account.

MAA incentive award supplements are allocated on the same 3-year population basis as that used in the social service formula. These funds will be made available contingent upon letters of assurance from States, as described previously.

Allocations for political prisoners are based on FY 1992 arrival numbers for this group in each State from the Refugee Data Center and are limited to States with 170 or more political prisoner arrivals. We have limited the population base to FY 1992 political prisoner arrival numbers because these funds are intended to serve recent arrivals. We have not included States with fewer than 170 former political prisoners in the political prisoner allocations formula because the resulting level of funding would be insignificant. In these States, we believe the small number of political prisoners could be served under the State's refugee social services program.

IV. Basis of Population Estimates

The population estimates for the allocation of funds in FY 1993 are based on data on refugee arrivals from the ORR Refugee Data System, adjusted as of October 1, 1992, for estimated secondary migration. The data base includes refugees of all nationalities and Amerasians from Vietnam. Figures on the number of Cuban and Haitian entrants resettled are obtained from several sources, including the ORR Florida office and the Immigration and Naturalization Service.

For fiscal year 1993, ORR's formula allocations for the States for social services for refugees are based on the numbers of refugees who arrived, and on the numbers of entrants who arrived or were resettled, during the preceding three fiscal years: 1990, 1991, and 1992. Therefore, estimates have been developed of the numbers of refugees and entrants with arrival or resettlement dates between October 1, 1989, and September 30, 1992, who are thought to be living in each State as of October 1, 1992. Refugees admitted under the Federal Government's private-sector initiative are not included, since their assistance and services are to be provided by the private sponsoring organizations under an agreement with the Department of State.

The figures on arrivals of refugees and Amerasians used in developing these population estimates were based on final arrival data by State for FY 1990, FY 1991, and FY 1992. Deductions were made for refugees resettled under the private sector initiative. The figures on Cuban and Haitian entrants were based on arrival data by State for FY 1990, FY 1991, and FY 1992.

The estimates of secondary migration were based on data submitted by all participating States on Form ORR–11. The total migration reported by each State was summed, yielding in- and out-migration figures and a net migration figure for each State. The net migration figure was applied to the State's total arrival figure, resulting in a revised population estimate. Because the reporting period covered on Form ORR–11 was a maximum of only 8 months as of June 1992 for the majority of States those reporting base was their cash/medical assistance caseload, extra weight was given to the secondary migration reported by those States to arrive at estimates of secondary migration over a 36-month period. In 1992, no count of recently-arrived refugee children was available from the Department of Education for use as a comparison.

Estimates were developed separately for refugees and entrants and then combined into a total estimated 3-year refugee/entrant population for each

State. Eligible Amerasians are included in the refugee figures.

Table 1, below, shows the estimated 3-year populations, as of October 1, 1992, of refugees (col. 1), entrants (col. 2), and total refugees and entrants (col. 3); the formula amounts which the population estimates yield (col. 4); the total allocation amounts after allowing for the minimum amounts (col. 5); and the amounts available as an incentive to States to use MAAs as service providers (col. 6). Table 1 also shows the number of former political prisoner arrivals in FY 1992 (col. 7); and the allocation amounts for services to this population (col. 8).

V. Allocation Amounts

Funding subsequent to the publication of this notice will be contingent upon the submittal and approval of a State annual services plan, as required by 45 CFR 400.11(b)(2). The following amounts are allocated for refugee social services in FY 1993:

TABLE 1.—ESTIMATED 3-YEAR REFUGEE/ENTRANT POPULATIONS OF STATES PARTICIPATING IN THE REFUGEE PROGRAM AND SOCIAL SERVICE FORMULA AMOUNTS AND ALLOCATIONS FOR FY 1993; AND FORMER POLITICAL PRISONER ARRIVALS AND ALLOCATIONS FOR FY 1993

State	Refugees (1)	Entrants (2)	Total population (3)	Formula amount (4)	Allocation (5)	MAA incentive allocation (6)	Former political prisoner arrivals from Vietnam in FY 1992 (7)	Former political prisoner allocation (8)
Alabama	891	18	909	$157,555	$157,555	$8,450	40	$0
Alaska [1]	147	0	147	25,479	75,000	5,000	13	0
Arizona	4,486	29	4,515	782,576	782,576	41,973	302	32,599
Arkansas	444	0	444	76,958	100,000	5,000	36	0
California [2]	95,217	529	95,746	16,595,459	16,595,459	890,084	7,887	851,360
Colorado	3,968	2	3,970	688,112	688,112	36,906	175	18,890
Connecticut	3,708	73	3,781	655,353	655,353	35,149	123	0
Delaware	135	9	144	24,959	75,000	5,000	8	0
District of Columbia	2,855	21	2,876	498,491	498,491	26,736	252	27,202
Florida	12,727	16,063	28,788	4,989,765	4,989,765	267,622	451	48,683
Georgia	7,625	58	7,683	1,331,679	1,331,679	71,424	873	94,236
Hawaii	984	0	984	170,555	170,555	9,148	101	0
Idaho	920	1	921	159,635	159,635	8,562	12	0
Illinois	13,411	96	13,507	2,341,141	2,341,141	125,565	279	30,117
Indiana	987	7	994	172,288	172,288	9,241	96	0
Iowa	3,037	2	3,039	526,744	526,744	28,251	189	20,402
Kansas	2,204	1	2,205	382,188	382,188	20,498	215	23,208
Kentucky	1,812	15	1,827	316,670	316,670	16,984	132	0
Louisiana	2,482	57	2,539	440,080	440,080	23,603	344	37,133
Maine	743	1	744	128,956	128,956	6,916	3	0
Maryland	7,372	235	7,607	1,318,506	1,318,506	70,717	375	40,479
Massachusetts	11,562	283	11,845	2,053,070	2,053,070	110,115	674	72,755
Michigan	7,025	31	7,056	1,223,002	1,223,002	65,595	371	40,048
Minnesota	6,629	0	6,629	1,148,991	1,148,991	61,625	291	31,412
Mississippi	268	0	268	46,452	87,785	5,000	11	0
Missouri	4,885	26	4,911	851,214	851,214	45,654	290	31,304
Montana	273	0	273	47,319	88,652	5,000	0	0
Nebraska	2,314	2	2,316	401,428	401,428	21,530	247	26,662
Nevada	870	139	1,009	174,888	174,888	9,380	47	0
New Hampshire	667	0	667	115,610	115,610	6,201	66	0
New Jersey	7,546	794	8,340	1,445,555	1,445,555	77,531	180	19,430
New Mexico	1,064	63	1,127	195,341	195,341	10,477	51	0
New York	61,785	683	62,468	10,827,451	10,827,451	580,722	570	61,529
North Carolina	3,875	24	3,899	675,806	675,806	36,246	172	18,566
North Dakota	804	0	804	139,356	139,356	7,474	10	0
Ohio	5,871	46	5,917	1,025,582	1,025,582	55,006	153	0
Oklahoma	1,365	2	1,367	236,939	236,939	12,708	150	0
Oregon	6,516	54	6,570	1,138,765	1,138,765	61,077	375	40,479
Pennsylvania	11,171	85	11,256	1,950,980	1,950,980	104,639	324	34,974
Rhode Island	1,404	11	1,415	245,259	245,259	13,154	0	0
South Carolina	324	2	326	56,505	97,839	5,000	54	0
South Dakota	1,217	0	1,217	210,940	210,940	11,314	0	0
Tennessee	3,072	20	3,092	535,930	535,930	28,744	227	24,503
Texas	17,136	148	17,284	2,995,800	2,995,800	160,677	1,920	207,254
Utah	1,851	0	1,851	320,830	320,830	17,207	129	0
Vermont	721	0	721	124,969	124,969	6,703	0	0
Virginia	6,023	20	6,043	1,047,421	1,047,421	56,178	621	67,034
Washington	17,356	0	17,356	3,008,280	3,008,280	161,347	924	99,741
West Virginia	122	0	122	21,146	75,000	5,000	0	0
Wisconsin	4,393	3	4,396	761,950	761,950	40,867	37	0
Wyoming	13	0	13	2,253	75,000	5,000	4	0
Total	354,275	19,653	373,928	$64,812,181	$65,185,386	$3,500,000	19,804	$2,000,000

[1] The Alaska allocation has been awarded for a Wilson/Fish demonstration project.
[2] A portion of the California allocation is expected to be awarded to continue a Wilson/Fish project in San Diego.

VI. Paperwork Reduction Act

This notice does not create any reporting or recordkeeping requirements requiring OMB clearance.

(Catalog of Federal Domestic Assistance No. 93.566 Refugee Assistance—State Administered Programs)

Dated: July 22, 1993.

David B. Smith,

Acting Director, Office of Refugee Resettlement.

[FR Doc. 93–18007 Filed 7–27–93; 8:45 am]

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DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT

Office of Administration

[Docket No. N–93–3648]

Notice of Submission of Proposed Information Collection to OMB

AGENCY: Office of Administration, HUD.

ACTION: Notice.

SUMMARY: The proposed information collection described below has been submitted to the Office of Management and Budget (OMB) for review, as required by the Paperwork Reduction Act. The Department is soliciting public comments on the subject proposal.

ADDRESSES: Interested persons are invited to submit comments regarding this proposal. Comments should refer to the proposal by name and should be sent to: Angela Antonelli, Assistant Chief, Human Resources and Housing Branch, Office of Management and Budget, New Executive Office Building, Washington, DC 20503.

FOR FURTHER INFORMATION CONTACT: Kay F. Weaver, Reports Management Officer, Department of Housing and Urban Development, 451 7th Street, Southwest, Washington, DC 20410, telephone (202) 708–0050. This is not a toll-free number. Copies of the proposed forms and other available documents submitted to OMB may be obtained from Ms. Weaver.

SUPPLEMENTARY INFORMATION: This Notice informs the public that the Department of Housing and Urban Development has submitted to OMB, for emergency processing, an information collection package with respect to a one-time research study of the relationship between lead in settled house dust and blood lead levels of young children.

HUD is sponsoring the planned study of dust-lead/blood-lead relationships because it has a direct interest in the dust lead standard that EPA must set under section 403 of the Toxic Substances Control Act, as amended by Title X (specifically section 1021) of the Housing and Community Development Act of 1992. Under section 403, EPA must promulgate regulations that identify dangerous levels of lead in paint, dust and soil. These EPA standards shall apply to statutorily required HUD regulations and guidelines on lead-based paint hazards as well as to other purposes of the Toxic Substances Control Act.

The law stipulates that EPA must promulgate the section 403 regulations by April 1994. To meet that deadline, EPA must have the findings of the proposed study of dust-lead/blood-lead relationships by the middle of December 1993 to take them into account in setting the dust-lead standard. The study investigator's must have four and one-half months to complete data collection, laboratory analysis, data analysis, and interim report writing by mid December.

Therefore HUD has requested OMB to complete its processing of this information collection no later than ten (10) days after the date of the publication of this Notice.

The Department has submitted the proposal for the collection of information, as described below, to OMB for review, as required by the Paperwork Reduction Act (44 U.S.C. chapter 35).

The Notice lists the following information: (1) The title of the information collection proposal; (2) the office of the agency to collect the information; (3) the description of the need for the information and its proposed use; (4) the agency form number, if applicable; (5) what members of the public will be affected by the proposal; (6) how frequently information submissions will be required; (7) an estimate of the total number of hours needed to respond to the information collection, including the number of respondents, frequency of response, and hours of response; (8) whether the proposal is new or an extension, reinstatement, or revision of an information collection requirement; and (9) the names and telephone numbers of an agency official familiar with the proposal and of the OMB Desk Officer for the Department.

Authority: Section 3507 of the Paperwork Reduction Act, 44 U.S.C. 3507; Section 7(d) of the Department of Housing and Urban Development Act, 42 U.S.C. 3535(d).

Dated: July 9, 1993.

Kay F. Weaver,

Director, Information Policy and Management Division.

Notice of Submission of Proposed Information Collection to OMB

Proposal: One-time Research Study of the Relationship Between Lead in Settled House Dust and Blood Lead Levels of Young Children

Office: Lead-Based Paint Abatement and Poisoning Prevention

Description of the Need for the Information and Its Proposed Use: Results of the study will be used by the U.S. Environmental Protection Agency (EPA) in setting standards for dangerous levels of lead in dust, as required by section 403 of the Toxic Substances Control Act (enacted in subtitle B of Title X of the Housing and Community Development Act of 1992 (Public Law 102–550)). Such standards must be promulgated by April 1994, according to Title X.

The EPA standards will be used by HUD in regulations pertaining to the evaluation and reduction of lead-based paint hazards in HUD-associated housing and in housing being disposed of by the Federal Government. The HUD regulations are required by section 302 of the Lead-Based Paint Poisoning Prevention Act, as amended by sections 1012 and 1013 of the Housing and Community Development Act of 1992. Such regulations must be effective January 1, 1995.

HUD will also use the EPA standards in the technical guidelines for the evaluation and reduction of lead-based paint hazards in housing, which are required by section 1017 of the Housing and Community Development Act of 1992.

If the proposed data collection is not conducted, it will be necessary for EPA to base the standards on existing data that have major limitations: (1) Dust sampling methods in other studies have been too varied; (2) most studies have focused on children with elevated blood lead levels rather than children with a range of blood lead levels; (3) prior studies included children with unmeasured past lead exposures at previous residences; (4) the literature has not estimated the contribution of dust lead at each of three sites (floors, interior window sills, and window wells) on blood leads.

The aims of the study are to determine:

—The relationship between lead loading and lead concentration in house dust and the blood lead levels among urban children 12 to 30 months who have lived in the same house since the age of 6 months or younger;

—The contribution of other potential sources of lead exposure;

—Whether a vacuum method or wet-wipe method of measuring dust-contaminated lead levels is better correlated with blood lead levels of children;

—The risk of a child developing elevated blood lead levels on the basis of a known level of lead in house dust using a predictive model.

These objectives will provide definitive data for the development of a standard for lead-contaminated dust in residential dwellings.

The study will enroll 200–400 children in the city of Rochester, NY between the ages of 12 to 30 months who have resided in the same house since 6 months of age, spent a limited duration of time away from their primary residence (<20 hours/week), and have no known history of environmental, nutritional, or educational intervention for elevated blood lead. The following data will be collected: (1) A behavioral questionnaire to charactertize each child's potential exposure to lead in soil and household dust, play and hand-to-mouth activities, and nutritional status; (2) a demographic questionnaire to obtain relevant data on all members of the household; (3) venous blood lead and ferritin of enrolled children; (4) measurements of lead in paint in the home; (5) interior dust lead; (6) exterior dust lead; (7) soil lead; (8) tap water lead; and (9) various characteristics of the home and other environmental characteristics.

Form Number: None
Respondents: Enrolled Children and Related Households
Frequency of Submission: One-time Only
Reporting Burden:

Number of respondents	×	Frequency of response	×	Hours per response	=	Burden hours
440 (maximum; includes 10 percent to be interviewed twice for reliability sample)		1		2		880

Total Estimated Burden Hours: 880
Status: New Collection
Contact: Steve Weitz, HUD (202) 755–1805, Angela Antonelli, OMB (202) 395–6880

[FR Doc. 93–17950 Filed 7–27–93; 8:45 am]
BILLING CODE 4210–01–M

DEPARTMENT OF THE INTERIOR

Bureau of Land Management

[WY–010–03–4333–04]

AGENCY: Bureau of Land Management, Interior.

ACTION: Notice of closure of public lands in Hot Springs County, Wyoming.

SUMMARY: The Bureau of Land Management (BLM) hereby gives notice that effective July 28, 1993, all of the following legally described public lands located in the South Fork Owl Creek and Cottonwood Creek drainages of Hot Springs County, Wyoming, are closed to all motorized vehicle access and travel where signed and gated. Exceptions to these closures are authorized administrative uses, emergency needs, and access authorized by the BLM right-of-way WYW–94065. Closure will remain in effect until rescinded or modified by the Authorized Officer.

Sixth Principal Meridian

T. 43 N., R. 102 W.,
Secs. 17 and 18;
T. 43 N., R. 103 W.,
Secs. 10, 11, and 13;
T. 44 N., R. 100 W.,
Secs. 3, 4, 5, 6, 8, 9, and 10;
T. 45 N., R. 100 W.,
Secs. 29, 30, 31, and 34;
T. 45 N., R. 101 W.,
Sec. 25.

EFFECTIVE DATE: Closure will begin on July 28, 1993, and will remain in effect until rescinded or modified by the Authorized Officer.

FOR FURTHER INFORMATION CONTACT: Joe Vessels, Area Manager, Grass Creek Resource Area, P.O. Box 119, 101 South 23rd Street, Worland, Wyoming 82401–0119, (307) 347–9871.

SUPPLEMENTARY INFORMATION: Maps describing the above mentioned areas are available at the BLM's Worland District Office for public review. The purpose of these closures is for access and use management to protect wildlife habitat and security areas, reduce damage to roads, minimize erosion, prevent trespass, provide for quality hunting and other allowable recreational experiences, and mitigate the impacts of access road development and range improvement. Year-round foot and horse access on these public lands is permitted.

The authority for this closure is the Federal Land Policy and Management Act of 1976, Public Law 94–579; and regulations 43 CFR 8341.2(a). This closure is consistent with the Grass Creek Management Framework Plan; the Absaroka Front Habitat Management Plan; the BLM's Cooperative Management Agreement with Rhodes Ranch Inc. and the Wyoming Game and Fish Department; and the terms and conditions of BLM right-of-way WYW–94065.

Any person who violates or fails to comply with this closure is subject to arrest, conviction, and punishment pursuant to appropriate laws and regulations. Such punishment may be a fine of not more than $1,000 or imprisonment for not longer than 12 months, or both.

Dated: July 16, 1993.

Joseph T. Vessels,
Grass Creek Resource Area Manager.

[FR Doc. 93–17897 Filed 7–27–93; 8:45 am]
BILLING CODE 4310–22–M

DEPARTMENT OF AGRICULTURE

Forest Service

Availability of Draft Supplemental Environmental Impact Statement; Management of Habitat for Species Within the Range of the Northern Spotted Owl

AGENCIES: Bureau of Land Management, Department of the Interior; and Forest Service, Department of Agriculture.

ACTION: Notice of availability of a draft supplemental environmental impact statement on management of habitat for late-successional and old-growth forest related species within the range of the Northern Spotted Owl.

DATES: The comment period on this draft supplemental environmental impact statement ends October 28, 1993.

ADDRESSES: Comments should be sent to: Interagency SEIS Team, P.O. Box 3623, Portland, OR 97208–3623.

FOR FURTHER INFORMATION CONTACT: Interagency SEIS Team, P.O. Box 3623, Portland, OR 97208–3623.

SUPPLEMENTARY INFORMATION: Copies of the draft supplemental environmental impact statement (SEIS) are available for review at local Bureau of Land Management and Forest Service offices and some public libraries in Oregon, Washington, and California. Alternatively, copies may be obtained by calling (503) 326–7883 or by writing the Interagency SEIS Team at P.O. Box 3623, Portland, OR 97208–3623.

Three public hearings on this draft SEIS will be scheduled. They will be announced at least 30 days in advance by notice in the **Federal Register** and in newspapers.

Dated: July 23, 1993.

Willie R. Taylor,

Acting Director, Office of Environmental Affairs, Department of the Interior.

Dated: July 23, 1993.

David E. Ketcham,

Director, Environmental Coordination, Forest Service, U.S. Department of Agriculture.

[FR Doc. 93–17951 Filed 7–27–93; 8:45 am]

BILLING CODE 3410–11–M

DEPARTMENT IF THE INTERIOR

Bureau of Land Management

[MT–064–4333–03]

Montana Off-Road Vehicle Designation

AGENCY: Bureau of Land Management, Valley Resource Area, Interior.

ACTION: Notice to limit off-road vehicle use on public lands.

SUMMARY: The Bureau of Land Management is cooperating in a Block Management Agreement with Page-Whitman Ranches of south Valley County, Montana, and the Montana Department of Fish, Wildlife, and Parks. In accordance with this agreement, the following rules will be in effect within the designated area from October 1, 1993 to November 30, 1993.

—Vehicles must stay on existing roads/trails designated as open. Maps of the area boundary and of roads/trails designated open are available from the BLM and the Montana Department of Fish, Wildlife, and Parks office in Glasgow, Montana and three field locations on the perimeter of the area boundary.
—Off-road vehicle use is allowed on public lands for game retrieval only.
—All gates should be left as signed.
—Open fires and littering are prohibited.

The block management area is described as all lands within the Square Creek, Desert Coulee, Taylor Coulee, Sheep Shed and Stone House pastures of the Carpenter Creek allotment. Legal description of the public lands within the block management area are as follows:

All or portions of the following sections in Valley County, Montana:

T. 25 N., R. 34 E., Sections 34 and 35
T. 25 N., R. 35 E., Sections 25 through 35
T. 25 N., R. 36 E., Sections 28 through 33
T. 24 N., R. 34 E., Sections 1, 2, 11, 12, 13, 14, 23
T. 24 N., R. 35 E., Sections 1–5, 7–15, 17–20, 23–28, 33–35
T. 24 N., R. 36 E., Sections 3–9, 17, 18, 30, 31
T. 23 N., R. 35 E., Sections 2, 3

DATES: This designation will be in effect from October 1, 1993 through November 30, 1993.

FOR FURTHER INFORMATION CONTACT: Michael R. Holbert, Valley Resource Area, Area Manager, Route 1–4775, Glasgow, MT 59230–9796.

SUPPLEMENTARY INFORMATION: These regulations apply as found in 43 CFR 8364.1.

Dated: July 19, 1993.

David L. Marl,

District Manager.

[FR Doc. 93–17902 Filed 7–27–93; 8:45 am]

BILLING CODE 4310–DN–M

[AZ–942–03–4730–02]

Arizona; Notice of Filing of Plats of Survey

Date: July 19, 1993.

1. The plat of survey of the following described lands were officially filed in the Arizona State Office, Phoenix, Arizona on the dates indicated:

A plat representing a dependent resurvey of a portion of the subdivisional lines and a portion of the adjusted 1906 meanders; and a survey of a portion of the fixed and limiting boundary of the left bank of the abandoned channel of the Colorado River in Township 16 North, Range 21 West, Gila and Salt River Meridian, Arizona, was accepted April 14, 1993, and was officially filed April 22, 1993.

A plat representing a dependent resurvey of a portion of the Fourth Standard Parallel North through Range 21 West, the 1963 partition line, (identical with a portion of the north boundary), the east boundary, the subdivisional lines, and a portion of the adjusted 1906 meanders; and a survey of a portion of the fixed and limiting boundary of the left bank of the abandoned channel of the Colorado River and a survey of accreted lands and a metes-and-bounds survey of a portion of the Havasu Fish and Wildlife boundary in Township 16 North, Range 22 West, Gila and Salt River Meridian, Arizona, was accepted April 14, 1993, and was officially filed April 22, 1993.

These plats were prepared at the request of the Department of the Interior, Fish and Wildlife Service.

A supplemental plat showing new lottings in section 21, Township 16 North, Range 1 East, Gila and Salt River Meridian, Arizona, was accepted April 14, 1993, and was officially filed April 22, 1993.

This plat was prepared at the request of the Bureau of Land Management, Phoenix District Office, to facilitate a land exchange.

A plat representing a dependent resurvey of a portion of the subdivisional lines; and the subdivision of section 8 and a metes-and-bounds survey in section 8, Township 13 North, Range 10 West, Gila and Salt River Meridian, Arizona, was accepted May 18, 1993, and was officially filed May 27, 1993.

This plat was prepared at the request of the Bureau of Land Management, Kingman Resource Area.

A supplemental plat showing Tract 37 in partially surveyed Township 15 South, Range 30 East, Gila and Salt River Meridian, Arizona, was approved May 4, 1993, and was officially filed May 13, 1993.

A supplemental plat showing Tracts 37 and 38 in partially surveyed Township 19 South, Range 29 East, Gila and Salt River Meridian, Arizona, was accepted May 4, 1993, and was officially filed May 13, 1993.

These plats were prepared at the request of the United States Forest Service, Conino National Forest.

A supplemental plat showing a subdivision of original lot 4, section 22, Township 17 North, Range 5 East, Gila and Salt River Meridian, Arizona was accepted May 17, 1993, and was officially filed May 27, 1993.

This plat was prepared at the request of the United States Forest Service, Conino National Forest.

A plat representing a survey of the Sixth Guide Meridian East, (west boundary), the east and north boundaries, and the subdivisional lines of Township 31 North, Range 25 East, Gila and Salt River Meridian, Arizona, was accepted May 25, 1993, and was officially filed June 3, 1993.

This plat was prepared at the request of the Bureau of Indian Affairs, Navajo Area Office.

2. These plats will immediately become the basic records for describing the land for all authorized purposes. These plats have been placed in the

open files and are available to the public for information only.

3. All inquiries relating to these lands should be sent to the Arizona State Office, Bureau of Land Management, P.O. Box 16563, Phoenix, Arizona 85011.

James P. Kelley,

Chief Cadastral Surveyor of Arizona.

[FR Doc. 93–17895 Filed 7–27–93; 8:45 am]

BILLING CODE 4310–32–M

[NM–940–03–4730–12]

Notice of Filing of Plats of Survey; New Mexico

AGENCY: Bureau of Land Management, Interior.

ACTION: Notice.

SUMMARY: The plats of survey described below are scheduled to be officially filed in the New Mexico State Office, Bureau of Land Management, Santa Fe, New Mexico, on August 24, 1993.

New Mexico Principal Meridian, New Mexico:

T. 19 N., R. 15 W., Accepted April 23, 1993, for Group 844 NM.

Supplemental:

T. 7 N., R. 2 E., Accepted June 14, 1993.

Indian Meridian, Oklahoma:

T. 7 N., R. 11 W., Sec. 11 and 24, Accepted June 16, 1993, for Group 62 OK.

T. 7 N., R. 11 W., Sec. 9, 16, 18, and 24, Accepted June 16, 1993, for Group 62 OK.

T. 13 N., R. 1 E., Accepted June 16, 1993, for Group 70 OK.

T. 13 N., R. 11 W., Accepted June 16, 1993, for Group 57 OK.

If a protest against a survey, as shown on any of the above plats is received prior to the date of official filing, the filing will be stayed pending consideration of the protest. A plat will not be officially filed until the day after all protests have been dismissed and become final or appeals from the dismissal affirmed.

A person or party who wishes to protest against a survey must file with the State Director, Bureau of Land Management, a notice that they wish to protest prior to the proposed official filing date given above.

A statement of reasons for a protest may be filed with the notice of protest to the State Director, or the statement of reasons must be filed with the State Director within (30) days after the proposed official filing date.

The above-listed plats represent dependent resurveys, survey and subdivision.

These plats will be in the open files of the New Mexico State Office, Bureau of Land Management, P.O. Box 27115, Santa Fe, New Mexico 87502–0115. Copies may be obtained from this office upon payment of $2.50 per sheet.

John P. Bennett,

Chief, Cadastral Survey/Geo Sciences.

[FR Doc. 93–17903 Filed 7–27–93; 8:45 am]

BILLING CODE 4310–FB–M

National Park Service

Golden Gate National Recreation Area and Point Reyes National Seashore Advisory Commission; Meeting

Notice is hereby given in accordance with the Federal Advisory Committee Act that a meeting of the Golden Gate National Recreation Area (GGNRA) Advisory Commission will be held at 7:30 p.m. (PDT) on Thursday, August 12, 1993, at Building 201, Fort Mason, San Francisco, California. The Advisory Commission was established by Public Law 92–589 to provide for the free exchange of ideas between the National Park Service and the public and to facilitate the solicitation of advice or other counsel from members of the public on problems pertinent to the National Park Service systems in Marin, San Francisco and San Mateo Counties.

The main agenda item at this public meeting will be a public hearing on the Alcatraz Development Concept Plan (DCP) and Environmental Assessment (EA). The DCP for Alcatraz was made available to the public the week of July 12, 1993.

The Plan will provide a blueprint for the future of Alcatraz Island, a 22-acre island in San Francisco Bay, managed by the National Park Service. It identifies specific management goals and practices to maximize resource protection, visitor use, and interpretation of the island.

According to the Plan some areas of Alcatraz Island currently closed to the public would be open with restrictions to protect wildlife and visitor safety. The detailed environmental assessment evaluates alternatives and potential impacts of each alternative on island resources and the visiting public. Alternatives focus on different levels of public access.

A draft Alcatraz Plan focused on the implementation of the vision for Alcatraz laid out in the General Management Plan (GMP). The Plan was updated to consider changing visitor patterns, wildlife values, and recent resource studies. Although still consistent with the original GGNRA GMP, the Development Concept Plan now focuses considerably more on preservation and protection. It offers additional public access to parts of the island now closed due primarily to safety concerns. Seasonal limitation to access are included to protect nesting birds, and some portions of the island would remain permanently closed for habitat preservation and visitor safety.

There will be a 30-day comment period on the Alcatraz Development Concept Plan (DCP) and Environmental Assessment (EA), and public comments will be taken at the August 12 meeting of the Advisory Commission at which Advisory Commission action is anticipated.

A second agenda item at this meeting is a presentation of the Cultural Resource Management Plan for the Golden Gate National Recreation Area. The GGNRA Cultural Resource Management Plan is a portion of the Congressionally-mandated Resources Management Plan for GGNRA and for all national park areas. The cultural section of the Resources Management Plan identifies existing cultural resources, themes, existing conditions, threats, and recommendations for future preservation and restoration actions. A major portion of the Plan is composed of programming documents identifying immediate and long-range planning, research, personnel, and funding needs to implement the Plan.

This meeting will also contain a Superintendent's Report which will include an update on issues relating to the transition and planning for the Presidio of San Francisco.

This public meeting is opened to all environmental, neighborhood, and community groups and others interested in being involved in the planning process for these GGNRA areas.

Copies of the Alcatraz Development Concept Plan (DCP) and Environmental Assessment (EA) can be obtained by writing to General Superintendent, Golden Gate National Recreation Area, Building 201, Fort Mason, San Francisco, California 94123.

This meeting will be recorded for documentation and transcribed for dissemination. Minutes of the meeting will be available to the public after approval of the full Advisory Commission. A transcript will be available after August 27, 1993. For copies of the minutes contact the Office of the Staff Assistant, Golden Gate National Recreation Area, Building 201, Fort Mason, San Francisco, California 94123.

Dated: July 15, 1993.

Stanley T. Albright,

Regional Director, Western Region.

[FR Doc. 93–18024 Filed 7–27–93; 8:45 am]

BILLING CODE 4310–70–M

INTERSTATE COMMERCE COMMISSION

Release of Waybill Data for Use By Freight Equipment Management Research-Demonstration Program Association of American Railroads

The Commission has received a request from the Freight Equipment Management, Research-Demonstration Program of the Association of American Railroads (AAR) for permission to use certain data from the Commission's 1992 to ICC Waybill Sample.

A copy of the request (WB099–7/21/93) may be obtained from the ICC Office of Economics.

The Waybill Sample contains confidential railroad and shipper data; therefore, if any parties object to this request, they should file their objections (an original and 2 copies) with the Director of the Commission's Office of Economics within 14 calendar days of the date of this notice. The rules for release of waybill data [Ex Parte 385 (Sub-No. 2)] are codified at 49 CFR 1244.8.

Contact: James A. Nash, (202) 927–6196.

Sidney L. Strickland, Jr.,

Secretary.

[FR Doc. 93–17984 Filed 7–27–93; 8:45 am]

BILLING CODE 7035–01–M

DEPARTMENT OF JUSTICE

Lodging of Final Judgment by Consent Pursuant to the Comprehensive Environmental Response, Compensation, and Liability Act

In accordance with Departmental policy, 28 CFR 50.7, and section 122 of the Comprehensive Environmental Response, Compensation and Liability Act ("CERCLA"), 42 U.S.C. 9622, notice is hereby given that on July 15, 1993, two proposed consent decrees in *United States* v. *Apache Energy & Mineral Company, et al.*, Civil Action No. 86–C–1675, were lodged with the United States District Court for the District of Colorado.

The proposed consent decree with defendant Leadville Silver & Gold, Inc. resolves the company's alleged liability to the United States based on its property ownership and operations at the California Gulch Superfund Site ("Site"). The decree reflects the company's financial inability to pay any of the United States' response costs at the Site but obligates the defendant to undertake future response activities on a specific area of the Site if EPA determines such activities to be necessary and if the defendant is deemed to be financially able to undertake any or all of the EPA selected response activities. The decree also requires the defendant to grant access to the United States and others performing response actions under the United States' oversight, file a notice sufficient to notify subsequent purchasers of defendant's property that its property is subject to the consent decree, and continue to exercise due care with respect to the hazardous substances at the Site. The decree further provides that, subject to general and specific reservations of rights, the United States covenants not to sue or take any other civil or administrative action against the defendant for any and all civil liability for reimbursement of response costs incurred by the United States or for injunctive relief, pursuant to sections 106 and 107(a) of CERCLA, 42 U.S.C. 9606 and 9607(a).

The consent decree with C & H Development Company resolves the defendant's alleged liability to the United States based on its ownership of mining claims at the Site. The decree reflects the fact that the defendant has never worked any of its claims and that the defendant is financially unable to pay any of the United States' response costs incurred at the Site. The decree requires the defendant to grant access to the United States and others performing response actions under the United States' oversight, file a notice sufficient to notify subsequent purchasers of defendant's property that its property is subject to the consent decree, and continue to exercise due care with respect to the hazardous substances at the Site. The decree further provides that, subject to general and specific reservations of rights, the United States covenants not to sue or take any other civil or administrative action against the defendant for any and all civil liability for reimbursement of response costs incurred by the United States or for injunctive relief, pursuant to sections 106 and 107(a) of CERCLA, 42 U.S.C. 9606 and 9607(a).

The Department of Justice will receive comments relating to the proposed consent decree with Leadville Silver & Gold, Inc. and the proposed consent decree with C & H Development Company for a period of thirty (30) days from the date of this publication. Comments on either of these decrees should be addressed to the Assistant Attorney General, Environment & Natural Resources Division, U.S. Department of Justice, Washington DC 20530, and should refer to *United States* v. *Apache Energy and Mineral Company*, DOJ Ref. 90–11–3–138.

Copies of the proposed consent decrees may be examined at the office of the United States Attorney, District of Colorado, 633 17th Street, Suite 1600, Denver, Colorado 80202; the Region VIII office of the Environmental Protection agency, 999 18th Street, Denver, Colorado, 80202; and the Consent Decree Library, 1120 G Street, NW., 4th Floor, Washington DC 20005, (202–624–0892). A copy of the proposed decree may be obtained in person or by mail from the Consent Decree Library, 1120 G Street, NW., 4th Floor, Washington DC 20005. When requesting a copy of the proposed consent decrees, please enclose a check in the amount of $5.75 for the consent decree with Leadville Silver & Gold, Inc. and $4.50 for the proposed consent decree with C & H Development Company, (twenty-five cents per page reproduction costs) payable to the "Consent Decree Library."

Myles E. Flint,

Acting Assistant Attorney General, Environment & Natural Resources Division.

[FR Doc. 93–17899 Filed 7–27–93; 8:45 am]

BILLING CODE 4410–01–M

Notice of Lodging of Consent Decree

In accordance with Section 122 of the Comprehensive Environmental Response, Compensation and Liability Act, as amended ("CERCLA"), 42 U.S.C. 9622, and the policy of the Department of Justice, 28 CFR 50.7, notice is hereby given that a complaint styled *United States* v. *Arthur Belanger et. al.*, Civil Action No. 91–0288–1, was filed in the United States District Court for the Western District of Missouri on March 29, 1991, On July 16, 1993 a consent decree was lodged with the Court in settlement of the allegations in the complaint. The proposed consent decree settles the government's claims set forth in the complaint pursuant to sections 104 and 107 of CERCLA, 42 U.S.C. §§ 9604, 9607, for the recovery of costs incurred by the United States during a removal action undertaken in response to releases of hazardous substances from the B & B facility located in Warren Missouri. The complaint alleged, among other things, that the defendants either owned or operated a facility at which hazardous substances were disposed of, or arranged for disposal of hazardous substances at such a facility, and that the United States incurred costs in response to the release of hazardous substances from the Site.

Under the terms of the proposed consent decree, the defendants agree to pay the United States the sum of

$1,215,880 for past response costs incurred by the government at the Site.

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 Assistant Attorney General of the Environment and Natural Resources Division, Department of Justice, 10th and Pennsylvania Avenue, NW., Washington, DC 20530. All comments should refer to *United States* v. *Arthur Belanger et. al.*, D.J. Ref. 90–11–2–226B.

The proposed consent decree may be examined 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. In requesting a copy, please enclose a check in the amount of *$21.50* (25 cents per page reproduction costs) payable to Consent Decree Library. The proposed Consent Decree may also be reviewed at the Environmental Protection Agency, Office of Regional Counsel, EPA Region VII, 726 Minnesota Avenue, Kansas City, Kansas 66101 and the Office of the United States Attorney, 549 Grand Avenue, Kansas City, Missouri 64106.

Myles E. Flint,

Acting Assistant Attorney General, Environment and Natural Resources Division.

[FR Doc. 93–17898 Filed 7–27–93; 8:45 am]

BILLING CODE 4410–01–M

Antitrust Division

Notice Pursuant to the National Cooperative Research and Production Act of 1993; Semiconductor Research Corporation

Notice is hereby given that, on June 24, 1993, pursuant to section 6(a) of the National Cooperative Research and Production Act of 1993, 15 U.S.C. 4301 *et seq.* ("the Act"), Semiconductor Research Corporation ("SRC") has filed written notifications simultaneously with the Attorney General and the Federal Trade Commission disclosing changes in its membership status. The notifications were filed for the purpose of extending the Act's provisions limiting the recovery of antitrust plaintiffs to actual damages under specified circumstances. Specifically, SRC has added BTA Technology, Inc., Santa Clara, CA; MEREX Corporation, Tempe, AZ; and Electrical Engineering Software, Inc., Santa Clara, CA as affiliate members. The following companies have been deleted from SRC membership: Brantford Computer Haus, Ltd; Excimer Laser Systems; Realtime Performance; Scientific Exchange; and UTI Instruments.

No other changes have been made in either the membership or planned activity of the group research project. Membership in this group research project remains open, and SRC intends to file additional written notification disclosing all changes in membership.

On January 7, 1985, SRC filed its original notification pursuant to section 6(a) of the Act. The Department of Justice published a notice in the **Federal Register** pursuant to section 6(b) of the Act on January 30, 1985 (52 FR 4281).

The last notification was filed with the Department on March 12, 1993. A notice was published in the **Federal Register** pursuant to section 6(b) of the Act on May 3, 1993 (58 FR 26350).

Joseph H. Widmar,

Director of Operations, Antitrust Division.

[FR Doc. 93–17900 Filed 7–27–93; 8:45 am]

BILLING CODE 4410–01–M

MARTIN LUTHER KING, JR. FEDERAL HOLIDAY COMMISSION

Meeting

AGENCY: Martin Luther King, Jr. Federal Holiday Commission.

ACTION: Notice of Meeting.

SUMMARY: In accordance with the Federal Advisory Act, Public Law 92–463, as amended, the Martin Luther King, Jr. Federal Holiday Commission announces a forthcoming meeting of the Commission.

Date: September 16, 1993.

Time: 1:30 p.m.–3:30 p.m.

Location: U.S. House of Representatives, Cannon House Office Building, room 311, Washington, DC. The public is invited.

FOR FURTHER INFORMATION CONTACT: Gerrie Maccannon, Executive Officer, Washington Office (202) 708–1005.

Dated: July 15, 1993.

Gerrie Maccannon,

Executive Officer.

[FR Doc. 93–17949 Filed 7–27–93; 8:45 am]

BILLING CODE 4210–01–M

NATIONAL AERONAUTICS AND SPACE ADMINISTRATION

[Notice (93–062)]

NASA Advisory Council (NAC), Aeronautics Advisory Committee (AAC); Meeting on Human Factors

AGENCY: National Aeronautics and Space Administration.

ACTION: Notice of meeting.

SUMMARY: In accordance with the Federal Advisory Committee Act, Public Law 92–463, as amended, the National Aeronautics and Space Administration announces a NAC, Aeronautics Advisory Committee meeting on human factors.

DATES: August 25, 1993, 8:30 a.m. to 4:30 p.m.; and August 26, 1993, 8 a.m. to 4 p.m.; and August 27, 1993, 8 a.m. to Noon.

ADDRESSES: National Aeronautics and Space Administration, Langley Research Center, room 2120, Building 1268A, Hampton, VA 23681.

FOR FURTHER INFORMATION CONTACT: Dr. J.F. Creedon, National Aeronautics and Space Administration, Langley Research Center, Hampton, VA 23681; 804/864–6033.

SUPPLEMENTARY INFORMATION: The meeting will be open to the public up to the seating capacity of the room. The agenda for the meeting is as follows:

—Human Factors National Plan Overview
—Aviation Safety/Automation
—Human Factors Activities in High Performance Aircraft
—High Speed Rotorcraft Flight Deck Overview
—Terminal Area Productivity

Dated: July 21, 1993.

Timothy M. Sullivan,

Advisory Committee Management Officer.

[FR Doc. 93–17889 Filed 7–27–93; 8:45 am]

BILLING CODE 7510–01–M

NUCLEAR REGULATORY COMMISSION

Advisory Committee on Nuclear Waste; Notice of Meeting

The Advisory Committee on Nuclear Waste (ACNW) will hold its 56th meeting on Wednesday and Thursday, August 25–26, 1993, in the Maryland Room, Holiday Inn, 8120 Wisconsin Avenue, Bethesda, MD.

During this meeting, the Committee plans to consider the following:

A. The Committee will meet in executive session to discuss a strategy for implementing recent direction from the Commission on the ACNW charter and renewal of appointments for members. Methods for ACNW operation, candidates for appointment to the Committee, and topical areas for ACNW review will form the central focus of this meeting.

B. *Committee Activities*—The Committee will discuss anticipated and proposed Committee activities, future meeting agenda, and organizational and personnel matters.

C. *Miscellaneous*—Discuss miscellaneous matters related to the conduct of Committee activities and complete discussion of topics that were not completed during previous meetings as time and availability of information permit. This meeting will be closed to the extent it discusses organizational and personnel matters that relate solely to the internal personnel rules and practices of this advisory committee, the release of which would represent a clearly unwarranted invasion of personal privacy per 5 U.S.C. 552b(c)(2) and (6).

Procedures for the conduct of and participation in ACNW meetings were published in the **Federal Register** on June 6, 1988 (53 FR 20699). In accordance with these procedures, oral or written statements may be presented by members of the public, recordings will be permitted only during those portions of the meeting when a transcript is being kept, and questions may be asked only by members of the Committee, its consultants, and staff. The office of the ACRS is providing staff support for the ACNW. Persons desiring to make oral statements should notify the Executive Director of the office of the ACRS as far in advance as practical so that appropriate arrangements can be made to allow the necessary time during the meeting for such statements. Use of still, motion picture, and television cameras during this meeting may be limited to selected portions of the meeting as determined by the ACNW Chairman. Information regarding the time to be set aside for this purpose may be obtained by a prepaid telephone call to the Executive Director of the office of the ACRS, Dr. John T. Larkins (telephone 301/492–4516), prior to the meeting. In view of the possibility that the schedule for ACNW meetings may be adjusted by the Chairman as necessary to facilitate the conduct of the meeting, persons planning to attend should check with the ACNW Executive Director or call the recording (301/492–4600) for the current schedule if such rescheduling would result in major inconvenience.

I have determined in accordance with subsection 10(d) Public Law 92–463 that it is necessary to close portions of this meeting noted above to discuss organizational and personnel matters that relate solely to the personnel rules and practices of this advisory committee, the release of which would represent a clearly unwarranted invasion of personal privacy per 5 U.S.C. 552b(c)(2) and (6).

Dated: July 22, 1993.

John C. Hoyle,

Advisory Committee Management Officer.

[FR Doc. 93–17983 Filed 7–27–93; 8:45 am]

BILLING CODE 7590–01–M

OFFICE OF PERSONNEL MANAGEMENT

Request for Reclearance of Form RI 25–41

AGENCY: Office of Personnel Management.

ACTION: Notice.

SUMMARY: In accordance with the Paperwork Reduction Act of 1980 (title 44, U.S. Code, chapter 35), this notice announces a request for reclearance of an information collection. Form RI 25–41, Initial Certification of Full-time School Attendance, is used to determine whether a child is unmarried and a full-time student in a recognized school. OPM must determine this in order to pay survivor annuity to children who are age 18 or older.

Approximately 1,200 RI 25–41 forms are completed annually. It takes approximately 90 minutes to complete the form. The total annual burden is 1,800 hours.

For copies of this proposal, contact C. Ronald Trueworthy on (703) 908–8550.

DATES: Comments on this proposal should be received on or before August 27, 1993.

ADDRESSES: Send or deliver comments to—

Lorraine E. Dettman, Operations Support Division, Retirement and Insurance Group, U.S. Office of Personnel Management, 1900 E Street, NW., room 3349, Washington, DC 20415

and

Joseph Lackey, OPM Desk Officer, Office of Information and Regulatory Affairs, Office of Management and Budget, New Executive Office Building, NW., room 3002, Washington, DC 20503

FOR INFORMATION REGARDING ADMINISTRATIVE COORDINATION CONTACT: Mary Beth Smith-Toomey, Chief, Administrative Management Branch, (202) 606–0623.

U.S. Office of Personnel Management.

Patricia W. Lattimore,

Acting Deputy Director.

[FR Doc. 93–17890 Filed 7–27–93; 8:45 am]

BILLING CODE 6325–01–M

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–32668; File No. SR–MSE–93–11]

Self-Regulatory Organizations; Filing and Order Granting Accelerated Approval of Proposed Rule Change by The Midwest Stock Exchange, Incorporated Establishing a Policy to Permit SuperMAX Executions for Certain Orders of the Exchange's Primary Odd-Lot Dealer

July 22, 1993.

Pursuant to section 19(b)(1) of the Securities Exchange Act of 1934, 15 U.S.C. 78s (b)(1), notice is hereby given that on May 5, 1993, the Midwest Stock Exchange, Incorporated ("MSE")[1] filed with the Securities and Exchange Commission ("SEC" or "Commission") the proposed rule change as described in Items I, II, III below, which have been prepared by the self-regulatory organization. The MSE has requested that the Commission grant accelerated approval of the proposed rule change. The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons, and is simultaneously granting accelerated approval of the proposed rule change.

I. Self-regulatory organizations statement of the terms of substance of the proposed rule change

The MSE proposes to add a policy regarding the availability of SuperMAX executions for certain orders systematically generated by the Odd-Lot Execution Service (OLES), the primary odd-lot dealer registered on the Exchange. This policy is necessary because the SuperMAX system is designed to apply to retail agency market orders, whereas OLES orders are for the account of a broker-dealer and thus deemed to be professional orders. However, due to the size of OLES passively driven system—generated orders (under 200 shares)—and the unique status of those orders on the Exchange floor, the Exchange, with the concurrence of the Exchange's Floor Procedure Committee, has determined to grant those OLES orders SuperMAX treatment.

[1] On July 8, 1993, the Midwest Stock Exchange formerly changed its name to the Chicago Stock Exchange. For purposes of convenience and consistency, the old name and acronym are used in this order.

II. Self-regulatory organization's statement of the purpose of, and statutory basis for, the proposed rule change

In its filing with the Commission, the self-regulatory organization included statements concerning the purpose of, and basis for, the proposed rule change and discussed any comments it received on the proposed rule change. The text of these statements may be examined at the places specified in Item IV below. The self-regulatory organization has prepared summaries, set forth in section (A), (B) and (C) below, of the most significant aspects of such statements.

(A) Self-regulatory organization's statement of the purpose of, and statutory basis for, the proposed rule change

The purpose of this rule filing is to establish an Exchange policy, in connection with the Exchange's companion rule filing (SR–MSE–93–10) seeking the institution of SuperMAX as a permanent Exchange system, regarding the availability of SuperMax executions for certain computer generated orders sent to MSE specialists by the primary odd-lot dealer on the MSE floor.

The Exchange is simultaneously submitting a rule proposal seeking permanent approval for its SuperMAX system, a system which provides automatic price improvement from the consolidated best bid or offer for small agency retail market orders according to certain pre-defined criteria. Because SuperMAX executions apply to retail agency orders, the price improvement features of SuperMAX are arguably unavailable to orders generated by the OLES system [2] due to OLES' position as an odd-lot dealer. However, because of the manner in which OLES functions on the floor of the Exchange, its unique status on the Exchange floor, and the passive nature of its computer generated market orders, the Exchange, with the concurrence of the Floor Procedure Committee, determined that SuperMAX should be made available to the passively driven OLES system-generated market orders, provided the order is for an issue which is on SuperMAX.

However, because OLES recently instituted an actively managed approach to some of its odd-lot dealer activity, the SuperMAX execution availability is limited to (1) OLES passively driven, system-generated market orders, (2) for order sizes of 200 shares or less, (3) for issues which are on SuperMAX.[3] Limit orders and market orders, regardless of size, sent to an Exchange specialist in OLES actively managed issues, as well as passively driven, computer generated market orders in excess of 200 shares, will not receive SuperMAX treatment, and instead will be handled as any other professional order.

The Exchange believes that allowing SuperMAX treatment for the passively driven OLES market orders described above is fair and reasonable. OLES does no anticipatory trading in these passively managed issues and has no control over when market orders are sent to an Exchange specialist. The passive OLES system responds to orders received by it from retail customers and fills them automatically and therefore acquires positions based entirely upon agency odd-lot transactions. There is no informational advantage available to OLES or its partners through the passive system, and no opportunity to selectively "manage" any issues in the passive system.[4]

(B) Self-regulatory organization's statement on burden on competition

The MSE does not believe that any burdens will be placed on competition as a result of the proposed rule change.

(C) Self-regulatory organization's statement of comments on the proposed rule change received from members, participants or others

The Floor Procedure Committee has approved the proposed rule change.

III. Date of effectiveness of the proposed rule change and timing for commission action

The MSE requests that the Commission find good cause for approving the proposed rule change prior to the thirtieth day after publication of the Notice in the Federal Register. The MSE believes it appropriate to approve the proposed rule change based on the fact that the MSE floor community supports the policy change and SuperMAX has been granted permanent approval.[5]

The Commission finds that the proposed rule change establishing an Exchange policy which permits SuperMAX executions for certain passively driven market orders generated by the MSE's primary odd-lot dealer is consistent with the requirements of the Act and the rules and regulations thereunder applicable to the MSE and, in particular, the requirements of Section 6 which states that a rule should promote just and equitable principles of trade and help to perfect the mechanism of free and open market and a national market system and foster competition among markets. The proposed rule change will accomplish these goals by adding smaller orders from the MSE's Odd-Lot Execution System to the category of orders eligible for price improvement under the SuperMAX system.

The Commission finds good cause for approving the proposed rule change prior to the thirtieth day after the date of publication of the notice of filing thereof for the reasons mentioned above and because the SuperMAX system has been approved on a permanent basis and this rule will allow the MSE to expand the range of securities eligible for SuperMAX's price improvement function.

IV. Solicitation of comments

Interested persons are invited to submit written data, views and arguments concerning the foregoing. Persons making written submissions should file six copies thereof with the Secretary, Securities and Exchange Commission, 450 Fifth Street, NW., Washington, DC 20549. Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for inspection and copying at the Commission and at the principal office of the MSE. All submissions should refer to the file number in the caption above and should be submitted by (insert date 21 days from the publication date).

[2] The Odd-Lot Execution Service is the MSE's primary odd-lot dealer and is a partnership of several Exchange broker-dealers. Until recently, no trading by OLES was actively managed. All OLES orders were market orders, passively driven and system-generated according to a pre-determined parameter. For example, if OLES did not want to be long or short more than 200 shares, its system would automatically send out a buy or sell market order to the respective specialist as soon as the OLES "inventory" became long or short more than 200 shares, without regard to the quoted market.

[3] There are currently about 60 issues which are actively managed by OLES and in excess of 2000 issues which are traded according to pre-set computer driven parameters.

[4] The parameters which are set for OLES issues in the system remain identical for all issues. That is, the system will not permit different parameters for different issues. If the system parameter calls for a sell order to be generated when one issue is long 200 shares, then sell orders will be generated for every issue once it reaches the 200 share long position.

[5] See Securities Exchange Act Release No. 32631 (July 14, 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 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. 93–18000 Filed 7–27–93; 8:45 am]

BILLING CODE 8010–01–M

[Release No. 34–32667; File No. SR–MSTC–93–1]

Self-Regulatory Organizations; Midwest Securities Trust Company; Order Approving a Proposed Rule Change Relating to Procedures for Processing Partial Calls of Uniquely Denominated Callable Securities

July 22, 1993.

On January 27, 1993, Midwest Securities Trust Company ("MSTC") filed a proposed rule change (File No. SR–MSTC–93–1) with the Securities and Exchange Commission ("Commission") under section 19(b)(1) of the Securities Exchange Act of 1934 ("Act").[1] The proposed rule change establishes procedures for applying MSTC's existing automated call lottery system to partial calls of uniquely denominated securities. The Commission published notice of this proposed rule change in the Federal Register on March 17, 1993.[2] No public comments were received. For the reasons discussed below, the Commission is approving the proposed rule change.

I. Description

The proposed rule change establishes procedures for applying MSTC's existing automated call lottery system to partial calls of uniquely denominated securities.[3] Securities are considered uniquely denominated where the issuer has authorized the issuance and trading of securities in incremental amounts that are above the base denomination but that are not integral multiples of the base denomination. For instance, a bond with a base denomination of $100,000 might be issued and traded in such amounts as $100,000, $105,000, $110,000, and $125,000. In this example, positions in the bonds need not be held in integral multiples of the base denomination, $100,000, as long as the positions are integral multiples of $5,000 above the $100,000 base.

Currently, authorized denominations must be multiples of the base denomination to be eligible for MSTC's lottery services. For example, for an issue with a $100,000 base denomination to be eligible for MSTC's lottery service, authorized denominations would have to be $100,000, $200,000, $300,000, and so on. Issues with unique denominations, such as $105,000, would be ineligible for MSTC's lottery system because there is a risk that in a partial call a participant would be left with a position below the base denomination. For instance, if a participant had a position of $125,000 and a partial call was executed in lots of $100,000, the participant would be left with a position in an unauthorized denomination (*i.e.*, $25,000). Such unauthorized denominations would be virtually impossible to have certificated and might be undeliverable and unsalable.

MSTC's procedures for processing partial calls of uniquely denominated securities, which are outlined in four partial call scenarios that are attached as Exhibit A to its rule filing, make uniquely denominated securities[4] eligible for MSTC's lottery services. Under each scenario, MSTC first rounds[5] the called quantity and all participants' positions to amounts that are integral multiples of the issue's base denomination for the purpose of running the first lottery.[6] The denomination for the first lottery always will be the base denomination of the called issue. The first lottery then is run and results in one of four scenarios.

Scenario #1

If after the first lottery no participant's remaining uncalled position is less than the issue's base denomination and no participant's original even position has been converted into a unique amount (*i.e.*, participants' positions do not need to be adjusted), then the call allocation is completed after the first lottery.

Scenario #2

If after the first lottery is run any participant's remaining uncalled position is less than the base denomination but not equal to zero, MSTC will adjust each such position as follows:

(a) If a participant's remaining uncalled position is less than 50% of the issue's base denomination or is negative, MSTC will call the entire position;

(b) If a participant's remaining uncalled position is equal to or greater than 50% of the issue's base denomination and if the original position held was greater than the issue's base denomination, MSTC will restore the original position up to the issue's base denomination;

(c) If a participant's remaining uncalled position is equal to or greater than 50% of the issue's base denomination and if the original position held was less than the issue's base denomination, MSTC will not adjust the remaining uncalled position because it already equals the participant's original position;[7]

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[1] 15 U.S.C. 78s(b)(1) (1988).

[2] Securities Exchange Act Release No. 31982 (March 11, 1993), 58 FR 14455.

[3] Bond issuers sometimes call for the return of bonds prior to maturity. The call may be for a full redemption (*i.e.*, return of the entire issue) or a partial redemption (*i.e.*, return of a portion of the issue). An issuer making a partial call will run a lottery of all outstanding certificates to determine which certificates, or portions thereof, it will redeem. After the issuer notifies MSTC that it is conducting a partial call of an issue and of the number of certificates MSTC is required to deliver, MSTC, as the depository for these issues, will run its own lottery to allocate the called certificates among its participants with deposits in the called issue. MSTC then will redeem the called bonds on the day of redemption on behalf of the participants.

The Commission approved a similar proposal of The Depository Trust Company ("DTC") in 1992. Securities Exchange Act Release No. 30729 (May 21, 1992), 57 FR 22504 (File No. SR–DTC–92–4). MSTC patterned their procedures after those of DTC by following the same lottery scenarios and making the same types of securities eligible. Memorandum from Kathy Stats, Vice President, MSTC, to Larry Mallinger, Associate Counsel, MSTC (June 25, 1993) (hereinafter "Stats Memo") responding to questions in memorandum from Richard C. Strasser, Attorney, Division of Market Regulation ("Division"), Commission, to Larry Mallinger, Associate Counsel, MSTC (May 17, 1993).

[4] Any MSTC-eligible uniquely denominated, callable security will be eligible for the proposed lottery procedures. The proposed procedures will be used primarily for municipal bonds but also may be used for corporate bonds and preferred stock. Stats Memo, *supra* note 3.

[5] When a participant's position is rounded up in this initial rounding phase, it is done for the sole purpose of executing the lottery with the result being a "rounded callable position." For example, if the base denomination of a called security is $100,000 and a participant has a position in the called security of $95,000, the $95,000 position will be rounded up to a rounded callable position of $100,000, but the total amount of that participant's position that may be called through the lottery will be limited to $95,000 (*i.e.*, the participant's actual position).

[6] If both the quantity of called securities and the total of all participants' original positions are even amounts (*i.e.*, amounts that are integral multiples of the base denomination), MSTC will run the lottery using its normal call lottery procedures.

If the total of all participants' rounded positions is less than or equal to the rounded called quantity, all participants' rounded positions will be called. If, after the initial rounding, however, the total of all participants' positions in the partially called issue is greater than the rounded called quantity, MSTC will run the lottery under the new procedures.

[7] This adjustment leaves the participant with an unauthorized denomination (*i.e.*, below the minimum base denomination or not an integral multiple of the base denomination). This situation is one of the few times under the new procedures where a participant is left with an unauthorized denomination.

(d) Adjust for any overall called amount to be allocated or unwound.[8]

After MSTC makes the necessary adjustments to participants' positions, it nets the adjustments of steps (a), (b), and (d). A sum of zero indicates that the adjustments offset each other, and the call allocation is completed.

Scenario #3

If after the first lottery is run any participant's remaining uncalled position is less than the base denomination and not equal to zero, MSTC will adjust each such position as described in Scenario #2. If the sum of the adjustments is a positive number, meaning that the entire called quantity has not yet been allocated to participants' positions, MSTC will run additional lotteries to complete the call.[9]

Scenario #4

If after the first lottery is run the net of the adjustments to participants' positions is a negative number, indicating that an amount greater than the called quantity has been allocated, MSTC will run additional lotteries to unwind the excess amount allocated.[10]

II. Discussion

The Commission believes the proposed rule change is consistent with the Act and especially with section 17A(b)(3)(F) of the Act.[11] Section 17A(b)(3)(F) requires, among other things, that the rules of a clearing agency be designed to remove impediments to and perfect the mechanism of a national system for the prompt and accurate clearance and settlement of securities transactions.

As discussed above, the Commission previously approved similar lottery procedures proposed by DTC. By bringing its lottery procedures in line with those already used by DTC, MSTC's proposal helps to promote uniformity in the processing of securities and thereby removes an impediment to and helps perfect the mechanism of a national securities clearance and settlement system.

In addition, by including uniquely denominated securities in its lottery service, MSTC is promoting market liquidity in that, for the most part,[12] participants will no longer be left with positions of unauthorized denominations after a partial call. Positions in unauthorized denominations are generally unsalable and undeliverable.

III. Conclusion

On the basis of the foregoing, the Commission finds that the proposed rule change is consistent with the Act, in particular with section 17A of the Act, and with the rules and regulations thereunder.

It is therefore ordered, pursuant to section 19(b)(2) of the Act,[13] that the proposed rule change (File No. SR–MSTC–93–1) be, and hereby is, approved.

For the Commission by the Division of Market Regulation, pursuant to delegated authority.[14]

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. 93–18001 Filed 7–27–93; 8:45 am]

BILLING CODE 8010–01–M

[8] This adjustment is necessary only when the amount called is not an integral of the base denomination (*i.e.*, must be rounded up or down before the first lottery is run). For instance, if the total amount called is $925,000 MSTC will round the amount to be allocated to $900,000 before the lottery is run. After the $900,000 is allocated by lottery, the additional $25,000 must be allocated. This number is then netted with the adjustments made in subparagraphs (a) and (b) to derive an aggregate adjustment.

[9] The procedures to be used in running these additional lotteries are detailed in MSTC's rule filing. Basically, the procedures are intended to draw remaining amounts of the called issue from eligible participants' accounts while minimizing the need to adjust unnecessarily participants' positions.

[10] The purpose of the procedures for Scenario #4, as detailed in MSTC's rule filing, is to unwind the excess amount called without converting participants' uncalled positions into unique denominations or driving participants' uncalled positions below the issue's minimum base denomination.

[11] 15 U.S.C. 78q–1(b)(3)(F) (1988).

[12] As discussed above, there are a limited number of instances where certain participants may be left with unauthorized denominations.

[13] 15 U.S.C. 78s(b)(2) (1988).

[14] 17 CFR 200.30–3(a)(12) (1992).

[Rel. No. IC–19584; 812–8348]

Bando McGlocklin Capital Corp. et al.; Application

July 21, 1993.

AGENCY: Securities and Exchange Commission ("SEC" or "Commission").

ACTION: Notice of application for exemption under the Investment Company Act of 1940 (the "Act").

APPLICANTS: Bando McGlocklin Capital Corporation ("Parent"); Bando McGlocklin Small Business Investment Corporation ("Subsidiary").

RELEVANT ACT SECTIONS: Order requested under sections 6(c) and 17(b) for an exemption from sections 8(b), 12(d), 17(a), 18(a), 18(c), 30(a), 30(b) and 30(d) and rules 8b–16, 30a–1, 30b1–1 and 30d–1 thereunder.

SUMMARY OF APPLICATION: Applicants seek to amend a conditional order to permit Parent to issue one class of senior security which is a stock and to correct a citation. The existing conditional order permitted Parent to establish and operate Subsidiary as a wholly-owned subsidiary under the terms of a reorganization in which Parent transferred certain assets, including its small business investment company license, to Subsidiary in exchange for all of the common stock of Subsidiary and the assumption by Subsidiary of certain liabilities of Parent.

FILING DATE: The application was filed on April 14, 1993 and amended on May 28, 1993. Applicants have agreed to file an additional amendment, the substance of which is incorporated herein, during the notice period.

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 August 16, 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. Any person may request notification of a hearing by writing to the SEC's Secretary.

ADDRESSES: Secretary, SEC, 450 5th Street NW., Washington, DC 20549. Applicants, 13555 Bishops Court, Brookfield, Wisconsin 53005.

FOR FURTHER INFORMATION CONTACT: Maura A. Murphy, Senior Attorney, at (202) 272–7779, or Barry D. Miller, Senior Special Counsel, 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 at the SEC's Public Reference Branch.

APPLICANT'S REPRESENTATIONS

1. Parent was incorporated under the laws of the State of Wisconsin in February, 1980. Parent is a diversified closed-end registered investment company that was, until March 26, 1993, licensed to operate as a small business investment company ("SBIC") under the Small Business Investment Act of 1958. As an SBIC, Parent provided long-term, primarily variable rate, secured loans to finance the growth, expansion, and modernization

of small businesses. As of December 31, 1992, Parent had total assets of $95,762,834, and had 3,831,576 shares of common stock outstanding. Subsidiary was incorporated under the laws of the State of Wisconsin on June 6, 1991 at the direction of Parent and, except for organizational matters, did not commence operations until March 26, 1993.

2. On November 10, 1992, the Commission issued a conditional order to Parent and Subsidiary granting exemptions from sections 8(b), 12(d), 17(a), 18(c), 30(a), 30(b), and 30(d) of the Act and Rules 8b–16, 30a–1, 30b–1, and 30d–1 thereunder to permit them to create a holding company structure with Subsidiary being a wholly-owned subsidiary of Parent. Investment Company Act Release Nos. 19030 (Oct. 15, 1992) (notice) and 19092 (Nov. 10, 1992) (order) (the "1992 Order"). Applicants seek to amend two conditions of the 1992 Order.

3. On March 26, 1993, Parent transferred its SBIC license to Subsidiary pursuant to a plan of reorganization (the "Reorganization") under section 351 of the Internal Revenue Code (the "Code") under which (a) virtually all of the assets of Parent were transferred to Subsidiary; (b) virtually all of the liabilities of Parent were assumed by Subsidiary; (c) all of the issued and outstanding shares of Subsidiary's common stock were issued to Parent; and (d) Parent became a holding company owning Subsidiary as its wholly-owned Subsidiary. Prior to the Reorganization, Parent applied for and received approval from the Small Business Administration (the "SBA") to transfer its SBIC license to Subsidiary. Parent also obtained the consent of its institutional lenders to the assumption by Subsidiary of Parent's liabilities to them, and the approval of its shareholders for the Reorganization.

4. Subsidiary registered as an investment company under the Act by filing a Notification of Registration on Form N–8A and a Registration Statement on Form N–5 under the Act on February 22, 1993.

5. Parent and Subsidiary have identical investment objectives and fundamental investment policies. All of the directors of Subsidiary also are directors of Parent. Parent and Subsidiary are both regulated investment companies under Subchapter M of the Code. Since the Reorganization, Subsidiary has continued the business conducted by Parent before the Reorganization. Parent may offer financial services related to the services offered by Subsidiary through lending company or loan servicing subsidiaries.

6. Since the Reorganization, Parent's activities have been limited to holding the stock of Subsidiary. Parent also intends to make long-term, primarily variable rate, secured loans to small business concerns. These loans will not qualify as permitted investments by an SBIC. Loans originated by Parent may be pursuant to the SBA's 504 Program.[1] Section 504 of the Small Business Investment Act authorizes the SBA to guarantee debentures, issued by qualified state or local development companies, the proceeds of which are used to finance loans to small business concerns in an amount not to exceed 50% of the cost of the projects with respect to which the loans are made. The objective of the 504 Program is to achieve community economic development through job creation and retention by providing long-term fixed asset financing to small business concerns. Such small business concerns must demonstrate that the project to be financed will have a significant economic impact on the community in which it is located. Loans originated pursuant to the SBA's 504 Program typically involve fixed asset financing in which 10% of the total funds for the project are provided by the small business, 40% by the SBA in the form of debentures guaranteed by the U.S. Treasury, and 50% by a third party private financier. Parent would provide the private financing and have a first lien on the project. The SBA would have a second lien on the project.

In all other respects the loans will be substantially similar to the loans made by Parent before the Reorganization and Subsidiary after the Reorganization (*i.e.*, the loans would be secured loans to small business concerns).

7. Parent also may make loans under the SBA's 7(a) Program.[2] Section 7(a) of the Small Business Act authorizes qualified lenders to make loans to small business concerns that are guaranteed by the SBA to the extent of 75% to 85% of the loan, depending upon the circumstances. SBICs are not permitted to participate in the SBA's 7(a) Program. Qualified lenders must be subject to continuing supervision and examination by a state or federal regulatory authority. Parent is not currently subject to such continuing supervision and examination but has applied to the Office of the Commissioner of Banking of the State of Wisconsin to be so supervised. The objective of the 7(a) Program is to provide funds to small business concerns (i) to finance construction, conversion, or expansion; (ii) to purchase equipment, facilities, machinery, supplies or materials; and (iii) to obtain working capital. Loans made by Parent pursuant to the 7(a) Program would be substantially similar to the loans made by Parent before the Reorganization and Subsidiary after the Reorganization (*i.e.*, the loans would be secured loans to small business concerns).

8. Parent also may make loans that are not pursuant to an SBA program. Such loans will be substantially similar to the loans made by Parent before the Reorganization and by Subsidiary after the Reorganization (*i.e.*, the loans would be secured loans to small business concerns).

9. Subject to receipt of the requested amended order, Parent's lending activities may be financed by (i) proceeds from offerings of shares of one class of senior security which is a stock to the extent permitted under section 18 of the Act; (ii) borrowings that constitute a single class of senior security representing indebtedness to the extent permitted under section 18 of the Act; and (iii) the proceeds from offerings of shares of its common stock following the Reorganization. Parent retained only nominal assets following the Reorganization.

10. Parent may from time to time make additional investments in Subsidiary either as contributions to capital, purchases of additional stock, or, subject to the prior approval of the SBA, loans. Parent and Subsidiary also may, subject to the prior approval of the SBA, from time to time purchase all or a portion of portfolio investments held by the other to enhance the liquidity of the selling company or for other reasons. None of these transactions would be pursuant to an express or implied agreement with any third party. As such, these transactions would not result from the functional equivalent of a guarantee by Parent to maintain a specified net worth for Subsidiary.

11. As indicated in the preceding paragraph, any loans made by Parent to Subsidiary require the prior approval of the SBA, as do any purchases or sales of portfolio securities between Parent and Subsidiary. As a result of the Reorganization, Subsidiary has outstanding debt securities that are guaranteed by the SBA, but Parent does not. Thus, while loans and portfolio securities transactions between Parent and Subsidiary would have no adverse

[1] The SBA's 504 Program is authorized by section 504 of the Small Business Investment Act (15 U.S.C. 697a).

[2] The 7(a) Program is authorized by section 7(a) of the Small Business Act (15 U.S.C. 636(a)). Regulations implementing the 7(a) Program are located in 13 CFR pt. 120.

economic effect on Parent's shareholders, they could have an adverse economic effect on the SBA. "Self-dealing" transactions that are detrimental to the SBA are prohibited by 13 CFR 107.903(a). However, 13 CFR 107.903(g) provides that an SBIC that is registered under the Act and that has been granted an exemption by the SEC with regard to a self-dealing transaction is exempted from this prohibition. Arguably, 13 CFR 107.903(g) would have applied to loans or portfolio securities transactions between Parent and Subsidiary because the Commission granted the 1992 Order. Consequently, applicants agreed, as a condition to the 1992 Order, that the SBA must approve each such transaction between Parent and Subsidiary.

12. Parent intends to file with the Commission on behalf of itself and Subsidiary annual reports and amendments to its registration statement on a consolidated basis only in lieu of and in satisfaction of the separate filing and reporting obligations of Parent and Subsidiary.

13. Borrowings by Subsidiary will include debentures issued to, or guaranteed by, the SBA ("SBA Debentures"). In the Reorganization, Subsidiary assumed the obligations of Parent with respect to any of Parent's then outstanding SBA Debentures. Certain of Parent's SBA Debentures were issued on or before April 7, 1986 and are held by the Federal Financing Bank, an instrumentality of the United States under the general supervision of the Secretary of the Treasury. Other SBA Debentures of Parent were issued after April 7, 1986 and are held by a pool, which is treated as a grantor trust for tax purposes. Initially, any SBA Debentures issued by Subsidiary will be held by such a pool. However, the SBA has the authority to hold SBA Debentures rather than guarantee SBA Debentures held by others.

14. Parent will not guarantee any borrowings of Subsidiary; nor will Parent enter into any express or implied agreement that is the functional equivalent of such a guarantee, including any agreement that will ensure that Subsidiary has a tangible net worth of a specified amount.

15. Applicants seek to amend condition 5 of the 1992 Order to permit Parent to issue one class of senior security which is a stock. In addition, applicants seek to correct a citation in condition 6 of the 1992 Order.

Applicants' Legal Analysis

1. Applicants believe that, subsequent to the Reorganization, purchases by Parent of Subsidiary's common stock, and loans or advances from Parent to Subsidiary, would be considered acquisitions or issuances of securities prohibited by section 12(d). Accordingly, applicants requested an exemption from section 12(d) to the extent necessary to permit (i) future acquisitions by Parent of any common stock issued by Subsidiary and (ii) the acquisition from time to time by Parent of securities of Subsidiary representing indebtedness, if the prior approval of the SBA is obtained. The exemption was granted in the 1992 Order, and applicants request no additional relief from section 12(d).

2. Parent and Subsidiary are affiliated persons, as defined in section 2(a)(3) of the Act, of one another. The Reorganization might be deemed to violate section 17(a) of the Act because it involves the sale of securities or other property by Parent to Subsidiary. Applicants believe that, following the Reorganization, additional investments in Subsidiary by Parent in the form of stock purchases, capital contributions, or loans do not violate section 17(a) because the seller (Subsidiary) would be the issuer of any securities issued and is controlled by the purchaser (Parent). However, purchases and sales of portfolio securities between applicants would appear to be violations of sections 17(a)(1) and 17(a)(2). Accordingly, applicants requested an exemption from section 17(a) to the extent necessary to permit (i) the Reorganization and (ii) purchases and sales of portfolio securities between applicants, if the prior approval of the SBA is obtained. The exemption was granted in the 1992 Order, and applicants request no additional relief from section 17(a).

3. Parent and Subsidiary are subject to the asset coverage requirements of section 18(a). However, section 18(k) provides SBICs an exemption, which applies to Subsidiary, from sections 18(a)(1) (A) and (B). Parent nevertheless will comply with the asset coverage requirements of section 18(a) on a consolidated basis, and thus will treat as its own all assets of Parent and Subsidiary (with the value of Parent's investment in Subsidiary eliminated) and all liabilities of Subsidiary (with intercompany receivables and liabilities eliminated). As a result, Parent would be in violation of the asset coverage provisions of section 18(a) absent an order of the Commission. Similarly, Parent would be in violation of section 18(c) as Subsidiary has more than one class of senior security representing indebtedness outstanding.[3] Accordingly, applicants requested an exemption from the provisions of section 18(a) to the extent necessary to treat borrowings by Subsidiary as "liabilities and indebtedness not represented by senior securities" within the meaning of section 18(h) in applying the asset coverage requirements of section 18(a) to Parent and Subsidiary on a consolidated basis. Parent also requested an exemption from the provisions of section 18(c) because, on a consolidated basis, it would be deemed to have more than one class of senior security representing indebtedness because of the inclusion of indebtedness of Subsidiary. The exemptions were granted in the 1992 Order, and applicants request no additional relief from section 18.

4. Section 18(c) also prohibits a registered closed-end investment company from issuing or selling more than one class of senior security which is a stock. Subsidiary has not issued or sold any class of senior security which is a stock. Parent may not issue any senior security which is a stock, however, because condition 5 of the 1992 Order prohibits each of Parent and Subsidiary from issuing any senior security except certain senior securities representing indebtedness. Section 6(c) of the Act permits the Commission to modify conditions to orders previously granted. Accordingly, Parent requests a modification to condition 5 of the 1992 Order to permit Parent to issue one class of senior security which is a stock.

5. Absent a Commission order, each of Parent and Subsidiary would be required to file annual amendments to their registration statements and transmit to shareholders annual and semi-annual reports, and each of Parent and Subsidiary would be required to file semi-annual reports on Form N-SAR pursuant to sections 8(b), 30(a), 30(b), and 30(d), and rules 8b–16, 30b1–1, and 30d–1. Such separate filings and reports would be burdensome to Parent and unlikely to provide a convenient source of information to investors. Accordingly, applicants requested an exemption from the foregoing provisions (i) to permit Parent to file on behalf of itself and Subsidiary amendments to its registration statement containing information with respect to, and financial statements of, Parent and Subsidiary on a consolidated basis only, (ii) to file on behalf of itself and Subsidiary semi-annual reports on Form N-SAR, containing information with respect to Parent and Subsidiary on a

[3] Subsidiary qualifies for the exemption from section 18(c) contained in rules 18c–1 and 18c–2.

consolidated basis only, and (iii) to permit Parent to transmit to its shareholders semi-annually reports containing the financial information and statements as required for Parent and Subsidiary on a consolidated basis only, except as otherwise provided in condition 6 (set forth below). The exemptions were granted in the 1992 Order, and applicants request no additional relief from these provisions. However, applicants request a modification to condition 6 of the 1992 Order to correct a citation.

Applicants' Legal Conclusions

1. The holding company structure is intended to permit Parent to engage in an expanded scope of operations beyond that which was available to it as an SBIC. Parent and Subsidiary are investment companies and each will thus be engaged in operations subject to the provisions of the Act. Because Parent and Subsidiary have the same fundamental investment policies and Parent will at all times own and hold beneficially and of record all of the outstanding capital stock of Subsidiary, applicants believe that the Reorganization did not result in overreaching or in any person receiving an advantage to the detriment of any other party. Moreover, because Subsidiary is a wholly-owned subsidiary of Parent, applicants believe that any activity carried on by Subsidiary will in all material respects have the same economic effect and substance vis-a-vis Parent's shareholders as if done directly by Parent. The foregoing exemptions will have no material adverse financial or economic impact on Parent's public shareholders because Subsidiary will be a wholly-owned Subsidiary of Parent.

2. Subsidiary is a wholly-owned subsidiary of Parent, and Parent has represented that it will exercise its rights as a shareholder of Subsidiary only as directed by Parent's shareholders. Thus, the relationship of Parent's shareholders to the SBIC activities to be carried out by Subsidiary will be no different than if such activities were carried out by Parent. Accordingly, the objectives of section 12 will not be compromised and the public interest will not be harmed by future acquisitions by Parent of securities issued by Subsidiary or the acquisition from time to time by Parent of evidences of indebtedness issued by Subsidiary.

3. Subsidiary is a wholly-owned Subsidiary of Parent and no officers or directors of Subsidiary or Parent or any controlling person of Parent had any financial interest (other than as shareholders of Parent) in the Reorganization or will have any financial interest (other than as shareholders of Parent) in purchases and sales of portfolio securities between Parent and Subsidiary. Thus, with respect to the exemption from section 17(a), there can be no overreaching on the part of any persons and no harm to the public interest will occur in those transactions.

4. With respect to the exemptions from sections 18(a) and 18(c), the effect of applying the asset coverage and single class of indebtedness limitations to Parent and Subsidiary, on a consolidated basis, could be to restrict Subsidiary's ability to obtain the kind of financing that was available to Parent. Accordingly, the exemptions from section 18 will cause no harm to the public interest.

5. With respect to the exemptions from sections 8(b), 30(a), 30(b), and 30(d), and rules 8b–16, 30a–1, 30b1–1 and 30d–1, single filings by Parent provide the Commission and the investing public with adequate information concerning Parent and Subsidiary in a more meaningful form than separate filings by Parent and Subsidiary, and are consistent with the filings made by other public companies. Accordingly, these exemptions will cause no harm to the public interest.

6. The requested modification to condition 5 of the 1992 Order would permit Parent to have a capital structure which would be permissible under the Act but for the 1992 Order. The effect of the modification would be to permit Parent to issue a class of senior security requiring 200% rather than 300% asset coverage. Because Subsidiary would not be permitted to issue a class of senior security which is a stock, Parent and Subsidiary, on a consolidated basis, would never have issued and outstanding more than one class of senior security which is a stock. In addition, because Parent will not be permitted to guarantee any borrowings of Subsidiary or enter into any express or implied agreement that is the functional equivalent of such a guarantee, including an agreement that will ensure that Subsidiary has a tangible net worth of a specified amount, Parent's capital structure would consist of only one class of common stock, one class of senior security which is a stock, and one class of senior security representing indebtedness. Section 18(c) expressly permits such a capital structure. Accordingly, applicants believe that no harm to the public interest will occur if condition 5 is modified as requested.

7. The requested modification to condition 6 will correct a citation to regulation S–X. The correct citation should be to rule 6–03(c) rather than rule 6–03(e), and the correction will cause condition 6 to contain the citation originally intended to be included therein. Accordingly, applicants believe that no harm to the public interest will occur if condition 6 is modified as requested.

Applicants' Conditions

Applicants represent to the Commission that, as a condition to the granting of the exemptive relief sought by this application, they will comply with the following:

1. Parent will at all times own and hold beneficially and of record all of the outstanding capital stock of Subsidiary.

2. Subsidiary will have the same fundamental investment policies as Parent, as set forth in Parent's registration statement; Subsidiary will not engage in any of the activities described in section 13(a) of the Act, except in each case as authorized by the vote of a majority of the outstanding voting securities of Parent.

3. No person shall serve or act as investment adviser to Subsidiary under circumstances subject to Section 15 of the Act, unless the directors and shareholders of Parent shall have taken the action with respect thereto also required to be taken by the directors and shareholders of Subsidiary.

4. No person shall serve as a director of Subsidiary who shall not have been elected as a director of Parent at its most recent annual meeting, as contemplated by section 16(a) of the Act and subject to the provisions thereof relating to the filling of vacancies. Notwithstanding the foregoing, the board of directors of Subsidiary will be elected by Parent as the sole shareholder of Subsidiary.

5. Parent will not itself issue or sell any senior security representing indebtedness if immediately thereafter Parent will have outstanding more than one class of senior security representing indebtedness, and Parent will not issue or sell any senior security which is a stock if immediately thereafter Parent will have outstanding more than one class of senior security which is a stock, as provided under section 18(c) of the Act. Parent shall not guarantee any of Subsidiary's borrowings; nor shall Parent enter into any express or implied agreement that is the functional equivalent of such a guarantee, including any agreement that will ensure that Subsidiary has a tangible net worth of a specified amount. Parent will not cause or permit Subsidiary to issue or sell any senior security of which Subsidiary is the issuer except as hereinafter set forth: Subsidiary may

issue and sell to banks, insurance companies and other financial institutions its secured or unsecured promissory notes or other evidences of indebtedness in consideration of any loan, or any extension or renewal thereof made by private arrangement, and Subsidiary may issue debt securities held or guaranteed by the SBA, provided the following conditions are met: (1) Such notes or evidences of indebtedness are not intended to be publicly distributed; (ii) such notes or evidences of indebtedness are not convertible into, exchangeable for, or accompanied by any options to acquire, any equity security; and (iii) immediately after the issuance or sale of any such notes or evidences of indebtedness by Subsidiary, or the issuance or sale of any class of senior security by Parent, Parent and Subsidiary on a consolidated basis, and Parent individually, shall have the asset coverage required by section 18(a), except that, in determining whether Parent and Subsidiary, on a consolidated basis, have the asset coverage required by section 18(a), any borrowings by Subsidiary, for purposes of the definition of "asset coverage" in section 18(h), shall be treated as indebtedness not represented by senior securities.

6. Parent will file with the Commission pursuant to rule 8b–16 amendments to its registration statement pursuant to section 8(b) of the Act on behalf of itself and Subsidiary containing information with respect to, and financial statements of, Parent and Subsidiary on a consolidated basis only, such amendments to be in lieu of and in satisfaction of the separate filing obligations of Parent and Subsidiary pursuant to rule 8b–16. Parent will file with the Commission pursuant to sections 30(a) and 30(b) of the Act and rules 30a–1 and 30b1–1 thereunder semi-annual reports on Form N–SAR, or appropriate successor form, on behalf of itself and Subsidiary containing information with respect to Parent and Subsidiary on a consolidated basis only, such consolidated semi-annual reports to be in lieu of and in satisfaction of the separate filing obligations of Parent and Subsidiary pursuant to sections 30(a) and 30(b) and rules 30a–1 and 30b1–1. Parent will in response to the appropriate item of Form N–SAR or appropriate successor form indicate that the report is being filed on behalf of Subsidiary and the "811" number of Subsidiary. Parent will transmit to its shareholders semi-annually pursuant to section 30(d) of the Act and rule 30d–1 thereunder reports containing the financial information and statements prescribed and required by such section and rule for Parent and Subsidiary on a consolidated basis only, which reports shall be in lieu of and in satisfaction of the separate reporting obligations of Parent and Subsidiary pursuant to section 30(d) and rule 30d–1; provided, however, that if 10% or more of Parent's total assets on a consolidated basis are invested in assets other than securities issued by Subsidiary, then, in addition to the consolidated financial statements of Parent and Subsidiary, there shall be included in such reports separate financial statements of Subsidiary. Notwithstanding anything in this condition, Parent shall not be relieved of any of its reporting obligations, including, but not limited to, any consolidating statement setting forth the individual statement of Subsidiary required by Rule 6–03(c) of Regulation S–X. The selection of any independent public accountant who signs a consolidated financial statement filed by Parent and Subsidiary with the Commission shall be ratified in accordance with section 32(a)(2) of the Act by a majority of the outstanding voting securities (as defined in section 2(a)(42) of the Act) of Parent.

7. Parent will acquire securities of Subsidiary representing indebtedness only if, in each case, the prior approval of the SBA has been obtained. Parent and Subsidiary will purchase and sell portfolio securities between themselves only if, in each case, the prior approval of the SBA has been obtained.

For the SEC, by the Division of Investment Management, under delegated authority.

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. 93–17997 Filed 7–28–93; 8:45 am]

BILLING CODE 8010–01–M

[Investment Company Act Rel. No. 19588; 811–5889]

Centennial Connecticut Tax Exempt Trust; Notice of Application

July 21, 1993.

AGENCY: Securities and Exchange Commission ("SEC").

ACTION: Notice of application for deregistration under the Investment Company Act of 1940 ("Act").

APPLICANT: Centennial Connecticut Tax Exempt Trust.

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 was filed on July 14, 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 August 15, 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 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. Applicant, 3410 South Galena Street, Denver, Colorado 80231.

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 Regulation).

SUPPLEMENTARY INFORMATION: The following is a summary of the application. The complete application may be obtained for a fee from the SEC's Public Reference Branch.

Applicant's Representations

1. Applicant is a diversified open-end management investment company organized as a Massachusetts business trust. On December 29, 1989, applicant filed a notification of registration pursuant to section 8(a) of the Act, and a registration statement pursuant to section 8(b) of the Act and the Securities Act of 1933. The registration statement became effective on June 1, 1990, and applicant commenced its initial public offering on June 12, 1990.

2. On October 13, 1992, applicant's board of trustees approved a plan of reorganization under which all of the assets of applicant would be exchanged for shares of Centennial Tax Exempt Trust ("CTET"), a registered open-end management investment company, and the CTET shares would be distributed to applicant's shareholders. Applicant's trustees determined that the reorganization would be in the best interests of the shareholders of the applicant and that no shareholder's interest would be diluted as a consequence of the reorganization.

3. A prospectus and proxy statement relating to the reorganization was filed with the SEC on November 13, 1992 and declared effective on December 9, 1992.

The reorganization was approved by applicant's shareholders at a meeting held on January 28, 1993, adjourned to February 1, 1993 for failure to reach a quorum.

4. On February 19, 1993, the reorganization was consummated. Applicant transferred its net assets, aggregating $1,325,193.01 to CTET in exchange for 1,326,816.68 shares of CTET. The exchange was made at net asset value, with necessary valuation of assets and shares made as of the close of business on February 18, 1993. The shares received in exchange for applicant's assets were distributed to applicant's shareholders.

5. The cost of printing the proxies and proxy statements associated with the reorganization was paid by applicant. The cost of mailing the proxies and proxy statements, and the cost of obtaining a tax opinion were borne jointly by application and CTET. Any documents such as existing prospectuses or annual reports that were included in that mailing were an expense of the fund issuing the document. Any other out-of-pocket expenses, including legal, accounting, and transfer agent expenses, were borne by applicant and CTET, respectively. Reorganization expenses incurred by the applicant totaled $1,512, which were assumed by Centennial Asset Management Corporation.

6. 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.

For the SEC, by the Division of Investment Management, under delegated authority.

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. 93–17996 Filed 7–27–93; 8:45 am]

BILLING CODE 8010–01–M

[Rel. No. 19590; 811–7106]

Citizens Acquisition Fund, L.P.; Application for Deregistration

July 22, 1993.

AGENCY: Securities and Exchange Commission ("SEC").

ACTION: Notice of Application for Deregistration under the Investment Company Act of 1940 ("Act").

APPLICANT: Citizens Acquisition Fund. L.P.

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 was filed on June 14, 1993, and amended on July 12, 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 August 16, 1993, and should be accompanied by proof of service on the applicant, in the form of an affidavit or, for lawyers, a certificate of service. Hearing requests should state the nature of the writer's interest, the reason for the request, and the issues contested. Persons may request notification of a hearing by writing to the SEC's Secretary.

ADDRESSES: Secretary, SEC, 450 5th Street, NW., Washington, DC 20549. Applicant, 5909 Harvest Hill, Suite 1078, Dallas, Texas 75230.

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 at the SEC's Public Reference Branch.

Applicant's Representations

1. Applicant, a Texas partnership, is a non-diversified closed-end management investment company. Applicant registered under the Act by filing a notification of registration on Form N–8A on August 17, 1992. Applicant filed a registration statement under the Securities Act of 1993 on Form N–2 on May 17, 1993.

2. By letter dated May 28, 1993, applicant requested that the Commission withdraw its registration statement under the Securities Act of 1933. Applicant's registration statement never became effective and, pursuant to applicant's request, was declared withdrawn on June 8, 1993. Applicant has never made a public offering of its securities.

3. All of applicant's outstanding securities are held by its general partner, Citizens Capital Corp. All outstanding shares of Citizens Capital Corp. are owned by one individual.

Accordingly, applicant believes that it is eligible to deregister on the basis of section 3(c)(1) of the Act. Section 3(c)(1) provides that an issuer is not an "investment company" for purposes of the Act if its outstanding securities (other than short-term paper) are beneficially owned by not more than 100 persons and it is not making and does not presently propose to make a public offering of its securities.

4. Applicant has no liabilities, and no assets other than the initial contribution made by Citizens Capital Corp. Applicant is not a party to any litigation or administrative proceeding.

5. Applicant may hereafter engage in investment related activities. Unless applicant again registers under the Act, however, it will conduct its business so as to be exempt from registration as an investment company pursuant to section 3(c)(1) or some other provision of the Act.

For the Commission, by the Division of Investment Management, under delegated authority.

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. 93–17999 Filed 7–27–93; 8:45 am]

BILLING CODE 8010–01–M

[Investment Company Act Rel. No. 19587; 811–7430]

The Marcette Fund, Inc.; Notice of Application

July 21, 1993.

AGENCY: Securities and Exchange Commission ("SEC").

ACTION: Notice of application for deregistration under the Investment Company Act of 1940 ("Act").

APPLICANT: The Marcette 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 under the Act.

FILING DATE: The application on Form N–8F was filed on May 13, 1993, and amended on July 12, 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 August 16, 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 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. Applicant, 18 English Turn Drive, New Orleans, LA 70131.

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 Regulation).

SUPPLEMENTARY INFORMATION: The following is a summary of the application. The complete application may be obtained for a fee from the SEC's Public Reference Branch.

Applicant's Representations

1. Applicant is an open-end, non-diversified management investment company organized under the laws of the State of Louisiana. On January 12, 1993, applicant registered as an investment company under the Act.

2. On January 12, 1993, applicant filed a registration statement to register its shares under the Securities Act of 1933. The registration statement has never become effective. The registration statement was withdrawn on July 21, 1993. Applicant did not make a public offering of its shares.

3. Applicant has no shareholders, assets or liabilities. Applicant is not a party to any litigation or administrative proceeding.

4. Applicant has not commenced, and does not intend to commence, operations. Applicant is not now engaged and does not propose to engage in any business activities other than those necessary for the winding up of its affairs.

For the SEC, by the Division of Investment Management, under delegated authority.

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. 93–17994 Filed 7–27–93; 8:45 am]

BILLING CODE 8010–01–M

[Rel. No. IC–19585; 811–2639]

Nuveen Income Fund; Notice of Application

July 21, 1993.

AGENCY: Securities and Exchange Commission ("SEC").

ACTION: Notice of application for deregistration under the Investment Company Act of 1940 ("Act").

APPLICANT: Nuveen Income Fund.

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 was filed on April 15, 1993, and amended on June 7, 1993 and July 16, 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 August 16, 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 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. Applicant, 333 West Wacker Drive, Chicago, Illinois 60606.

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 Regulation).

SUPPLEMENTARY INFORMATION: The following is a summary of the application. The complete application may be obtained for a fee from the SEC's Public Reference Branch.

Applicant's Representations

1. Applicant is a unit investment trust which offered shares in six series. Each of the series is a separately organized trust created under the laws of Massachusetts. On June 8, 1976, applicant filed a notification of registration pursuant to section (8)(a) of the Act, and a registration statement pursuant to section 8(b) of the Act and the Securities Act of 1993. The registration statement was declared effective and the initial public offering of shares of Series 1 commenced on July 28, 1976. Applicant filed a second registration statement on October 6, 1976. The second registration statement was declared effective and the initial public offering of shares of Series 2 commenced on December 9, 1976. Applicant filed a third registration statement on December 29, 1976. The third registration statement was declared effective and the initial public offering of shares of Series 3 commenced on May 24, 1977. Applicant filed a fourth registration statement on June 8, 1977. The fourth registration statement was declared effective and the initial public offering of shares of Series 4 commenced on August 11, 1977. Applicant filed a fifth registration statement on August 25, 1977. The fifth registration statement was declared effective and the initial public offering of shares of Series 5 commenced on November 9, 1977. Applicant filed a sixth registration statement on November 17, 1977. The registration statement was declared effective and the initial public offering of shares of Series 6 commenced on April 18, 1978.

2. Applicant's trust indenture provides that when the value of the trust funds is reduced to less than 40% of the aggregate principal amount of bonds initially deposited in the trust, the trustee, at the direction of applicant, is to terminate and liquidate the trust fund. As of November 26, 1991, the value of each trust fund had been reduced to below 40% of its original aggregate principal amount and applicant's board of directors recommended dissolution of applicant.

3. Applicant's remaining bonds were sold in market transactions prior to their maturity date. No brokerage commissions were paid in connection with such sales. On November 26, 1991, United States Trust Company of new York (the "Trustee") sent a notice of termination to all unitholders stating that the applicant would be terminated on December 10, 1991 and setting forth procedures to enable each unitholder to receive his or her *pro rata* share of the liquidating distribution. Beginning on December 10, 1991, applicant distributed the following amounts *pro rata* to those shareholders who confirmed their ownership interest: Series 1, $2,991,799 ($64.45 per unit); Series 2, $2,797,230 ($62.96 per unit); Series 3, $2,986,051 ($84.73 per unit); Series 4, $2,448,708 ($79.07 per unit); Series 5, $2,449, 294 ($74.43 per unit); and Series 6, $3,341,718 ($98.01 per unit). On October 23, 1992, the Trustee sent a second notice of termination to all unitholders who had not confirmed their ownership interest in applicant and received a liquidating distribution.

4. The following table lists the number of unitholders who had not claimed their liquidating distribution as of the date of the application, and the cash held for distribution to such unitholders:

Series	Remaining Unitholders	Cash held for distribution
1	30	$123,240
2	21	97,917
3	20	69,533
4	7	24,100
5	14	37,789
6	8	33,603

The cash retained for distribution to these remaining unitholders is being held by the Trustee in a separate non-interest bearing account for each series. The Trustee currently is utilizing a number of services which provide current addresses and phone numbers for individual or corporate investors, and will promptly use such current information to attempt to locate remaining unitholders.

5. If the remaining unitholders do not claim their interest by December 10, 1994, the Trustee, as a holder of abandoned property, will make a report to the treasurer of the Commonwealth of Massachusetts and deliver all abandoned property to the Treasurer of the Commonwealth of Massachusetts. The Treasurer will then publish a notice at least once a week for two consecutive weeks in a newspaper of general circulation in each county in which any remaining unitholder had a last known address. Any person claiming an interest in property surrendered to the Treasurer may file a claim to retrieve such property. If the property remains unclaimed longer than one year after the delivery of such property to the Treasurer, the Treasurer may proceed to liquidate the abandoned property.

6. Expenses incurred in connection with the liquidation of applicant consist primarily of administrative, legal, accounting, reproduction, mailing, and telephone expenses. Anticipated expenses to locate remaining unitholders will consist of stationery and postage used for follow-up letters. All liquidation expenses, including amounts reserved for anticipated remaining expenses, were deducted from the assets of each series of applicant. Total liquidation expenses, including estimated remaining costs, retained from Trust assets are summarized as follows: Series 1, $1,010.03; Series 2, $1,098.20; Series 3, $637.07; Series 4, $542.86; Series 5, $681.86; and Series 6, $562.10.

7. Applicant has no debts or liabilities. Applicant is not a party to any litigation or administrative proceeding. Applicant is not engaged, nor does it propose to engage, in any business activities other than those necessary for the winding up of its affairs.

For the SEC, by the Division of Investment Management, under delegated authority.

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. 93–17995 Filed 7–27–93; 8:45 am]

BILLING CODE 8010–01–M

[Investment Company Act Rel. No. 19586; 811–4713]

Oppenheimer Blue Chip Fund; Application

July 21, 1993.

AGENCY: Securities and Exchange Commission ("SEC").

ACTION: Notice of application for deregistration under the Investment Company Act of 1940 ("Act").

APPLICANT: Oppenheimer Blue Chip Fund.

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 was filed on July 14, 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 August 16, 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 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. Applicant, 3410 South Galena Street, Denver, Colorado 80231.

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 Regulation).

SUPPLEMENTARY INFORMATION: The following is a summary of the application. The complete application may be obtained for a fee from the SEC's Public Reference Branch.

Applicant's Representations

1. Applicant is a diversified open-end management investment company organized as a Massachusetts business trust. On June 20, 1986, applicant filed a notification of registration pursuant to section 8(a) of the Act, and a registration statement pursuant to section 8(b) of the Act and the Securities Act of 1933. The registration statement became effective on September 10, 1986, and applicant commenced its initial public offering on September 11, 1986.

2. On August 25, 1992, applicant's board of trustees approved a plan of reorganization under which all of the assets of applicant would be exchanged for shares of Oppenheimer Value Stock Fund ("Value Stock"), a registered open-end management investment company, and the Value Stock shares would be distributed to applicant's shareholders. A prospectus and proxy statement relating to the reorganization was filed with the SEC on November 13, 1992 and declared effective on December 9, 1992. The reorganization was approved by applicant's shareholders at a meeting held on January 28, 1993.

3. Applicant, Value Stock, and Massachusetts Life Insurance Company received an order under section 17(b) of the Act granting an exemption from the provisions of section 17(a) to permit Value Stock to acquire substantially all of the assets of applicant in exchange for shares of Value Stock.[1]

4. On March 26, 1993, the reorganization was consummated. Applicant transferred its net assets, aggregating $20,149,958.82, to Value Stock in exchange for 1,356,899.108 shares of Value Stock. The exchange was made at new asset value, with necessary valuation of assets and shares made as of the close of business on March 25, 1993. The shares received in exchange for applicant's assets were distributed to applicant's shareholders.

5. The cost of printing the proxies and proxy statements assoicated with the reorganization was paid by applicant. The cost of mailing the proxies and

[1] Investment Company Act Release Nos. 19296 (Feb. 25, 1993) (notice) and 19344 (Mar. 3, 1993) (order). The Division of Investment Management notes that rule 17a–8 under the Act grants an exemption from section 17(a) for reorganizations among registered investment companies that are affiliated persons solely by reason of having a common investment adviser, common directors, and/or common officers, provided that certain conditions set forth in the rule are satisfied. The reorganization could not be carried out under rule 17a–8, however, because applicant and Value Stock were affiliated persons of one another by virtue of the fact that the parent of their common investment adviser also owned more than 5% of the outstanding shares of Value Stock.

proxy statements, and the cost of obtaining a tax opinion were borne jointly by applicant and Value Stock. Any documents such as existing prospectuses or annual reports that were included in that mailing were an expense of the fund issuing the document. Any other out-of-pocket expenses, including legal, accounting, and transfer agent expenses, were borne by applicant and Value Stock, respectively. All such reorganization expenses were accrued by applicant prior to the closing date of the reorganization. Reorganization expenses paid by applicant totaled $14,022.

6. 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.

For the SEC, by the Division of Investment Management, under delegated authority.

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. 93–17998 Filed 7–27–93; 8:45 am]

BILLING CODE 8010–01–M

SMALL BUSINESS ADMINISTRATION

[Declaration of Disaster Loan Area #2662]

Illinois; Amendment #1; Declaration of Disaster Loan Area

The above-numbered Declaration is hereby amended effective July 17, 1993 to include the counties of Alexander, Jackson, Randolph, and Union in the State of Illinois as a disaster area as a result of damages caused by severe storms and flooding beginning on June 7, 1993 and continuing.

In addition, applications for economic injury loans from small businesses located in the following contiguous counties may be filed until the specified date at the previously designated location: Franklin, Johnson, Perry, Pulaski, and Williamson in the State of Illinois, and Mississippi County in Missouri.

Any counties contiguous to the above-named primary counties and not listed herein have been previously declared or are covered under a separate declaration for the same occurrence.

The economic injury numbers are 793200 for Illinois and 793300 for Missouri.

All other information remains the same, i.e., the termination date for filing applications for physical damage is September 9, 1993 and for economic injury the deadline is April 11, 1994.

(Catalog of Federal Domestic Assistance Program Nos. 59002 and 59008.)

Dated: July 20, 1993.

Bernard Kulik,

Assistant Administrator for Disaster Assistance.

[FR Doc. 93–17986 Filed 7–27–93; 8:45 am]

BILLING CODE 8025–01–M

[Declaration of Disaster Loan Area #2667]

Nebraska; Declaration of Disaster Loan Area

As a result of the President's major disaster declaration on July 19, 1993, I find the counties of Buffalo, Cass, Lancaster, Sarpy, Seward, and Washington in the State of Nebraska constitute a disaster area as a result of damages caused by severe storms and flooding beginning on June 23, 1993 and continuing. Applications for loans for physical damage may be filed until the close of business on September 17, 1993, and for loans for economic injury until the close of business on April 19, 1994, at the address listed below: U.S. Small Business Administration, Disaster Area 3 Office, 4400 Amon Carter Boulevard, Suite 102, Fort Worth, Texas 76155, or other locally announced locations. In addition, applications for economic injury loans from small businesses located in the following contiguous counties may be filed until the specified date at the above location: Adams, Burt, Butler, Custer, Dawson, Dodge, Douglas, Fillmore, Gage, Hall, Howard, Johnson, Kearney, Otoe, Phelps, Polk, Saline, Saunders, Sherman, and York in Nebraska.

Any contiguous counties not listed herein are covered under a separate declaration for the same occurrence.

The interest rates are:

	Percent
For Physical Damage:	
Homeowners with credit available elsewhere	8.000
Homeowners without credit available elsewhere	4.000
Businesses with credit available elsewhere	8.000
Businesses and non-profit organizations without credit available elsewhere	4.000
Others (including non-profit organizations) with credit available elsewhere	7.625
For Economic Injury:	
Businesses and small agricultural cooperatives without credit available elsewhere	4.000

The number assigned to this disaster for physical damage is 266706 and for economic injury the number is 793400.

(Catalog of Federal Domestic Assistance Program Nos. 59002 and 59008).

Dated: July 20, 1993.

Bernard Kulik,

Assistant Administrator for Disaster Assistance.

[FR Doc. 93–17987 Filed 7–27–93; 8:45 am]

BILLING CODE 8025–01–M

[Declaration of Disaster Loan Area #2668]

South Dakota; Declaration of Disaster Loan Area

As a result of the President's major disaster declaration on July 19, 1993, I find that the Counties of Bon Homme, Brookings, Clay, Davison, Hanson, Hutchison, Kingsbury, Lake, Lincoln, McCook, Miner, Minnehaha, Moody, Sanborn, Turner, Union, and Yankton in the State of South Dakota constitute a disaster area as a result of damages caused by severe storms, tornadoes, and flooding which occurred May 6, 1993 and continuing. Applications for loans for physical damage may be filed until the close of business on September 20, 1993, and for loans for economic injury until the close of business on April 19, 1994, at the address listed below: U.S. Small Business Administration, Disaster Area 4 Office, P.O. Box 13795, Sacramento, CA 95853–4795, or other locally announced locations. In addition, applications for economic injury loans from small businesses located in the following contiguous counties may be filed until the specified date at the above location: Aurora, Beadle, Charles Mix, Clark, Deuel, Douglas, Hamlin, and Jerauld in South Dakota; and Cedar, Dakota, Dixon, and Knox in Nebraska.

The interest rates are:

	Percent
For Physical Damage:	
Homeowners with credit available elsewhere	8.000
Homeowners without credit available elsewhere	4.000
Businesses with credit available elsewhere	8.000
Businesses and non-profit organizations without credit available elsewhere	4.000
Others (including non-profit organizations) with credit available elsewhere	7.625
For Economic Injury:	
Businesses and small agricultural cooperatives without credit available elsewhere	4.000

The number assigned to this disaster for physical damage is 266806. For

economic injury the numbers are 793800 for South Dakota, and 793400 for Nebraska.

(Catalog of Federal Domestic Assistance Program Nos. 59002 and 59008).

Dated: July 20, 1993.

Bernard Kulik,

Assistant Administrator for Disaster Assistance.

[FR Doc. 93–17988 Filed 7–27–93; 8:45 am]

BILLING CODE 8025–01–M

DEPARTMENT OF STATE

Office of the Legal Adviser

[Public Notice 1837]

Claims for Property Located in Albania

Albania has enacted two laws concerning return of expropriated or confiscated properties in Albania. This notice provides short, general descriptions of those laws and tells potential claimants whom to contact for further information. As explained below, these laws set deadlines of November 15, 1993, and May 15, 1994, for certain actions in Albania with respect to claimed property.

Claims concerning agricultural properties. The Law on Compensation in Value to Former Owners of Agricultural Land, Law No. 7699, entered into force on May 15, 1993. This law recognizes the right of former owners to ownership of agricultural land for purposes of compensation. The law covers natural and juridical persons who owned land at the time of the issuance of the Law on Agrarian Reform (Law 108, August 29, 1945) or the legal heirs of such persons. Agricultural land refers to all land in Albania designated as agricultural land, including olive groves, orchards, vineyards and lands which were regarded as agricultural in 1945. Under Law No. 7699, former owners or heirs who received agricultural land under Law No. 7501 of July 19, 1991 may receive compensation in value for the difference between the area of agricultural land they originally owned and the area returned to them.

Owners or heirs who did not receive agricultural land under Law No. 7501 may be compensated as provided in the following formula. Full compensation is available for up to 15 hectares (approximately 37 acres). For areas of more than 15 hectares, compensation is determined on the basis of the following formula: From 15 hectares to 100 hectares, compensation for each hectare above the initial 15 shall be at the rate of 0.1 hectare. For areas between 100 and 1,100 hectares, compensation for each hectare in excess of 100 shall be at the rate of 0.02 hectare. For land areas greater than 1,100 hectares, no additional compensation will be available. The maximum amount of compensation may not exceed the equivalent of compensation for an area of 43.5 hectares. The amount of compensation to be given for each hectare is to be specified by law within six months of the effective date of this law.

Compensation will be provided through state bonds denominated in leks, which will be payable before December 31, 1999, and which will be transferable and salable. After December 31, 1999, for a 5-year period compensation can also be provided in leks. The bonds will be guaranteed and may be used before the redemption date to purchase state property.

Claims for compensation must be presented to the State Committee for the Compensation of Property in the relevant district within one year after the date of entry into force of the law, i.e., by May 15, 1994.

The law does not cover properties belonging to the former king and to foreign or joint companies. In addition, certain persons may not benefit from compensation under the law, including former collaborators of the Nazi-Fascist occupiers for properties acquired during the occupation, former communist party and government officials for properties acquired as a result of the abuse of official position as provided by court decision, and persons convicted of massive appropriations of the wealth of the people.

Claims concerning non-agricultural properties. The Law on the Return and Compensation for Property of Former Owners, Law No. 7698, which covers property (in the form of lots, buildings and anything permanently connected with them, such as residential buildings, factories, workshops, shops, stores and any other type of building) within municipal limits, entered into force on May 15, 1993. The law does not cover properties which fall within the purview of the Law on Compensation in Value for Owners of Agricultural Land.

Under Law No. 7699, the right to ownership is recognized, and all properties that exist in the form of unoccupied lots or unchanged buildings shall be returned to their former owners or their heirs, with some exceptions. Other properties may also be returned, under a complex system of restitution and compensation, depending on the type of property, its current status and use. For example, the availability and amount of restitution or compensation may depend on factors such as use of the property or buildings (whether in public or private use), whether the building or lot is used for purposes for which it was expropriated, whether full compensation was received at the time of expropriation, whether properties have been transferred to third parties (in which case payment of rent may be required), whether improvements have been made by the state or the owner (in which case co-ownership or payments may be required), and whether permanent or temporary construction has been undertaken on lots. The law provides for co-ownership and payment of rents (at specified rates) in certain circumstances.

Unless otherwise specified, full restitution or compensation shall be provided up to 10,000 sq. meters (approximately 1 hectare or 2.5 acres). From 10,000 to 100,000 sq. meters, the amount of restitution shall be 10 percent. For property in excess of 100,000 sq. meters, the restitution or compensation provided shall be at the rate of 1 percent.

The law does not apply to properties belonging to the former king and to foreign or joint companies. In addition, certain types of people may not benefit from the law, including former collaborators of the Nazi-Fascist occupiers, for property acquired during the occupation, former communist party and government leaders for property acquired as a result of the abuse of an official position as proved by a court decision, and persons convicted of massive appropriations of the wealth of the people.

Actions for the recognition of ownership under the law are to be carried out by the agencies charged with the registration of real estate. Former owners are required to submit official documents proving ownership, or in the absence of such documents may have their ownership proven by court decision. Requests for transfer of ownership must be submitted within six months from the effective date of the law, i.e., by November 15, 1993. If former owners, for legitimate reasons, have not been informed of the deadline, they may seek extensions through the courts.

The law states that a State Committee for the return of property to former owners or for providing compensation has been created in the Council of Ministers for the purpose of certifying claims of former owners that are not otherwise resolved in the law.

Information Concerning Albanian Property Laws. Copies of the Albanian laws in Albanian and English may be obtained by writing or telephoning the State Department at the following

address: Office of International Claims and Investment Disputes, Office of the Legal Adviser, 2100 K. Street, NW., Washington, DC 20037–7180, (202) 632–6686. Further information concerning the laws may also be obtained from the Embassy of Albania at 1150 18th St., NW., Washington, DC 20036. (202) 223–4942.

U.S. Registration of Claims. In 1992, the Foreign Claims Settlement Commission requested registration of potential property claims against Albania. 57 FR 4067 (February 3, 1992). This program was designed to gather information concerning potential claims against Albania. It did not constitute a formal filing of a claim with the U.S. Government, and the Foreign Claims Settlement Commission has made no determinations concerning which claims are valid.

The United States has begun discussions with Albania for a claims settlement agreement. However, it is not yet clear whether or when such an agreement may be concluded. Any agreement would likely cover only claims for property which was owned by United States nationals at the time of expropriation by Albania. In addition, dual United States-Albanian nationals will be included only if those nationals are domiciled in the United States currently or for at least half the period of time between the taking of their property in Albania and the date entry into force of the agreement. Claimants who wish to pursue restitution or compensation for their property in Albania may wish to proceed to file claims for compensation with the required authorities in Albania. Claimants should note, however, that while the Governments of the United States and Albania have not yet decided what claims would be covered by a settlement agreement, the United States Government reserves the right to settle, as part of such an agreement, claims filed with the Government of Albania under the laws described above. Moreover, it is expected that no claim will be allowed to result in a double recovery.

Claimants are advised that neither the Foreign Claims Settlement Commission nor the Department of State has any information concerning the Albanian law other than that noted here and contained in the text of the law. Further information must be obtained from the Government of Albania. Claimants are also encouraged to consult with counsel familiar with Albanian law. Claimants are reminded that the United States Government cannot advise them concerning whether their claims will result in any form of compensation under Albanian law.

Dated: July 16, 1993.

Ronald J. Bettauer,

Assistant Legal Adviser for International Claims and Investment Disputes.

[FR Doc. 93–17894 Filed 7–27–93; 8:45 am]

BILLING CODE 4710–08–M

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

Advisory Circular; Operating Procedures for Airport Traffic Control Towers (ATCT) That Are Not Operated By, or Under Contract With, the United States (Non-Federal)

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Notice of availability of Advisory Circular 90–93.

SUMMARY: The FAA is announcing the availability of Advisory Circular (AC) 90–93 which recommends government publications and procedures for the operation by, equipment installation at, and maintenance of, record keeping by, accident/incident reporting by, tower specialist training for, and management of a non-Federal ATCT (NFCT).

DATES: This AC is effective as of July 19, 1993.

ADDRESSES: A copy of AC90–93, Operating Procedures for Airport Traffic Control Towers (ATCT) That Are Not Operated By, or Under Contract With, The United States (Non-Federal), may be obtained by writing to Department of Transportation, Utilization and Storage Section, M–443.2, Washington, DC 20590.

FOR FURTHER INFORMATION CONTACT: Mr. Joseph C. White, Air Traffic Rules Branch, ATP–230, Airspace Rules and Aeronautical Information Division, Federal Aviation Administration, 800 Independence Avenue, SW., Washington, DC 20591; telephone (202) 267–8783.

SUPPLEMENTARY INFORMATION: AC 90–81, Procedures for Obtaining Publications—Civil Non-FAA Operated Control Towers, dated November 9, 1983, is cancelled. This notice is issued pursuant to the FAAct, 49 U.S.C. App. 1343, 1346, 1347, 1348, 1354(a), 1355, 1401, 1421–1430, 1472(c), 1502, and 1522; 49 U.S.C. 106(g), 307(a), 313(a).

Dated: July 20, 1993.

Harold W. Becker,

Acting Director, Air Traffic Rules and Procedures Service.

[FR Doc. 93–17974 Filed 7–27–93; 8:45 am]

BILLING CODE 4910–13–M

Civil Tiltrotor Development Advisory Committee; Establishment

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Notice of establishment of Civil Tiltrotor Development Advisory Committee.

Notice is hereby given of the establishment of the Civil Tiltrotor Development Advisory Committee. This committee will determine the costs, feasibility, and economic viability of developing a civil tiltrotor aircraft and establishing the necessary infrastructure to incorporate such aircraft and other advanced vertical takeoff and landing aircraft into the national transportation system. Public Law 102–581, Airport and Airway Safety, Capacity, Noise Improvement, and Intermodal Transportation Act of 1992, directed the Secretary of Transportation to establish this advisory committee.

Meetings of the panel will be open to the public except as authorized by section 10(d) of the Federal Advisory Committee Act.

FOR FURTHER INFORMATION CONTACT: The Office of System Capacity and Requirements (ASC), 800 Independence Avenue SW., Washington, DC 20591; telephone 202–267–7370.

Issued in Washington, DC, July 22, 1993.

Edward T. Harris,

Director of System Capacity and Requirements.

[FR Doc. 93–17976 Filed 7–27–93; 8:45 am]

BILLING CODE 4910–13–M

Environmental Impact Statement: New Runway and Associated Projects, Tulsa International Airport, Tulsa, OK

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Notice.

SUMMARY: The FAA is issuing this notice to advise the public that it is withdrawing its intent to prepare an Environmental Impact Statement (EIS) for a proposed third parallel runway which would accommodate air carrier traffic at Tulsa International Airport, Tulsa, Oklahoma.

FOR FURTHER INFORMATION CONTACT: Joyce M. Porter, Airport Environmental Specialist, ASW–640D, Federal Aviation Administration, Southwest Regional Office, 4400 Blue Mound Road, Fort Worth, Texas 76193–0640. Telephone (817) 624–5652.

SUPPLEMENTARY INFORMATION: The FAA, after coordinating with the Tulsa Airports Improvement Trust, is withdrawing its notice of intent to

prepare an EIS for a proposed third parallel runway which would accommodate air carrier traffic at Tulsa International Airport.

Issued on: July 12, 1993.

John M. Dempsey,

Manager, Airports Division.

[FR Doc. 93–17970 Filed 7–27–93; 8:45 am]

BILLING CODE 4910–13–M

DEPARTMENT OF THE TREASURY

Public Information Collection Requirements Submitted to OMB for Review

July 22, 1993.

The Department of Treasury has made revisions and resubmitted the following public information collection requirement(s) to OMB for review and clearance under the Paperwork Reduction Act of 1980, Public Law 96–511. Copies of the submission(s) may be obtained by calling the Treasury Bureau Clearance Officer listed. Comments regarding this information collection should be addressed to the OMB reviewer listed and to the Treasury Department Clearance Officer, Department of the Treasury, room 3171 Treasury Annex, 1500 Pennsylvania Avenue, NW., Washington, DC 20220.

Internal Revenue Service

OMB Number: 1545–1004
Form Number: IRS Form 1120–REIT
Type of Review: Resubmission
Title: U.S. Income Tax Return for Real Estate Investment Trusts
Description: Form 1120–REIT is filed by a corporation, trust, or association electing to be taxed as a REIT in order to report its income and deductions and to compute its tax liability. IRS uses Form 1120–REIT to determine whether the REIT has correctly reported its income, deductions, and tax liability.
Respondents: Businesses or other for-profit
Estimated Number of Respondents/ Recordkeepers: 176
Estimated Burden Hours Per Respondent/Recordkeeper:
Recordkeeping—57 hours, 38 minutes
Learning about the law or the form—18 hours, 55 minutes
Preparing the form—38 hours, 22 minutes
Copying, assembling, and sending the form to the IRS—5 hours, 5 minutes
Frequency of Response: Annually
Estimated Total Reporting/ Recordkeeping Burden: 21,124 hours
Clearance Officer: Garrick Shear (202) 535–4297, Internal Revenue Service, room 5571, 1111 Constitution Avenue, NW., Washington, DC 20224
OMB Reviewer: Milo Sunderhauf (202) 395–6880, Office of Management and Budget, room 3001, New Executive Office Building, Washington, DC 20503

Dale A. Morgan,

Departmental Reports Management Officer.

[FR Doc. 93–17924 Filed 7–27–93; 8:45 am]

BILLING CODE 4830–01–P

Public Information Collection Requirements Submitted to OMB for Review

July 21, 1993.

The Department of Treasury has submitted the following public information collection requirement(s) to OMB for review and clearance under the Paperwork Reduction Act of 1980, Public Law 96–511. Copies of the submission(s) may be obtained by calling the Treasury Bureau Clearance Officer listed. Comments regarding this information collection should be addressed to the OMB reviewer listed and to the Treasury Department Clearance Officer, Department of the Treasury, room 3171, Treasury Annex, 1500 Pennsylvania Avenue, NW., Washington, DC 20220.

Internal Revenue Service

OMB Number: 1545–0203
Form Number: IRS Form 5329
Type of Review: Revision
Title: Additional Taxes Attributable to Qualified Retirement Plans (including IRAs), Annuities, and Modified Endowment Contracts
Description: This form is used to compute and collect taxes related to distributions from individual retirement arrangements (IRAs) and other qualified plans. These taxes are for excess contributions to an IRA, premature distributions from an IRA and other qualified retirement plans, excess accumulations in an IRA and excess distributions from qualified retirement plans. The data is used to help verify that the correct amount of tax has been paid
Respondents: Individuals or households
Estimated Number of Respondents/ Recordkeepers: 1,000,000
Estimated Burden Hours Per Respondent/Recordkeeper:
Recordkeeping—2 hours, 24 minutes
Learning about the law or the form—31 minutes
Preparing the form—1 hour, 17 minutes
Copying, assembling, and sending the form to the IRS—34 minutes
Frequency of Response: On occasion
Estimated Total Reporting/ Recordkeeping Burden: 4,780,000 hours
OMB Number: 1545–0877
Form Number: IRS Form 1099–A
Type of Review: Extension
Title: Acquisition or Abandonment of Secured Property
Description: Form 1099–A is used by lenders to report foreclosures and abandonments of property that is security for a loan.
Respondents: Businesses or other for-profit, Federal agencies or employees
Estimated Number of Respondents: 15,800
Estimated Burden Hours Per Respondent: 10 minutes
Frequency of Response: Annually
Estimated Total Reporting Burden: 68,000 hours
Clearance Officer: Garrick Shear, (202) 622–3869, Internal Revenue Service, Room 5571, 1111 Constitution Avenue, NW., Washington, DC 20224.
OMB Reviewer: Milo Sunderhauf, (202) 395–6880, Office of Management and Budget, Room 3001, New Executive Office Building, Washington, DC 20503.

Dale A. Morgan,

Departmental Reports, Management Officer.

[FR Doc. 93–18022 Filed 7–27–93; 8:45 am]

BILLING CODE 4830–01–P

Public Information Collection Requirements Submitted to OMB for Review

July 22, 1993

The Department of the Treasury has submitted the following public information collection requirement(s) to OMB for review and clearance under the Paperwork Reduction Act of 1980, Public Law 96–511. Copies of the submission(s) may be obtained by calling the Treasury Bureau Clearance Officer listed. Comments regarding this information collection should be addressed to the OMB reviewer listed and to the Treasury Department Clearance Officer, Department of the Treasury, Room 3171 Treasury Annex, 1500 Pennsylvania Avenue, NW., Washington, DC 20220.

Internal Revenue Service

OMB Number: 1545–0415
Form Number: IRS Form W–4P
Type of Review: Extension
Title: Withholding Certificate for Pension or Annuity Payments
Description: Used by the recipient of pension or annuity payments to designate the number of withholding allowances he or she is claiming, an additional amount to be withheld, or

to elect that no tax be withheld, so that the payer can withhold the proper amount.
Respondents: Individuals or households
Estimated Number of Respondents/ Recordkeepers: 12,000,000
Estimated Burden Hours Per Respondent/Recordkeeper:
Recordkeeping—40 minutes
Learning about the law or the form—20 minutes
Preparing the form—49 minutes
Frequency of Response: On occasion
Estimated Total Reporting/ Recordkeeping Burden: 12,000,000 hours
OMB Number: 1545–1027
Form Number: IRS Form 1120–PC
Type of Review: Revision
Title: U.S. Property and Casualty Insurance Company Income Tax Return
Description: Property and casualty insurance companies are required to file an annual return of income and pay the tax due. The data is used to insure that companies have correctly reported income and paid the correct tax.
Respondents: Businesses or other for-profit
Estimated Number of Respondents/ Recordkeepers: 2,200
Estimated Burden Hours Per Respondent/Recordkeeper:
Recordkeeping—102 hours, 50 minutes
Learning about the law or the form—33 hours, 29 minutes
Preparing the form—55 hours, 15 minutes
Copying, assembling, and sending the form to the IRS—5 hours, 22 minutes
Frequency of Response: Annually
Estimated Total Reporting/ Recordkeeping Burden: 433,246 hours
Clearance Officer: Garrick Shear, (202) 622–3869, Internal Revenue Service, Room 5571, 1111 Constitution Avenue, NW., Washington, DC 20224.
OMB Reviewer: Milo Sunderhauf, (202) 395–6880, Office of Management and Budget, Room 3001, New Executive Office Building, Washington, DC 20503.

Dale A. Morgan,

Departmental Reports Management Officer.

[FR Doc. 93–18021 Filed 7–27–93; 8:45 am]

BILLING CODE 4830–01–P

Customs Service

Revised Procedure Relating to Expiration of Generalized System of Preferences

AGENCY: U.S. Customs Service, Department of the Treasury.

ACTION: General notice.

SUMMARY: The Generalized System of Preferences (GSP), a preferential trade program that allowed the products of many developing countries to enter the U.S. duty-free, expired on July 4, 1993. On July 1, 1993, Customs published a document in the Federal Register that both notified importers that claims for duty-free treatment under the GSP could not be made for merchandise entered or withdrawn from a warehouse on or after July 5, 1993, and set forth Customs mechanism to facilitate refunds if the GSP is renewed retroactively. This document notifies the public of a change in the procedures set forth in the July 1 document pertaining to persons filing paperless entry summaries.

DATES: The change in procedure is effective as of July 13, 1993.

FOR FURTHER INFORMATION CONTACT: Lisa Crosby, Office of Trade Operations, 202–927–0163.

SUPPLEMENTARY INFORMATION:

Background

On July 1, 1993, Customs published a document in the Federal Register (58 FR 35506) notifying importers that the Generalized System of Preferences (GSP), the preferential trade program allowing the products of many developing countries to enter the U.S. duty-free, was expiring on July 4, 1993, unless extended by law. The document informed the importing public that claims for duty-free treatment under the GSP could not be made for merchandise entered or withdrawn from a warehouse on or after July 5, 1993, if the program was not extended before that date. The document also set forth Customs mechanism to facilitate refunds, if the GSP is renewed retroactively.

As of today, the GSP program has neither been extended nor renewed retroactively.

The purpose of this document is to inform the importing public of a modification to the procedures set forth in the July 1 document relating to filers of paperless entry summaries.

Modification to Procedures

In the July 1 notice, Customs stated that all filers, other than those using the Automated Broker Interface (ABI) who file paperless entry summaries, may continue to file using the Special Program Indicator (SPI) for the GSP (the letter "A") as a prefix to the tariff number for all entries that would have qualified for the GSP if the GSP were still in effect.

Based on input from filers and field locations, Customs has determined that persons using ABI who file paperless entry summaries, including electronic invoice summaries, also may use the SPI "A".

Use of the SPI "A" will permit Customs Automated Commercial System (ACS) to perform its usual edits on the information transmitted by the filer, thereby ensuring that GSP claims are for acceptable country/tariff combinations. Further, the need for numerous statistical corrections will be eliminated.

Refunds and Paperless Entry Summary Filers

While Customs will now permit paperless entry filers to use the SPI "A", Customs reiterates that even though the SPI "A" is used, a refund will not be processed automatically for these filers by Customs if the GSP is eventually renewed retroactively. Paperless entry filers who use the SPI "A" still will be required to file a refund request if and when the GSP is renewed retroactively.

As stated in the July 1 notice, if a filer submits an entry summary with both the SPI "A" and the blue cover sheet explained in the July 1 notice, no further action need be taken by the filer to request a refund; filing with the SPI "A" and the blue cover sheet constitutes a valid claim for a refund. Because paperless entry summaries will not be filed with the blue cover sheet and will not be in the special GSP batches, a refund will not be issued unless the importer requests a refund in writing.

Instructions on how to request a refund in writing will be issued if and when the GSP is renewed retroactively.

Customs cannot overemphasize that any refunds for duty-free claims under the GSP for merchandise entered or withdrawn from a warehouse on or after July 5, 1993 will only be issued provided that the GSP is renewed retroactively by Congress in the same manner that tariff preference programs have been renewed in the past.

Dated: July 21, 1993.

Samuel H. Banks,

Assistant Commissioner, Commercial Operations.

[FR Doc. 93–17990 Filed 7–27–93; 8:45 am]

BILLING CODE 4820–02–P

Internal Revenue Service

Privacy Act of 1974, as Amended; System of Records

AGENCY: Internal Revenue Service, Treasury.

ACTION: Notice of proposed new Privacy Act system of records.

SUMMARY: The Treasury Department, Internal Revenue Service, gives notice of

a proposed new system of records entitled Internal Security Management Information System (ISMIS)—Treasury/IRS 60.011, which is subject to the Privacy Act of 1974, 5 U.S.C. 552a.

DATES: Comments must be received no later than August 27, 1993. This new system of records will be effective September 27, 1993, unless comments are received which results in a contrary determination.

ADDRESSES: Comments should be sent to the Disclosure Officer, Office of the Chief Inspector, Internal Revenue Service, 1111 Constitution Avenue, NW, Washington, DC 20224. Comments will be made available for inspection and copying in the Freedom of Information Reading Room upon request.

FOR FURTHER INFORMATION CONTACT: Program Analyst Mary Anderson, or Staff Inspector Jean Keller, Office of the Chief Inspector, Internal Security, Internal Revenue Service (703) 235-0567.

SUPPLEMENTARY INFORMATION: The development of the Internal Security Management Information System (ISMIS) was precipitated by the need for better resource management and greater continuity in case management. This system enables management to effectively track investigative cases and assists in determining budget and staffing requirements within Internal Security by drawing from data currently maintained in the following Inspection systems of records; Assault and Threat Investigation files—Treasury/IRS 60.001, Bribery Investigation Files—Treasury/IRS 60.002, Conduct Investigation Files—Treasury/IRS 60.003, Disclosure Investigation Files—Treasury/IRS 60.004, Enrollee Applicant Investigation Files—Treasury/IRS 60.005, Enrollee Charge Investigation Files—Treasury/IRS 60.006, Miscellaneous Information Files—Treasury/IRS 60.007, Security, Background and Character Investigation Files—Treasury/IRS 60.008, Special Inquiry Investigation Files—Treasury/IRS 60.009, and Tort Investigation Files—Treasury/IRS 60.010. There is the possibility that other databases will be added in future enhancements of ISMIS.

ISMIS consolidates the information into a data base providing more effective management of Internal Security resources, programs, and budget and staff requirements for the benefit of the Department of the Treasury, the Congress, and IRS officials.

The system notice, as proposed, is published in its entirety below. A proposed rule exempting this system from certain provisions of the Privacy Act is to be published separately in the **Federal Register.**

Treasury/IRS 60.011

SYSTEM NAME:

Internal Security Management Information System (ISMIS)—Treasury/IRS.

SYSTEM LOCATION:

Office of the Chief Inspector, National Office, and Regional Inspection Offices. (See IRS appendix A for Addresses.)

CATEGORIES OF INDIVIDUALS COVERED BY THE SYSTEM:

(1) Current and former employees of the Internal Revenue Service, other Bureaus and Services within the Department of the Treasury, and Private Contractors at IRS Facilities; (2) Taxpayers and non-IRS persons whose alleged criminal actions may affect the integrity of the Internal Revenue Service; (3) Former employees and non-IRS persons who apply for enrollment to practice before the IRS under the provisions of Circular 230; (4) Tax practitioners, attorneys, certified public accountants or enrolled persons.

CATEGORIES OF RECORDS IN THE SYSTEM:

(1) ISMIS personnel system records contain Internal Security employee name, office, start of employment, series/grade, title, separation date; (2) ISMIS tracking records contain status information on investigations from point of initiation through conclusion; (3) ISMIS timekeeping records contain assigned cases and distribution of time; (4) ISMIS case tracking records contain background investigations and criminal/administrative cases.

AUTHORITY FOR MAINTENANCE OF THE SYSTEM:

5 U.S.C. 301; 26 U.S.C. 7602, 7608, 7801 and 7802; Executive Order 11222.

PURPOSE:

The purpose of ISMIS is to: (1) Effectively manage Internal Security resources and assess the effectiveness of current Internal Security programs and to assist in determining budget and staff requirements; (2) Provide the technical ability for other components of the Service to analyze trends in integrity matters on an organizational, geographic and violation basis.

ROUTINE USES OF RECORDS MAINTAINED IN THE SYSTEM, INCLUDING CATEGORIES OF USERS AND THE PURPOSES OF SUCH USES:

Disclosure of returns and return information may be made only as provided by 26 U.S.C. 6103. Records other than returns and return information may be used to: (1) Disclose pertinent information to appropriate Federal, State, local, or foreign agencies, or other public authority, responsible for investigating or prosecuting the violations of, or for enforcing or implementing a statute, rule, regulation, order, or license, where the disclosing agency becomes aware of an indication of a violation or potential violation of civil or criminal law or regulations; (2) Disclose information to the Department of Justice for the purpose of litigating an action or seeking legal advice. Disclosure may be made during judicial processes; (3) Disclose information to a Federal, State, or local agency, or other public authority, maintaining civil, criminal or other relevant enforcement information or other pertinent information, which has requested information relevant to or necessary to the requesting agency's, bureau's, or authority's hiring or retention of an individual, or issuance of a security clearance, license, contract, grant, or other benefit; (4) Disclose information in a proceeding before a court, adjudicative body, or other administrative body before which the agency is authorized to appear when: (a) The agency, or (b) any employee of the agency in his or her official capacity, or (c) any employee of the agency in his or her individual capacity where the Department of Justice or the agency has agreed to represent the employee; or (d) the United States, when the agency determines that litigation is likely to affect the agency, is a party to litigation or has an interest in such litigation, and the use of such records by the agency is deemed to be relevant and necessary to the litigation or administrative proceeding and not otherwise privileged; (5) Provide information to a congressional office in response to an inquiry made at the request of the individual to whom the record pertains; (6) Provide information to the news media in accordance with guidelines contained in 28 CFR 50.2 which relate to an agency's functions relating to civil and criminal proceedings; (7) Provide information to third parties during the course of an investigation to the extent necessary to obtain information pertinent to the investigation; (8) Disclose information to a public or professional licensing organization when such information indicates, either by itself or in combination with other information, a violation or potential violation of professional standards, or reflects on the moral, educational, or professional qualifications of an individual who is licensed or who is seeking to become licensed.

POLICIES AND PRACTICES FOR STORING, RETRIEVING, ACCESSING, RETAINING AND DISPOSING OF RECORDS IN THE SYSTEM:

STORAGE:

Paper records and magnetic media.

RETRIEVABILITY:

By name of individual to whom it applies, cross-referenced third parties, social security number, or case number.

SAFEGUARDS:

Access is limited to authorized Inspection personnel who have a direct need to know. Hard copy of data is stored in rooms of limited accessibility except to employees. These rooms are locked after business hours. Access to magnetic media is controlled by computer passwords. Access to specific ISMIS records is further limited by computer security programs limiting access to select personnel.

RETENTION AND DISPOSAL:

Records are periodically updated to reflect changes and are retained and archived as long as deemed necessary.

SYSTEM MANAGER(S) AND ADDRESS:

Assistant Chief Inspector (Internal Security), Internal Revenue Service, 1111 Constitution Avenue, NW, Washington, DC 20224.

NOTIFICATION PROCEDURE:

Individuals seeking to determine if this system of records contains a record pertaining to them may inquire in accordance with instructions appearing at 31 CFR part 1, subpart C, appendix B. Inquiries should be addressed as in "Record access procedures" below.

RECORD ACCESS PROCEDURES:

Individuals seeking access to any record contained in this system of record, or seeking to contest its content, may inquire in accordance with instructions appearing at 31 CFR part 1, subpart C, appendix B.

Inquiries should be addressed to the Disclosure Officer, Office of the Chief Inspector, Internal Revenue Service, Room 6116, I:IS:I, 1111 Constitution Avenue, NW, Washington, DC 20224.

CONTESTING RECORDS PROCEDURES:

26 U.S.C. 7852(e) prohibits Privacy Act amendment of tax records.

RECORDS SOURCE CATEGORIES:

Department of the Treasury personnel and records, other Federal agencies, current and former employees of the Internal Revenue Service, taxpayers and non-IRS persons whose alleged criminal actions may affect the integrity of the Internal Revenue Service.

SYSTEMS EXEMPTED FROM CERTAIN PROVISIONS OF THE ACT:

This system is exempt from 5 U.S.C. 552a(c)(3), (c)(4), (d)(1), (d)(2), (d)(3), (d)(4), (e)(1), (e)(2), (e)(3), (e)(4)(G), (H) and (I), (e)(5), (e)(8), (f) and (g) of the Privacy Act pursuant to 5 U.S.C. 552a(j)(2).

Dated: July 15, 1993.

Deborah M. Witchey,

Deputy Assistant Secretary (Administration).

[FR Doc. 93-17892 Filed 7-27-93; 8:45 am]

BILLING CODE 4830-01-M

UNITED STATES INFORMATION AGENCY

Exchange Visitor Program; Skills List

AGENCY: United States Information Agency.

ACTION: Amendment to delete Spain from the Exchange Visitor Skills List.

SUMMARY: The Exchange Visitor Skills List is amended by deleting the fields of specialization for Spain at the request of the Government of Spain.

DATES: This amendment shall become effective July 28, 1993.

ADDRESSES: Comments and requests for further information should be addressed to: Mary D. Hitt, Director, Exchange Visitor Program Services, USIA, 301 Fourth Street SW., suite 700, Washington, DC 20547, telephone (202) 475-6869.

SUPPLEMENTARY INFORMATION: Pursuant to the provisions of section 212(e) of the Immigration and Nationality Act, as amended (8 U.S.C. 1182(e)), the Secretary of State designated on April 25, 1972, a list of fields of specialized knowledge or skill (referred to as the Exchange Visitor Skills List) and those countries which clearly required the services of persons engaged in one or more of such fields. Any alien who was a national or resident of one of those countries and obtained an exchange visitor visa and/or became a participant in an Exchange Visitor Program involving a designated field of specialized knowledge or skill after the effective date of that notice was subject to the 2-year home country physical residence requirement of section 202(e) of the Immigration and Nationality Act as provided in section 212(e) and 22 CFR 41.65(b).

Pursuant to the provisions of Reorganization Plan No. 2 of 1977, section 217 of the United States Information Agency Authorization Act of August 24, 1982 (Pub. L. 97-241) and Executive Order Nos. 12048 (March 27, 1978) and 12388 (October 14, 1982) the Director, United States Information Agency, on June 12, 1984 further amended the 1972 Exchange Visitor Skills List, as revised in 1978, to increase the designated fields of specialized knowledge of skills. The 1984 amendment gave notice of the addition of China and the deletion of Cambodia, Iran and Viet-Nam from the skills list as well as the indefinite suspension of Afghanistan. In September, 1986 an amendment reflected the deletion of South Africa, addition of Iraq and changes in Group 4 for the People's Republic of China. It also clarified that the skills list for the People's Republic of China is not applicable to exchange visitors from Taiwan. A February, 1987 amendment gave notice of the indefinite suspension of Libya and the addition of two fields to Group (1) of the skills list for the People's Republic of China. Amendments in March and April, 1987, contained date corrections. An amendment in December, 1988 added additional fields to the skills list for the People's Republic of China.

This Notice amends Public Notice No. 356-37, 37 FR 8099, April 25, 1972; Public Notice No. 591, 43 FR 5910, February 10, 1978; Public Notice No. 49 FR 24194, June 12, 1984; 51 FR 34701, September 30, 1986; 52 FR 3744, February 5, 1987; 52 FR 8700, March 19, 1987; 52 FR 10437, April 1, 1987 and 53 FR 50619, December 16, 1988.

Accordingly, the Exchange Visitor Skills List, is further amended by deleting Spain from said list.

Dated: July 19, 1993.

R. Wallace Stuart,

Acting General Counsel, United States Information Agency.

[FR Doc. 93-17893 Filed 7-27-93; 8:45 am]

BILLING CODE 8230-01-M

Sunshine Act Meetings

Federal Register
Vol. 58, No. 143
Wednesday, July 28, 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).

UNITED STATES INTERNATIONAL TRADE COMMISSION

[USITC SE-93-21]

TIME AND DATE: August 2, 1993 at 2:30 p.m.

PLACE: Room 101, 500 E Street S.W., Washington, DC 20436.

STATUS: Open to the public.

1. Agenda for future meeting.
2. Minutes
3. Ratification List
4. Invs. Nos. 731–TA–651 (Preliminary) (Silicon Carbide from the People's Republic of China)—briefing and vote.
5. Continuation of discussion of APO matters
6. Outstanding action jackets
   1. EC–93–011; Antidumping and Countervailing Duty Laws and Practices in South America.
7. Any items left over from previous agenda

CONTACT PERSON FOR MORE INFORMATION: Donna R. Koehnke, Secretary, (202) 205–2000.

Issued: July 23, 1993.

Donna R. Koehnke,

Secretary.

[FR Doc. 93–18164 Filed 7–26–93; 3:28 pm]

BILLING CODE 7020–02–P

SECURITIES AND EXCHANGE COMMISSION

Notice is hereby given, pursuant to the provisions of the Government in the Sunshine Act, Pub. L. 94–409, that the Securities and Exchange Commission will hold the following meetings during the week of July 26, 1993.

A closed meeting will be held on Wednesday, July 28, 1993, at 10:00 a.m.

Commissioners, Counsel to the Commissioners, the Secretary to the Commission, and recording secretaries will attend the closed meeting. Certain staff members who have an interest in the matters may also be present.

The General Counsel of the Commission, or his designee, has certified that, in his opinion, one or more of the exemptions set forth in 5 U.S.C. 552b(c)(4), (8), (9)(A) and (10) and 17 CFR 200.402(a)(4), (8), (9)(i) and (10), permit consideration of the scheduled matters at a closed meeting.

Commissioner Beese, as duty officer, voted to consider the items listed for the closed meeting in a closed session.

The subject matter of the closed meeting scheduled for Wednesday, July 28, 1993, at 10:00 a.m., will be:

Institution of injunctive actions.
Institution of administrative proceedings of an enforcement nature.
Settlement of injunctive action.
Opinions.

At times, changes in Commission priorities require alterations in the scheduling of meeting items. For further information and to ascertain what, if any, matters have been added, deleted or postponed, please contact: Holly Smith at (202) 272–2100.

Dated: July 23, 1993.

Jonathan G. Katz,

Secretary.

[FR Doc. 93–18165 Filed 7–26–93; 3:29 p.m.]

BILLING CODE 8010–01–M

Corrections

Federal Register
Vol. 58, No. 143
Wednesday, July 28, 1993

This section of the FEDERAL REGISTER contains editorial corrections of previously published Presidential, Rule, Proposed Rule, and Notice documents. These corrections are prepared by the Office of the Federal Register. Agency prepared corrections are issued as signed documents and appear in the appropriate document categories elsewhere in the issue.

DEPARTMENT OF AGRICULTURE

Food Safety and Inspection Service

9 CFR Part 317

[Docket No. 91-019F]

RIN 0583-AB37

Listing of Minor Ingredients in Other Than Descending Order of Predominance

Correction

In rule document 93-16783 beginning on page 38046 in the issue of Thursday, July 15, 1993, make the following correction:

§ 317.2 [Corrected]

1. On page 38049, in the first column, in § 317.2(f)(1)(vi)(B), in the eighth line, "qualifying" should read "quantifying".

BILLING CODE 1505-01-D

DEPARTMENT OF DEFENSE

DEPARTMENT OF VETERANS AFFAIRS

38 CFR Part 21

RIN 2900-AF52

Veterans Education; Disenrollment From the Post-Vietnam Era Veterans' Educational Assistance Program Following Election to Receive Other Benefits

Correction

In rule document 93-16728 beginning on page 38057 in the issue of Thursday, July 15, 1993, make the following correction:

§ 21.5058 [Corrected]

1. On page 38058, in the second column, in § 21.5058(b), in the fourth line, "disenrolled" should read "reenroll".

BILLING CODE 1505-01-D

FEDERAL MARITIME COMMISSION

Agreement(s) Filed, Manchester Terminal Corp./Southern Stevedoring Co., Inc. Terminal Agreement et al.

Correction

In notice document 93-16695 beginning on page 38126 in the issue of Thursday, July 15 1993, on page 38127, in the first column, "*Agreement No.:* 224-200229-001." should read "*Agreement No.:* 224-200229-002.".

BILLING CODE 1505-01-D

DEPARTMENT OF TRANSPORTATION

Coast Guard

46 CFR Part 15

[CGD 92-061]

RIN 2115-AE28

Federal Pilotage Requirement for Foreign Trade Vessels

Correction

In proposed rule document 93-16082 beginning on page 36914 in the issue of Friday, July 9, 1993, make the following corrections:

1. On page 36914, in the second column, under **ADDRESSES**, in the third line, "(G-LFA/3406)" should read "(G-LRA/3406)".

2. On page 36915, in the first column, in the first paragraph, in the eighth line, "terminal" should read "terminals".

3. On page 36916, in the first column, in the first full paragraph, in the fifth line, "a departing" should read "or departing".

PART 15—[CORRECTED]

4. On page 36917, in the second column, in amendatory instruction 2., in the second line, "315.1040," should read "§ 15.1040,".

§ 15.1010 [Corrected]

5. On page 36917, in the third column, in § 15.1010(g), in the ninth line, "36°38′18″" should read "36°48′18″".

BILLING CODE 1505-01-D

DEPARTMENT OF TRANSPORTATION

Federal Railroad Administration

49 CFR Parts 218 and 229

[Docket No. LI-7; Notice 5]

RIN 2130-AA53

Event Recorders

Correction

In rule document 93-15966 beginning on page 36605 in the issue of Thursday, July 8, 1993, make the following correction:

On page 36605, in the 1st column, under the heading **DATES**, in the 11th and 12th lines, "January 16, 1995." should read "May 5, 1995.".

BILLING CODE 1505-01-D

DEPARTMENT OF LABOR

Occupational Safety and Health Administration

29 CFR Part 1926

Incorporation of General Industry Safety and Health Standards Applicable to Construction Work

Correction

In rule document 93-15063 beginning on page 35076 in the issue of Wednesday, June 30, 1993, on page 35285, in "Appendix D to § 1926.1147," in the first column remove "Insert illus. 44" and add the following equation:

$$CV = \frac{3(.0277)^2 + 3(.0452)^2 + 3(.0333)^2}{3+3+3}$$

BILLING CODE 1505-01-D

federal register

Wednesday
July 28, 1993

Part II

National Credit Union Administration

12 CFR Part 701

Federal Credit Union Field of Membership and Chartering Policy; Proposed Interpretive Ruling and Policy Statement ("IRPS")

NATIONAL CREDIT UNION ADMINISTRATION

12 CFR Part 701

Federal Credit Union Field of Membership and Chartering Policy

AGENCY: National Credit Union Administration ("NCUA").

ACTION: Proposed interpretive ruling and policy statement. ("IRPS").

SUMMARY: Significant changes have occurred since NCUA's comprehensive restatement of chartering and field of membership policy—Interpretive Ruling and Policy Statement ("IRPS") 89–1—became effective. Many corporate and governmental units served by credit unions have begun restructuring dramatically, leaving associated credit unions scurrying to keep their fields of membership up-to-date. Technology has expanded the geographic range within which many credit unions can effectively serve their members at the same time that much of the public have begun to accept and even demand the convenient service that the new technology offers. Those seeking to provide credit union service to low-income communities have shown they need more flexibility in the chartering and field of membership expansion process if these credit unions are to be effective in helping persons of small means obtain a source of credit in which they have a real voice.

In recognition of these changes, the NCUA Board directed a review of IRPS 89–1 to determine what updating might be needed in these and other areas. That review produced a number of recommended changes—some substantial, others technical; some in the form of specific proposals, others in the form of subjects for discussion by the credit union community. The following proposal, which would amend and replace IRPS 89–1, sets forth the proposed changes. The subjects for discussion are set forth at the end of the Supplemental Information section of this Preamble; changes along the lines suggested there may be incorporated into the final IRPS.

DATE: Comments must be received by October 26, 1993.

ADDRESSES: Send comments to Becky Baker, Secretary, NCUA Board. Comments mailed prior to September 1, 1993 are to be sent to 1776 G Street, NW., Washington, DC 20456; comments mailed after that date are to be sent to 1775 Duke Street, Alexandria, Virginia 22314.

FOR FURTHER INFORMATION CONTACT: H. Allen Carver, Regional Director, Region III (Atlanta), 7000 Central Parkway, Suite 1600, Atlanta, GA 30328, or telephone (404) 396–4042.

SUPPLEMENTARY INFORMATION:

The Proposed IRPS

The changes included in the proposed IRPS are designed:

- To facilitate corporate and military unit restructurings
- To clarify NCUA policy on the "operational area" requirement for select group expansions
- To update the low income and community development credit union policies, and to accelerate reaching final decision on a charter application
- To make minor or technical changes to modify or clarify NCUA policy.

Corporate and Military Restructurings

The radical restructurings taking place in many organizations served by credit unions have forced credit union officials to adapt quickly to significant changes to their fields of membership. Sponsoring organizations previously organized on geographic or military service lines, for example, are reorganizing more strictly on functional lines. With increasing frequency, entire business lines are being bought and sold. Military bases and industrial plants are closing, leaving credit unions effectively without a field of membership. Former employer-employee relationships are being converted to staff leasing arrangements. Much of IRPS 89–1, particularly with respect to adding new groups as part of either a primary sponsor or select group expansion, remains valid for restructuring situations. However, there appears to be need for some additional guidance and for some modification of existing policy.

The NCUA Board proposes:

- To help federal credit unions endangered by base or plant closings or similar shocks by liberalizing somewhat the agency's general policy against allowing a community federal credit union to include in its field of membership select groups outside the community boundaries but within the credit union's operational area. The proposed liberalization would be limited. It would be applicable only to an occupational, associational, or multiple-group federal credit union converting to a community charter as a result of a military base or plant closing, or significant cutbacks or downsizing. It would only allow the converting federal credit union to maintain service to the select groups in its field of membership prior to conversion and, for only so long as needed to ensure the credit union's continued viability, to add other select groups within the credit union's operational area after the conversion. Moreover, to ensure that this liberalized policy would be evenly and properly applied, a special administrative approval procedure would be put into place.
- To clarify NCUA policy on staff leasing arrangements. Where the requirements of existing policy are met, the employees leased to a firm listed in a federal credit union's field of membership may be added as a common bond expansion. Where those requirements are not met, the elements of a select group expansion to serve employees of the leasing company must be met. The proposal attempts to provide improved guidance in both these areas.
- To clarify NCUA policy on mergers, spin-offs and purchase and assumptions. Particularly in the context of base closings and plant shutdowns, there has been confusion in the credit union community in these areas.
- To clarify NCUA policy on the removal of groups from a federal credit union's field of membership. Recently, a number of credit unions have found that some of the groups in their fields of membership have ceased to exist. The proposal seeks to describe the credit unions' obligations in such situations.

Other suggestions for improvement in these areas are invited.

Select Group Expansions—the "Operational Area" Requirement

NCUA has traditionally focused multiple group field of membership additions around the "operational area" of a home or branch office. This policy was designed to ensure a satisfactory level of commitment and of service to the groups included in the field of membership, while also minimizing instances of overlap and deterring territorial stakeouts by overly aggressive credit unions. Notwithstanding some additional fixed asset cost and the fact that there have been some areas—primarily in rural parts of the country—into which federal credit unions were prevented from expanding, this policy has served the credit union community well.

Improved communication links that have been made available over the last few years and that likely will continue to be developed at an exponential rate require a rethinking of the necessity of strict adherence to past policy. Payroll deduction through electronic funds transfer and ATM networks, long available, are becoming generally accepted by the public. Fax and data transmission improvements now enable

many credit unions to carry out even the lending function quickly and efficiently despite many miles' separation from the member.

At the same time, credit unions, attempting to provide better low-cost service for their members, have been experimenting with variations on the traditional brick and mortar branch, owned and operated by a single institution. "Shared facilities" or "shared service centers"—brick and mortar operations owned by a group of credit unions through a credit union service organization and operated by a shared staff—are springing up around the country.

These developments suggest an updating of NCUA's "operational area" requirement may be appropriate. These changes are being proposed:

- A clarification that the "standard" operational area will be considered an area within a 25 mile radius of a home or branch office, but that this standard may be extended for rural areas.
- Added guidance on what constitutes a "home" or "branch" office. Though the proposal maintains much of the flexibility in existing IRPS 89–1 for evaluating individual facilities, "shared facilities" or "shared service centers" are specifically excluded from consideration as either a "home" or a "branch" office for purposes of meeting NCUA's operational area requirement, except in unusual circumstances—e.g., where a credit union is converting an existing home or branch office to a "shared facility."
- For state-chartered credit unions converting to federal credit unions, recognition that an established history of being able to serve multiple groups outside of the operational area of a "home" or "branch" office can justify permitting continued service to the groups without regard to the operational area requirement normally applicable to new federal multiple group charters. Future select group expansions would have to conform to all NCUA requirements applicable at the time, including the operational area limitation.

Low Income Credit Unions

Congress and the NCUA Board have long recognized that special efforts must be made for those who are attempting to use the credit union philosophy to help with the savings and credit needs of persons of truly small means. The proposal makes clear that the NCUA Board is committed to aid these efforts, and that NCUA will consider chartering and field of membership requests subject only to section 109 of the Federal Credit Union Act and safety and soundness requirements, to ensure that quality credit union service can be made available to those of limited means.

As part of this commitment, the proposal seeks to improve the process for evaluating new charters, the bulk of which are now for low-income credit unions. The proposed changes are designed to eliminate unnecessary burdens on the applicants and to speed up the decision process.

On a more technical level, the proposal updates the discussion in IRPS 89–1 to reflect the regulatory changes which have taken place in this area since the statement was issued.

Technical Updates and Clarifications

There are a number of relatively minor updates and clarifications in the proposal:

- Clarification that employees of different school systems and different governmental units do not have the same primary sponsor. Therefore, the addition of the employees of a particular school district by a federal credit union serving employees of an adjoining school district must be done under the select group addition procedures.
- Clarification that a federal credit union seeking to include an association in its field of membership may only include natural persons who pay dues and have voting rights or hold office in the association.
- Clarification that a federal credit union's field of membership must be updated and approved by NCUA when an association changes its bylaws to modify the scope of those eligible for membership.
- Modification of the existing IRPS 89–1 to facilitate inclusion of employees at office parks, industrial parks, shopping centers, and similar establishments. Experience suggests that the best reference point for requesting credit union service in these instances is not the individual employers but the leasing agent, who is on-site, is most likely to provide support, and has the most at stake in establishing a credit union presence in the facility. The proposal would modify existing policy to permit expansion to include all employees of such an establishment upon request from the leasing agent or similar authoritative figure. No overlap protection would be given to the expanding credit union and exclusionary clauses would be used to prevent injury to other credit unions serving a portion of these employees.
- Additional guidance on the safety and soundness concerns NCUA has with a credit union's using outside parties—insurance agents and car dealers, for example—to recommend select group expansions. The guidance, included as an appendix, is an update of a white paper which has been widely distributed to credit unions in the past.
- Clarification that NCUA may exclude from overlap protection state credit unions' with a field of membership so broadly defined as to include virtually everyone in a wide area.
- Clarification that NCUA must approve all prospective officials and management personnel of a newly chartered federal credit union during the first two years.
- Clarification of appeal rights for new charter applicants and for those federal credit unions denied a request for a field of membership expansion, merger, or spin-off.
- Clarification and amplification of the process for requesting additions to a federal credit union's field of membership.
- Inclusion of language to minimize potential conflicts of interest when adding certain professional organizations to the field of membership of a federal credit union.

Additional Subjects on Which Comment Is Requested

There are a number of additional possible changes or clarifications which are not included in the proposed IRPS but for which comment is requested.

Special Procedures for Permitting Select Group Expansion "in the Public Interest"

There has been considerable interest in establishing a middle ground between common bond and select group expansions to help credit unions serve groups without quality credit union service available. The Board requests comment on a limited "public interest" procedure by which NCUA might approve a federal credit union expansion to include a group outside the credit union's primary sponsor group and outside the operational area of a home or branch office, if such action is in the interest of making quality credit union service available to all eligible groups who wish to have it, and if doing so will not have a significant adverse effect on the safe and sound operation of credit unions. The federal credit union seeking expansion would have to provide:

- A list of all federal and state credit unions within a 25 mile radius of the group's location.
- A summary of the views of each credit union with a home or branch office within the 25 mile radius as to whether each has agreed to inclusion of the group in the applying credit union's

field of membership, and, if the credit union has refused, the reasons for the refusal.

• Copies of letters from each consenting credit union confirming agreements with the applying credit union's request.

• Either copies of letters from each credit union opposing the applying credit union's request or a summary of the unsuccessful efforts made to obtain such a letter.

• A statement, if necessary, of the reasons for granting the inclusion of the group in the applying credit union's field of membership notwithstanding the objection of one or more credit unions with service in the area.

• A justification for inclusion of the group in the applying credit union's field of membership. Included in the justification should be such matters as the relationship, if any, between the applying credit union's primary sponsor and the group; the service to be provided to the group and how that service is to be provided; the fact that the group is aware of and accepts the kind of service to be provided, supported by a letter from an responsible official of the group; and the effect inclusion of the group will have on the applying credit union.

"File and Serve" Procedure

One of the difficulties federal credit unions have had in reaching out to select groups has been the delay required between when the group requests service and when NCUA approves the expansion and the credit union can begin providing the service. The Board is therefore requesting comments on a "File and Serve" select group expansion procedure. It is envisioned that the procedure would permit CAMEL code 1 and 2 federal credit unions to approach new groups for credit union membership to sign up new members and to begin providing service prior to formal NCUA approval of the expansion. Such groups to be added could have not more than 50 potential members and must clearly be within the operational area of the credit union's home or a branch office. The credit union would be required to submit documentation to the appropriate regional director, similar to existing policy, within a specified time after service has begun. NCUA would then formally act to add the new select group to the credit union's field of membership. The procedure would permit credit unions to begin providing quality services much more quickly and efficiently. The Board invites comments on the appropriateness of such policy and suggested procedures for dealing with these expansions.

Policy To Help Foster Service to Low-Income Communities

The Board has considered two additional means for helping to enable federal credit unions to serve low-income communities:

• To permit credit union chartering and field of membership expansion based on associational groups formed for the sole purpose of making credit union service available to low-income persons, much as is now permitted for existing credit unions seeking to extend service to senior citizens.

• To permit occupational, associational, and multiple group federal credit unions to add to their fields of membership communities satisfying the "low income credit union" definition of § 701.32 of NCUA's rules and regulations.

The Board seeks comment on both of these approaches.

Pending Litigation

Currently, there are several lawsuits pending brought by banks challenging NCUA's interpretation of common bond requirements, particularly certain NCUA decisions with respect to the statutory limit on community charters and the permissibility of multiple group charters. These proposed changes in chartering policy are not being made in response to or because of these lawsuits. Since the proposed changes are basically a clarification of existing policies and practices, they will have no effect on the lawsuits. Moreover, NCUA believes its interpretations of section 109 of the Federal Credit Union Act are proper and will be upheld by the courts.

Regulatory Procedures

Regulatory Flexibility Act

The Regulatory Flexibility Act requires the NCUA to prepare an analysis to describe any significant economic impact a proposed regulation may have on a substantial number of small credit unions (primarily those under $1 million in assets). The changes to NCUA policy resulting from adoption of this proposed IRPS would not have a significant economic impact on a substantial number of small credit unions; and resulting changes would clarify existing policy rather than create new restrictions. Accordingly, the Board determines and certifies that this proposed rule does not have a significant economic impact on a substantial number of small credit unions and that a Regulatory Flexibility Act analysis is not required.

Paperwork Reduction Act

The information collection requirements contained in the proposed IRPS will be submitted to OMB for review under the Paperwork Reduction Act. Written comments and recommendations regarding the collection requirements should be forwarded directly to the OMB Desk Officer indicated below at the following address: OMB Reports Management Branch, New Executive Office Building, room 3208, Washington, DC 20503; Attn.: Gary Waxman.

Executive Order 12612

Executive Order 12612 requires NCUA to consider the effect of its actions on state interests. The proposed regulation applies only to federal credit unions and, therefore, will not affect state interests.

List of subjects in 12 CFR part 701

Chartering, Conversions, Credit union, Field of membership, Field of membership addition, Mergers.

By the National Credit Union Administration on July 15, 1993.

Becky Baker,

Secretary, NCUA Board.

Accordingly, NCUA proposes to amend 12 CFR part 701, supersede IRPS 89–1, and add IRPS XX–X as follows:

PART 701—ORGANIZATION AND OPERATIONS OF FEDERAL CREDIT UNIONS

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

Authority: 12 U.S.C. 1755, 1756, 1757, 1759, 1761a, 1761b, 1766, 1767, 1782, 1784, 1787, 1789, and 1798.

2. Section 701.1 is revised as follows:

§ 701.1 Federal credit union chartering, field of membership modifications, and conversions.

National Credit Union Administration practice and procedure concerning chartering, field of membership modifications, and conversions are set forth in Interpretive Ruling and Policy Statement XX–X—Chartering and Field of Membership Policy XX–X (IRPS XX–X). The IRPS is incorporated into this regulation.

3. IRPS 89–1 is superseded by the following IRPS XX–X.

Note: The following ruling will not appear in the Code of Federal Regulations.

Chapter 1—Federal Credit Union Chartering

Goals of NCUA chartering policy

NCUA's chartering policies are directed toward achieving three goals:

• To uphold the provisions of the Federal Credit Union Act concerning granting federal charters.

• To promote credit union safety and soundness.

• To make quality credit union service available to all eligible groups who wish to have it.

Who May Apply for a Federal Credit Union Charter

NCUA may grant a charter to any group where it finds:

• The group possesses a recognizable and appropriate common bond;

• The subscribers are of good character and are fit to represent the group; and

• Establishment of the credit union is economically advisable—i.e., it will be a viable institution and its chartering will not materially affect the interests of other credit unions or the credit union system.

Generally, these are the only criteria NCUA will look to. In unusual circumstances, however, NCUA may consider other factors, such as other federal law or public policy, in deciding if a charter should be approved.

Common Bond

Congress has recognized three types of federal credit union common bonds—occupational, associational, and community. A federal credit union may also consist of a combination of occupational and associational groups. For example, NCUA may charter a federal credit union consisting of employees of a local school district and members of a church group.

The Federal Credit Union Act and NCUA recognize that individual groups have their own common bond. All of the groups belonging to one particular credit union (i.e., listed in section 5 of the credit union's charter) make up the credit union's field of membership. If the charter is granted, the federal credit union will only be able to grant loans and provide services within the groups defined in the charter.

If the federal credit union later wishes to add persons to its field of membership, it must submit a charter amendment request to NCUA in accordance with the procedures set forth in Chapter 2.

• *Occupational Common Bond*

NCUA has limited this common bond to employment by the same enterprise. Persons sharing this common bond may be geographically dispersed.

A proposed federal credit union whose primary sponsor is a particular corporation may include the employees of that corporation who work at another location, employees of the corporation who are paid from or are supervised from the headquarters location, such as sales persons or sales agents who work at a number of locations, employees of a division or majority-owned subsidiary of the parent corporation regardless of location, and employees of a related company (such as persons working regularly for an enterprise under contract and possessing a strong dependency relationship with the sponsoring enterprise). Each group to be served (e.g., majority-owned subsidiaries, and contractors) must be separately listed.

All occupational common bonds will include a geographic definition: e.g., "employees, officials, and persons who work regularly under contract in Miami, Florida for ABC Corporation or any of these majority-owned subsidiaries. * * *" Other acceptable geographic definitions are: "employees of * * * who are paid from * * *" or "employees of * * * who are supervised from * * *". To the maximum extent possible, setting geographic definitions by changeable corporate or division boundary—e.g., "employees of Federal Reserve District 6"—is to be avoided.

The employer may also be included in this common bond—e.g., "ABC Corporation and its subsidiaries." The employer group will be defined in the last clause describing the group.

• Sample Fields of Membership

Some examples of occupational group definitions are:

• "Employees of the Scott Manufacturing Company who work in Chester, Pennsylvania. * * *" (common bond—same employer)

• "Employees and elected and appointed officials of municipal government in Parma, Ohio. * * *" (common bond—same employer)

• "Employees of Johnson Soap Company and its majority-owned subsidiary, Johnson Toothpaste Company, who work in Augusta and Portland, Maine. * * *" (common bond—parent and majority-owned subsidiary company)

• "Personnel of fleet units of the U.S. Navy home ported at Mayport, Florida. * * *" (common bond—same employer (U.S. Navy))

• "Department of Defense civilian and U.S. Army personnel who work or are stationed at, or are attached or assigned to Fort Belvoir, Virginia, or those who are retired from, or their dependents or dependent survivors who are eligible by law or regulations to receive and are receiving benefits or services from, that military installation. * * *" (common bond—same employer)

• "Employees of those contractors who work regularly at U.S. Naval Shipyard in Bremerton, Washington. * * *" (common bond—employees of contractors)

• "Employees, doctors, medical staff, technicians, medical and nursing students who work at Boston Medical Center at the locations stated:. * * *" (common bond—same employer)

• "Employees and teachers who work for the School District Number 3 in Austin, Texas. * * *" (common bond—same employer)

Some examples of insufficiently defined occupational groups are:

• "Employees of engineering firms in Seattle, Washington." (No common employer; names of firms must be stated; however, may be the basis for a multiple group.)

• "Persons employed or working in Chicago, Illinois." (No common employer; names of firms must be stated.)

• "Persons working in the entertainment industry in California." (No common employer; names of firms must be stated.)

• "Persons employed by the Atlanta, Georgia and the Jacksonville, Florida Boards of Education. * * *" (No common employer; not same operational area.)

• *Associational Common Bonds*

NCUA limits this common bond to groups consisting primarily of individuals (natural persons) who participate in activities developing common loyalties, mutual benefits, and mutual interests.

Qualifying associational groups must hold meetings open to all natural person members at least once a year, must sponsor other activities which clearly demonstrate that the members of the group meet and interact frequently to accomplish the objectives of the association, and must have an authoritative definition of who is eligible for membership—usually, this will be the association's charter and bylaws.

The clarity of the associational group's definition and compactness of its membership will be important criteria in reviewing the application. NCUA policy is to organize associational charters at the lowest organizational level which is economically feasible.

Associations formed primarily to obtain a credit union charter do not have a sufficient associational common bond; nor do associations based on a client-customer relationship—an

insurance company and its customers or a buyer's club and its members, for example.

NCUA charters associational federal credit unions consisting of natural person members. Associational members must be natural persons, pay dues, and have voting rights or hold office as prescribed in the association's charter and bylaws. In certain instances, NCUA will also allow non-natural persons (e.g., corporate sponsor or organizations of members) to be eligible for membership. Moreover, the common bond extends only to the association's members. The employees of a member of a local chamber of commerce, for example, do not have a sufficiently close tie to the association to be included. A proposal to include these persons among those to be served by the federal credit union will be considered as a multiple-group charter application.

All associational common bonds will include a definition of the group that may be served based on the effective date of the association's charter and bylaws and a geographic limitation—unless the charter or bylaws of the associational group limits the geographical area—e.g., "Members of the ABC Association living or working in New York, New York, who qualify for membership in accordance with its charter and bylaws in effect on January, 21, 1989."

If the association's charter and bylaws are changed subsequent to the effective date stated in the field of membership, the credit union must submit the revised charter or bylaws for NCUA's approval prior to serving members of the association added as a result of the change. This type of field of membership amendment will require following select group addition procedures discussed in Chapter 2.

Student groups, including students in a trade school curriculum, constitute an associational common bond and may qualify for a federal credit union charter. Since such groups usually do not have a formal charter, there is no requirement for these groups to provide a charter.

Labor union groups also constitute an associational common bond. Some labor unions serve members who work regularly for several employers, but others have members who work for only one employer. In these latter cases, overlap protection may be provided if a substantial portion of the company's employees are served by the credit union.

Homeowner associations, tenant groups, electric co-ops, consumer groups and other groups of persons having an "interest in" a particular cause and certain consumer cooperatives may be eligible to receive a federal charter. However, they must make a strong showing of common activities which clearly demonstrate that the group meets and interacts frequently to accomplish the objectives of the association. Furthermore, they must provide clear evidence of economic viability. Newly-organized associations must make a similar showing. Experience has shown that a new group's efforts are best focused on solidifying member interest before attempting to offer credit union service.

The association itself may also be included in the field of membership—e.g., "ABC Association."

- Sample Fields of Membership

Some examples of associational group definitions are:

- "Regular members of Locals 10 and 13. IBEW, Miami, Florida, who qualify for membership in accordance with their charter and bylaws in effect on May 20, 1989."
- "Members of the Hoosier Farm Bureau who live or work in Grant, Logan, or Lee Counties of Indiana, who qualify for membership in accordance with its charter and bylaws in effect on March 7, 1980."
- "Members of the First Baptist Church Topeka, Kansas."
- "Members of the Shalom Congregation in Chevy Chase, Maryland."
- "Regular members of the Corporate Executives Association, located in Westchester, New York, who live or work in Westchester, Rockland, and Suffolk Counties in New York, who qualify for membership in accordance with its charter and bylaws in effect on December 1, 1985."
- "Members of the Northern Michigan Electric Co-op located in Marquette, Michigan." Some examples of insufficiently defined associational group definitions are:
- "Members of military service clubs in the State of New Mexico." (No single associational tie; specific clubs and locations must be named; may be considered as multiple group.)
- "Veterans of U.S. military service." (Group is too broadly defined; no formal association of all members of the group.)

Some examples of unacceptable associational common bonds are:

- "ABC Buyers Club." (An interest in purchasing only does not meet associational standards.)
- "Customers of ABC Insurance Company." (Policyholders or customer/client relationships do not meet associational standards.)

- Community Common Bonds

Congress has required that a credit union charter based on a tie to a specific geographic location be limited to "a well-defined neighborhood, community, or rural district." NCUA policy is to limit the community to a single, compact, well-defined area where residents commingle and interact regularly.

NCUA recognizes two types of affinity on which a community common bond can be based: residence and employment. Businesses and other legal entities within the community boundaries may also qualify for membership. Given the diversity of community characteristics throughout the country and NCUA's goal of making credit union service available to all eligible groups who wish to have it, NCUA has established the following common bond requirements (see also appendix G for further discussion):

- The geographic area's boundaries must be clearly defined; and
- The charter applicant must establish that the area is recognized by those who live and/or work there as a distinct "neighborhood, community, or rural district."

A typical definition of a community-based common bond is: "Persons who live or work in, and businesses and other legal entities located in ABC, the area of XYZ City bounded by Fern Street on the north, Long Street on the east, Fourth Street on the south, and Elm Avenue on the west."

If the community is also a recognized legal entity, it may also be included in the field of membership—e.g., "DEF Township, GHI County, Kansas."

- Sample Fields of Membership

Some examples of community common bond definitions are:

- "Persons who live or work in Green County, Maine."
- "Persons who live or work in and businesses and other legal entities located in Independent School District No. 1, DuPage County, Illinois."
- "Persons who live or work within a ten-mile radius of the main post office in Walnut, Illinois" (Rural areas only.)

Some examples of insufficiently defined community common bond definitions are:

- "Persons who live or work within and businesses located within a ten-mile radius of Washington, DC." (Not a recognized neighborhood, community, or rural district.)
- "Persons who live or work in the industrial section of New York, New York." (Not a recognized neighborhood, community, or rural district.)

• Community Service Area

The service area of a community federal credit union is the area defined in its charter, usually with north, east, south, and west boundaries.

• *Multiple group charters*

NCUA may charter a federal credit union to serve a combination of distinct, definable occupational and/or associational groups. However, NCUA will not charter as a single federal credit union multiple groups which include a group with a community common bond.

Persons with different employers but who work in the same or a similar occupation will not be considered as having a single common bond. For example, employees of two independent school districts will not be considered as having a single common bond. However, these disparate groups, identified and listed separately, may serve as the basis of a multiple group field of membership.

In addition to general chartering requirements, these special requirements pertaining to multiple group applications must be satisfied before NCUA will grant such a charter:

• Each group to be included in the proposed field of membership of the federal credit union must have its own occupational or associational common bond.

• Except for employee groups in the same industrial park, shopping center or similar facility, each group must individually request inclusion in the proposed federal credit union's charter.

• The proposed credit union must possess the financial resources and management capability to provide quality credit union service to each group. Evidence of this capacity must be included in the business plan.

• Each group must be within the "operational area" of the home or branch office of the proposed federal credit union. The "operational area" of a credit union is an area surrounding the credit union's home and each branch office that, as determined by NCUA in its discretion, can reasonably be served by that office. Normally, NCUA will consider the area within a 25 mile radius of the home or branch office as the operational area. With rural populations, however, the area the credit union can reasonably serve may be somewhat broader.

Whether a credit union facility qualifies as a "home" or "branch" office will depend on the circumstances of each particular case. On the one hand, a facility which is directly and solely owned by, leased by, or donated to a credit union, and has a credit union employee regularly on site who accepts payment on shares and disburses loans, is clearly a home or branch office. On the other hand, an ATM or similar cash disbursing machine is not.

Between these two extremes are a host of arrangements—e.g., shared ownership, full service facilities; individually owned facilities with shared staff; and facilities owned through a CUSO individually or jointly with other credit unions or other financial institutions (sometimes called "shared facilities" or "shared service centers"). Recognition of each of these intermediate cases as a home or branch office will take into account all relevant circumstances, including:

• The demonstrated commitment on the part of the credit union to serve the group in that area for the long term.

• The likelihood that the group will perceive that commitment.

• The adequacy of the facility and staff in relation to the needs of the group to be served.

• The desires of the group.

• The availability of other credit union service.

"Shared service centers" or "shared facilities" generally will not be considered "branches" for the purposes of field of membership expansions. Regional directors may make exceptions, considering a pertinent factors—for example, for credit unions which are converting an existing branch to a shared facility. It is not NCUA's intention to force a credit union to maintain an unprofitable branch just to enable select group expansions around that branch.

All persons within the group who work (for an occupational group) or meet regularly (for an associational group) within the operational area are "within" the operational area. The following are also "within" the operational area: employees of a firm who are paid or supervised from a place or employees of a firm or members of a group which has its headquarters at a place within the operational area; and all employees or members of a group which has a majority of its employees or members working within the operational area.

• Sample Field of Membership

An example of a multiple group field of membership is: "The field of membership of this federal credit union shall be limited to the following:

1. Employees of DuPont Corp. who work in Wilmington, Delaware;

2. Partners and employees of the law firm of Smith & Jones who work in Wilmington, Delaware;

3. Members of the GHI Association who live in Wilmington, Delaware, and qualify for membership in accordance with its charter and bylaws in effect on December 31, 1992.

• Additional Documentation

For multiple group charters, the applicable regional director will need the following, in addition to what is required for new charters generally:

• For each group seeking to be included in the credit union's field of membership, the credit union must provide a letter from the group, on the group's letterhead stationery and signed by an official representative of the group, containing this information:

• The fact that the group wants to obtain service from the requesting credit union and the extent to which the group supports the credit union—e.g., by providing access to its employees or members via payroll deduction, by permitting use of employee or members newsletter, etc.

• The number of employees or members in the group.

• The proximity to the credit union's closest office, either home or branch.

• The name of any credit union to which the group currently has access.

• The group's headquarters location and all other work locations the credit union is proposing to serve.

• If the group is eligible for membership in another credit union, documentation must be provided to support inclusion of the group under the standards set forth in the "Overlaps" section of this chapter.

• The credit union must submit sufficient information to support the conclusion that the group is in fact within the operational area of its home or a branch office.

• *Other persons sharing common bond*

A number of persons by virtue of their close relationship to a common bond group may be included, at the charter applicant's option, in the field of membership:

• "Spouses of persons who died while within the field of membership of this credit union".

• "Employees of this credit union".

• "Persons retired as pensioners or annuitants from the above employment".

• "Members of their immediate families".

• "Volunteers".

• "Organizations of such persons".

"Members of their immediate families" may be generally defined as deemed appropriate by a federal credit union when including this group among those to be served. To be made effective,

however, the federal credit union's board of directors must approve the definition by resolution, and include it in Article XVIII, section 2, of its bylaws. NCUA approval is not necessary.

Volunteers, by virtue of their close relationship with a sponsor group, may be included. Examples include volunteers working at a hospital or church.

Under Article II, section 5, of NCUA's Standard Bylaws, if a member leaves the field of membership, standard member services are terminated. However, the board of directors may, by resolution, set forth the circumstances under which a member may maintain membership. This option is commonly referred to as the "once a member, always a member" bylaw provision.

Character and fitness of subscribers

The Federal Credit Union Act requires that seven or more natural persons must present, to NCUA for approval, a sworn organization certificate stating at a minimum:

- The name of the proposed federal credit union.
- The location of the proposed federal credit union and the territory in which it will operate.
- The names and addresses of the subscribers to the certificate and the number of shares subscribed by each.
- The initial par value of the shares.
- The proposed field of membership, specified in detail.
- The term of the existence of the corporation, which may be perpetual.
- The fact that the certificate is made to enable such persons to avail themselves of the advantages of the Federal Credit Union Act.

These seven or more persons will be the proposed federal credit union's "subscribers." False statements on the organization certificate may be grounds for federal criminal prosecution.

The Act also requires NCUA to satisfy itself as to the "general character and fitness" of these subscribers. The subscribers, prospective officials and employees, therefore, will be the subject of credit and background investigations.

Economic advisability

Before chartering a federal credit union, NCUA must be assured that the institution will be viable and that it will not materially affect existing state or federal credit unions. This economic advisability inquiry has become especially important since 1970, when Congress assigned NCUA the obligation to establish a deposit fund insuring credit union shares and to preserve that fund.

NCUA will conduct an independent on-site investigation for each charter application to assure itself that the proposal can be successful. In general, the success of any credit union depends on: (a) The depth of the members' support; (b) the character and fitness of management; and (c) present and projected market conditions.

- Member Support

While NCUA has not set a minimum size field of membership for chartering a federal credit union, experience has shown that a credit union with under 500 potential members generally is unlikely to succeed. A charter applicant with a proposed field of membership of under 500 will have to demonstrate convincing support for the credit union. For example, in an occupational group a commitment for significant long-term support from the employer must be in evidence.

The group's size is only of help if members participate in the credit union. The charter applicant must show that a substantial percentage of the group's members will join the credit union and use its services. Survey results must be based, at a minimum, on a sampling of 250 potential members. In particular instances, especially where the common bond is broadly defined or newly established, NCUA may require a larger sampling.

- Proposed Management's Character and Fitness

The applicant must provide a list of the persons who will serve as officials and employees. NCUA will conduct a credit and background (including criminal record) investigation on each of the proposed federal credit union officials and employees. The costs of any such investigations will be borne by the subscribers.

NCUA will also need assurance that the management team will have the requisite skills—particularly in leadership and accounting—and the commitment to dedicate the time and effort needed to make the proposed federal credit union a success.

- Present and Future Market Conditions

The ability to compete in the marketplace and to adapt to changing market conditions is key to the survival of any enterprise, and a crucial part of that is the ability to plan well. NCUA, therefore, requires an applicant to submit a business plan based on realistic and supportable projections and assumptions, including, as a minimum, these elements:

- Mission statement.
- Analysis of market conditions—economic prospects for the group availability of financial services from credit unions, banks, S&Ls.
- Summary of survey results.
- Financial services needed/desired.
- Financial services to be provided.
- How/when services are to be implemented.
- Staffing of credit union and credentials of key employees.
- Physical facility—office, equipment.
- Type of recordkeeping system.
- Budget for 1st, 2nd and 3rd year.
- Semiannual pro forma financial statements for 1st, 2nd and 3rd year, including assumptions—e.g., loan and dividend rates.
- Goals for number of members.
- Goals for operating independently.
- Source of funds to pay expenses during initial months of operation.
- Written policies (lending, investments, funds management, capital accumulation).
- Goals for dividends, generation of resources.
- Plan for continuity—directors, committee members.
- Evidence of sponsor commitment if subsidies are critical to success of the federal credit union—evidence may be in the form of letters, contracts, or any other such document on which the proposed federal credit union can substantiate its projections.

NCUA expects that the subscribers and proposed officials will understand and support the business plan submitted.

Overlaps

(This discussion pertains to new charters as well as existing charters.)

- In General

An overlap exists when a group of persons is eligible for membership in two or more credit unions, including state charters. General policy requires that every reasonable effort be made to avoid an overlap. Ideally, a group of persons should be included in the field of membership of only one credit union.

Both new and existing credit unions are obligated to investigate the possibility of an overlap prior to submitting an application for a new charter or adding a group by surveying the prospective field of membership and contacting the state credit union supervisor and the local credit union league or trade association.

If and when an overlap situation does arise, officials of the involved credit unions must attempt to work out the overlap problem between or among themselves. If the matter is resolved informally, the applicant must submit a letter to that effect from the credit union

whose field of membership already includes the subject group.

If no resolution is possible, an application for a new charter or expansion may still be submitted, but must also include information regarding the overlap and document attempts at informal resolution. In any event, the applicant federal credit union must clearly indicate why a new credit union or expansion is being sought and why existing and potential members of the current credit union will support and join a newly chartered or expanded federal credit union.

When resolution of an overlap problem is not forthcoming, and other circumstances warrant an overlap, then an overlap may be permitted. Among the circumstances which may justify an overlap are:

- Failure of the original credit union to provide quality service to the group.
- Limited participation by members or employees of the group in the original credit union after the expiration of a reasonable period of time.
- Incidental overlap (the group of persons in question is so small as to have no material effect on the original credit union).

In reviewing the overlap, the regional director will consider the nature of the problem, efforts made to resolve the problem, financial effect on the overlapped credit union, the desires of the group(s), the opinion of the state credit union supervisor, if applicable, and other interested parties, and the best interests of the involved potential of current members.

Potential overlaps of a state credit union's field of membership by a federal credit union will generally be analyzed in the same way as if two federal credit unions were involved. However, where a state credit union's field of membership is so broad as to include virtually everyone in a wide area, NCUA may exclude that state credit union from overlap protection altogether. Prior to making that decision, a regional director will consult the credit union and the state supervisor; any decision by the regional director will be made in writing and sent to the credit union and the state supervisor.

Generally, NCUA will not protect associational and community charters from overlaps with occupational charters. However, should the proposed overlap pose significant safety and soundness concerns, NCUA may provide overlap protection for any type charter.

Some situations may not justify approval of a requested overlap. For example, if the requesting credit union offers certain specialized services not offered by the original credit union (such as credit cards, ATMs, and IRAs), the extra services alone may not justify the overlap. Also, proximity, by itself, does not warrant approval of an overlap. A federal credit union in Chicago, Illinois, may not have a convincing argument, based on geography alone, that a select group also located in Chicago would be better served by it than by the select group's headquarters credit union located in Dallas, Texas.

From an overlap prevention perspective, new charter applicants and every occupational or associational group which comes before the regional director for affiliation with an existing federal credit union must advise in writing whether the group is included within the field of membership of any other credit union. This requirement will alert the regional director to possible overlap situations before they occur. Thus, most potential field of membership conflicts can be avoided. If cases do arise where the assurance given to a regional director concerning unavailability of credit union service turns out later to be inaccurate, the misinformation is grounds for removal of the group from the federal credit union's charter.

- Overlap Issues as a Result of Corporate Restructuring

A federal credit union's field of membership will always be governed by the group descriptions contained in section 5 of its charter. Where a sponsor organization expands its operations internally, by acquisition or otherwise, the credit union may serve these new entrants to its field of membership if they are part of a group described in section 5. Where acquisitions are made which add a new wholly-owned or majority-owned subsidiary, the group cannot be served until the subsidiary and its location are individually listed in the field of membership.

However, overlaps may occur as a result of restructuring of the parent corporation. When corporate restructuring occurs, affected credit unions should identify to NCUA which groups they intend to serve after the restructuring. In addition, credit unions should submit to NCUA correspondence from the parent corporation explaining the restructuring and providing information regarding the new corporate structure.

The corporate structure should identify divisions and subsidiaries, whether they are majority-owned or not, and the location and number of employees at each location. Credit unions affected by resultant overlaps are required first to attempt to resolve overlap issues among themselves.

NCUA will not automatically grant an overlap, but will consider an overlap on a case-by-case basis after considering the will of the sponsor, the best interests of the members, safety and soundness, the significance of the overlap, and any other relevant factors.

Overlaps may also occur as a result of the parent corporation's merger. NCUA's general policy of avoiding overlaps applies to overlaps by corporate mergers as well. Affected credit unions must make every reasonable effort to identify up front and address the overlap issue raised by the parent corporation mergers and must attempt to resolve any differences among themselves. Ideally, the division of the field of membership between affected credit unions will be logical as it relates to the new corporate structure. In those rare cases which require NCUA's intervention, all attempts to resolve the issues must be fully documented by the affected credit union.

Affected credit unions should consider consolidation (merger), as a possible alternative to dividing up the field of membership, particularly if safety and soundness concerns exist or future viability is in question. A federal credit union which has a broad based field of membership generally has a better chance of survival when a sponsor restructures or closes.

While neutral, NCUA will make the final decision regarding field of membership amendments, taking into account the credit unions' agreements, safety and soundness concerns or other issues which may adversely impact upon the National Credit Union Share Insurance Fund. NCUA will be flexible when working with credit unions affected by parent corporation mergers.

Exclusionary clauses

(This discussion pertains to new charters as well as existing charters.)

In certain instances, exclusionary wording prohibiting certain overlaps may be used to help define the field of membership of a federal credit union. Use of exclusionary wording should be avoided if possible.

Generally, a thorough investigation of a charter application or an application for a field of membership expansion will disclose the situations where other credit union service is available. The field of membership should be written so that only the specific locations where credit union service is not currently available are allotted to the new charter or to the federal credit union seeking the field of membership addition.

However, certain cases exist where a specific recitation of work locations (for an occupational group) or member locations (for an associational group) is not feasible. Corporations or associations with widely dispersed employees or members fall into this "exception" category. In these special cases, exclusionary wording could be used to provide some limits on an extensive field of membership.

An example might be employees of XYZ Corporation where XYZ Corporation is a relatively new company which specializes in acquisitions and divestitures and its corporate makeup is constantly changing. In this case the field of membership could be described as "employees of XYZ Corporation who work in the United States, except employees eligible for membership in another occupational-type credit union serving an employee unit of XYZ Corporation."

Another situation which may require exclusionary wording is the chartering of a new community credit union or the field of membership conversion of an existing occupational or associational credit union to a community charter. Although investigation may show that the residents of the proposed area of service by and large do not have access to a credit union, other credit unions wishing to remain autonomous entities may be operating in the community.

If the regional director determines that avoidance of overlap is warranted, an exclusionary clause may be inserted in the community credit union's field of membership. Examples of exclusionary wording are as follows:

- Persons who reside or work in Portland, Maine, except members of groups listed in the field of membership of ABC Employees Federal Credit Union or Portland City Employees Credit Union as of (the date of this charter).
- Persons who reside or work in Hilo, Hawaii, except employees of Hilo Sugar Company and the United States Government.

The exclusionary language in a community charter's field of membership ordinarily applies only to "primary" members of existing occupational-type credit unions. "Primary" is defined as the basic occupational or associational affinity to the field of membership defined in Section 5 of the charter.

In the first example above, assuming that the two excluded credit unions have single sponsor fields of membership, only employees of ABC Company and of the City of Portland would be excluded. Family members (or other secondary or derivative members) are not excluded.

Also, unless special circumstances warrant, only occupational and multiple group fields of membership will be protected by the exclusion. That is, associational and community credit unions will not normally be afforded protection from overlap.

Finally, if the exclusionary clause is dated, only those employee groups in the protected credit union's field of membership on the date the exclusion was granted are denied membership eligibility in the credit union subject to the exclusionary clause. Thus, members of groups added by an occupational credit union subsequent to the establishment of a community charter subject to an exclusionary clause are eligible for membership in the community credit union.

In the second example above, which is written very specifically, dating the exclusion clause is unnecessary.

Although use of exclusionary clauses by NCUA will normally be on an exception basis only, regional directors may, at their discretion, apply exclusionary wording to a credit union's field of membership. However, the clauses shall not be used in lieu of a thorough investigation of the availability of existing credit union service by a charter applicant or an applicant for a field membership addition. Furthermore, it is NCUA's intent to use exclusionary clauses only to increase the vitality and strength of the credit union system, not to prevent people from obtaining credit union service.

Appropriateness of proposed Federal credit union name

It is the responsibility of the federal credit union organizers to ensure that the federal credit union applicant's name or federal credit union name change does not constitute an infringement on the name of any corporation in their trade area. Prior to granting a charter or approving a name change, NCUA will ensure that the credit union's name:

- Is not already being used by another federal credit union;
- Will not be confused with NCUA or another federal or state agency, or with another credit union; and
- Does not include inappropriate language.

The last three words in the name of every credit union chartered by NCUA must be "Federal Credit Union."

Widely dispersed associational charters

NCUA policy is to charter associational federal credit unions at the lowest organizational level which is economically feasible. This does not preclude the granting of associational charters with widely dispersed memberships. NCUA may grant such charters after scrutinizing the adequacy of the appplicant's common bond. NCUA may, in its discretion, require that the proposed field of membership be narrowed before granting a new charter. Expansion to include a larger portion of the association's members may be allowed at a later time, if appropriate.

Also, as with any widely dispersed group, overlap issues are likely to arise, either at the time of or subsequent to chartering. NCUA will consider the effect that granting a charter with such a group in its field of membership would have on any number of existing credit unions. In addition, an associational credit union with a widely dispersed membership may expect overlaps to be granted to other credit unions in the future, particularly at the local level.

In recognition of these unique circumstances, NCUA follows a separate internal procedure for associational charter applications for associations with proposed fields of membership of 500 or more persons which cross NCUA regional boundaries. NCUA's Director of Examination and Insurance and all NCUA regional directors with any of the association's members located in their region must vote on the charter application. A majority vote is required for approvals; tie votes are referred directly to the NCUA Board for decision: denials are appealable to the Board.

Industrial parks, shopping centers and similar groups

A federal charter may be available to persons working in a particular industrial park, shopping mall, or office complex either as a community or as a multiple group charter.

If the multiple group option is selected a request from the complex owner, leasing agent, or similar authoritative official must be submitted. The leasing agent or similar official must provide information regarding credit union service available to any segment of the proposed federal credit union. Exclusionary clauses, protecting existing credit unions, will be used on a case-by-case basis.

In those cases where each employer group in the complex has not specifically requested credit union service, NCUA may exercise broad discretion in addressing overlaps with other credit unions and any request from a group to be removed from the field of membership.

If the community option is selected, the industrial park, shopping center, or office complex must meet the standards for community charters.

The following wording will be used to define groups added under this procedure:

Employees of the following businesses who regularly work in the Plaza Mall, New Orleans, Louisiana:
[List businesses]

Employee leasing companies

In general, employee leasing companies, which employ persons and lease them, with insurance coverage and other benefits, to others under long-term contracts, will be treated as any other group eligible to become part of a multiple-group charter. When a leasing company is included in a credit union's field of membership, the company must identify each client and work location served by the leasing company. The following wording will be used to define such groups:

Employees of (name of leasing company) who work regularly at the following businesses at the locations specified: (followed by a list of the name and location of the businesses supplied with employees by the leasing company.)

This type of group is not permissible if the leasing company only provides temporary employees with no extended relationship to the client company, i.e. temporary secretaries. This does not preclude regular employees of a temporary employment firm, such as Kelly Services or Manpower, being added to a credit union's field of membership as a select group.

Specially designated Federal credit unions

Some credit unions are recognized and designated by NCUA to perform certain functions different from those available to federal credit unions in general. An applicant wishing to be considered for such a designation may, at the time of charter application, provide the additional information NCUA needs. NCUA will then consider the designation and the charter application together. The designation can also be applied for at a later time if all the requirements are met.

• Low-Income Credit Unions

A low-income credit union is defined, in § 701.32 of the NCUA rules and regulations, as one where a majority of its members either earn less than 80 percent of the average for all wage earners, as established by the Bureau of Labor Statistics, or whose annual income falls at or below 80 percent of the median household income for the nation. In documenting its low-income membership, a credit union that serves a geographical area where a majority of residents fall at or below the annual income standard is presumed to be serving predominantly low-income members.

A credit union designated by NCUA as serving predominantly low-income members has greater flexibility in accepting non member deposits insured by the National Credit Union Share Insurance Fund.

NCUA recognizes that special efforts are needed to help make credit union service available to persons in these communities. Accordingly, the NCUA Board will consider chartering and field of membership issues subject only to section 109 of the Federal Credit Union Act and safety and soundness needs, to ensure that quality credit union service is available to persons in these communities.

The credit union charter applicant meeting the definition of low-income credit union should forward a separate request for low-income designation at the time the charter application is submitted, along with appropriate documentation. NCUA will consider the low-income designation simultaneously with the charter application. A charter applicant's low-income designation will be based on its primary field of membership and not on its actual members as is the practice for operating credit unions.

The proposed low-income credit union may also participate in special funding programs such as the Community Development Revolving Loan Program for Credit Unions if it is involved in the stimulation of economic development and community revitalization efforts. A credit union participating in the revolving loan program is also eligible for technical assistance. The requirements for participation in the revolving loan program are set forth on part 705 of the NCUA rules and regulations. Only operating credit unions are eligible for participation in the revolving loan program.

A low-income credit union charter applicant may contract with a third party to assist in the chartering process. Even after the charter is granted, a low-income credit union may contract with a third party to provide necessary management services. Such contracts should be for a duration of one year subject to renewal. However, within three years of commencement of credit union operations, the credit union should no longer require such services.

A low-income credit union that has a community common bond should include the following language in its field of membership:

"Persons who live in (the target area); persons who regularly work, perform volunteer services, or participate in associations headquartered in (the target area); persons participating in programs to alleviate poverty or distress which are located in (the target area); incorporated and unincorporated businesses located in (the target area) or maintaining a facility in (the target area); and organizations of such persons."

• Corporate Federal Credit Unions

A corporate credit union is defined as one that:

• Is operated primarily for the purpose of serving other credit unions.

• Is designated by the NCUA as a corporate credit union.

• Limits natural person members to the minimum required by state or federal law to charter and operate the credit union.

Corporate credit unions operate under and are governed by different standards than natural person credit unions. These standards are set forth in part 704 of NCUA's rules and regulations.

Supervision of corporate credit unions is the responsibility of NCUA's Office of Examination and Insurance. All applications for federal corporate charters as well as requested changes to section 5 of the charter of existing corporate federal credit unions should be directed to that office.

Organizing a Federal credit union

Federal credit unions are organized by persons who donate time and resources and are responsible for determining the interest, commitment, and advisability of forming a federal credit union. The organization of a federal credit union takes considerable planning and dedication in order to ensure the success of the new credit union.

Persons interested in organizing a federal credit union should contact the NCUA regional office serving the state in which the credit union will be organized or their state credit union league. Lists of NCUA offices and trade associations are attached in the appendices. NCUA will provide information to groups interested in pursuing a federal charter and will assist them in obtaining an organizer.

A credit union organizer may be a trade association representative, or a volunteer with training and experience in chartering new federal credit unions. The functions of the organizer are to provide direction, guidance, and advice on the chartering process. The organizer also provides the group with information about a credit union's

functions and purpose as well as technical assistance in preparing and submitting the charter application. Close communication and cooperation between the organizer and the group members are critical to the chartering process.

• Steps to be Followed by Organizers

It is advisable for the organizers to obtain from NCUA written tentative approval of the proposed field of membership early in the process.

Once the field of membership has been tentatively approved, and the organizer is satisfied the application has merit, the organizer should conduct a preliminary organizational meeting to elect 7 to 10 persons to serve as subscribers. The subscribers should locate willing individuals capable of serving on the board of directors, credit committee, supervisory committee, and as chief operating officer/manager of the proposed credit union.

The organizers and subscribers should then complete an NCUA 4012, Report of Official or Employee, for each prospective board member, credit and supervisory committee member, and employee. The organizers must review each of the NCUA 4012s for elements—bankruptcies, indictments, etc.—that would prevent the prospective official or employee from serving in an official capacity. The organizers should also inform the proposed officials and employees that credit reports will be obtained and background investigations done on each of them and that the reports must demonstrate their ability to effectively handle financial matters.

The NCUA 4012s should be submitted to NCUA as early as possible to enable the necessary credit reports and background checks to be obtained well in advance of the anticipated charter date. The subscribers will be required to pay the direct costs of such credit reports and background checks.

The organizers and subscribers should arrange for any meetings necessary to develop the business plan discussed earlier in this chapter and to complete the forms and other supporting documentation for submittal to NCUA. Each of the required documents is discussed more fully later in this chapter.

The organizers and subscribers must apply for insurance of member accounts. The Certificate of Resolutions (NCUA 9501) will be executed by the prospective chief executive officer and recording officer. Following action on this issue, the prospective chief executive officer and chief financial officer will execute the Application and Agreements for Insurance of Accounts (NCUA 9500). These documents should be provided to NCUA as part of the charter application.

Subsequent organizational meetings may be held to discuss the progress of the charter investigation, to announce the proposed slate of officials, and to respond to any questions posed at the meeting.

• Steps to be Followed by NCUA

Once NCUA receives a complete charter application package, an acknowledgment of receipt will be sent to the organizers, and a staff member will be assigned to perform an on-site contact with the proposed officials and others having an interest in the proposed federal credit union.

The staff member will review the application package and verify its accuracy and reasonableness. The staff member will inquire into the financial management experience, suitability and commitment of the proposed officials and make an assessment of economic advisability. The staff member will assist the subscribers in the proper completion of the Organization Certificate, NCUA 4008. By assisting in the completion of the Organization Certificate, the staff member may expedite the process without indicating his or her endorsement of the charter application.

The staff member will thoroughly analyze the prospective credit union's business plan for realistic projections, attainable goals, and time commitment. Any concerns should be reviewed with the organizers and discussed with the prospective credit union's officials.

The staff member will then make a recommendation to the regional director regarding the charter application. His or her recommendation may include specific provisions to be included in the Letter of Understanding and Agreement discussed later in this chapter.

If NCUA approves the charter application, the subscribers, as their final duty, will elect the board of directors and credit committee of the proposed federal credit union. The new board of directors will then appoint the supervisory committee. The charter organization meeting should then be adjourned.

Support for charter application

As discussed previously in this chapter, applicants for federal credit union charters must, at a minimum, provide evidence that:

• The group constitutes a recognized common bond

• The subscribers, prospective officials and employees are of good character; and

• The establishment of the credit union is economically feasible.

In addition, the Federal Credit Union Act requires applicants to submit a sworn organization certificate setting forth seven criteria (see section entitled Character and Fitness of Subscribers earlier in this chapter). In order to process the application and capture all required information, NCUA has developed certain chartering forms to assist organizers.

• Federal Credit Union Investigation Report, NCUA 4001

Applications for new federal credit unions will be submitted on NCUA 4001. (State-chartered credit unions applying for conversion to federal charter will use NCUA 4000. See Chapter 3 for a full discussion.) The organizer is required to certify the information and recommend approval or disapproval, based on the investigation of the request. Instructions and guidance for completing the form are provided on the form's reverse. Associational charter applicants must include a statement of their membership criteria (normally the group's charter or bylaws) and a current financial statement.

• Report of Official and Employee, NCUA 4012

This form documents general background information of each official and employee of the proposed federal credit union. Each official must complete and sign this form. In addition, NCUA will request credit and background investigations of new officials and employees.

• Organization Certificate, NCUA 4008

This document establishes the seven criteria required of subscribers by the Federal Credit Union Act and is signed by the subscribers and notarized. This document should be executed in duplicate. The NCUA staff member assigned to the case will assist, during his or her on-site contact, in the proper completion of this document.

• Certification of Resolutions, NCUA 9501

This document certifies that the board of directors of the proposed federal credit union has resolved to apply for insurance of member accounts and has authorized the chief executive officer and chief financial officer to execute the Application and Agreements for Insurance of Accounts. This form must be signed by both the chief executive officer and recording officer of the proposed federal credit union.

• Application and Agreements for Insurance of Accounts, NCUA 9500

This document contains the agreements with which federal credit unions must comply in order to obtain National Credit Union Share Insurance Fund (NCUSIF) coverage of member accounts, including providing appropriate fidelity bond coverage of officials and employees. The document must be completed and signed by both the chief executive officer and chief financial officer. Each prospective federal credit union must qualify for federal share insurance.

• Business Plan

While the required business plan need not follow a prescribed form, it must include all of the information set forth in the section "Economic Advisability—Present and Future Market Conditions" earlier in this chapter.

• Appropriateness of Officials

The Federal Credit Union Act requires all newly chartered credit unions, up to two years after the charter anniversary date, to notify NCUA at least 30 days prior to the change of any member of the board of directors or any credit or supervisory committee member or the employment of any individual as a senior executive officer.

If NCUA issues a Notice of Disapproval, the newly chartered credit union is prohibited from making the change. NCUA may disapprove an individual serving as a director, committee member or senior executive officer if its finds that the competence, experience, charter, or integrity of the individual would not be in the best interests of the members of the credit union or of the public to permit the individual to be employed by or associated with the credit union.

Section 701.14 of the NCUA rules and regulations sets forth the notice and application requirements. The charter applicant should submit to NCUA the list of its officials—see Report of Officials above—early in the chartering process so the appropriate credit and background checks can be conducted in a timely fashion.

Letters of understanding and agreement

NCUA has found from experience that certain activities generally cause significant problems for new credit unions. Therefore, in most cases, NCUA will require the prospective federal credit union's officials to enter into an agreement not to engage in certain activities. The agreement is for a limited term—usually two to four years. A sample letter is attached in the appendix.

Approvals

NCUA will make every effort to process the application expeditiously. Once approved, the board of directors of the newly formed federal credit union will receive a signed charter and bylaws from the regional director.

In addition, the officials will be advised of the name and mailing address of the examiner who has been assigned responsibility for supervising and examining the credit union.

Generally, the examiner will contact the credit union officials shortly after approval of the charter in order to arrange for the initial examination (usually within the first six months of operation). Assistance in commencing operations is generally available through the various trade organizations listed in the appendices.

Denials

If a charter application is disapproved, the organizers will be informed in writing of the specific reasons for the denial. Where applicable they will be provided information concerning options or suggestions that they could consider for gaining approval or otherwise acquiring credit union service.

The letter of denial will include information on the group's right to appeal the decision to the NCUA Board. The procedures for submitting the appeal will be provided.

Appeals

If a charter application is denied by the regional director, the group may appeal the decision to the NCUA Board. All such appeals must be sent to the denying regional office within 60 days of the denial. The regional director will then forward it to the NCUA Board. NCUA central office staff will independently review the facts of the case and present the appeal to the Board. (The prospective group may submit substantive new and additional information for reconsideration to the regional director. In these cases, the request will not be considered as a request for appeal but as a request for reconsideration by the regional director.)

The letter of appeal should contain information and applicable documentation responding to the reasons for the denial. It may provide only the information which the regional director had available to make the denial decision. The appealing group may submit written documentation only; neither the regional director nor the credit union will be permitted to present oral arguments to the Board.

Chapter 2—Changes in Field of Membership

Reasons for requesting an amendment

As in the case of NCUA chartering policy, the goals for field of membership expansion are:

• To uphold the provisions of the Federal Credit Union Act concerning expansion of federal charters

• To promote credit union safety and soundness

• To make quality credit union service available to all eligible groups who wish to have it.

A federal credit union's field of membership is an official statement which specifically defines who may become a member of the credit union. It is recorded in section 5 of the credit union's charter.

Any change to the field of membership, whether it is an addition, deletion, or simple update, must be reflected formally in section 5 of the credit union's charter. Changes to section 5 are normally initiated by the officials of the respective federal credit union and submitted in writing to the appropriate NCUA regional director for approval.

The National Credit Union Administration Board has delegated the authority to the regional directors to act on most charter amendment requests. This delegation enables the agency to respond to the majority of requests promptly.

However, certain complex proposals require special investigation by the regional directors, and may also require consultation with and approval by other regional directors, the NCUA Washington Office, and the NCUA Board. Applicants submitting such complex proposals will be advised in writing of the need of the special review and the likelihood of extra processing time.

A federal credit union's board of directors may wish to request a field of membership amendment for a variety of reasons, including, but not limited to:

• Providing credit union access and service to an additional, clearly-defined group of persons who desire to be served by the applicant credit union

• Accommodating sponsor acquisitions or reorganization

• Diversifying the membership base in order to withstand real or potential economic adversities (e.g., sponsor shutdown or cutback, economic downturn)

• Merger with another credit union

• Expanding the membership base to facilitate an improvement of service to all members.

Field of membership addition requests—types & criteria.

As noted in the previous chapter, four types of charters exist—occupation, association, community, and multiple group—for purposes of establishing a federal credit union. Field of membership expansions are achieved by adding—either occupational, associational or community—to an existing credit union.

The definition of common bond for purposes of field of membership additions is the same as that found in the previous chapter concerning federal credit union chartering. The examples of groups which do and do not meet the definition of common bond found in that chapter apply to field of membership additions as well.

Different criteria apply to occupational, associational, and multiple group field of membership additions than those that apply to community field of membership expansions. These two sets of criteria are discussed below.

Special rules apply for credit union additions to provide service to retiree and senior citizen groups.

Additional methods of increasing the field of membership are possible through a merger, a spin-off, or a purchase & assumption. All of these types of expansions are discussed below.

Occupational and associational groups which share the same common bond as the credit union's primary sponsor fall under the category of common bond additions. Occupational and associational groups which have a separate common bond from a federal credit union's primary sponsor (common bond group) are added under the provisions of select group field of membership expansion policy. Select group and common bond expansions are treated somewhat differently.

Additions within the common bond

Some field of membership expansions for occupational and associational federal credit unions can be accomplished along traditional common bond lines.

For example, a federal credit union whose primary sponsor is a particular corporation may add, by a charter amendment, the employees of that corporation who work at another location, employees of the corporation—such as sales persons or sales agents who work at a number of locations—who are paid from or are supervised from the headquarters location, employees of a division or majority-owned subsidiary of the parent corporation regardless of location, or employees of a related company (such as persons who work regularly for an enterprise under contract and processing a strong dependency relationship with the sponsoring corporation). A federal credit union may expand its field of membership to include employees of a subsidiary that is not majority-owned by the parent corporation by using the select group expansion procedures.

A federal credit union's field of membership will always be governed by the group descriptions contained in section 5 of its charter. Where a sponsor organization expands its operations through an existing corporate entity, the credit union may serve these new entrants to its field of membership if they are part of a group described in section 5. Where acquisitions are made which add a new wholly- or majority-owned subsidiary, the group cannot be served until the subsidiary and its location are individually listed in the field of membership.

The written request for an addition must be supported by a letter from a representative of the corporate unit to be added. This letter must indicate:

• That the group wants to affiliate with the applicant federal credit union

• That at present the group does not have any credit union service available

• The number of persons currently employed by the corporate unit and their work locations

• The relationship to the primary sponsor

This letter should be submitted on the letterhead stationery of the respective corporate entity. Included with the request for expansion must be a current financial statement for the applicant federal credit union.

For associational federal credit unions, expansions along common bond lines will normally be allowed only at the lowest economically feasible organizational level of the sponsoring association. For example, a federal credit union serving the members of a local chapter of an association could apply to serve the members of another chapter.

The approval or disapproval of a field of membership amendment request of an existing federal credit union adding an association which crosses NCUA regional boundaries may be subject to special review, and this may cause some delay in processing. The regional director whose jurisdiction includes the applicant credit union will notify the applicant of the special review and will advise the applicant in writing of the estimated time needed to reach a decision.

Unlike select group additions, common bond additions do not have operational area requirements. That is, an addition within the common bond may be approved even through the applicant federal credit union does not have an office in the vicinity of the group to be added.

Select group additions

Occupational and associational groups dissimilar to the credit union's primary sponsor may be added as "select group additions." The following standards and procedures for adding these groups are similar—but not identical—to those described in Chapter 1 for including groups in a new multiple group charter.

It is possible for a federal credit union to serve the employees or members of a select group who are located outside the operational area of the credit union as long as the select group has its headquarters, or its "paid from" or its "supervised from" location within the credit union's operational area, or a majority of the company's employees work within the credit union's operational area. This provision also applies to a group whose headquarters location is within the operational area of the credit union but whose employees are so widely dispersed that no single location constitutes a majority.

• Standards for Adding Select Groups

Each group to be added must have its own common bond. The group may be either an occupational or associational group. However, the group cannot be defined by a common bond of community. Moreover, special care will be exercised by the regional directors in considering requests for select associational group expansions where the association's membership is geographically dispersed. The associational chartering criteria discussed in Chapter 1—Widely Dispersed Associational Charters—will apply in its entirety to select associational group expansion requests.

Each group must individually request inclusion in the federal credit union's field of membership.

The credit union must possess the financial resources and management capability to provide quality credit union service to the group. The applicant credit union's current CAMEL rating and financial condition will be considered under this criterion.

The addition request must be economically feasible and advisable.

Each group must be within the "operational area" of the credit union's home or branch office. The operational area of an existing credit union is an area surrounding the credit union's home and each branch office—either existing or planned—that, as determined by NCUA in its discretion, can reasonably be served by that office. Normally, NCUA will consider the area within a 25 mile radius of the home or branch office as the operational area. With rural populations particularly, however, the area the credit union can reasonable serve may be somewhat broader.

Whether a credit union facility qualifies as a "home" or "branch" office will depend on the circumstances of each particular case. On the one hand, a facility, which is directly and solely owned by, leased by, or donated by a credit union, and has a credit union employee regularly on site who accepts payment on shares and disburses loans, is clearly a home or branch office. On the other hand, an ATM or similar cash disbursing machine is not.

Between these two extremes are a host of arrangements—e.g., shared ownership, full service facilities; individually owned facilities with shared staff; and facilities owned through a CUSO individually or jointly with other credit unions or other financial institutions (sometimes called "shared facilities" or "shared service centers"). Recognition of each of these intermediate cases as a home or branch office will take into account all relevant circumstances, including:

- The demonstrated commitment on the part of the credit union to serve the group in that area for the long term
- The likelihood that the group will perceive that commitment
- The adequacy of the facility and staff in relation to the needs of the group to be served
- The desires of the group
- The availability of other credit union service

"Shared service centers" or "shared facilities" generally will not be considered "branches" for the purposes of field of membership expansions. Regional directors may make exceptions, considering all pertinent factors—for example, for credit unions which are converting an existing branch to a shared facility. It is not NCUA's intention to force a credit union to maintain an unprofitable branch just to enable select group expansions around that branch.

A home or branch office will be considered "planned" if it is actually going to be established and if the current field of membership constitutes a significant portion of the total field of membership to be served initially by the proposed office. Although the addition of a new select group alone is not enough to justify a proposed home or branch office, it is permissible to include new groups as partial justification for a proposed branch office if that office will also improve credit union service to the existing field of membership.

In the case of a planned office, NCUA may, in its discretion, require financial projections and/or a business plan supporting expansions around that branch office in order to determine the economic feasibility and to address any safety and soundness concerns of the expansion.

All persons within the group who work or meet regularly within the operational area are "within" the operational area. The following are also "within" the operational area: employees of a firm who are paid from or supervised from a place, or employees of a firm or members of a group which has their headquarters at a place within the operational area; and all employees of a firm or members of a group which has a majority of its employees working or members within the operational area.

Documentation Requirements

The process to add a select group to a federal credit union's field of membership is a relatively simple one. A federal credit union must submit a formal written request, using the Application for Field of Membership Change form shown in appendix E, or its equivalent, to the appropriate NCUA regional director. The request must be signed by the credit union's president or an authorized board members.

Included in the request must be the following:

- The requesting credit union's most current financial statements and, where available, branch office financial statements where the expansion is based on a branch office location
- For each group seeking to be included in the credit union's field of membership, the credit union must provide a letter from the group, on the group's letterhead stationery and signed by a responsible official of the group, containing the following information:
- The fact that the group wants to obtain service from the requesting credit union and the extent to which the group will support the credit union—e.g., by providing access to its employees or members via payroll deduction, by permitting use of employee or member newsletter, etc.
- The number of employees or members in the group
- The proximity to the credit union's closest office, either home or branch
- The name of any credit union to which the group currently has access; if there are none, the letter must state this fact
- If the group is eligible for membership in any other credit union, documentation must be provided to support inclusion of the group under the standards set forth in the "Overlaps" section of Chapter 1.
- If the group is to be included in the credit union's field of membership because it is within the operational area of a home or branch office, the credit union must submit sufficient information to support the conclusion that the group is within the operational area of its home or a branch office.

Employee leasing companies

In general, employee leasing companies will be treated as any other select group addition. Usually such leasing companies employ persons and then lease them, with insurance coverage and other benefits, to other companies under long-term contracts.

When a credit union is requesting the addition of an employee leasing company to its field of membership, the credit union must provide a listing of each of the leasing company's clients and their geographic locations.

Should the leasing company subsequently develop additional client relationships which desire credit union service, the federal credit union must submit a routine request for a select group addition for each new client.

The following wording will be used to define the groups in this type of field of membership request:

"Employees of [name of leasing company] who work regularly at the following businesses at the locations specified: (followed by a list of the name and location of the businesses supplied with employees by the leasing company.)

This type of field of membership expansion is generally for long term relationships and is not permissible if the leasing company only provides temporary employees with no extended relationship to the client company, i.e. temporary secretaries. This does not preclude the addition of regular employees of temporary employment firms, such as Kelly Services and Manpower, from being added to a field of membership as a select group.

Block additions

When a state chartered credit union is converting to federal charter or when a credit union is being merged into a

federal credit union, large blocks of select groups frequently are added to a credit union's field of membership. In such cases, the credit union whose field of membership is being revised should consult directly with the appropriate regional office early in the process to ensure the efficient treatment of such revisions and to avoid misunderstandings.

Therefore, when a block of 50 or more new groups is being added to a credit union's field of membership at any one time, in addition to requirements previously stated for adding select groups, NCUA may require a list of the prospective sponsors and their locations be provided on a computer diskette. Direct coordination with the appropriate NCUA regional office will ensure the compatibility of hardware and software.

Community federal credit union field of membership expansions

Community federal credit unions may expand their fields of membership only by redefining their boundaries. There must be regular contact among persons who live or work within the proposed well-defined neighborhood, community or rural district. The burden of proof for existence of the common bond is placed upon the applicant credit union. See appendix G for additional information regarding this issue.

In the majority of cases where community credit unions are asking to expand their areas of service, and in all cases where a conversion to a community charter is proposed, an NCUA staff member will make an on-site evaluation of the proposal. The staff member will prepare a separate analysis of the proposed expansion, independent of the credit union's application. Following completion of the on-site evaluation and regional office review of the staff member's report, the regional director will act on the proposal, provided that the size of the proposed area's population does not exceed his or her delegated authority. If so, the applicant credit union will be formerly apprised of the need for NCUA Board consideration.

Conversion to community charter

An existing occupational, associational or multiple group federal credit union may apply to convert to a community charter. (See appendix G for more information on the documentation necessary for consideration of a community charter.)

In most cases of an occupational, associational, or multiple group credit union converting to community charter, select groups outside the new community credit union's boundaries will no longer be eligible for credit union service. (The "once a member, always a member" bylaw provision can alleviate problems to some degree.) However, in the event of unusual and stressful situations—e.g., an announced military base or plant closing, or significant cutbacks or downsizing—NCUA may include existing select groups which are within the operational area of an existing home or branch office but outside the new community boundaries. NCUA may also subsequently permit the new community credit union to add other select groups, but only for so long and to the extent needed to ensure the credit union's continued viability. In all such cases, NCUA will carefully weigh all matters including safety and soundness and public policy. To ensure consistency in the application of this procedure and its proper application throughout NCUA, the responsible regional director will consult with each of the other regional directors and NCUA's Director of Examination and Insurance prior to permitting expansion of a community credit union's field of membership to include select groups. The views of the majority of the regional directors and the Director of Examination and Insurance will control. If the group is evenly divided on the issue, it will be referred to the NCUA Board for decision. Denials will be appealable to the Board under standard procedures.

In order to support a case for a conversion to community charter, the applicant federal credit union must develop a detailed business plan incorporating the following data:

- Current financial statements, including the income statement and a summary of loan delinquency.
- A map or maps showing both the existing and proposed boundaries for the field of membership.
- A written description of the area of community service for the proposed community credit union.
- The most current population figures for the existing and proposed boundaries.
- The source of the population information : census data are considered the most authoritative; the greater the population of the proposed area, the greater justification necessary to support the existence of the "community" and regular contact among its residents.
- Evidence in the form of surveys or letters from official representatives of prominent groups located in the area to be added showing that the residents of the area are interested in affiliating with the applicant credit union.
- Evidence that the proposed area is a "community" as defined in "Community Common Bond" in Chapter 1.
- Information concerning the availability of financial services to the residents of the new area.
- A list of credit unions with a home or branch office in the proposed area. (If present credit union service to the residents of the new area is adequate, there may be no basis for the proposed conversion.)
- The attitude of current credit union sponsors and existing credit union members toward the proposed conversion.
- The advantages and disadvantages of the conversion to community charter.
- The anticipated financial impact on the credit union in terms of need for additional employees and fixed assets.

Addition of retiree or senior citizen associations

Special rules apply for retiree or senior citizen groups that seek credit union service. For field of membership addition purposes, these groups are viewed as unique associational groups which do not need to meet all the requirements for associations discussed in Chapter 1.

It is NCUA Board policy to make federal credit union service available to as many senior citizens and retirees as possible who are in fact interested in obtaining access to a credit union.

Federal credit unions are encouraged to bring associations of senior citizens or retired persons within their fields of membership, and to sponsor and assist in the formation of such associations where they do not exist.

The policies recited in Chapter 1 for associational groups (requiring that the sponsoring association be well-established and that it not be an organization created solely as a vehicle to obtain credit union service) do not apply to retirees or senior citizen associations. Such groups may be formed with the primary purpose of providing eligibility for federal credit union service to the associations and their members.

The definitions of senior citizen or retiree are left to each organization. The operational area criterion does not apply to senior citizen and retiree organizations.

Credit unions wishing to add retiree or senior citizen groups to their field of membership must submit a request to the appropriate regional director. However, supporting letters, charter and bylaws, and other documentation *are not* required.

Additions via mergers, purchase & assumptions, and spin-offs

NCUA supports credit unions desiring to remain a separate entity. However, there are three other ways a federal credit union can expand its field of membership, two of which result in a credit union's ceasing to exist—by taking in the field of membership of another credit union through merger or a purchase and assumption (P&A) of certain of the assets and liabilities of a credit union after it has been liquidated, or by taking a portion of a continuing credit union's field of membership through a spin-off.

Mergers Generally

With some exceptions, the standards applicable to field of membership additions apply to mergers. Moreover, where the merging credit union is state chartered, the field of membership rules applicable to a credit union converting to a federal charter generally apply as well. These are the differences:

• As to a merger which constitutes an addition within the common bond, the requirements to provide a request for credit union service from the corporate or associational unit to be added is not required, since the corporate unit already has credit union service.

• As to a merger which constitutes a select group addition:

• For the same reason, the requirement for a letter from each group requesting inclusion in the credit union's field of membership is not required.

• Where a state-chartered credit union is merging into a federal credit union, the operational area requirement may be waived on a proper showing that the state-chartered credit union has been able to provide quality credit union service to its field of membership and that the federal credit union will be able to continue quality service. The state credit union's field of membership will be worded to conform to federal credit union standards as discussed throughout this manual. Any subsequent field of membership additions must comply with select group expansion procedures.

• Mergers of community credit unions into a federal credit union of any type may be accomplished where the operational area requirement is satisfied and the continuing federal credit union is not interested in obtaining the field of membership of the merging community charter. The continuing federal credit union will only obtain the members of record of the merging community credit union.

Where both credit unions are community charters and the criteria for expanding the service area of a community credit union (as discussed previously in this chapter) are satisfied, the entire field of membership of the merging credit union will be added to the continuing federal credit union's charter.

• Distress Mergers

Regardless of the type of credit union involved, where the merging credit union is suffering such severe financial difficulties that it will become insolvent within twelve months, it may merge into any federal credit union in the same operational area.

If the merging credit union is community based, its field of membership, to the extent it complies with the requirements set forth in Chapter 1, will be transferred intact to the continuing federal credit union. In this case, the continuing federal credit union will remain as an occupational, associational, community or multiple group charter for purposes of future field of membership expansions.

• Emergency Mergers

A specifically designated emergency merger may be approved by NCUA without regard to field of membership or other legal constraints. An emergency merger involves NCUA's direct intervention. The credit union to be merged must either be insolvent or in danger of insolvency and NCUA must determine that:

• An emergency requiring expeditious action exists.

• Other alternatives are not reasonably available.

• The public interest would best be served by approving the merger.

In an emergency merger situation, NCUA takes an active role in finding a suitable merger partner (continuing credit union). NCUA is primarily concerned that the continuing credit union has the financial strength and management expertise to absorb the troubled credit union without adversely affecting its own financial condition and stability.

As a stipulated condition to an emergency merger, the field of membership of the merging credit union may be transferred intact to the continuing credit union without regard to any field of membership restrictions and without changing the character of the credit union for future expansions. Under this authority, therefore, a federal credit union may take into its field of membership a group defined by a community or associational common bond permitted under state law, regardless of whether that common bond definition could be approved under the Federal Credit Union Act.

• Purchase and Assumptions

Another alternative for acquiring the field of membership of a failing credit union is through consolidation known as purchase and assumption.

A purchase and assumption has limited application because the failing credit union must be placed into involuntary liquidation. However, in the few instances where purchase and assumption may occur, the assuming federal credit union, as with emergency mergers, may acquire the entire field of membership along with loans, shares and certain designated assets and liabilities, without regard to field of membership expansion restrictions and without changing the character of the continuing credit union for purposes of future field of membership expansions.

• Spin-Offs

A "spin-off" is, in effect, a partial merger of a credit union. By agreement of the parties, a portion of the field of membership, assets, liabilities, shares and capital of a credit union, are transferred to a new or existing credit union.

If the spin-off goes to a new federal charter, the requirements of Chapter 1 apply. (See that chapter for discussion of the field of membership and documentation requirements for new federal charters.)

If it goes to an existing federal charter, the requirements of Chapter 2 apply.

Spin-offs involving federally insured credit unions in different NCUA regions must be approved by all affected regional directors, and the state supervisory authorities, as applicable.

The request for approval of a spin-off must be supported with a plan that addresses, as a minimum:

• Why the spin-off is being requested.

• What part of the field of membership is to be spun-off.

• Whether the affected credit unions have a common sponsor or are located within the same operational area.

• Which assets, liabilities, shares and capital are to be transferred.

• The financial impact the spin-off will have on the affected credit unions.

• The ability of the acquiring credit union to effectively serve the new members.

• The proposed spin-off date.

The spin-off request must also include current financial statements from the affected credit unions and the proposed voting ballot.

Membership notice and voting requirements and procedures are the same as for mergers—part 708 of the

NCUA rules and regulations—except that only the members directly affected by the spin-off—those whose shares are to be transferred—are required to vote. Members whose shares are not being transferred will not be afforded the opportunity to vote.

Overlaps—See Chapter 1 for discussion.

Exclusionary clauses—See Chapter 1 for discussion.

Professional conflicts.

It is important for a credit union, as well as professional organizations such as accounting firms, law firms, real estate title insurance firms and appraisal firms, to avoid the appearance of impropriety when the credit union contracts with a professional organization for services. This is even more critical if the professional organization and/or its employees are members of the credit union.

When a professional organization is added to a credit union's field of membership, the credit union should notify the professional organization of certain provisions. The following provision is intended to ensure that decisions made by a credit union and the professional organizations serving the credit union are independent of any loan decisions or deposit activities.

"Please be advised that with respect to the addition of the employees of (professional organization) to the [FCU], any lending, deposit and/or other credit union services involving credit union members who are also employees of the firm will be independent from any services rendered to the credit union by the firm and will avoid any appearance of impropriety."

A credit union should also make a similar notification to a professional organization when contracting with it to provide professional services to the credit union.

Reviewing field of membership addition requests

All field of membership addition requests will be reviewed by regional office staff in order to ensure that the requests conform to NCUA policy, are properly documented, including completion of the Application of Field of Membership Change, and do not cause significantly harmful or unreasonable overlap with the fields of membership of existing credit unions.

NCUA understands and appreciates the importance of timely processing of well-supported addition requests. To respond to this desire for prompt handling, each regional office has established a goal of ten working days from the date of receipt in the regional office for complete processing of a routine addition request. A fully documented request that fulfills all of the criteria discussed in this manual and does not require written or telephone follow-up will normally be processed within this time.

In some cases, an on-site review by NCUA staff may be requested by the regional director before acting on a proposed addition. Nonstandard or controversial requests, those involving associational, community or multiple charters, or those from credit unions with serious operational or management problems, are most likely to fall into this category.

In addition, the regional director may, at his discretion, after taking into account the significance of the field of membership expansion proposed, require the applicant to submit a business plan.

The condition of the requesting credit union will be considered in every instance. The economic feasibility of expanding the field of membership of a credit union with serious management or operational problems must be carefully considered by regional staff if the safety and soundness of the credit union is to be preserved.

In most cases, field of membership additions will only be approved for credit unions which are operating satisfactorily. If a federal credit union is having difficulty providing good service to its current membership, it may have even more difficulty serving an enlarged field of membership.

In some cases, expanding the field of membership of a struggling credit union may do more harm than good. A struggling credit union's resources need to be focussed on current problems. Placing an additional strain on these resources by increasing the field of membership may also increase the credit union's problems.

If the requested addition is approved by the regional director, the credit union will be furnished a formal, updated section 5 of its charter which restates the field of membership, including the requested addition. After action by the board of directors, the form should be promptly filed with the credit union's official charter and bylaws.

Removal of groups from the field of membership

Credit unions may request removal of a group from its field of membership for various reasons. The most common reasons for this type amendment are:

- The group is within the overlapping field of membership of two credit unions and one wishes to discontinue service.
- The federal credit union cannot continue to provide adequate service to the group.
- The group has ceased to exist.
- The group initiates action to be removed from the field of membership.

When a federal credit union requests an amendment to remove a group from their field of membership, the regional director will determine why the credit union wishes to remove the group and whether the existing members of the group will continue membership. Membership must continue for those who are already members through the "once a member, always a member" provision.

The regional director will consider these types of requests on a case by case basis.

Denials

If a request for a field of membership amendment is denied by the regional director, the credit union will be so advised in writing. The letter of denial will include specific reasons why the request was not approved. The letter may include suggestions for making the request acceptable and other options the credit union could consider.

The credit union will be informed that there is a right to appeal the regional director's decision to the NCUA Board. (The credit union may submit substantive new and additional information to the regional director. In these instances, the submission will not be considered an appeal but a request for reconsideration by the regional director.)

The appeal must be sent to the regional office within 60 days of the denial. The letter of appeal should provide the credit union's response to the reasons for the denial. Only the information which the regional director had available to make the denial decision may be submitted for an appeal.

The regional director will forward the appeal to the NCUA Board. NCUA central office staff will independently review the facts of the case and present the appeal to Board. The appealing credit union may present written documentation only; neither the regional director not the credit union will be permitted to present oral arguments to the Board.

Service status reports

Federal credit unions which frequently add select groups to their fields of membership should be prepared to furnish a written summary of the results of their efforts to bring service to the employees or members of the select groups.

The regional directors will periodically request that such federal credit unions submit service status reports to NCUA showing, at a minimum, the number of primary potential members of each select group added and the number of persons from each select group who have actually enrolled as credit union members.

These service status reports can be enlarged to require information concerning aggregate share and loan activity by select group or participation in other credit union services.

In any event, federal credit unions using the select group addition method should implement an information gathering system early in their addition/diversification program to track their progress in providing service to the potential members of their select groups.

This information will help the credit union to operate more efficiently and will give management the data necessary to make decisions about marketing strategy, new promotions, implementation of new services, etc.

The service status reports will enable NCUA to determine which federal credit unions are serving newly added groups, as well as any federal credit unions that are not serving new groups.

If the NCUA determines that a federal credit union is not adequately serving new groups, the regional director may restrict further expansions and permit the groups not being adequately served to be overlapped with another federal credit union or remove the select group(s) not being served from section 5 of the credit union charter.

Chapter 3—Charter Conversions

A charter conversion is a change in the jurisdictional authority under which a credit union operates. A credit union's charter is the instrument given to the institution by the government, either state or federal, granting to it the authority to carry out credit union business in accordance with law.

Federal credit unions receive their charters from NCUA and are subject to its supervision, examination, and regulation; they are incorporated under federal law.

State-chartered credit unions are incorporated in a particular state, receiving their charter from the state agency responsible for credit unions and subject to the state's supervisory authority. If the state-chartered credit union's deposits are federally insured by NCUA, it will also fall under NCUA's jurisdiction.

A federal credit union's power and authority are principally derived from the Federal Credit Union Act and NCUA rules and regulations. State-chartered credit unions are principally governed by the state law and regulation.

There are two types of charter conversions—federal charter to state charter, and state charter to federal charter. Although common bond is not an issue from NCUA's standpoint in the case of a federal to state charter conversion, the procedures and forms relevant to such a conversion have been included.

Conversion of a State Credit Union to a Federal Credit Union

- General Requirements

Any state-chartered credit union may apply to convert to a federal credit union. In order to do so, it must:

- Comply with state law regarding conversion:
- File proof of compliance with NCUA;
- File the required conversion application, proposed federal credit union organization certificate and other documents with NCUA;
- Comply with the requirements of the Federal Credit Union Act, e.g., common bond and reserve requirements; and
- Be granted a charter by NCUA.

Conversions are treated the same as any initial application for a federal charter, including mandatory on-site examination by NCUA. NCUA will also consult with the appropriate state authority regarding the credit union's current condition, management expertise, and past performance. Since the applicant in a conversion is an ongoing credit union, the economic advisability of granting a charter is more readily determinable than in the case of an initial charter application.

Generally, a converting state credit union's field of membership must conform to NCUA chartering policy. However, if a converting credit union can demonstrate that it has been effectively serving groups outside what would have been its operational area if it had been a federal credit union, the regional director, in his or her discretion, may permit continued service to these groups after conversion. Every reasonable effort will be made to phrase the field of membership similar to the presentations in Chapters 1 and 2 with individually listed groups and their locations. In any case, subsequent changes must conform to NCUA expansion policy in effect at that time.

- *Submission of conversion proposal to NCUA*

The following actions are to be taken before submitting a conversion proposal:

- The credit union board must approve a proposal for conversion.
- The Application to Convert (NCUA Form 4401) must be completed. Its purpose is to provide the regional director with information on the present operating policies and financial condition of the credit union and the reasons why the conversion is desired. A continuation sheet may be used if space on the form is inadequate. Particular attention should be given to answering the question on the reasons for conversion. These reasons should be stated in specific terms, not as generalities.
- The application must be accompanied by all required attachments including the following:
- Written evidence that the state supervisory authority is either in agreement with the conversion proposal, or, if not in agreement, the reasons therefor.
- The Application for Insurance of Accounts (NCUA 9600) in the case of a state credit union that is not federally insured.
- The Application and Agreements for Insurance of Accounts (NCUA 9500).
- The Federal Credit Union Investigation Report, Conversion of State Charter to Federal Charter (Form NCUA 4000).
- The most current financial report and delinquent loan schedule.
- The Organization Certificate (NCUA 4008). Only Part (3) and the signature/notary section of page 4 should be completed and, where applicable, signed by the credit union officials. The NCUA regional office will complete the other sections of this document.

- *NCUA consideration of application to convert*

- Review by the Regional Director

The application will be reviewed to determine that it is complete and that the proposal is in compliance with section 125 of the Federal Credit Union Act. This review will include a determination that the state credit union's field of membership is in compliance with NCUA's chartering policies. The regional director may make further investigation into the proposal and may require the submission of additional information to support the request to convert. At this point, NCUA will conduct an on-site review of the credit union.

- Examination and Payment of Fees

NCUA will examine the books and records of the credit union on-site. NCUA will charge the credit union an examination fee.

Note: This fee may be waived by the regional director in those cases where the converting credit union is federally insured. Non federally insured credit unions will also be assessed an application fee.

• Approval by the Regional Director and Conditions to the Approval

The conversion will be approved by the regional director if it is in compliance with section 125 of the Federal Credit Union Act and meets the criteria for federal insurance. Where applicable, the regional director will specify any special conditions that the credit union must meet in order to convert to a federal charter, including changes to the credit union's field of membership in order to conform to NCUA's chartering policies. Some of these conditions may be set forth in a Letter of Understanding and Agreement ("LUA"), which requires the signature of the officials and the regional director.

• Notification

The regional director will notify both the credit union and the state supervisory authority of the decision on the conversion.

• *Action by Board of Directors*

Upon being informed of the regional director's approval, the board must:

• Comply with all requirements of the state supervisory authority that will enable the credit union to convert to a federal charter and cease being a state credit union;

• Obtain a letter or official statement from the state supervisory authority certifying that the credit union has met all of the state requirements and will cease to be a state credit union upon its receiving a federal charter. A copy of this document must be submitted to the regional director;

• Submit a statement of the action taken to comply with any conditions imposed by the regional director in the approval of the conversion proposal and, if applicable, submit the signed LUA.

• Application for a Federal Charter

When the regional director has received evidence that the board has completed the actions described above, then a federal charter and new Certificate of Insurance will be issued. The credit union may then complete the conversion as discussed in the following section. Denials are appealable to the NCUA Board.

• *Completion of the Conversion*

• Effective Date of Conversion

The date on which the regional director approves the Organization Certificate and the Application and Agreements for Insurance of Accounts is the date on which the credit union becomes a federal credit union. The regional director will notify the credit union and the state supervisory authority of the date of the conversion.

• Assumption of Assets and Liabilities

As of the effective date, the federal credit union will be the owner of all of the assets and will be responsible for all of the liabilities and share accounts of the state credit union.

• Board of Directors' Meeting

Upon receipt of its federal charter, the board will hold its first meeting as a federal credit union. At this meeting, the board will transact such business as is necessary to complete the conversion as approved and to operate the credit union in accordance with the requirements of the Federal Credit Union Act and NCUA rules and regulations. Actions to be taken at this meeting include:

a. Change of the credit union's name on all records, accounts, investments and other documents evidencing assets or liabilities of the credit union;

b. Changes to the credit union's books and records:

(1) As of the commencement of business, the accounting system, records, and forms must conform to the standards established by NCUA;

(2) New journal and cash record and general ledger pages should be set up. The general ledger accounts for the state credit union will be posted through the effective date of the conversion, and the new balances will be transferred to the new general ledger accounts of the federal credit union;

(3) The income and expense accounts of the state credit union will not be closed unless the conversion is at the close of an accounting period or is required by the state supervisory authority; and

(4) The individual share and loan ledger accounts used by the state credit union may continue to be used. The federal credit union's names should be properly reflected on these accounts.

• Reports to NCUA

Within 10 days after commencement of operations, the federal credit union must submit to the regional director the following:

• Report of Officials (NCUA 4501)

• Financial and Statistical Reports, (Forms FCU 109A, 109B, and 109F, or their equivalent) as of the commencement of business of the federal credit union.

Conversion of a Federal Credit Union to a State Credit Union

• General Requirements

Any federal credit union may apply to convert to a state credit union. In order to do so, it must:

• Comply with the requirements of the Federal Credit Union Act (section 125) that enable it to convert to a state credit union and to cease being a federal credit; and

• Comply with applicable state law and the requirements of the state supervisory authority.

• *Special provisions regarding Federal share insurance*

If the federal credit union wants to continue federal share insurance after the conversion to a state credit union, it must submit an Application for Insurance of Accounts (Form NCUA 9600) to the regional director at the time it requests approval of the conversion proposal. The regional director has the authority to approve or disapprove the Application.

If the converting federal credit union does not want to continue federal share insurance or if its application for continued insurance is denied, insurance will cease in accordance with the provisions of section 206 of the Federal Credit Union Act.

If, upon its conversion to a state credit union, the federal credit union will be terminating its federal share insurance or converting from federal to nonfederal share insurance, it must comply with the membership notice and voting procedures set forth in section 206 of the Federal Credit Union Act and part 708 of NCUA's rules and regulations.

Where the state credit union will be non federally insured, federal insurance ceases on the effective date of the conversion. If it will be otherwise uninsured, then federal insurance will cease one year after the date of conversion subject to the restrictions in section 206(d)(1) of the Federal Credit Union Act. In either case, the state credit union will be entitled to a refund of the federal credit union's NCUSIF capitalization deposit and any unused portion of the federal insurance premium after the final date on which any of its shares are federally insured.

The NCUA Board reserves the right to delay the refund of the capitalization deposit for up to one year if it determines that payment would jeopardize the NCUSIF.

• *Submission of conversion proposal to NCUA*

Upon approval of a proposition for conversion by a majority vote of the

board of directors at a meeting held in accordance with the federal credit union's bylaws, the conversion proposal will be submitted to the regional director and will include:

- A current financial report;
- A current delinquent loan schedule;
- An explanation and appropriate documents relative to any changes in insurance of member accounts;
- A resolution of the board of directors;
- A proposed Notice of Special Meeting of the Members (NCUA 4221);
- A copy of the ballot to be sent to members (NCUA 4506);
- Evidence that the state supervisory authority is in agreement with the conversion proposal; and
- A statement of reasons supporting the request to convert.

- *Approval of proposal to convert*

- Review by the Regional Director

The proposal will be reviewed to determine that it is complete and is in compliance with section 125 of the Federal Credit Union Act. The regional director may make further investigation into the proposal and require the submission of additional information to support the request.

- Conditions to the Approval

The regional director will specify any special conditions that the credit union must meet in order to proceed with the conversion.

- Approval by the Regional Director

The proposal will be approved by the regional director if it is in compliance with section 125 and, in the case where the state credit union will no longer be federally insured, the notice and voting requirements of section 206 of the Federal Credit Union Act.

- Notification

The regional director will notify both the credit union and the state supervisory authority of the decision on the proposal.

- *Approval of proposal by members*

- Upon approval of the proposal by the regional director, the following actions will be taken by the board of directors:
- The proposal must be submitted to the members for approval and a date set for a vote on the proposal. The proposal may be acted on at the annual meeting, at a special meeting for that purpose, or by written ballot to be filed by the date set for the vote.
- Members must be given advance notice (NCUA 4221) of the meeting at which the proposal is to be submitted in accordance with the provisions of the Federal Credit Union Bylaws (Article V). The notice shall:
- Specify the purpose, time and place of the meeting;
- Include a brief and accurate statement of the reasons for and against the proposed conversion, including any effects it could have upon share holdings, insurance of member accounts, and the policies and practices of the credit union;
- Inform the members that they have the right to vote on the proposal at the meeting, or by written ballot to be filed not later than the date and time announced for the annual meeting, or at the special meeting called for that purpose;
- Be accompanied by a Ballot for Conversion Proposal (NCUA 4506); and
- State in bold face type that the issue will be decided by a majority of members who vote.
- A copy of the notice of the meeting shall be delivered to the regional director at the same time that it is delivered to the members.
- The proposed conversion must be approved by a majority of all of the members who vote on the proposal, a quorum being present, in order for the credit union to proceed further with the proposition. Ballots cast by members who did not attend the meeting but who submitted their ballots in accordance with instructions above will be counted with votes cast at the meeting. In order to have a suitable record of the vote, the voting at the meeting should be by written ballot as well.
- The board of directors shall, within 10 days, certify the results of the membership vote to the regional director. The statement shall be verified by affidavits of the Chief Executive Officer and the Recording Officer on NCUA 4505.

- *Compliance with state laws*

If the proposition for conversion is approved by a majority of all members who voted, the board of directors should then:

- Ensure that all requirements of state law and the state supervisory authority have been accommodated;
- Ensure that the state charter or the license has been received within 90 days from the date members approved the proposal to convert;
- Ensure that the regional director is kept informed as to progress toward conversion and of any material delay or of substantial difficulties which may be encountered.

If the conversion cannot be completed within the 90-day period, the regional director should be informed of the reasons for the delay.

- *Completion of conversion*

In order for the conversion to be completed, the following steps are necessary:

- The board of directors will submit a copy of the state charter to the regional director within 10 days of its receipt. This will be accompanied by the federal charter and the federal insurance certificate. A copy of the financial reports (FCU 109A and 109B) as of the preceding month-end should be submitted at this time.
- The regional director will notify the credit union and the state supervisory authority in writing of the receipt of evidence that the credit union has been authorized to operate as a state credit union.
- The credit union shall cease to be a federal credit union as of the effective date of the state charter.
- If the regional director finds a material deviation from the provisions that would invalidate any steps taken in the conversion, the credit union and the state supervisory authority shall be promptly notified in writing. This notice may be either before or after the copy of the state charter is filed with the regional director. The notice will inform the credit union as to the nature of the adverse findings. The conversion will not be effected and completed until the improper actions and steps have been corrected.
- Upon ceasing to be a federal credit union, the credit union shall no longer be subject to any of the provisions of the Federal Credit Union Act, except as may apply if federal share insurance coverage is continued. The successor state credit union shall be immediately vested with all of the assets and shall continue to be responsible for all of the obligations of the federal credit union to the same extent as though the conversion had not taken place. Operation of the credit union from this point will be in accordance with the requirements of state law and the state credit union supervisory authority.
- If the regional director is satisfied that the conversion has been accomplished in accordance with the approved proposal, the federal charter will be canceled.
- There is no federal requirement for closing the records of the federal credit union at the time of conversion or for the manner in which the records shall be maintained thereafter. The converting credit union is advised to contact the state supervisory authority for applicable state requirements. The credit union shall no longer use the

words "Federal Credit Union" in its name nor represent itself in any manner as being a federal credit union.

• If the state credit union is to be federally insured, the regional director will issue a new insurance certificate.

Appendix A—Glossary

These definitions apply only for use with this Manual. Definitions are not intended to be all inclusive or comprehensive. This Manual, the Federal Credit Union Act, and NCUA rules and regulations as well as state laws may be used for further reference.

Appeal—The right of a credit union or charter applicant to request reconsideration of an unfavorable NCUA Regional Director's decision to a higher authority. Appeals are usually made to the NCUA Board through the Regional Directors.

Associational common bond—Association resulting from membership in an organization, participation in whose activities develops common loyalties, mutual benefits and mutual interests. The association should hold regular meetings and sponsor other activities that provide for contact among members.

Associational credit union—A credit union whose field of membership consists primarily of persons who are members of one or more related associational groups.

Business plan—Plan submitted by a charter applicant or existing federal credit union addressing the economic viability of a proposed charter or field of membership addition.

Charter—The document which authorizes a group or combination of groups to operate as a credit union and defines the fundamental limits of its operating authority, generally including the persons the credit union is permitted to accept for membership. Charters are issued by the National Credit Union Administration for federal credit unions and by the designated state chartering authority for credit unions organized under the laws of that state.

Common bond—The characteristic or combination of characteristics which distinguishes a particular group of persons from the general public. There are only three common bonds which can serve as a basis for a group's forming or being included in a federal credit union: employment by the same person or entity ("occupational common bond"), membership in the same association ("associational common bond"), and residence or employment in the same geographic area ("community common bond").

Community common bond—Residence or employment of persons and business and other legal entities located within the same well-defined neighborhood, community or rural district.

Community credit union—A credit union whose field of membership consists of persons who live or work in the same well-defined neighborhood, community, or rural district.

Conversion—The process of changing from a federal to a state or state to federal credit union charter.

Credit union—A member-owned, not-for-profit cooperative financial institution formed to permit those in the field of membership specified in the charter to save, borrow, and obtain related financial services. Federal credit unions are chartered as corporations pursuant to the Federal Credit Union Act.

Economic viability—An overall evaluation of the credit union's or charter applicant's ability to operate successfully.

Emergency merger—Pursuant to section 205(h) of the Federal Credit Union Act, authority of NCUA to merge two credit unions without regard to field of membership policy.

Exclusionary clause—A limitation, written in a credit union's charter, which precludes the credit union from serving a portion of a group otherwise included in its field of membership. Exclusionary clauses are used to prevent certain overlaps of fields of membership between credit unions.

Federal share insurance—Insurance coverage provided by the National Credit Union Share Insurance Fund and administered by the National Credit Union Administration. Coverage is provided for qualified accounts in all federal credit unions and participating state credit unions.

Field of membership—The persons (persons may include organizations and other legal entities) a credit union is permitted to accept for membership. A federal credit union's field of membership, set forth in paragraph 5 of its charter, may be made up entirely of a single group, related groups with one common bond, or of unrelated groups each having its own common bond.

Letter of understanding and agreement—Agreement between NCUA and federal credit union officials not to engage in certain activities and/or to establish reasonable operational goals. These are normally entered into with new charter applicants, and occasionally with credit unions granted significant charter expansions and are for a limited time.

Merger—Absorption by one credit union of all of the assets, liabilities and equity of another credit union. Mergers must be approved by the National Credit Union Administration and by the appropriate state supervisory authority whenever a state credit union is involved.

Multiple group credit union—A credit union whose field of membership consists of groups of persons, each group with its own common bond. The groups may be occupational, associational, or a combination thereof and do not need to share a common bond or be in any way related to one another.

Occupational common bond—Employment by the same employer. "Employment" includes long term contractual arrangements which are the practical equivalent of regular employment. "Employer" comprises a parent corporation and other corporations in which the parent directly or indirectly holds at least a majority interest.

Occupational credit union—A credit union whose field of membership consists primarily of persons employed by the same entity or related entities.

Operational area—The operational area of a credit union is an area surrounding the credit union's home and each branch office that, as determined by NCUA in its discretion, can reasonably be served by that office. Normally, NCUA will consider the area within a 25 mile radius of the home or branch office as the operational area. With rural populations, however, the area the credit union can reasonably serve may be somewhat broader. But a credit union cannot "annex" adjoining areas—i.e., add a group in an adjacent area because the group or a portion of the area the group is located in is within 25 miles of the outer edge of the credit union's operational area.

Overlap—The situation which results when a group is eligible for membership in more than one credit union.

Potential membership—Persons eligible to become primary members of a federal credit union.

Primary members—Members sharing the basic occupational, associational or community affinity to the field of membership.

Primary sponsor—That single enterprise that represents the largest potential segment of the field of membership.

Purchase and assumption—Purchase of all or a part of the assets of and assumption of all or a part of the liabilities of one credit union by another credit union. The purchased and

assumed credit union must first be placed into involuntary liquidation.

Select group—An occupational or associational group with its own common bond.

Secondary or derivative members—Members included in the field of membership by virtue of their close relationship to a common bond group (e.g., immediate family members, employees of the credit union, etc.).

Service status report—Periodic written statements made by federal credit unions to NCUA summarizing the results of efforts to bring service to the employees or members of select groups.

Subscribers—For a federal credit union, at least seven individuals who sign the charter application and pledge at least one share.

Appendix B—Letter of Understanding and Agreement

To the Board of Directors and Other Officials _____
Federal Credit Union

Since the purposes of credit unions are to promote thrift and to make funds available for loans to credit union members for provident and productive purposes, and since newly chartered credit unions do not generally have sufficient reserves to cover large losses on loans or meet unduly large liquidity requirements, Federal insurance coverage of member accounts under the National Credit Union Share Insurance Fund will be granted to the above named credit union subject to the conditions listed in this Letter of Understanding and Agreement and in the Organization Certificate and Application and Agreements for Insurance of Accounts. These terms are listed below and are subject to acceptance by authorized credit union officials.

1. The credit union will refrain from soliciting or accepting brokered fund deposits from any source without the prior written approval of the Regional Director.

2. The credit union will refrain from the making of large loans, that is, loans in excess of 5 percent of unimpaired capital and surplus, to any one member or group of members without the prior written approval of the Regional Director.

3. The credit union will not establish or invest in a Credit Union Service Organization (CUSO) without the prior written approval of the Regional Director.

4. The credit union will not enter into any insurance programs whereby the credit union member finances the payment of insurance premiums through loans from the credit union.

5. Any special insurance plan/program, that is, insurance other than usual and normal surety bonding or casualty or liability or loan protection and life savings insurance coverage, which the credit union officials intend to undertake, will be submitted to the Regional Director of the National Credit Union Administration for written approval prior to the officials committing the credit union thereto.

6. The credit union will prepare and mail to the district examiner financial and statistical reports as required by the Federal Credit Union Act and Bylaws by the 20th of each month following that for which the report is prepared.

7. As the credit union's officials gain experience and the credit union achieves target levels of growth and profitability, the above terms and conditions may be renegotiated by the two parties.

We, the undersigned officials of the _____ Federal Credit Union, as authorized by the board of directors, acknowledge receipt of and agree to the attached Letter of Understanding and Agreement dated _____ 19____.

This Letter of Understanding and Agreement has been voluntarily entered into with the National Credit Union Administration. We agree to comply with all terms and conditions expressed in this Letter of Understanding and Agreement.

Should the NCUA Board determine that these terms and conditions have not been complied with or that the board of directors or other officials have not conducted the affairs of the credit union in a sound and prudent manner, the NCUA Board may terminate insurance coverage of the credit union. If actions by the officials, in violation of this Letter of Understanding and Agreement, cause the credit union to become insolvent, the officials assume such personal liability as may result from their actions.

The term of this Letter of Understanding and Agreement shall be for the period of at least 24 months from the date the credit union is insured. This Letter of Understanding and Agreement may, at the option of the Regional Director, be extended for an additional 24 months at the end of the initial term of this agreement.

Dated this _____day of _____19____

National Credit Union Administration Board on Behalf of the National Credit Union Share Insurance Fund

Regional Director _____

_____Federal Credit Union

By:

Chief Executive Officer _____
Date _____
Chief Financial Officer _____
Date _____
Secretary _____
Date _____

Appendix C—Type-of-Membership Classification System

The National Credit Union Administration (NCUA) has established a type-of-membership classification system. This system provides information on credit unions in major associational, community, industrial service and occupational groups. The classification system has been designed to be flexible and to produce data needed for program planning, analysis and research purposes.

Credit unions have individual differences. For example, membership affiliation, geographic location and industrial or associational attachment of the credit union are significant factors in determining the general nature of the problems the credit union may encounter and in evaluating economic feasibility for chartering and other purposes. Thus, these factors must be identified and analyzed in order for NCUA and the credit union industry to respond effectively to any changes occurring or anticipated.

The classification system uses a three digit code. The first number in each three digit code identifies the common bond type: Associational (010–099), Occupational (100–700), Multiple Groups (800) and Residential (Urban and Rural Community) (900). As appropriate, the next two numbers in each digit identify the specific categories, e.g., 030–religious groups within the associational common bond. Credit unions that have more than one group will receive a classification that most nearly represents the common bond of the majority of its potential members. For example, XYZ FCU's membership comprises 51% banking employees, 45% mixed associational groups and 4% senior citizens groups. The credit union's type of membership classification would be 500-Finance, Insurance and Real Estate.

The Multiple Group classification has the three-digit code 800. This classification will be used for credit unions that have more than one group with no single group predominant, e.g., industrial parks, shopping centers. The nine hundred (900) classification is used for all urban and rural community groups.

Limited income and other types of special codes are addressed in a separate classification system.

The classification system presented in this Section covers all federally insured

credit unions. The Section will be helpful to credit union officials, trade organizations and others in the use of NCUA data classified by type-of-membership.

This Section is a revision of the "Type-of-Membership Classification for Federally Insured Credit Unions" guide issued by NCUA in October 1975.

Associational (010–099)

Federally insured credit unions whose common bond consists primarily of individuals who participate in activities developing common loyalties, mutual benefits and mutual interests are classified as associational groups.

010—Cooperatives

Examples: Agricultural, production and marketing; Consumer-retail mercantile; Electric; Housing; Other cooperatives

020—Fraternal, Professional and Trade Associations

Examples: Knights of Columbus, Knights of Pythias, National Grange, Farm Bureau; American Leather Association; Kidney Association and similar groups.

030—Religious

Examples: Catholic, Jewish, Muslim, Protestant, Others.

040—Labor Unions

Examples: Carpenters, Electrical Workers, Food and Beverage Workers; Performing Arts; Retail Clerks and Workers; Teamsters, Typographic and Printing Workers, Others.

050—Student Credit Unions

Examples: Students enrolled (graduate, undergraduate, full time, part time) in any junior college, technical institute, college and university.

060—Corporate Credit Unions

Examples: Credit unions organized primarily to provide liquidity and other services to member credit unions.

099—Associational Groups Not Elsewhere Classified

Occupational (100–799)

Federally insured credit unions whose common bond is limited to members employed by the same enterprise are classified as occupational groups. Persons sharing this common bond may be geographically dispersed. Employees of a parent corporation and its wholly-owned subsidiaries and persons under contract who work regularly for an enterprise may be considered under a single occupational bond. Occupational common bonds may include agriculture, mining, transportation, communications, public utilities, wholesale and retail trade, finance, insurance, real estate, services and government.

100—Natural Resources

101—Agriculture, Forestry, Fisheries and Mining and Construction

Examples: Commercial and non commercial farms timber tracts, commercial fishing, other agricultural services, forestry services such as fire fighting and reforestation establishments primarily engaged in commercial fishing hunting and trapping or in the operation of game preserves.

102—Mining

Examples: Companies involved in the extraction of minerals occurring naturally: Solids such as coal and ores; liquids such as crude petroleum; and gases such as natural gas. Also includes companies primarily engaged in exploration and development of mineral properties.

200—Manufacturing

201—Food and Kindred Products

Examples: Establishments manufacturing foods and beverages for human consumption, prepared feeds for animal and fowls, and certain related products.

202—Textile Mill Products

Examples: Establishments manufacturing all types of textiles.

203—Apparel and Other Finished Products Made From Fabrics and Similar Materials

Examples: Establishments producing clothing and fabricated products by cutting and sewing purchased woven or knit textile fabrics and related materials such as leather, rubberized fabrics, plastic and furs.

204—Lumber and Wood Products, Except Furniture

Example: Establishments operating different types of lumber mills

205—Furniture and Fixtures

Examples: Establishments engaged in manufacturing household, office, public building and restaurant furniture; and office and store fixtures.

206—Paper and Allied Products

Examples: Establishments manufacturing pulps from wood and other cellulose fibers and rags; the manufacture of paper and paperboard; and the manufacture of paper bags, boxes and envelopes.

207—Printing, Publishing and Allied Industries

Examples: Establishments engaged in printing by one or more of the common processes such as letterpress, lithography, gravure or screen, and those establishments which perform services for the printing trade such as bookbinding, typesetting, engraving, photoengraving, and electrotyping. Also included are establishments engaged in publishing newspapers, books and periodicals, regardless of whether or not they do their own printing.

208—Chemicals and Allied Products

Examples: Establishments producing basic chemicals and establishments manufacturing products by predominantly chemical processes. Such chemicals include chemicals, plastic materials and synthetics, drugs, soap detergents and cleaning preparations, perfumes, cosmetics and other toilet preparations, paints, varnishes, lacquers, enamels and allied products, miscellaneous chemical products.

209—Petroleum, Refining and Related Industries

Examples: Establishments primarily engaged in producing gasoline, kerosene distillate fuel oils, residual fuel oils, lubricants and other crude petroleum.

210—Rubber and Miscellaneous Plastics Products

Examples: Establishments manufacturing tires and inner tubes, fabricated rubber.

211—Leather and Leather Products

Examples: Establishments engaged in tanning, currying, and finishing hides and skins, and establishments manufacturing leather and artificial leather products.

212—Stone, Clay, Glass and Concrete Products

Examples: Establishments engaged in manufacturing flat glass and other glass products, cement, structural clay products, pottery, concrete and gypsum products, cut stone products, abrasive and asbestos products, etc., from materials taken principally from the earth in the form of stone, clay and sand.

213—Primary Metal Industries

Examples: Establishments engaged in smelting and refining of ferrous and nonferrous metals from ore, pig, or scrap; in the rolling, drawing and alloying of ferrous and non-ferrous metals, and in the manufacturing of castings, forgings; and other basic

products of ferrous and non-ferrous metals; and in the manufacture of nails, spikes and insulated wire and cable.

214—Fabricated Metal Products, Except Guided Missiles, Machinery and Transportation Equipment

Examples: Establishments engaged in fabricating ferrous and non-ferrous products such as metal cans, tinware, hand tools cutlery, general hardware, non electric heating apparatus, fabricated structural metal products, metal stampings and a variety of metal and wire products note elsewhere classified.

215—Machinery Except Electrical

Examples: Establishments where machines are powered by built-in-or detachable motors, with the exception of electrical household appliances. Portable tools, both electric and pneumatic power, are included in this group but hand tools are classified in major group 214 (fabricated metal products, except guided missiles, machinery and transportation equipment).

216—Electrical and Electronic Machinery, Equipment and Supplies

Examples: Establishments that manufacture household appliances but industrial machinery and equipment powered by built-in or detachable electric motors is classified in major group 215 (machinery except electrical).

217—Transportation Equipment-Motor Vehicles

Examples: Establishments that manufacture aircraft and parts. Also includes manufacturing space vehicle and parts, tanks and tank components and guided missiles.

219—Transportation Equipment—Ship and Boat Building and Repairing

220—Transportation Equipment—Railroad Equipment

Examples: Establishments primarily engaged in building streetcars, trackless trolley buses and railway cars.

221—Transportation Equipment—Other

Examples: Establishments engaged in manufacturing motorcycles, bicycles and other items not elsewhere classified in codes 217–220.

222—Measuring, Analyzing and Controlling Instruments; Photographic, Medical and Optical Goods; Watches and Clocks

Examples: Establishment engaged in manufacturing mechanical-measuring, engineering, laboratory and scientific research instruments; optical instruments and lenses; surgical, medical and dental instruments, equipment and supplies; ophthalmic goods, photographic equipment and supplies; watches and clocks.

229—Miscellaneous Manufacturing Industries

Examples: Establishments engaged in manufacturing tobacco, jewelry, silverware and plated ware, musical instruments and parts, toys, amusements, sporting and athletic goods, pens, pencils and other office artists' materials, furs, signs and other miscellaneous manufacturing industries not elsewhere classified.

300—Transportation, Communication, Electric, Gas and Sanitary Services

Examples: Establishments in this classification to a large extent are legally recognized as having a semipublic character. Most of the establishments are regulated by commissions or other public authorities as to the rates or prices they may charge and the services they may render.

301—Transportation—Railroad

Examples: Establishments include railroads, sleeping car and railroad express services.

302—Transportation—Local, Suburban and Interurban Passenger

Examples: Companies or systems providing municipal passenger transportation, taxicabs and intercity and highway transportation including school buses charter services and passenger terminals and service facilities.

303—Transportation—Motor Freight and Warehousing

Examples: Establishments engaged in local and long distance trucking, transfer and draying services, storage of goods, terminal facilities and warehousing.

304—Transportation—Water

Examples: Establishments engaged in freight and passenger transportation over water include towing, excursion boats and water taxis.

305—Transportation—Air

Examples: Establishments engaged in furnishing transportation by air including airports and terminal services.

306—Transportation—Other

Examples: Establishments not elsewhere classified in codes 301–305.

310—Communication

Examples: Establishments include telephone, telegraph, radio and television, and other.

311—Electric, Water, Gas and Sanitary Services

Examples: Establishments include electric services, gas production and distribution, combination electric and gas, and other utility services, water supply, sanitary services, irrigation systems, other.

400—Wholesale and Retail Trade

401—Wholesale

Examples: Establishments engaged in wholesale trade such as selling goods to trading facilities or to industrial commercial, institutional and professional users, and bringing buyer and seller together. Examples of such establishments include: Motor vehicles and automobile equipment; drug, chemicals and allied products—raw materials, electrical goods; hardware, plumbing and heating equipment, and supplies.

402—Retail Trade

Examples: Establishments that are classified by kind of business according to the principal lines of commodities sold (groceries, hardware, etc.) or the usual trade designation (drug store, department store, etc.). Examples of such establishments include: Building materials, hardware and farming equipment; general merchandise (department stores, mail order houses, etc.); retail trade—food; automobile dealers and gasoline service stations; retail trade—apparel and accessories; retail trade—eating and drinking places; retail trade—miscellaneous retail stores.

500—Finance, Insurance and Real Estate

Examples: Establishments such as a Federal Reserve Banks, commercial and stock saving banks, mutual savings banks, and banks and trust companies. Also includes establishments performing functions closely related to banking such as foreign exchange centers, check cashing agencies and currency exchanges, safe deposit companies, clearing house associations, establishments incorporated in the United States and engaged in international and foreign banking, credit agencies other than banks, insurance companies, security and commodity brokers, dealers and exchanges; real estate operators, and owners and lessors of real property as well as buyers, sellers, developers, and agents.

600—Services and Construction

Establishments engaged primarily in rendering a wide variety of services to individuals and business establishments, and in the building field.

601—Services

Examples: Establishments engaged in hotels and other lodging places; personal services (laundries, beauty salons, barber shops, shoe repair services, etc.); advertising agencies; consumer credit reporting agencies, collection agencies; private employment agencies; automobile repair, automobile services, and garages; motion pictures, and amusement and recreation services.

602—Health

Examples: Establishments that include associations or groups primarily engaged in providing medical or other health services to members, when the field of membership is limited to employees of such groups. Such establishments may include non government hospitals, medical and dental laboratories, health and allied services, not elsewhere classified.

603—Construction

Examples: Establishments engaged in building and heavy construction, and special trade contractors who are primarily engaged in specialized construction activities such as plumbing, painting, electrical work, and carpentry. Also, includes installation of prefabricated building equipment and materials by general contractors and special trade contractors.

604—Other

Examples: Service and construction groups not elsewhere classified.

700—Government and Education

701—Federal Government—Civilian

Examples: Establishments that include civilian employees in the various departments, agencies, and offices of the federal government including employees in federal government hospitals.

702—Federal Government—Military

Examples: Establishments that include civilian employees if they are together with military employees in the field of membership.

703—State Government

Examples: Establishments that include all state agencies and the national guard.

704—Local Government

Examples: Establishments that include county and city agencies, including hospitals, police and fire departments.

705—International Government

Examples: Establishments that include international government organizations Establishments that include county such as the United Nations and World Bank.

706—Education—Colleges and Universities

Examples: Establishments that include employees of private and trade schools, colleges and universities and other higher educational institutions.

707—Education—Elementary and Secondary

Examples: Establishments that include employees of private and trade schools, elementary and secondary school systems.

799—Occupational Groups not Otherwise Classified

Multiple Groups (800)

Credit unions whose members comprise multiple groups (associational and occupational) with no single group predominant, e.g. shopping centers, industrial parks.

801—Multiple groups primarily associational
802—Multiple groups primarily occupational
803—Multiple groups primarily mixed

Community—Urban and Rural (900)

Community groups that represent a well-defined neighborhood, community or rural district. The distinction between urban and rural is based on the latest Census definitions.

902—Government assisted urban groups
909—Other urban community groups
952—Government assisted rural groups
959—Other rural community groups
999—Unclassified

Appendix D—NCUA Offices

Note: Addresses and phone numbers will be updated at the time the interpretive ruling and policy statement is finalized.

BILLING CODE 7535-01-M

APPENDIX E

NCUA FORMS

NCUA 4000 -- Conversion of State Charter to a Federal Charter

-- FCU Investigation Report

NCUA 4001 -- FCU Investigation Report

NCUA 9500 -- Application and Agreement for Insurance of Accounts

NCUA 9501 -- Certification of Resolutions

NCUA 4008 -- Charter

NCUA 4009 -- Approval of Organization Certificate & Certification of Insurance

NCUA 4012 -- Report of Official & Agreement to Serve

NCUA 4401 -- Application to Convert from a State Credit Union to an FCU

NCUA 4221 -- Notice of Meeting of Members

NCUA 4505 -- Affidavit

NCUA 4506 -- Ballot for Conversion Proposal

NCUA 9600 -- Information to be Provided in Support of the Application of a State Credit Union for Insurance of Accounts

NCUA XXX -- Application for Field of Membership Change

OMB No. 3133-0015
Expiration 9-30-92

Conversion of State Charter to Federal Charter

FEDERAL CREDIT UNION INVESTIGATION REPORT
(NOTE TO ORGANIZER)

This report must be filled in completely and submitted with the other completed forms listed on page 2 under "SUBMITTAL OF CHARTER APPLICATION." Please refer to page 2 for instructions in completing this report.

A. INFORMATION FOR CHARTER AND BYLAWS

1. Proposed name _____ Federal Credit Union
   Second choice of name _____ Federal Credit Union
2. Contact Person _____ Bus. Tel. No./Area Code _____
   Res. Tel. No./Area Code _____
   Address _____
3. The credit union will maintain its office at _____
   (City) (County) (State) (Zip)
4. Permanent mailing address of credit union _____
5. Define proposed field of membership (Attach a copy of current state charter/field of membership)
6. The board will have (an odd number, 5 to 15) ____ members; the credit committee (an odd number, 3 to 7) ____ members; the supervisory committee (3 to 5) ____ members. Each official must complete a Report of Official and Agreement to Serve (NCUA 4012) which is to be submitted with this investigation report.

B. CHARACTER AND FITNESS OF SUBSCRIBERS
(Please type or print)

7. List of the subscribers who have signed the organization certificate (7 not more than 10 persons). Names should be IDENTICAL to signatures on the organization certificate (NCUA 4008). Each subscriber listed below has subscribed to at least one share in accordance with Section 103 of the Federal Credit Union Act:

Name _____ Address _____
Occupation _____ Years of membership _____
Name _____ Address _____
Occupation _____ Years of membership _____
Name _____ Address _____
Occupation _____ Years of membership _____
Name _____ Address _____
Occupation _____ Years of membership _____
Name _____ Address _____
Occupation _____ Years of membership _____
Name _____ Address _____
Occupation _____ Years of membership _____
Name _____ Address _____
Occupation _____ Years of membership _____
Name _____ Address _____
Occupation _____ Years of membership _____
Name _____ Address _____
Occupation _____ Years of membership _____
Name _____ Address _____
Occupation _____ Years of membership _____
Name _____ Address _____
Occupation _____ Years of membership _____
Name _____ Address _____
Occupation _____ Years of membership _____

ANY ADDITIONAL COMMENTS OR INFORMATION THAT IS DEEMED PERTINENT OR HELPFUL IN GIVING CONSIDERATION TO THIS APPLICATION SHOULD BE INCLUDED AS AN ATTACHMENT.

The undersigned certifies that to the best of his/her knowledge and belief the above information is true and correct.

I do (do not) recommend that a charter be granted to this group.

Signature _____, Organizer
Organizer's address _____

NCUA 4000

INSTRUCTIONS

A. INFORMATION FOR CHARTER AND BYLAWS

The subscriber should select a name for the proposed credit union, desirably a short one. Although it need not fully describe the group, the name should not be misleading. The last three words in the name must be "Federal Credit Union." Since the name selected should not duplicate exactly the name of an existing credit union, item 1 provides space for a second choice.

The territory of operations of a Federal credit union is described in the field of membership, item 4. The principal office of the credit union will usually be maintained at a location described in the field of membership.

The proposed field of membership should be defined so clearly that it leaves no room for any doubt as to whom the credit union is to serve or the area in which it is to operate. Corporations and other organizations referred to in the definition of the field of membership should be designated by the exact names rather than by some local or popular contraction of these names. Any segment of a larger organization should be identified with the parent. The field of membership for each type of common bond and samples are discussed in detail in Chapter 1 of the *"Chartering and Field of Membership Manual."*

With the guidance of the organizer, the subscribers to the Organization Certificate decide on the number of directors and credit committee members. The board and credit committee must be composed of an odd number of members. The supervisory committee is appointed by the board of directors.

B. CHARACTER AND FITNESS OF SUBSCRIBERS

The names and addresses of the subscribers should be recorded legibly and completely in item 20 of this report. It is from this information that the Administration prepares section 3 of the charter.

The names of the subscribers must be **IDENTICAL** to their signatures on the Organization Certificate.

C. SUBMITTAL OF CHARTER APPLICATION

In addition to this Investigation Report, the following should be submitted to the appropriate regional director of NCUA:

1. Organization Certificate, NCUA 4008 - two notarized originals. At least seven, *but no more than ten persons,* must sign both copies of the organization certificate. Signatures on both copies must be identical. The person administering the oath must not be one of the subscribers. The oath on both copies of the organization certificate must be executed and show the notary's seal and date the commission expires as required by State law;
2. Report of Official and Agreement to Serve, NCUA 4012 - one original for each board member, credit committee member, and supervisory committee member;
3. Application and Agreements for Insurance of Accounts, NCUA 9500 - one original;
4. Business Plan - refer to Chapter 1 of the *Chartering and Field of Membership Manual* for a discussion of the components of an acceptable business plan.

FEDERAL CREDIT UNION INVESTIGATION REPORT

(Note to Organizer) This report form must be filled in completely and submitted with the other completed forms listed on page 8 under "Submittal of Charter Application." Please refer to page 7 for instructions in completing this report.

A. INFORMATION FOR CHARTER AND BYLAWS

1. Proposed name _____ Federal Credit Union
   Second choice _____ Federal Credit Union

2. Contact Person _____ Business Tel. _____ Residence Tel. _____
   Address _____

3. The credit union will maintain its offices at _____
   (City, State, County, Zip Code)
   _____

3a. Proposed permanent mailing address of credit union _____
   _____

4. Define proposed field of membership _____
   _____
   _____
   _____
   _____

5. The board will have (an odd number, 5 to 15) _____ members; the credit committee will have (an odd number, 3 to 7) _____ members; the supervisory committee will have (3 to 5) _____ members. Each official must complete a Report of Official and Agreement to Serve (NCUA 4012) which is to be submitted with this investigation report.

B. ECONOMIC ADVISABILITY OF ORGANIZING PROPOSED CREDIT UNION

(Attach a separate sheet if space available is not adequate)

GENERAL INFORMATION

1. Potential membership _____ .
   NOTE: Number of employees for occupational, active members for associational (or families for religious groups), or population per most recent census for community-type fields of membership.

2. Potential interest (survey results).
   NOTE: Sample must consist of a minimum of 250 potential members. Copy of survey form(s) utilized should be attached.
   Number of people surveyed _____ .
   Number of people responding to survey _____ .
   Number of people pledging an initial deposit _____ .
   Total dollars pledged $ _____ .
   Number pledging systematic savings _____ .
   Total dollars pledged (per month) $ _____ .

3. Number of persons attending the charter-organization meeting _____ .

4. Are officials of the sponsor favorable toward the proposal to organize a credit union? _____ .
   NOTE: Attach letters of support from company officials (occupational-type); association officials (associational-type); business, civic, or other community organizations (community-type).

For Paperwork Reduction Act Notice, see page 7.

5. What facilities and assistance, if any, will the sponsor provide?
_____ Office Space (Describe)
_____ Office Supplies
_____ Payroll deductions
_____ Funding for start-up costs, if so $_____.
_____ Other (Describe)

6. Is credit union service now available to any members of the group? _____.
If so, explain the nature and approximate extent of overlapping of such service with the field of membership proposed in this application, i.e., employees who are labor union members eligible for membership in another credit union on an associational basis; labor union members who are eligible for credit union membership on an occupational basis; community residents who are eligible for credit union membership in occupational or associational credit unions located within the proposed boundaries. _____

7. What potential difficulties do you detect in the elected officials carrying out their management responsibilities or in the FCU achieving its stated objectives? _____

NOTE TO ORGANIZER: The officials' projected goals for share growth must be recorded in the business plan.

8. What provisions have been made to overcome potential difficulties? _____

Dates of planned contacts by organizer to determine progress and to assist the group:

_____ (Date) _____ (Date) _____ (Date)

SPECIFIC INFORMATION - OCCUPATIONAL CHARTER APPLICANTS

9. How long has the sponsor company been in existence? _____ .

10. What was the highest number of employees during the past three years? _____ ; Lowest number during the past three years _____ . If a large variance, please explain, _____

11 Are there any contemplated changes in the corporate structure of the company? _____ . If yes, explain _____

12. Have there been any significant changes in the corporate structure in the past three years? _____ . If yes, please explain _____

13. Are there any negotiations now in progress between management and labor that could lead to work stoppages? _____ . If yes, please explain _____

14. If the credit union cannot operate on the employer's property, explain how the credit union will be able to transact business effectively with the members. _____

15. If the employees to be served by the credit union work in more than one location or city, identify each location with the corresponding number of employees working at each. _____

16. Are there other employees of the company who are not being included in the proposed field of membership? _____ . If so, give the number and location of the other employees and explain why a credit union is being proposed for this group only. _____

SPECIFIC INFORMATION - ASSOCIATIONAL CHARTER APPLICANTS

17. State the purpose and goals of the organization sponsoring this charter. _____

18. List the types of activities and their frequency, which the organization sponsors that provide contact among the members and from which common loyalties, mutual benefits, and mutual interests are developed. _____

19. In what year was the organization established? _____. Is it incorporated? _____. Where is the headquarters located? _____.

20. Give statistics as to trends in membership during the last five years. _____

21. What is the frequency of members' meetings? _____. Average attendance _____. Dues required _____.

22. State the geographic territory where members reside. _____

23. Except for religious and labor union groups, obtain a copy of the current bylaws, the constitution or articles of incorporation, and recent financial statements, i.e. balance sheet, and income and expense statement. Submit these documents with this application.

24. If the bylaws, constitution or articles of incorporation provides for more than one type of membership and if all classes of membership are to be included in the credit union's field of membership, provide justification for the inclusion of other than "regular" members. _____

25. For labor union group only, complete a through c:

a. State the number of labor union members at each place of employment. _____

b. State the total number of employees, whether union members or not, working at each place of employment. Give a breakdown of union versus nonunion employees. _____

c. What has been done toward organizing a credit union on an employee basis? Discuss fully. _____

SPECIFIC INFORMATION - COMMUNITY CHARTER APPLICANTS

26. List the factors or conditions which make this residential unit a logical group for credit union operation. _____

27. If the area to be served by the credit union is adjacent to any major metropolitan area, explain why it is not considered a part of such metropolitan area. _____

28. Which business, civic, or other community organizations support the proposed credit union? List and show the support pledged including the names and titles of officials who were contacted. Obtain and attach letters of support from these individuals. _____

29. Provide a map which clearly outlines the credit union's proposed community boundaries.

30. Are there currently any state or federal credit unions operating within the proposed community boundaries? _____. If so, provide a list of the credit union's names and mailing addresses.

31. List any other financial institutions, i.e. banks, savings and loan associations, etc., located within the proposed community boundaries.

C. CHARACTER AND FITNESS OF SUBSCRIBERS

1. List of subscribers who have signed the organization certificate (7 not more than 10 persons). Names should be **IDENTICAL** to signatures on the organization certificate (NCUA 4008). Each subscriber listed below has subscribed to at least one share in accordance with Section 103 of the Federal Credit Union Act:

Name _____
Address _____
Occupation _____
Years of Residence _____

Name _____
Address _____
Occupation _____
Years of Residence _____

Name _____
Address _____
Occupation _____
Years of Residence _____

Name _____
Address _____
Occupation _____
Years of Residence _____

Name _____
Address _____
Occupation _____
Years of Residence _____

Name _____
Address _____
Occupation _____
Years of Residence _____

Name _____
Address _____
Occupation _____
Years of Residence _____

Name _____
Address _____
Occupation _____
Years of Residence _____

Name _____
Address _____
Occupation _____
Years of Residence _____

Name _____
Address _____
Occupation _____
Years of Residence _____

2. Are all of the subscribers within the field of membership? _____. Do they appear to be fairly representative of the group described in the definition of the field of membership? _____. If not, explain _____
_____
_____
_____.

3. Does your investigation indicate that the subscribers are persons of good character? _____. If not, explain _____
_____
_____
_____.

4. From your investigation, is it your judgment that the directors and committee members are persons of good character, and that they have the ability and determination to operate a credit union satisfactorily? _____. If not, explain _____
_____
_____
_____.

5. Does it appear that there are any factions within the group which may render smooth and efficient credit union operations difficult? _____. If so, explain _____
_____
_____
_____.

6. Is there any indication that the proposed credit union would be used for selfish gain by any person or group of persons within the group to be served? _____.

7. Is an application for a State charter now pending? _____.

8. Has the group ever had a credit union? _____. If so, when did it liquidate or merge? _____.

ANY ADDITIONAL COMMENTS OR INFORMATION THAT IS DEEMED PERTINENT OR HELPFUL IN GIVING CONSIDERATION TO THIS APPLICATION SHOULD BE INCLUDED AS AN ATTACHMENT.

The undersigned certifies that to the best of their knowledge and belief the above information is true and correct.

I do (do not) recommend that a charter be granted to this group.
Signature _____, Organizer
Organizer's Address _____
_____
Telephone No. _____ Date _____

OMB No. 3133-0015
Expiration 9-30-92

INSTRUCTIONS

A. INFORMATION FOR CHARTER AND BYLAWS

The subscriber should select a name for the proposed credit union, desirably a short one. Although it need not fully describe the group, the name should not be misleading. The last three words in the name must be "Federal Credit Union." Since the name selected should not duplicate exactly the name of an existing credit union, item 1 provides space for a second choice.

The territory of operations of a Federal credit union is described in the field of membership, item 4. The principal office of the credit union will usually be maintained at a location described in the field of membership.

The proposed field of membership should be defined so clearly that it leaves no room for any doubt as to whom the credit union is to serve or the area in which it is to operate. Corporations and other organizations referred to in the definition of the field of membership should be designated by the exact names rather than by some local or popular contraction of these names. Any segment of a larger organization should be identified with the parent. The field of membership for each type of common bond and samples are discussed in detail in Chapter 1 of the *"Chartering and Field of Membership Manual."*

With the guidance of the organizer, the subscribers to the Organization Certificate decide on the number of directors and credit committee members. The board and credit committee must be composed of an odd number of members. The supervisory committee is appointed by the board of directors.

B. ECONOMIC ADVISABILITY OF ORGANIZING PROPOSED CREDIT UNION

This section of the report contains information on:

1. The size and compactness of the group;
2. The nature of the common bond;
3. The attitude of the:
   a. (if occupational based field of membership) management of the sponsor organization;
   b. (if associational based field of membership) officers of the sponsor association;
   c. (if community based field of membership) community leaders and/or officers of prominent associations or organizations in the area to be served;
4. The facilities available for credit union operations;
5. The availability of existing credit union service, and
6. Other facts to support a potential for successful operation.

This section of the report should contain information on the management, association or civic leaders contacted that intend to support or utilize the credit union. In those cases where certain persons in the area are opposed to the credit union, the organizer should point out the factors which indicate that the group will be able to overcome this handicap.

Clerical assistance at least during the first few months of operation, payroll deductions, and office space are desirable aids in the development of a credit union. Plans for overcoming any obstacles to effective operation such as lack of office space or scattered field of membership should be described briefly. If more space is needed than that provided, a separate sheet may be used.

C. CHARACTER AND FITNESS OF SUBSCRIBERS

The names and addresses of the subscribers should be recorded legibly and completely in item 20 of this report. It is from this information that the Administration prepares section 3 of the charter.

The names of the subscribers must be **IDENTICAL** to their signatures on the Organization Certificate.

D. SUBMITTAL OF CHARTER APPLICATION

In addition to this Investigation Report, the following should be submitted to the appropriate regional director of NCUA:

1. Organization Certificate, NCUA 4008 - two notarized originals. At least seven, *but no more than ten persons,* must sign both copies of the organization certificate. Signatures on both copies must be identical. The person administering the oath must not be one of the subscribers. The oath on both copies of the organization certificate must be executed and show the notary's seal and date the commission expires as required by State law;
2. Report of Official and Agreement to Serve, NCUA 4012 - one original for each board member, credit committee member, and supervisory committee member;
3. Application and Agreements for Insurance of Accounts, NCUA 9500 --one original;
4. Business Plan - refer to Chapter 1 of the *Chartering and Field of Membership Manual* for a discussion of the components of an acceptable business plan.

APPLICATION AND AGREEMENTS FOR INSURANCE OF ACCOUNTS

Date

TO: The National Credit Union Administration Board (Board)

The proposed _____ Federal Credit Union,

_____
(Mailing Address)

_____
(City) (State) (Zip Code)

applies for insurance of its accounts as provided in Title II of the Federal Credit Union Act, and in consideration of the granting of insurance, hereby agrees:

1. To pay the reasonable cost of such examinations as the Board may deem necessary in connection with determining the eligibility of the application for insurance.

2. To permit and pay the reasonable cost of such examinations as in the judgment of the Board may from time to time be necessary for the protection of the fund and of other insured credit unions.

3. To permit the Board to have access to any information or report with respect to any examination made by or for any public regulatory authority and furnish such additional information with respect thereto as the Board may require.

4. To provide protection and indemnity against burglary, defalcation, and other similar insurable losses, of the type, in the form, and in an amount at least equal to that required by the laws under which the credit union is organized and operates.

5. To maintain such regular reserves as may be required by Section 116 of the Federal Credit Union Act.

6. To maintain such special reserves as the Board, by regulation or in special cases, may require for protecting the interest of members.

7. Not to issue or have outstanding any account or security the form of which, by regulation or in special cases, has not been approved by the Board.

8. To pay and maintain the capitalization deposit required by Title II of the Federal Credit Union Act.

9. To pay the premium charges for insurance imposed by Title II of the Federal Credit Union Act.

10. To comply with the requirements of Title II of the Federal Credit Union Act and of regulations prescribed by the Board pursuant thereto.

11. To permit the Board to have access to all records and information concerning the affairs of the credit union and to furnish such information pertinent thereto that the Board may require.

12. To comply with Title 18 of the United States Code and other pertinent Federal statutes as they may exist or may be hereafter promulgated or amended.

We, the undersigned, certify to the correctness of the information submitted. In support of this application the undersigned submit the Schedules described below:

Schedule No.	Title

We, the undersigned, further certify that to the best of our knowledge and belief no proposed officer, committee member, or employee of this credit union has been convicted of any criminal offense involving dishonesty or a breach of trust, except as noted in attachments to this application. We further agree to notify the Board if any proposed or future officer commits a criminal offense.

_____ _____
Chief Executive Officer Chief Financial Officer

Note: A willfully false certification is a criminal offense. U.S. Code, Title 18, Sec. 1001.

NCUA 9500

CERTIFICATION OF RESOLUTIONS

_____ FEDERAL CREDIT UNION (PROPOSED)

We certify that we are the duly elected and qualified chief executive officer and recording officer of the above-named proposed Federal credit union and that at the charter-organization meeting the board of directors passed the following resolution and recorded it in its minutes:

"Be it resolved that this credit union apply to the National Credit Union Administration Board for insurance of its accounts as provided in Title II of the Federal Credit Union Act.

Be it further resolved that the president and treasurer be authorized and directed to execute the Application and Agreements for Insurance of Accounts as prescribed by the Board and any other papers and documents required in connection therewith; to pay all expenses and do all other things necessary or proper to secure and continue in force such insurance."

_____

Chief Executive Officer

_____

Recording Officer, Board of Directors

NCUA 9501

NATIONAL CREDIT UNION ADMINISTRATION

FEDERAL CREDIT UNION

(A corporation chartered under the laws of the United States)

CHARTER NO. _____

NCUA 4008
1

ORGANIZATION CERTIFICATE

_____ FEDERAL CREDIT UNION

Charter No. _____

TO NATIONAL CREDIT UNION ADMINISTRATION:

We, the undersigned, do hereby associate ourselves as a Federal credit union for the purposes indicated in and in accordance with the provisions of the Federal Credit Union Act, (12 U.S.C. 1751 et seq.). We hereby request approval of this organization certificate; we hereby apply for insurance of member accounts; we agree to comply with the requirements of said Act, with the terms of this organization certificate and with all laws, rules, and regulations now or hereafter applicable to Federal credit unions.

(1) The name of this credit union shall be _____

_____ Federal Credit Union.

(2) This credit union will maintain its office and will operate in the territory described in the field of membership.

(3) The names and addresses of the subscribers to this certificate and the number of shares subscribed by each are as follows:

NAME	ADDRESS	SHARES

(4) The par value of the shares of this credit union will be as stated in the bylaws.

(5) The field of membership shall be limited to those having the following common bond:

(6) The term of this credit union's existence shall be perpetual: Provided, however, that upon the finding that this credit union is bankrupt or insolvent or has violated any provision of this organization certificate, of the bylaws, of the Federal Credit Union Act including any amendments thereto or thereof, or of any regulations issued thereunder, this organization certificate may be suspended or revoked under the provisions of Section 120 (b) of the Federal Credit Union Act.

(7) This certificate is made to enable the undersigned to avail themselves of the advantages of said Act.

(8) The management of this credit union, the conduct of its affairs, and the powers, duties, and privileges of its directors, officers, committees and membership shall be set forth in the approved bylaws and any approved amendments thereto or thereof.

IN WITNESS WHEREOF we[1] have hereunto subscribed our names this

day of _____, 19__.

_____ _____

_____ _____

_____ _____

_____ _____

_____ _____

Subscribed before me, an officer competent to administer oaths, at _____
CITY/STATE

this _____ day of _____,

19__.

Signed _____

Title _____
(Notary public or other competent officer)

[1] At least seven signers, none of whom should administer the oath.

APPROVAL OF ORGANIZATION CERTIFICATE AND CERTIFICATION OF INSURANCE

Pursuant to the provisions of the Federal Credit Union Act (12 U.S.C. 1751 et. seq.), the foregoing organization certificate and insurance of member accounts of _____ _____ Federal Credit Union are approved this _____ day of _____, 19__.

_____

ROGER W. JEPSEN
CHAIRMAN

NATIONAL CREDIT UNION ADMINISTRATION

NCUA 4009

REPORT OF OFFICIAL AND AGREEMENT TO SERVE

TO: **NATIONAL CREDIT UNION ADMINISTRATION**
(Type or Print)

Proposed _____ Federal Credit Union

☐ Mr. ☐ Ms.
Name
☐ Mrs. ☐ Miss _____ (Last / First / Middle)

Title of Newly Elected/Appointed Credit Union Position _____

Maiden Name (If Different From Above) _____

Address (Res.) _____ (Street / City / State / Zip Code)

Phone + Area Code _____ (Residence) _____ (Business)

Place of Birth _____ (City/State)

Date of Birth _____

Social Security Number _____

Employer _____

Type of Business _____

Number of years with present employer _____ Your position title _____

Education background (circle highest grade completed)

1 2 3 4 5 6 7 8 9 10 11 12 (Grade and High School)

1 2 3 4 ( ) (College)

MAJOR FIELD OF STUDY _____

Other training or experience _____

Are you willing to accept the position of trust for which you have been selected and to remain in office until such time as a qualified successor is found? ☐ Yes ☐ No

Have you been informed as to the general duties and responsibilities of an official of the proposed Federal credit union and are you willing to devote the time necessary to familiarize yourself with and to perform your duties? ☐ Yes ☐ No

Estimated number of hours per month you will be able to donate as a volunteer _____.

IF THE ANSWER IS **YES** TO THE FOLLOWING QUESTION, PLEASE PROVIDE INFORMATION AS INSTRUCTED ON REVERSE SIDE OF THIS FORM:

Have you ever been convicted of any CRIMINAL OFFENSE involving dishonesty or a breach of trust? ☐ Yes ☐ No

To facilitate the process of obtaining a credit and background check, please provide the following:

1. Any other names which you have used _____, and,
2. Previous address, (if your address changed over the past 2 years). _____
3. Name of Spouse _____

READ THE FOLLOWING CAREFULLY BEFORE SIGNING

CERTIFICATION AND AGREEMENT TO SERVE:

I certify that the information provided on this form is true and correct. Further, I, the undersigned, having been duly designated to occupy the position(s) indicated above, do hereby agree to serve in the above-stated office(s) of this proposed credit union until the first annual meeting held in accordance with the Federal Credit Union Act and the bylaws of this credit union and until the election of my successor(s). I further pledge to carry out the duties and responsibilities commensurate with said office(s) as promulgated by the Federal Credit Union Act and the bylaws of this credit union. I have read the Privacy Act Notice on the reverse side of this form.

_____ (Date) _____ (Signature) _____ (Witness)

PRIVACY ACT NOTICE

The Privacy Act of 1974 (Public Law 93-579) requires that you be advised as to the legal authority, purpose and uses of the information solicited by this form. Pursuant to Sections 104 and 205(d) of the Federal Credit Union Act, the information in this form is requested for the purpose of completing the investigation required for a new Federal credit union. The information in this form will be primarily used in considering the soundness of the management for the proposed Federal credit union. However, this form may be disclosed to any of the following sources: a congressional office in response to your inquiry to that office; an appropriate Federal, state or local authority in the investigation or enforcement of a statute or regulation; or employees of a Federal agency for audit purposes. Failure to complete this form or omission of any item of information, **except** for disclosure of your social security number, may result in a delay in the process for chartering the proposed Federal credit union. In accordance with Section 792.36 of NCUA's regulations, you are not required to furnish your social security number on this form. Your social security number, if voluntarily provided, will be used to more easily verify the information required by this form. No penalty will result to you as a management official or to the chartering of the proposed Federal credit union if you do not provide your social security number.

Further information needed if answer to CRIMINAL OFFENSE question on reverse side of form was YES:

CRIMINAL OFFENSE:

Nature of offense _____

_____

Date of occurrence _____ Date of conviction _____

Sentence conferred _____

_____

(Attach a separate sheet if space provided is not adequate)

CRIMINAL OFFENSE GUIDELINES

The Federal Credit Union Act, Subchapter II, section 205(d), requires that, "Except with the written consent of the Administrator, no person shall serve as director, officer, committee member, or employee of an insured credit union who has been convicted, or who is hereafter convicted, of any criminal offense involving dishonesty or breach of trust." To assist the Administrator in making a determination of the fitness of a person who is selected to serve and who the organizer believes is qualified to serve as an official, the specific information above will need to be furnished.

If the Board believes that, in view of the facts presented and the date of the offense, they can give their consent to the appointment they will so advise that person in writing. If on the other hand, the Board believes after careful consideration that they cannot in good conscience give their written consent to the appointment they will contact the organizer and ask that another person be selected for the position. The person selected will have to complete a Report of Official and Agreement to Serve.

An indication of whether the bonding company would agree to provide coverage should be included if the person is to serve as treasurer. Bonding company agrees to provide coverage ☐ Yes ☐ No.

APPLICATION TO CONVERT FROM A STATE TO A FEDERAL CREDIT UNION

The _____ Credit Union of _____ (city), _____ (State), incorporated under the laws of the State of _____ on _____, 19___, by decision of its board of directors, hereby makes application to the National Credit Union Administration to convert to a Federal credit union.

1. Field of membership of State-chartered credit union. (Use exact wording of charter, articles of incorporation or bylaws, as amended to date.)

_____

_____

_____

_____

_____

2. Is proposed Federal charter to cover same field of membership? Yes ☐ No ☐ If answer is "No," explain fully:

_____

_____

_____

_____

3. Standard financial and statistical reports as of _____, 19___, or comparable forms of reports, certified correct by the treasurer and verified by the affidavit of the president or vice-president, are attached.

4. A schedule of delinquent loans classified 2 to 6 months, 6 to 12 months, and 12 months and over delinquent is attached. (As a minimum, schedule should include for each delinquent loan: loan date, last payment date, unpaid balance, security, and comment on collectibility.)

5. The following policies on loans to members are currently in effect in this credit union:

a. Interest rates on loans: _____

_____

b. Charges incident to making loans which are passed on to borrowers: _____

_____

c. Maturity limits: _____

_____

_____

d. Unsecured loan limit: _____

_____

e. Secured loan limit: _____

_____

f. Types of security accepted: _____

_____

g. Requirements of amortization (Repayment requirements): _____

_____

6. Attached is a list of unsecured loans in excess of the amounts stipulated in the Act. (For each loan show account number, original amount, terms, and unpaid balance.)

7. Attached is a list of loans with maturities in excess of periods stipulated in the Act and the NCUA Rules and Regulations. (For each loan show account number, original amount, terms, unpaid balance, and security.)

8. Types of accounts which members are required or are permitted to maintain: Share ☐ Deposit ☐ Other ☐ (describe): _____

9. Describe any real estate owned by credit union, including a list of its current market value: _____

10. Describe and list any investments which are outside of the investment powers of Federal credit unions (Refer to Section 107(7), Federal Credit Union Act): _____

11. Names and locations of any depository institutions in which the credit union deposits its funds but which are beyond the purview of deposit powers authorized by Section 107(8) of the Federal Credit Union Act.

_____

12. Describe any services rendered to or on behalf of members or of the public, other than accepting and maintaining accounts of members and making loans to members: _____

13. Describe what you propose to do about any policies, procedures, assets or liabilities which do not comply with the Federal Credit Union Act: _____

14. Give specific reasons as to why you desire to convert to a Federal credit union: _____

We hereby authorize the National Credit Union Administration to examine our books and our records and agree to pay an examination fee in accordance with Section 701.6 of the National Credit Union Administration Rules and Regulations.

We, the undersigned _____ Chief Executive Officer and

_____ Chief Financial Officer of the _____ Credit

Union of _____, State of _____, certify: That we are the duly elected Chief Executive Officer and the Chief Financial Officer, respectively, of said credit union; that the statements made in this Application to Convert from a State to a Federal Credit Union and the schedules attached hereto are true, complete, and correct to the best of our knowledge and belief and are made in good faith.

_____

TITLE:
(CHIEF EXECUTIVE OFFICER)

_____

TITLE:
(CHIEF FINANCIAL OFFICER)

NCUA 4401

NOTICE OF MEETING OF THE MEMBERS

_____ FEDERAL CREDIT UNION

_____, _____
(City) (State)

THIS PROPOSITION WILL BE DECIDED BY A MAJORITY OF THE MEMBERS WHO VOTE.

Notice is hereby given that a meeting of the members of _____ Federal Credit Union, _____, _____ has been called and will be held at _____ on _____, 19__, at _____ o'clock, ____ .M. for the purpose of considering and voting upon the following resolution:

"RESOLVED, That the _____ Federal Credit Union be converted to a credit union chartered under the laws of the State of _____ and that its operation under Federal charter be discontinued.

RESOLVED FURTHER, That the board of directors and the officers of this credit union be and are hereby authorized and directed to do all things necessary to effect and to complete the conversion of this credit union from a Federal to a State-chartered credit union"

The board of directors of this credit union has given careful consideration to the advantages and the disadvantages of the proposed conversion and believes it to be in the best interest of the members for the following reasons: _____

The proposed conversion would result in the following disadvantages or adverse changes in services and benefits to the members of the credit union: _____

NCUA 4221

The board of directors recommends that the members approve the proposal to convert to a State charter.

The members' accounts will ☐ will not ☐ continue to be insured by the National Credit Union Share Insurance Fund.

Attached is your ballot. You are urged to bring your ballot to the meeting and to cast your vote after hearing the discussion of the proposal. If you cannot attend the meeting, you are urged to mark your vote, date and sign your ballot, have it postmarked no later than the date and the time announced for the meeting of the members, and mail it to the following address:_____

BY ORDER OF THE BOARD OF DIRECTORS

_____

TITLE:
(CHIEF EXECUTIVE OFFICER)

_____

TITLE:
(CHIEF RECORDING OFFICER)

Issued _____
(Date)

AFFIDAVIT

PROOF OF RESULTS OF MEMBERSHIP VOTE ON PROPOSED CONVERSION

We, the undersigned _____ president/vice president and _____ secretary of the _____ Federal Credit Union, hereby swear or affirm as follows:

1. That the conversion proposal as set forth in the attached Notice of Meeting of the Members was fully explained to the members present at said meeting of members.

2. That on the date of the said meeting of members there were _____ members of this credit union qualified to vote; _____ members were present at said meeting; of those members present, _____ members voted in favor of the conversion and _____ members voted against the conversion; of those members not present at the meeting but who filed ballots, _____ members voted in favor of the conversion and _____ members voted against the conversion; and that, without duplication of the votes of any member, a total of _____ members voted in favor of the conversion and _____ members voted against the conversion.

3. That the action of the members of this credit union at said meeting is fully and completely recorded in the minutes of said meeting and all ballots cast by the members on the question of conversion, either at the meeting or by delivery to the credit union, are on file with the secretary of this credit union.

_____
TITLE:
(CHIEF EXECUTIVE OFFICER)

_____
TITLE:
(CHIEF RECORDING OFFICER)

_____
Federal Credit Union

Subscribed before me, an officer competent to administer oaths, at _____ _____, this _____ day of _____, 19___.

Signed _____

(SEAL)

Title _____
(Notary Public or other competent officer)

My Commission Expires _____, 19___.

NCUA 4505

BALLOT FOR CONVERSION PROPOSAL

I have read the notice concerning the meeting of the members of the _____ Federal Credit Union called for _____, 19___, to consider and to vote upon the following proposition:

"RESOLVED, That the _____ Federal Credit Union be converted to a credit union chartered under the laws of the State of _____, and operation under Federal Charter Number _____ be discontinued.

RESOLVED FURTHER, That the board of directors and the officers of this credit union be and are hereby authorized and directed to do all things necessary to effect and complete the conversion of this credit union from a Federal to a State-chartered credit union."

I hereby cast my vote on the proposition: (Place an X in the square opposite the appropriate statement.)

I vote for the conversion ☐

I vote against the conversion ☐

_____ (Account Number)

_____ (Signature of Member)

Date _____

NCUA 4506

OMB No. 3133
Expiration 9-30-92

INFORMATION TO BE PROVIDED IN SUPPORT OF THE APPLICATION OF A STATE CHARTERED CREDIT UNION FOR INSURANCE OF ACCOUNTS

_____ Credit Union

1. Show below the location of the credit union's books and records.

_____
(Street Address)

_____
(City) (State) (Zip) (Telephone)

2. Show the date (month, day, year) in which the credit union was chartered. _____ 19 ____
3. Attach a copy of the credit union's field of membership as shown in the charter, articles of incorporation and/or bylaws, as amended to date. Please identify it as the first schedule in the consecutive number sequence, as discussed in the instructions. Schedule No. _____
4. Potential membership (total number of persons who could be served, including present members). _____
5. Describe type activity sponsor organization is engaged in. (See instructions pertaining to Item No. 5.)

_____

_____

6. Does the credit union operate under standard bylaws provided by the State Supervisory Authority? Yes ☐ (Stop) No ☐ (Complete a.)
   a. Attach a copy of the current official bylaws under which the credit union operated. Schedule No. _____
7. Is the credit union under any administrative restraints by the State Supervisory Authority? Yes ☐ (Complete a.) No ☐ (Stop)
   a. Explain fully on an attached schedule. Schedule No. _____
8. Attach a copy of the latest State supervisory authority examination report or attach a copy of the latest certified public accountant's report if made in lieu of a State supervisory authority examination. Copies of any correspondence from the State supervisory authority which accompanied the examination report should also be included.
9. Attach copies of the Balance Sheet and of the Statement of Income and Expense (or Financial and Statistical Report) for the month-end preceding the date of this application and for the same month of the preceding year. Schedule Nos. _____ . (Identify current year statement with (a) after schedule no. and previous year with (b).)
10 Reserves
   a. Show below the requirements of the State law and/or your bylaws for transfer of earnings to reserves (either monthly or at the end of each accounting period).

11. Delinquent Loans and Charged-off Loans
   a. Attach a copy of the delinquent loan list as of the month-end preceding the date of this application. See instructions pertaining to Item No. 11a. Schedule No. _____ .

b. List below the requested information on delinquent loans for the last four calendar quarters preceding the date of the application (March 31, June 30, September 30 and December 31). Also show total share and loan balances for all members for same period.

(a) *Other Delinquent Categories	(b) Delinquent Categories	Date _____	Date _____	Date _____	Date _____
	2 mos. to less than 6 mos.	$	$	$	$
	6 mos. to less than 12 mos.	$	$	$	$
	12 mos. and over	$	$	$	$
	Totals				
	Share Balances	$	$	$	$
	Loan Balances	$	$	$	$

*See instructions pertaining to Item No. 11 b.

c. List below the requested information on loans charged off during the last three years and the current year. List total of all reserves both revocable and irrevocable for the same period as (balance at year-end or current period).

	19 _____	19 _____	19 _____	Current Yr. to Date _____ 19 ____	*Totals Since Organization
Total Charged Off					
Total Recovered					
Net Charged Off					
Total of all Reserves					

*If this information is available.

12. Does the credit union have any unrecorded or contingent liabilities (including pending law suits or civil actions)? Yes ☐ (Complete a.) No ☐ (Stop)
a. List on a schedule the complete description of such liabilities, including amounts, status of the items, and a description of the circumstances creating the liabilities or contingent liabilities. Schedule No. _____ .

13. Do any asset accounts (other than loans to members, investments, and real estate) have actual values less than the book values shown on the Balance Sheet? Yes ☐ (Complete a.) No ☐ (Stop)
a. List on a separate schedule a description of such assets, showing at least the following information: account number, description of item, book value and actual value. Schedule No. _____ .

14. List below or on an attached schedule any investments or real estate as discussed in the instructions pertaining to Item No. 14. Schedule No._____ . Attach a copy of the credit union's current investment policies. Investments/Loans to Credit Union Service Organization (CUSO) should be listed separately on page 6.

Description of Item	Current Market Value	Current Book Value
_____	$ _____	$ _____
_____	$ _____	$ _____
_____	$ _____	$ _____

15. Individual Share and Loan Ledgers:
a. Were the totals of the trial balance tapes of the individual share and loan ledgers in agreement with the balances of the respective general ledger control accounts as of the month-end preceding the date of this application? Yes ☐ (Stop) No ☐ (Complete b.)
b. What are the differences as of the month end preceding the date of this application?

	Shares	Loans
Balances in General Ledger	$_____	$_____
Totals of the trial balance of the individual ledgers	$_____	$_____
Differences	$_____	$_____

16. Supervisory Committee:
a. What is the effective date of the last complete comprehensive annual audit performed by the supervisory committee? Effective Date _____
(1) If the effective date of the annual audit is not within the last 18 months what is the supervisory committee's target date for completion of a comprehensive audit? Date _____

b. Show the effective date of the supervisory committee's last controlled verification of all members' accounts: Effective Date _____
(1) If all members' accounts have not been verified under controlled conditions during the last two years what is the supervisory committee's target date for completion of the verification program? Date _____

c. If it is necessary to complete either 16 a(1) or 16 b(1), please describe the directors' plans for seeing that the target dates are met. (Discuss below or on an attached schedule.) Schedule No. _____

17. Surety Bond. List below the credit union's surety bond coverage.
a. Name of carrier _____
b. Standard form number of the bond (i.e. 23, 576, 577, 578, 581, 582 CU-1, other) _____
c. Basic amount of coverage $ _____
d. Bond premium paid to (date) _____
e. What is the amount of coverage required by State law or your bylaws? _____
f. Riders to the bond (list below) (i.e., faithful performance, forgery, misplacement, etc.)

18. Credit Union Services
Does the credit union render any services to or perform any functions on behalf of the members, non-members, organizations, or the public other than the usual savings and loan services for members? Yes ☐ (Complete a.) No ☐ (Stop)
a. Attach a schedule describing each activity in full. Schedule No. _____.

19. Does the credit union know of any adverse economic condition that is affecting or will affect its present or future operation or that of the sponsor organization? Yes ☐ (Complete a.) No ☐ (Stop)
a. Attach a schedule describing the condition and its possible effect on the credit union's future. Schedule No. _____.

20. To the best of the credit union's knowledge and belief, has any director, officer, committee member, or employee been convicted of any criminal offense involving dishonesty or breach of trust? Yes ☐ (Complete a.) No ☐ (Stop)
a. Attach a statement describing the circumstances. Schedule No. _____.

21. Lending policies and practices:
a. Complete (on page 4) showing the present policies and practices on loans to members.
b. Complete page 5 in accordance with the instructions pertaining to Item No. 21 b.

LENDING POLICIES AND PRACTICES

	Maximum Loan Amount	Maximum Period of Repayment	Required Amount of Downpayment (Equity)
1. *Credit Union Policies and Practices*			
a. Unsecured Loan Limits			
b. Secured Loan Limits			
(1) New Auto Collateral			
(2) Used Auto Collateral			
(3) Real Estate			
(a) First Mortgage			
(b) Second Mortgage			
(4) Comakers			
(5) Others (describe)			
c. Loans to Organizations			
d. Loans to Director, Officers, or Committee Members			
2. *State Credit Union Law; Bylaws*			
a. Unsecured Loan Limits			
b. Secured Loan Limits			
c. Loans to Directors, Officers, or Committee Members			

List below or on an attached page, any additional policies, including the interest rates applied to members' loans and the method of assessing and accounting for interest income, i.e.: add-on, discount or unpaid balance.

SCHEDULE OF LARGEST LOANS

Complete this form as discussed in the instructions pertaining to Item 21 b.

Account No.	Unpaid Loan Balance	Repayment Period (No. Months)	Status of Repayment		Appraised Collateral Value*	Description of Collateral
			Current	Delinquent (No. Months)		
	$				$	

*If there is more than one type of collateral assign value to each type.

CREDIT UNION SERVICE ORGANIZATION (CUSO)

1. Name of CUSO _____

2. Date of CUSO's Organization _____
(Date of obtaining charter from State)

3. Type of organization (circle one):

a. General Partnership

b. Limited Partnership

c. Joint Ownership

d. Corporation

4 Owners of CUSO (list name, charter number if FCU, and percentage of ownership, if possible).

Name - Charter Number (if FCU)	%	Name - Charter Number (if FCU)	%
a. _____	_____	_____	_____
b. _____	_____	_____	_____

(Continue on reverse side if additional space is required)

5. Capitalization (list investors and amount of investment in CUSO).

Name - Charter Number (if FCU)	Amount	Name - Charter Number (if FCU)	Amount
a. _____	_____	_____	_____
b. _____	_____	_____	_____

(Continue on reverse side if additional space is required)

6. List all known services which are being offered by the CUSO (be as specific as possible).

_____

_____

_____

7. Comments (include all other pertinent information, if applicable, not previously discussed).

_____

_____

_____

8. Attach latest Financial and Statistical Report of CUSO, if available.

INSTRUCTIONS FOR COMPLETION OF APPLICATION OF A STATE CHARTERED CREDIT UNION FOR INSURANCE OF ACCOUNTS

The application and all supporting documents should be prepared, photocopied, and submitted in accordance with the procedures outlined in the letter that transmitted these instructions. Additional schedules may be included if deemed appropriate.

All items should be completed. If the answer given to a question is followed by the word "Stop," proceed to the next numbered question. If, however, the answer given is followed by instructions, the additional parts of that question should be completed before going on to the next question.

When page 1 specifies that a schedule should be prepared and attached, please assign a schedule number in consecutive order, starting with number one. Please show the schedule number at the top right-hand corner of the schedule.

Some of the items are self-explanatory and require no special instructions. Other items, however, need special explanations, definitions, and instructions for completion. These are listed below, identified by the same item numbers as appear in Exhibit A.

Item No. 5: Show whether the sponsor organization is associational, occupational or residential. If occupational, please show the specific products or services produced.

Item No. 10: Reserves: The term "reserve" in Exhibit A means that account, or accounts, which represents segregated portions of earnings as provided by the law, bylaws, and/or the credit union's management for the absorption of losses relating to loans to members. (These accounts are usually called Regular Reserve, Reserve for Bad Debts, Guarantee Reserve, Guarantee Fund, Special Reserve for Losses, and Allowance for Loan Losses.)

Item No. 11 a: The delinquent loan list requested should include, for each delinquent loan, the account number of the borrower, date of loan, original amount of loan, unpaid balance, date of last payment of principal, excluding transfers from pledged shares, collateral, and comments regarding the collectibility of each loan in the categories 6 months to less than 12 months and 12 months and over. Payments of interest only should be so identified.

For the purpose of this application, loan delinquency will be determined on the basis of the borrowers' payments in relation to the terms of the notes, as follows:

If a loan is in arrears by two monthly payments plus any part of the third payment, the loan is 2 months delinquent and, therefore, the entire unpaid balance is shown in the 2 months to less than 6 months category. A loan in arrears a total of 6 monthly payments plus any part of the seventh payment would be 6 months delinquent and the entire unpaid balance shown in the 6 months to less than 12 months category. A loan in arrears a total of 12 monthly payments plus any part of the thirteenth payment would be 12 months delinquent and the entire unpaid balance shown in the 12 months and over category.

Item No. 11 b: the schedule provided for the delinquent loan information is set up in delinquency categories of 2 months to less than 6 months, 6 months to less than 12 months, and 12 months and over. Credit unions that compute delinquency using categories other than shown in column (b) may use these other categories and show them in column (a). Credit unions using column (a) need not show the delinquencies in the column (b) categories. It is not necessary to report on loans which are delinquent less than 2 months.

Adverse Trends: If items 8, 9, or 11 indicate adverse trends such as significant decreases in shares, loans or reserves, increases in loan delinquency or loan charge-offs, or unresolved serious exceptions shown in the State examination report, the credit union may attach an explanation and identify it as "Explanation of Adverse Trends or Unresolved Examination Exceptions" and assign it a schedule number.

Item No. 14: This item need be completed only if the credit union owns any of the following:

A. Investments in U.S. Government securities guaranteed as to principal and interest or Federal Agency securities, the market value of which is now less than the book value.

B. Real estate other than that used entirely for the credit union's own office(s).

C. Other investments of any type except:

1. Loans to other credit unions.
2. Certificates of, or accounts in, federally insured savings and loan associations.
3. Certificates of deposit in National or State banks.
4. Deposits or accounts in State central credit unions.
5. Common trust investments with International Credit Union Services Corporation (ICUS).

If corporate bonds are listed, please show maturity date, rate of interest on bonds and current yield rate.

If stocks are listed, please show number of shares and bid price.

Please identify the source of the market valuation information and the date of such information.

Item No. 21 b: The largest loans to members should be shown on page 5. In selecting the loans for this Exhibit, list the largest outstanding unpaid loan balance and proceed in descending order by dollar amount until the number specified

below has been shown. The number of such loans to be listed will be determined as follows:

If your credit union has the following no. of outstanding loans	You should list the following no. of the largest unpaid balances
Under 100	5
100 to 199	10
200 to 299	15
300 to 399	20
400 or more	25

If any of the above loans are delinquent, please show the number of months delinquent in the appropriate "Status of Repayment" column.

Page 6: Complete page 6 for each investment/loan to a Credit Union Service Organization (CUSO).

TERMINATION OF INSURANCE

Should the credit union, after obtaining insurance of member accounts, desire to terminate its insured status, this could be accomplished by complying with the provisions of Section 206(a), (c) and (d) of Title II of the Federal Credit Union Act. This action would require approval by a vote of the majority of the members, and ninety days written notice of the proposed termination date to NCUA. Member accounts would continue to be insured for one year following termination of insurance and the insurance premium would be paid during that period. After termination of insurance, the credit union shall give prompt and reasonable notice to all members whose accounts are insured that it has ceased to be an insured credit union.

Sections 206(a)(2) and 206(d)(2) and (3) of the Act provide that an insured credit union may also terminate its insurance by converting from its status as an insured credit union under the Act to insurance from a corporation authorized and duly licensed to insure member accounts. In this event, approval is required by a majority of all the directors and by affirmative vote of a majority of the members voting, provided that at least 20 percent of the members have voted on the proposition. Under this provision for termination, insurance of member accounts would cease as of the date of termination.

APPLICATION AND AGREEMENTS FOR INSURANCE OF ACCOUNTS STATE CHARTERED CREDIT UNION

Date _____

TO: The National Credit Union Administration Board

The _____ Credit Union,

Insurance Certificate Number _____ (if applicable)

_____ . _____
(mailing address) (city) (state) (zip code)

applies for insurance of its accounts as provided in Title II of the Federal Credit Union Act, and in consideration of the granting of insurance, hereby agrees:

1. To permit and pay the cost of such examinations as the NCUA Board deems necessary for the protection of the interests of the National Credit Union Share Insurance Fund;

2. To permit the Board to have access to all records and information concerning the affairs of the credit union, including any information or report related to an examination made by or for any other regulating authority, and to furnish such records, information, and reports upon request of the NCUA Board;

3. To possess such fidelity coverage and such coverage against burglary, robbery, and other losses as is required by Parts 701.20 and 741 of NCUA's regulations;

4. To meet, at a minimum, the statutory reserve and full and fair disclosure requirements imposed on Federal credit unions by Section 116 of the Federal Credit Union Act and Parts 702 of NCUA's regulations, and to maintain such special reserves as the NCUA Board may by regulation or on a case-by-case basis determine are necessary to protect the interests of members. Any waivers of the statutory reserve or full and fair disclosure requirements or any direct charges to the statutory reserve other than loss loans must have the prior written approval of the NCUA Board. In addition, corporate credit unions shall be subject to the reserve requirements specified in Part 704 of NCUA's regulations;

5. Not to issue or have outstanding any account or security the form of which has not been approved by the NCUA Board, except accounts authorized by state law for state credit unions;

6. To maintain the deposit and pay the insurance premium charges imposed as a condition of insurance pursuant to Title II (Share Insurance) of the Federal Credit Union Act;

7. To comply with the requirements of Title II (Share Insurance) of the Federal Credit Union Act and of regulations prescribed by the NCUA Board pursuant thereto; and

8. For any investments other than loans to members and obligations or securities expressly authorized in Title I of the Federal Credit Union Act, as amended to establish now and maintain at the end of each accounting period and prior to payment of any dividend, an Investment Valuation Reserve Account in an amount at least equal to the net excess of book value over current market value of the investments. If the market value cannot be determined, an amount equal to the full book value will be established. When, as of the end of any dividend period, the amount in the Investment Valuation Reserve exceeds the difference between book value and market value, the board of directors may authorize the transfer of the excess to Undivided Earnings.

9. When a state-chartered credit union is permitted by state law to accept nonmember shares or deposits from sources other than other credit unions and public units, such nonmember accounts shall be identified as nonmember shares or deposits on any statement or report required by the NCUA Board for insurance purposes. Immediately after a state-chartered credit union receives notice from NCUA that its member accounts are federally insured, the credit union will advise any present nonmember share and deposit holders by letter that their accounts are not insured by the National Credit Union Share Insurance. Also, future nonmember share and deposit fund holders will be so advised by letter as they open accounts.

10. In the event a state-chartered credit union chooses to terminate its status as a federally-insured credit union, then it shall meet the requirements imposed by Sections 206(a)(1) and 206(c) of the Federal Credit Union Act and Part 741.6 of NCUA's regulations.

11. In the event a state-chartered credit union chooses to convert from federal insurance to some other insurance from a corporation authorized and duly licensed to insure member accounts, then it shall meet the requirements imposed by Sections 206(a)(2), 206(c), 206(d)(2), and 206(d)(3) of the Federal Credit Union Act.

In support of this application we submit pages 1-6 and Schedules described below:

Schedule No.	Title

CERTIFICATIONS AND RESOLUTIONS

We, the undersigned, certify that we are the duly elected and qualified presiding officer and recording officer of the credit union and that at a properly called regular or special meeting of its board of directors, at which a quorum was present, the following resolutions were passed and recorded in its minutes:

We, the undersigned, certify to the correctness of the information submitted.

Be it resolved that this credit union apply to the National Credit Union Administration Board for insurance of its accounts as provided in Title II of the Federal Credit Union Act.

Be it resolved that the presiding officer and recording officer be authorized and directed to execute the Application and Agreement for Insurance of Accounts as prescribed by the NCUA Board and any other papers and documents required in connection therewith and to pay all expenses and do all such other things necessary or proper to secure and continue in force such insurance.

We, further certify that to the best of our knowledge and belief no existing or proposed officer, committee member, or employee of this credit union has been convicted of any criminal offense involving dishonesty or breach of trust, except as noted in attachments to this application. We further agree to notify the Board if any existing, proposed, or future officer, committee member or employee is indicted for such an offense.

_____

(Signature) Presiding Officer, Board of Directors

_____

(Print or type Presiding Officer's Name)

_____

(Signature) Recording Officer, Board of Directors

_____

(Print or type Recording Officer's Name)

APPLICATION FOR FIELD OF MEMBERSHIP CHANGE
NCUA XXX

(Attach a separate application for each group included in your request for expansion.)

1. NAME & ADDRESS OF CREDIT UNION: _____

_____

2. NAME OF FIRM/ASSOCIATION TO BE ADDED: _____

_____
(If Association, include Charter/Bylaws.)

DESCRIPTION OF BUSINESS: _____

ADDRESS: _____

_____

3. TOTAL NUMBER OF POTENTIAL EMPLOYEES/MEMBERS TO BE ADDED:

_____

SPONSOR'S HEADQUARTERS LOCATION: _____

WORK AND/OR PAID FROM LOCATION. ALSO, INDICATE THE NUMBER OF EMPLOYEES AT EACH LOCATION:

_____

_____

_____

4. DISTANCE IN MILES TO THE NEAREST CREDIT UNION OFFICE: _____

INDICATE NAME OF CLOSEST BRANCH: _____

5. IS THE GROUP ELIGIBLE FOR MEMBERSHIP IN ANY OTHER CREDIT UNION?
NO_____ YES_____

IF YES, GIVE NAME AND LOCATION OF THE OVERLAPPED CREDIT UNION. ALSO INCLUDE A LETTER OF RELEASE FROM THE OVERLAPPED CREDIT UNION. _____

6. ATTACH A COPY OF THE CREDIT UNION'S MOST CURRENT BALANCE SHEET AND YEAR-TO-DATE INCOME STATEMENT. _____

   (NOTE: IF THIS IS PART OF A MULTIPLE GROUP REQUEST FOR EXPANSION, ENCLOSE ONLY ONE SET OF FINANCIAL STATEMENTS.)

   (WHERE THE EXPANSION REQUEST IS BASED ON A BRANCH OFFICE, ATTACH FINANCIAL STATEMENTS FOR THAT BRANCH ALSO.)

7. ATTACH A LETTER, ON LETTERHEAD STATIONERY, FROM THE GROUP REQUESTING CREDIT UNION SERVICE. _____

8. IF THIS REQUEST FOR EXPANSION OR REDEFINITION AMENDMENT IS A RESULT OF A REORGANIZATION OF A SPONSORING GROUP, ENCLOSE A LETTER FROM THE SPONSORING GROUP WHICH EXPLAINS THE REORGANIZATION.

9. OTHER COMMENTS.

I CERTIFY THAT THIS EXPANSION IS NOT BASED ON THE LOCATION OF A SHARED SERVICE CENTER OR SHARE FACILITY.

NAME AND TITLE _____
(e.g., Credit Union President/CEO-Please print or type)

SIGNATURE _____ _____
(Date)

BILLING CODE 7535-01-C

Appendix F—Use of Outside Agents To Solicit Field of Membership Expansions

Purpose

This appendix addresses the National Credit Union Administration's (NCUA) experience with credit unions and arrangements whereby the agents outside the organization of the credit union solicit credit union membership in conjunction with the sale of products or services. This section also provides guidelines for these arrangements.

While these guidelines are not mandated by federal law or regulation, they do represent what the NCUA considers to be safe and sound policies and procedures to protect the credit union's assets. Since state laws vary, the guidance may not address every area. Thus, each credit union considering such ventures should obtain a written legal opinion from its counsel, as well as financial counseling from its normal sources.

Background

As credit unions continue to grow and expand their fields of membership to select employee groups, there has been an increased interest by vendors in mutually beneficial relationships. Generally, such arrangements operate as follows:

- The vendor contacts select employee group sponsors providing information on the credit union and the insurance or other product to be offered.
- The vendor assists the sponsor in requesting inclusion in the credit union's field of membership.
- After the field of membership is approved by NCUA or the state supervisor, the vendor arranges to meet with employees.
- The vendor represents the credit union to the employees and enrolls them into membership in accordance with appropriate laws, regulations, and bylaws.
- The vendor explains the products or services being marketed and enrolls the employee in a program or plan. In the case of insurance plans, policies are typically paid by periodic installments, and frequently in one lump sum.
- The vendor arranges for payroll deductions to the credit union. If the employee has an insurance policy or some other plan with periodic installments, generally, the credit union's deduction is increased and arrangements are made for the credit union to forward the appropriate amount to the vendor's company.

These arrangements have been beneficial to some credit unions and vendors. The credit union receives a service—solicitation of members—free of charge. Membership increases and the credit union grows. The vendor has a marketing tool to complement its marketing program. Additionally, in the case of insurance vendors, if the credit union distributes the premiums or other payments directly to the vendor's company, the vendor's paperwork is greatly reduced.

Safety and soundness issues

NCUA's experience in these arrangements has shown that potential risk to the credit union exists unless prior planning and internal controls are in place. NCUA has liquidated or taken administrative action in a number of credit unions in recent years when these controls were absent. Some unsafe and unsound practices are described below:

- The credit union did not investigate the vendor's or the vendor's company's reputation, financial soundness, or the authority to do business in the state where the credit union operated. In those cases where NCUA liquidated the credit unions, the companies or firms were of the fly-by-night variety, out to obtain quick profits in short periods of time. Dealing with well established and reputable firms is important if problems arise due to member complaints. Additionally, in the event of suits against the company or firm, adequate financial standing can often mitigate the credit union's losses.
- The credit union did not review the programs or products offered to "its" new members. In several instances, the policies were life insurance policies or annuity contracts which called for annual premiums (normally paid by installments) over long periods of time—20 to 30 years. While normal for such contracts, they generally called for limited reimbursement in the event of cancellation, for instance 20 percent reimbursement, if canceled before one year, 45 percent, two years, 55 percent, three years, etc. Many members who enrolled in these contracts did not understand the terms. When they subsequently canceled the policy and received only a 20 percent return, they held the credit union responsible. While the credit union had no legal obligation, it presented public relation problems which could have been avoided.
- The credit union was unfamiliar with the sales techniques used by the vendor to enroll members into the credit union and in the vendor's programs. In the liquidated credit union mentioned above, unethical methods were used to sign uneducated members. It was not uncommon to have them just sign blank forms which included a membership card, payroll deduction authorization, insurance policy, and a loan application and the first year's premium or other payment.
- The credit union did not provide written instructions to the vendor on procedures to enroll members. Thus the vendor contracted groups which the credit union was ill-equipped to serve.
- The credit union authorized the vendor to approve loans enmasse to cover first year fees or insurance premiums. NCUA considers this an unsafe and unsound practice which will result in appropriate administrative action. In several liquidated credit unions which had arrangements with insurance vendors, employees were enrolled in the credit union, received a loan to pay the first year's premium and authorized payroll deductions. The reason the insurance agency proceeded in this manner was to be reimbursed immediately by the carrier for new policies. Such reimbursement ranged from 85 to 105 percent of the first year's premium. Thus an agency that enrolled just 100 new members for $500 per year insurance contracts could have received $42,500 to $52,500 in fees. This desire to obtain reimbursement clouded the vendor's objectivity and resulted in members having unwanted policies, which they generally canceled. At a minimum, since the policy holder received only 20 percent return on the policy, the credit union had a public relations problem collecting its exposed 80 percent. At the worst, the credit union had a loss loan.
- The credit union failed to obtain proper payroll deduction authorizations and authority to remit fees or insurance premiums to the company. In several cases, payroll deduction for all members, even those who chose not to enroll in the vendor's program, were sent to the credit union. This procedure exposed the credit union to misappropriation of funds by the company, to a potential surety problem, and to an uninsured status until the funds were received in the credit union.
- In another case, a vendor contracted with a credit union to assist credit union members select, locate, and negotiate the purchase or lease of automobiles. Members paid a fee to the vendor during the closing transactions. The vendor also provided marketing assistance to attract select employee groups into the credit union. The vendor was alleged to have falsified and concealed material facts and to have aided prospective credit union members in falsifying credit information to the credit union in attempts to obtain credit. In some cases the prospective member obtained possession of the automobile prior to being accepted as a member and in other cases prior to being approved

for the financing. In many instances, the prospective credit union member was pressured to solicit his employer for inclusion into the credit union's field of membership. In certain of these instances, the employer group had existing credit union affiliation with another credit union. In certain other instances, the vendor indicated the prospective member was affiliated with a legitimate group in the credit union's field of membership, when, in fact, the person was not employed by the group. The vendor failed to properly complete required documentation for loans and lease agreements. In some cases the vendor indicated excessively high annual mileage limits in lease agreements.

Recommended Investigative Procedures

Before entering into an agreement with a vendor acting as the credit union's agent in soliciting membership, a federally insured credit union should thoroughly investigate the impact of this action on its financial operations and condition; determine its legal liabilities; clearly define its moral responsibilities; and assure proper control of these activities. The following steps are recommended:

- Thoroughly investigate the financial condition of all corporations, partnerships or other entities involved in the activities. Obtain and review financial statements and credit reports, such as Dun and Bradstreet, on each entity. Consider the need for appropriate bonding by each company.
- Review the organizational structure and reputation of each entity. Included in the review should be a certification that each entity is authorized to do business in the state where the credit union is authorized to do business.
- Review and approve the contracts or policies to be offered. Since members may hold the credit union morally responsible for problems which may occur, the officials should consider the impact of each contract or policy on its public relations with members.
- Determine through a written legal opinion that all forms, documents and procedures used by the credit union to obtain membership, payroll deductions or to transfer funds to a vendor are legal and protect the credit union.
- Develop cash flow and budget projections showing the effect of increased membership on the credit union's financial condition and ability to serve new members.
- Develop procedures to monitor the activities of vendors as discussed below under Agreement.
- Develop brochures and handouts to be presented to potential members. Among these should be a disclaimer that the credit union does not endorse the products or services and that the vendor can make no commitments regarding membership approval or the granting of loans. Other materials to be presented are discretionary by the credit union.
- Obtain confirmation from surety that such activities are bondable.

Agreements

All arrangements with a vendor should be in writing and reviewed by credit union legal counsel. Such agreements should include, but not be limited to, the following:

- Scope of the vendor's authority to contact sponsors, such as limits on sponsor's assets, number of employees/potential members, financial condition, organizational structure, geographical location, and sponsor stability in the area.
- Procedures for the vendor to follow in contacting sponsors. These should require the vendor to present any product or service as separate and distinct from credit union membership and to state that inclusion in the field of membership is subject to regulatory approval. There should be absolute indication that the credit union is not endorsing any products or services marketed by the vendor.
- Procedures for vendors to follow once a sponsor is included in the credit union's field of membership.
- Agreement that products or services to be offered and materials, brochures and handouts to be presented by the vendor are to be approved, in advance, by the credit union.
- Agreement that all approved brochures and handouts of the credit union will distributed.
- Agreement that credit union representatives may accompany the vendor on contacts with sponsors and on membership enrollments.
- Agreement that the credit union may disqualify any vendor or vendor's representative from representing the credit union. Generally such an agreement will include a preliminary approval process as well as monitoring standards to include necessary credit union training.
- Any other standard contractual agreements necessary to contract law.

Summary

- Credit unions and vendors can engage in mutually beneficial contractual agreements provided that adequate planning and internal controls are instituted. Credit unions engaging in these activities should plan, direct, and control these activities in a safe and sound manner.

Appendix G—Information Needed To Support Application for Community Federal Credit Union Charter

A community credit union serves all persons who either reside or work in a well-defined neighborhood, community or rural district. The area chosen must be reasonably compact. Such compactness provides for a greater common bond among the residents. As population levels increase, the extent of the common bond tends to decrease. Therefore, the area chosen must be the most compact area practical from both a common bond and economic standpoint.

Information should be provided to support that the area chosen represents one well-defined area, separate and apart from the immediate surrounding areas and that the persons who reside and work in the area have the necessary commonalty of interests and commingling to provide for a sufficient common bond.

This may not be possible in all cases, especially for urban areas. Some items to be considered are as follows:

- Political jurisdictions
- Major trade areas (shopping patterns)
- Traffic flows
- Shared/common facilities (educational, medical, police and fire protection, water, etc.)
- Organizations/clubs whose membership is made up exclusively of persons within the area
- Newspapers or other periodicals published for and about the area
- Census tracts
- Common characteristics and background of residents (income, religious beliefs, primary ethnic groups, similarity of occupations, household types, primary age group, etc.)
- History of area
- In general, what causes the chosen area and its residents to be separate and apart from the immediate surrounding areas and residents—some examples are old, well established ethnic neighborhoods, planned communities and small/rural towns

Information to support a need for a community credit union includes the following:

- Number of credit unions presently in area and approximate percentage of residents who currently have credit union service available
- Number of other financial institutions (banks, savings and loan associations) that service the area
- Average/median income level of residents

Written documentation (letter, pledges, petitions) reflecting support for the application for or the conversion to a community credit union is as follows:

- For the residents of the area
- Approximate number contacted
- Number in favor of the credit union
- Number against the credit union
- Number who will join the credit union
- Number who have pledged initial and/or systematic savings and amount of pledges
- For the employers
- Number of area employers and numbers of employees
- Number contacted
- Number in favor of the credit union
- Number against the credit union
- Number willing to provide payroll deductions to the credit union
- Number willing to provide other type(s) of support to the credit union
- For organizations (including churches)
- Number in areas and number of members
- Number contacted
- Number in favor of the credit union
- Number against the credit union
- Number willing to provide some type of support to the credit union, i.e., advertising facilities, etc.
- Letters of support for area civic leaders

Business Plan

Community credit unions are frequently more susceptible to competition from other local financial institutions and generally do not have substantial support from any single sponsoring company or association. Also, the lack of payroll deduction creates special challenges in the development of savings promotion programs and in the collection of loans. Therefore, it is essential for the group to develop a detailed and practical business plan for at least the first three years of operation. The business plan should contain, but not necessarily be limited to, the following:

- Analysis of market area—geographic, demographic, employment, income, housing and economic data
- Service/market strategy—financial and other services to be provided, new member/share/loan promotion policies and procedures and income generation strategy
- Organizational/management plan—qualification and planned training of officials/employees, operating facilities to include office space/equipment and supplies, accounting system, safeguarding of assets, insurance coverage, etc.
- Financial plan—sources and applications of funds statements and proforma balance sheet and income/expense statements.

Appendix H—Trade Associations

Note: Addresses and phone numbers will be updated at the time the Interpretive Ruling and Policy Statement is finalized.

[FR Doc. 93–17487 Filed 7–27–93; 8:45 am]
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Federal Register

Wednesday
July 28, 1993

Part III

Department of the Interior

Fish and Wildlife Service
50 CFR Part 17
Endangered and Threatened Wildlife and Plants; Saimaa et al.; Rule

DEPARTMENT OF THE INTERIOR

Fish and Wildlife Service

50 CFR Part 17

RIN 1018–AC01

Endangered and Threatened Wildlife and Plants; Listing of the Saimaa Seal as an Endangered Species

AGENCY: Fish and Wildlife Service, Interior.

ACTION: Final rule.

SUMMARY: The Service is adding the Saimaa seal (*Phoca hispida saimensis*) to the List of Endangered and Threatened Wildlife. This measure, required by the Endangered and aThreatened Wildlife. This measure, required by the Endangered Species Act of 1973 (Act), corresponds with a determination of 1endangered status for this species, as defined under the Act, by the National Marine Fisheries Service, which has jurisdiction for pinniped species (except walrus).

EFFECTIVE DATE: June 7, 1993.

FOR FURTHER INFORMATION CONTACT: Dr. Jon Fay, Acting Chief, Division of Endangered Species, U.S. Fish and Wildlife Service (452 ARLSQ), Washington, DC 20240 (703/358–2171).

SUPPLEMENTARY INFORMATION: Under the Endangered Species Act (16 U.S.C. 1531 *et seq.*), and in accordance with Reorganization Plan No. 4 of 1970, the National Marine Fisheries Services (NMFS), National Oceanic and Atmospheric Administration, Department of Commerce, is responsible for the Saimaa seal. Under section 4(a)(2) of the Act, NMFS must decide whether a species under its jurisdiction should be classified as endangered or threatened. The Fish and Wildlife Service (FWS) is responsible for the actual addition of a species to the List of Endangered and Threatened Wildlife in 50 CFR 17.11(h).

NMFS published its determination of endangered status for the Saimaa seal on May 6, 1993 (58 FR 26920–26921). Accordingly, the FWS is now adding it to the List of Endangered and Threatened Wildlife as an endangered species. This addition is effective as of June 7, 1993, as indicated in the NMFS's determination. Because this action of the FWS is nondiscretionary, and in view of the public comment period provided by NMFS on the proposed listing (December 18, 1992, 57 FR 60162), the FWS finds that good cause exists to omit the notice and public comment procedures of 5 U.S.C. 553(b).

National Environmental Policy Act

The Fish and Wildlife Service has determined that an Environmental Assessment, as defined under the authority of the National Environmental Policy Act of 1969, need not be prepared in connection with regulations adopted pursuant to section 4(a) of the Endangered Species Act of 1973, as amended. A notice outlining the Service's reasons for this determination was published in the **Federal Register** on October 25, 1983 (48 FR 49244).

List of Subjects in 50 CFR Part 17

Endangered and threatened species, Export, Import, Reporting and recordkeeping requirements, Transportation.

Regulation Promulgation

Accordingly, part 17, subchapter B of chapter I, title 50 of the Code of Federal Regulations is amended as set forth below:

PART 17—[AMENDED]

1. The authority citation for Part 17 continues to read as follows:

Authority: 16 U.S.C. 1361–1407; 16 U.S.C. 1531–1544; 16 U.S.C. 4201–4245; Public Law 99–625, 100 Stat. 3500, unless otherwise noted.

2. Section 17.11(h) is amended by adding the following, in alphabetical order under Mammals, to the List of Endangered and Threatened Wildlife:

§ 17.11 Endangered and threatened wildlife

* * * * *

(h) * * *

Species		Historic range	Vertebrate population where endangered or threatened	Status	When listed	Critical habitat	Special rules
Common name	Scientific name						
*	*	*	*	*	*	*	
MAMMALS							
*	*	*	*	*	*	*	
Seal, Saimaa	*Phoca hispida saimensis.*	Finland (Lake Saimaa).	Entire	E	508	NA	NA
*	*	*	*	*	*	*	

Dated: July 10, 1993.

Richard N. Smith,

Acting Director, Fish and Wildlife Service.

[FR Doc. 93–17932 Filed 7–27–93; 8:45 am]

BILLING CODE 4310–55–M

50 CFR Part 17

RIN 1018–AB52

Endangered and Threatened Wildlife and Plants; The Plant Eutrema penlandii (Penland Alpine Fen Mustard) Determined to be a Threatened Species

AGENCY: Fish and Wildlife Service, Interior.

ACTION: Final rule.

SUMMARY: The U.S. Fish and Wildlife Service determines that *Eutrema penlandii* (Penland alpine fen mustard) is a threatened species under the Endangered Species Act (Act) of 1973, as amended. Five to fourteen small populations of the plant are distributed in a 40-km (25 mi) stretch of the Continental Divide in central Colorado. Total abundance of the species is estimated at about 10,000 to 16,400 plants that grow on about 200 hectares (about 500 acres) of alpine tundra. The species grows on southerly to easterly facing slopes above 3,703 m (12,150 ft) in elevation. Its habitat is restricted to wetlands that are irrigated by melting snowfields. This wetland habitat is fragile and sensitive to watershed alterations that divert flows of surface water. Direct impacts to plants and habitats occur from mining, off-road vehicles, and other activities of man. Federal land is intermingled with private land (patented mining claims) in areas where *E. penlandii* grows, but the largest populations, about 80 percent of the plants, are on public land. Listing *E. penlandii* as threatened implements the Federal protection and recovery provisions provided by the Act.

EFFECTIVE DATE: August 12, 1993.

ADDRESSES: The complete file for this rule is available for inspection, by appointment, during normal business hours at the U.S. Fish and Wildlife Service, Colorado State Office, 730 Simms Street, room 290, Golden, Colorado 80401, or Western Colorado Suboffice, 529–25½ Road, suite B–113, Grand Junction, Colorado 81505–6199.

FOR FURTHER INFORMATION CONTACT: Dr. Lucy A. Jordan, Botanist, at the above Grand Junction address (303/243–2778).

SUPPLEMENTARY INFORMATION:

Background

The Penland alpine fen mustard has been found in 14 different areas (Schwendinger et al. 1991). It was first collected in 1935 at Hoosier Ridge in the Mosquito Range, Park County, Colorado, by the late Colorado College professor C.W.T. Penland. He recollected it in the same area in 1949 (Rollins 1950; Johnson 1981). The plant was described by R. Rollins (1950), an expert on species in the mustard family. The type specimen was found below a snowbank on Hoosier Ridge, near Hoosier Pass (Johnson 1981; Weber and Shushan 1955). This area contains about 2,000 plants, and it is one of three populations with more than 1,000 plants. The other 11 areas identified by Schwendinger et al. (1991) have fewer than 900 plants each (Table 1).

TABLE 1.—NAME AND SIZES OF EXTANT POPULATIONS OF EUTREMA PENLANDII (FROM JOHNSTON 1991). ( ) = YEAR DISCOVERED

Population	Population name and year discovered	Number of plants
1	Hoosier Ridge (1935).	2,000
2	Pennsylvania Creek (1985).	200
3	Mount Silverheels (1988).	100
4	Cameron Amphitheater (1988).	700
5	Mosquito Pass-London Mt. (1967).	3,250
6	Mount Buckskin (1988).	850
7	Cooney Lake (1988).	200
8	Hilltop Mine (1967)	750
9	Kite Lake (1991)	200
10	Mount Evans (1991).	6,900
11	Sacramento Creek (1991).	500
12	Dauntless Mine (1991).	200
13	Peerless Mt.-Horseshoe (1991).	610
14	Loveland Mountain (1991).	unknown

Eutrema penlandii is a small, herbaceous perennial plant that grows to 3–8 cm (1.2–3.2 in) in height. It is a shiny-green glabrous (hairless) plant with long-petioled (long-stemmed), heart-shaped basal leaves that grow up to 35 mm (1.4 in) long. It also has clusters of small, white flowers atop the stems that grow 2–3.5 mm (about 0.1 in) in length. The generic name refers to its small and rounded hollow fruits that are 1.5 mm (0.06 in) wide, and 4–8 mm (0.2–0.3 in) long (Johnston et al. 1981; Rollins 1950).

This taxon is closely related to *Eutrema edwardsii*, a circumboreal (inhabiting northern regions of North America and Eurasia) species in the Arctic whose range also extends into the mountains of central Asia (Weber and Shashan 1955). Rollins (1982) recognized *E. penlandii* at the species level, but Weber (1987) treated it as a subspecies of *E. edwardsii* (*E. edwardsii* ssp. *penlandii*).

The Fish and Wildlife Service (Service) recognizes *E. penlandii* as a species. If it is later recognized as a subspecies of *E. edwardsii*, its designation as a threatened species will remain valid because section 3(15) of the Endangered Species Act (Act) of 1973, as amended, (16 U.S.C. 1531 *et seq.*) permits the listing of subspecies.

A plant of Colorado alpine tundra, *E. penlandii* grows in a harsh environment. Alpine winters in Colorado may last 5 months or more, and summer temperatures are usually below 16° C (60° F). Growing seasons may only last from 0 to 70 days per year (Colorado Native Plant Society 1989). Thus, in its native habitat, the plant grows at the limits of most plant adaptations due to low temperatures and short growing seasons. Freezing and thawing soil (solifluction), drying winds, and windblown snow and ice crystals also result in low plant productivity on the tundra (Zwinger and Williard 1972).

E. penlandii is habitat-specific, growing only in oligotrophic, rheotrophic alpine marshes (Weber and Shushan 1955). It grows in a macroclimate of long, cold, wet winters and cool, windy summers, and a microclimate of relatively protected, wet, springy bogs (Johnston et al. 1981). Major components of its microenvironment include moss-covered peat fens, perennial subirrigation, and high elevation (above 3,703 m; 12,150 ft). Peat mats on which it grows form on small, flat-to-gently sloping benches in leeward cirques (i.e., steep-walled rounded glacial valleys). Water required for the development and sustenance of these peat mats comes from snowfields which persist through the summer. Conditions for maintaining these persistent snowfields exist along this east-west trending portion of the Continental Divide, where the plant is found on slopes that vary from southerly to easterly (Schwendinger et al. 1991). Most portions of the Continental Divide do not support the plant, presumably due to a north-south

trend which exposes slopes to blowing and snow-melting winds (Weber 1965; Naumann 1988).

Eutrema penlandii is found on deep organic soils in moist areas that are usually adjacent to clear, running water from snowmelt. Johnston et al. (1981) noted a relationship between the emergence of *E. penlandii* and snowmelt, i.e., that plant emergence at a site depended on the availability and timing of sufficient water to continuously moisten the mosses in which the plants were rooted, but not so much water as to flood them. Presumably, it is this phenomenon that, in part, affects standing crops during a particular year. Johnston et al. (1981) also stated that flowering was apparently subject to this same control.

The biogeography and phylogenetic history of *E. penlandii is unusual (Rollins 1982). As the only representative of its genus in the lower 48 States, it is an extremely disjunct species. Its range is separated by more than 1,600 km (1,000 mi) from its nearest relative, E. edwardsii,* an Arctic circumboreal species. All other species of *Eutrema* occur in Asia. This biogeographic pattern (i.e., disjunct species in central Asia and the interior of western North America) could have been caused by one of several possible historic conditions. *E. penlandii* populations may be glacial relicts from the Pleistocene epoch that migrated south of the Arctic with glaciation and were left stranded as the glaciers retreated. Alternatively, populations of *E. penlandii* may be relicts of a more widespread Tertiary flora (Weber 1987). These scenarios are supported by the existence of other rare alpine taxa with Arctic affinities that also occur in the Mosquito Range, either as separate species (e.g., *Saussurea weberi*) or disjunct populations of species (e.g., *Armeria scabra* ssp. *sibirica, Braya glabella,* and *Braya humilis;* Weber 1987).

As previously indicated, Penland discovered the first stand of *E. penlandii* in 1935. He recollected it in 1949 (Rollins 1950). This population was sampled again by W.A. Weber and others in 1951 and 1959. Weber discovered two new populations in 1967 (Johnston et al. 1981). The two new populations were located south of Hoosier Ridge, one at Mosquito Pass and London Mountain Saddle, and the other above Hilltop Mine on the slopes of Mount Sherman (Naumann 1988) in the Four Mile Creek cirque (between Mount Sheridan and Mount Sherman). Johnston et al. (1981) found and mapped all three populations within 4 km (2.5 mi) of the Continental Divide.

In addition to the three populations above, Johnston et al. (1981) reported nine other collections (in 1977, 1978, and 1980), which included five new sightings of the plant. Naumann (1988) revised and expanded Johnston et al. (1981) and reported sightings in eight extant populations (in 1985 and 1988). These sightings included five new populations of *E. penlandii.*

Studies by Schwendinger et al. (1991) and Kelso et al. (1991) further clarified the distribution and habitat preferences of *E. penlandii.* Schwendinger et al. (1991) reported six additional populations where *E. penlandii* previously had not been documented. They also reported extensions of four of the eight populations described by Naumann (1988). Schwendinger et al. (1991) reported seven new stands (subpopulations) in areas where the species previously had been known to occur and 16 more at new sites.

Johnston (1991) summarized his earlier findings and those of Naumann (1988) and Schwendinger et al. (1991) to report the total number of *E. penlandii* populations as 14. This total includes 29 distinct stands, with a total number of individuals estimated at about 16,400 (Table 2). All of these discoveries are within the original 40-km (25-mi) range of the species, and Service biologists estimate that the area actually occupied by *E. penlandii* plants is about 200 hectares (about 500 acres).

TABLE 2.—SIZE AND LANDOWNERSHIP STATUS OF KNOWN EUTREMA PENLANDII POPULATIONS AND SUBPOPULATIONS (JOHNSTON 1991; SCHWENDINGER 1991). (NO.=NUMBER; USFS=U.S. FOREST SERVICE; BLM=BUREAU OF LAND MANAGEMENT; PAT=PATENTED MINING CLAIMS; PPAT=PRESUMED PATENTED BUT NOT SURVEYED)

Population	Subpopulation	No. of plants	Federal	State	Private
1		2,000	USFS		
2		200			PAT
3		100	USFS		
4	A	500			PAT
	B	100			PAT
	C	100	USFS		
5	A–D	2,000	BLM		
	E	1,000			PPAT
	F	200	BLM		
	G	50			PPAT
6	A–B	50	USFS		PAT
	C	500			PAT
	D	300	USFS		
7		200	USFS	CO	
8	A–C	750			PAT
9		200	USFS		
10	A–G	5,000	BLM		
	H	1,800	BLM		
	I	100	BLM		
11		500	BLM[1]		
12		200			PAT
13	A	10			PAT
	B	100			PPAT
	C	500	USFS		
14		<100	USFS		

[1] Landownership uncertain.

Federal and private land is intermingled in the alpine areas where *E. penlandii* is found, and exact boundaries often have not been determined on the ground. Most of the private land was once Federal land that was converted to patented mining claims under provisions of the General Mining Law of 1872.

The known elevational zone occupied by *E. penlandii* has been extended by Schwendinger et al. (1991), who reported *E. penlandii* populations at 3,703 m (12,150 ft) in elevation. This lowered its known growth zone about 100 m (328 ft). However, all *E. penlandii* plants are restricted to the Mosquito Range and recent reconnaissance of potential habitat in Summit, Gunnison, Chaffee, and Clear Creek Counties in Colorado, and in the Wind River Range in Wyoming failed to find *E. penlandii* (Schwendinger et al. 1991; Walter Fertig, Rocky Mountain Herbarium, pers. comm., 1991). Previous searches by other botanists also failed to locate *E. penlandii* outside of the Mosquito Range.

Federal action involving *E. penlandii* began in 1973 with section 12 of the Act, which directed the Secretary of the Smithsonian Institution to prepare a report on those plants considered to be endangered, threatened, or extinct. This report, designated as House Document No. 94–51, was presented to Congress on January 9, 1975. On July 1, 1975, the Service published a notice (40 FR 27847) of its acceptance of this report as a petition within the context of section 4(c)(2) of the Act, now section 4(b)(3)(A), and of its intention thereby to review the status of those plants. *E. penlandii* was included for review as endangered in the July 1, 1975 petition.

In 1976, the Service proposed *E. penlandii* for endangered status, along with 1,700 other plant species (41 FR 24535), but this proposal was withdrawn in 1979 because a final rule had not been prepared within the time limits required under the 1978 amendments to the Act. On December 15, 1980 (45 FR 82485), the Service included the plant as a category 2 species in an updated notice reviewing native plants under consideration for classification as threatened or endangered. Category 2 consists of taxa for which there is some evidence of vulnerability, but for which there was not enough data to support listing proposals at that time.

Section 4(b)(3)(B) of the Act, as amended in 1982, required the Secretary of the Interior to make findings on certain petitions within 1 year of their receipt. Section 2(b)(1) of the 1982 amendments further required that all petitions pending on October 13, 1982, be treated as having been newly submitted on that date. Because the 1975 Smithsonian report was accepted as a petition, all the taxa contained in the notice, including *E. penlandii*, were treated as being newly petitioned on October 13, 1982.

On November 28, 1983 (48 FR 53665), the Service changed *E. penlandii* from Category 2 to Category 3C based on recommendations from Johnston et al. (1981). Category 3C consists of taxa that are no longer being considered for listing because they are more abundant and/or widespread than previously thought. In a notice published on January 24, 1984 (49 FR 2485), the Service announced a "not warranted" finding for listing *E. penlandii* due to its reclassification to Category 3C. This finding terminated the need for 1-year petition findings on the species. *E. penlandii* remained as a Category 3C species in the September 27, 1985, Notice of Review (50 FR 39552).

In a 1985–1986 reconnaissance survey, O'Kane (1988) found one new, small population of *E. penlandii* consisting of 200 plants on a 0.4-hectare (1-acre) plot at Pennsylvania Creek. However, he searched six sites that were previously occupied by the plant and was able to locate the plant on only two of these (O'Kane 1988). He observed ditching associated with gold mining operations and expressed concern that these operations could disrupt the hydrologic regime of peat fens and threaten the plant by desiccating its habitat.

In 1988, the Service funded a new status survey and report under a Section 6 Cooperative Agreement with the Colorado Natural Areas Program. Only four new populations were found during the 1988 status survey. Each consisted of about 0.4–0.8 hectares (1–2 acres) and all were within the previously documented range. Total numbers estimated for eight populations of the Penland alpine fen mustard in 1988 were 5,200 individuals from 25 hectares (62 acres; Naumann 1988). No plants were found in two previously known locations, one at London Mountain Saddle below Mosquito Pass and the other at the Dauntless Mine site below Mount Sherman. Desiccating effects of ditching from off-road vehicle ruts and mining activities were observed at several of the populations. For these reasons, Naumann (1988) recommended that *E. penlandii* be returned to the candidate list. On February 21, 1990, it was added to the 1990 Notice of Review (55 FR 6205) as a Category 1 candidate species, a species for which the Service has substantial information to support a proposal to list as threatened or endangered.

Eutrema penlandii was proposed for listing as a threatened species on October 15, 1990 (55 FR 41725). All interested parties were requested to submit factual reports or information that might contribute to the development of a final rule.

During the public comment period associated with the listing proposal, the Alma London Joint Venture, a mining company which has done geological mapping in the Mosquito Range, disagreed with the Service's summary of habitat requirements for *E. penlandii*, particularly with respect to reports that it required calcareous substrate for growth. The Service had based its determination that the plant needed calcareous substrates on its co-occurrence with calciphiles (plants that require calcareous substrates), and it had stratified its search for potential *E. penlandii* habitat by looking for calcareous substrates.

The mining company, based on their geologic mapping, stated that several sites occupied by the plant did not occur in areas with significant amounts of carbonate rock fragments. They suggested that new plants might be found if searches were broadened to include noncalcareous substrates. If so, they believed that a broadened search might show the species to be too common to qualify for listing. They requested a 6-month extension before a final decision was made on the listing to allow them to look for *E. penlandii* in additional areas. The company developed a 1991 study plan to search about 50 additional areas in the Mosquito and Sawatch (the next mountains to the west) ranges where other rare alpine plants occur. Alma London Joint Venture also believed the proposed rule overstated acid mine drainage as a threat to the plant.

The Service, the Colorado Natural Areas Program, and the mining company agreed that the plant's substrate preferences should be further evaluated. The Service then decided that substantial disagreement existed among scientists regarding interpretation of available data and that a 6-month extension would be appropriate to resolve habitat preference and distributional questions. The Service also worked with Colorado College in a study to:

(1) Determine pH (acidity) of *E. penlandii* habitat and

(2) Examine exchangeable calcium in soils where *E. penlandii* grows.

To allow time to resolve various issues, the Service published a notice of a 6-month extension on October 28,

1991 (56 FR 55487), extending the listing deadline to April 15, 1992. A 30-day comment period was granted from October 28, 1991, to November 27, 1991.

Alma American Mining Corporation (Schwendinger et al. 1991) and Colorado College (Kelso et al. 1991) prepared and submitted reports to the Service for use in the final listing decision. These reports were of interest to others, and numerous requests were received to extend the comment period to allow review and comment on them. The Service extended the comment period until February 7, 1992, an additional 45 days. Notice of reopening the comment period was published December 24, 1991 (56 FR 66614). Results from the two reports are presented and discussed in this rule.

Summary of Comments and Recommendations

Seven comments were received during the initial comment period. Five of these were in support of the proposed listing. These comments were provided by one State agency, one Federal agency, and three professional botanists (from a botanical garden, a plant conservation center, and a university, respectively). The other two comments were received from a mining company and opposed listing. One comment from the company requested a public hearing, but indicated that this request would be withdrawn if further studies were agreed to. The other comment from the company questioned some of the information used to determine the status of the species and suggested that further listing action be delayed so that additional studies could be conducted.

Subsequent to the initial comment period, several letters were exchanged between the Service, the mining company, and a private conservation organization. These letters discussed the purpose and objectives of proposed studies, and consequences that this delay in the listing process might have on the species.

Notice of the availability of the two 1991 study reports and a solicitation for comments were sent to appropriate State and Federal agencies, scientific organizations, and other interested parties. Fifteen written and three oral comments were received (one individual responded both in writing and orally, and one group responded twice in writing). Comments were received from Federal and State agencies (7), local government (1), botanical gardens (1), universities (3), and private firms (6). Fifteen comments were in support of listing *E. penlandii* as threatened, one was neutral, and two comments from one group opposed the listing.

Written comments and oral statements received during the comment period are addressed in the following summary. Comments of a similar nature or point are grouped into general issues. These issues and the Service's response to each are discussed below.

Issue 1: Is *Eutrema penlandii* rare enough to warrant listing as threatened?

a. Comments claiming *Eutrema penlandii* is not rare

The sponsors (Alma Mining Company) and authors (Schwendinger et al. 1991) of a 1991 study of the distribution and habitat preferences of *E. penlandii* pointed out that they found its habitat specificity was broader than originally thought, i.e., that *E. penlandii* does not appear to require calcareous substrates as suggested by others. They stated that more potential habitat may exist than previously estimated and that prior searches had been inappropriately designed. They also noted that brief but intense searches by trained amateurs during the 1991 survey succeeded in expanding population sizes and numbers, leading them to conclude that the species is not uncommon in appropriate habitats. They speculated that similar efforts in other mountain ranges may well result in the same success. They concluded that the species is not as rare as previously thought and not sufficiently rare to qualify as a threatened species.

b. Comments claiming *Eutrema penlandii* is rare

Regarding the 1991 survey (Schwendinger et al. 1991) and comments provided by its proponents, several botanists noted that *E. penlandii* is diminutive, difficult to identify in the field, and that it can often be confused with similar-looking species that grow with it. They expressed concern that voucher specimens were collected at only two locations and that photographs were taken as documentation in the study in lieu of taking voucher specimens, particularly because most of the survey workers were amateurs and the principal investigators did not visit every site.

Several commenters disagreed with the estimates given by Schwendinger et al. (1991). One biologist commented that the number of *E. penlandii* at one location was overestimated by 1991 survey workers, and he estimated the total number of plants to be about 10,000 rather than the 16,400 reported by Schwendinger et al. (1991). Another group of biologists found significant discrepancies between numbers in populations that they counted in the same year that counts were made by Schwendinger et al. (1991). They suggested caution when using estimated numbers and that numbers provided by Schwendinger et al. (1991) be taken as possible overestimations. Another commenter stated that the delineation of discrete populations was arbitrary and not based on sufficient examination of biogeographical conditions and ecological parameters. This commenter stated that just as defensible a case could be made for 5 populations, or 2 major populations using existing data rather than the 14 populations described by the mining company and its contractors.

Some reviewers were concerned that the procedure used to estimate population sizes was not described in the study report. All professional botanists were pleased that additional plants were found. However, they pointed out that even if the estimate of 16,400 individuals were accurate, this should not be construed as a large population or sufficient for long-term viability of this species. Furthermore, populations were generally quite small in numbers (most numbering less than 900 individuals) and small areas of habitat were occupied. Thus, they were considered vulnerable to extirpation from any number of potential natural or human-caused threats.

Reviewers stated that *E. penlandii* requires special habitat conditions, including clear, running water from melting, persistent snowfields. These habitat conditions are restricted in the Mosquito Range (and elsewhere), and they serve to limit the number and size of the plant populations and their potential distribution. Furthermore, these habitat conditions would be virtually impossible to artificially produce should the species require propagation to bolster the declining populations. Whether or not the plant is limited by calcareous substrates, reviewers maintained that the species is highly specialized and restricted to sensitive and vulnerable habitats. Therefore, it was judged important to protect *E. penlandii* populations by listing the plant.

Some reviewers considered it significant that, even though additional plants and populations were discovered, 1991 surveys did not extend the range of *E. penlandii*. Small stands of the plant were found scattered in sensitive habitats in high elevations of the east-west trending portion of the Mosquito Range. Reviewers believed that this relict plant, a rare and disjunct species, should be considered an important evolutionary resource and that its

distribution pattern mandates preserving the full genetic complement of the species (i.e., all the populations). Those supporting listing indicated that loss of even a single population could compromise the ability of the species to adapt to changing conditions or threats.

Reviewers repeated that several trained botanists had searched suitable habitats in many mountain ranges over many years without discovering additional *E. penlandii* populations. Therefore, despite the apparent success of the 1991 study in locating additional plants and expanding the number of populations within the Mosquito Range, it is unlikely that other populations will be found outside this range. Searches by botanists were not limited to known calcareous substrates, and thus their surveys were not biased.

Service Response

The Service finds that *E. penlandii* is a rare species occupying small areas of specialized habitat within a limited range. Despite years of search, its documented distribution remains restricted to the Mosquito Range. Computations by Service biologists and others from survey maps indicate that most subpopulations identified in Table 2 occur in tracts of a few hectares (2.47 acres) or less in size, and the total area of all documented, occupied habitat is about 200 hectares (500 acres).

There is disagreement regarding the total population size for *E. penlandii*. Three field botanists have estimated the numbers at 5,200, 10,000, and 16,400, respectively. The most recent estimates are 10,000 and 16,400 plants, and the Service believes that the actual number of plants is likely to be somewhere between these two estimates. The Service points out that no statistically based estimate exists for the number of *E. penlandii* plants, and thus the significance or absolute statistical validity of either "estimate" remains open to question. However, even though the exact number is not known, it is apparent from the estimates that the total population size of this species is relatively small.

The Service also acknowledges that the number of *E. penlandii* populations or subpopulations is open to question. The 14 populations that have been identified may not warrant population status based on valid principles of biogeography and genetics. It has been suggested that there is no valid scientific reason why the number of populations is 14, and the number may be 2 or 5. The close proximity of some of the populations and many of the subpopulations warrants further investigation. It is likely that the extent of many of the stands of the plant is a function of the amount of annual precipitation, and thus some overlap may be expected in years of favorable hydrologic conditions. Thus, the reliance on one year of survey work to delineate populations and subpopulations is considered scientifically inadequate.

The Service has mapped and examined the locations of various stands of *E. penlandii* and finds that designation of subpopulations and populations is somewhat arbitrary. Only a few feet or less separate some of the subpopulations delineated by Schwendinger et al. (1991). As an example, subpopulations 10 a, c, d, e, f, and g (Table 2) all occur in an area less than about 16 hectares (40 acres), and it is arguable whether these should be construed as six or only one subpopulation. As an example of questionable population designations, it is debatable whether populations 5 and 10 characterized by Schwendinger are 2 populations or only 1 population. The Service believes that the present number of populations is between 5 and 14, and that this does not constitute a diverse and common species.

Eutrema penlandii primarily grows in soils that overlay the Leadville limestone formation. Its requirements for or relationship with these calcareous substrates are unknown, but the role of substrate has been debated (Kelso, et al. 1991; Schwendinger et al. 1991). The Service finds that regardless of whether *E. penlandii* is associated with calcareous substrates, the plant is otherwise highly restricted in its habitat use. Many questions about the life history and habitat requirements of the plant remain unresolved, but its habitats are uncommon and the amount of available habitat is highly dependent upon hydrology.

Issue 2: Are *Eutrema penlandii* populations or its habitat sufficiently threatened to warrant designation as a threatened species?

a. Comments Indicating Minimal Threats to Populations or Habitat

The sponsors and authors of the Schwendinger et al. report (1991) reiterated that there were no visible signs of ongoing mining activities where *E. penlandii* was found and, except for one instance, off-road vehicle travel appeared to be restricted to existing roads. Also, they found *E. penlandii* in areas that recently had been disturbed (within the past few years), indicating the plant had some tolerance for habitat disturbance. They concluded that the magnitude of threats to *E. penlandii* populations has been exaggerated (Schwendinger et al. 1991).

b. Comments Indicating Significant Threats to Populations or Habitat

The reviewers supporting listing *E. penlandii* emphasized that the habitat required by the species is created by specific hydrologic conditions that can easily be altered. Any activity that diverts water flow or changes the quality of water flowing to *E. penlandii* habitats could place an entire population at risk. Although reviewers acknowledged that *E. penlandii* can be found where there is some habitat disturbance, it would not tolerate disturbance that is frequent, repeated, or of large magnitude.

Although there is little current mining activity in areas where *E. penlandii* is established, much of the area occupied by the plant is staked for mining claims, and reviewers were concerned that mining activity could become a serious problem for the species if market conditions change. Even though *E. penlandii* may be somewhat tolerant of acidic soil and water conditions, this does not diminish threats due to actual destruction of populations and changes in the watershed and its hydrology.

Half of the *E. penlandii* populations occur, at least partially, on private land (patented mining claims). Reviewers suggested that listing would increase the incentives to create cooperative protection agreements with landowners.

Reviewers observed that recreation is growing in popularity in alpine areas along the Continental Divide and that many *E. penlandii* sites are accessible and near existing or proposed trails. They stated that listing the species as threatened would encourage Federal land managers to more adequately take into account the requirements of the species in their recreational and land-use planning.

Service Response

The Service finds that *E. penlandii* and its restricted habitat are under sufficient threat that the species is likely to become an endangered species within the foreseeable future throughout all or a significant portion of its range. *E. penlandii* populations exist in alpine habitats in which plant growing seasons may vary from 0 to 70 days depending on annual climatic changes. Plant growth is already reduced in some years by naturally extreme conditions characteristic of the alpine tundra, and human-induced changes can easily and quickly affect this sensitive ecosystem.

Threats from mining activities and recreation can destroy populations by modifying habitat through surface

disturbance or changes in hydrology, such that the habitat no longer supports the species. The Service notes that most of the populations and subpopulations of the plant are very small, and some are only a few square meters (yards) in size. These small plant stands are highly vulnerable to human-induced changes in surface topography, especially in upslope areas. Specific threats posed by anthropogenic impacts are discussed in detail later in this document under the five listing factors.

Summary of Factors Affecting the Species

Section 4(a)(1) of the Act and regulations (50 CFR part 424) promulgated to implement the listing provisions of the Act set forth the procedures for adding species to the Federal lists. A species may be determined to be an endangered or threatened species due to one or more of the five factors described in section 4(a)(1). These factors and their application to *Eutrema penlandii* Rollins (Penland alpine fen mustard) are as follows:

A. *The present or threatened destruction, modification, or curtailment of its habitat or range.* The Service finds that *E. penlandii* is a rare species occupying a small area. Despite years of search, its documented distribution remains limited to a restricted range in specialized and uncommon habitat. Most subpopulations occur in small tracts and the total area of all documented, occupied habitat is about 200 hectares (500 acres). Only a few meters (yards) or less separate some of the *E. penlandii* subpopulations, and some populations do not appear to be biogeographically distinct. However, regardless of the number of populations and subpopulations, the Service believes that the areas occupied by *E. penlandii* are too small to provide a high degree of genetic diversity or to reduce the threats of endangerment to the species.

Evidently, because of its high degree of habitat specificity, which requires the combination of several microenvironmental factors as described earlier, the Penland alpine fen mustard is found only in the Mosquito Range in Colorado, where this combination of conditions occurs. Suitable habitat for the plant is rare, and most areas in Colorado and elsewhere that have a high potential as habitat have been surveyed by botanists. *E. penlandii* never has been collected outside the Mosquito Range in Colorado, and it appears unlikely that the plant exists outside of this area.

The most fragile aspect of the Penland alpine fen mustard's habitat is the continuous supply of water needed to maintain peat fens in which the species grows. *E. penlandii* grows in peat mounds along saturated stream margins and small hummocks within streams, and it rarely occurs more than 0.5 m (0.55 yd) away from flowing meltwater. Populations of *E. penlandii* are small, and some are found on areas of less than about 0.4 hectares (1 acre). Some subpopulations occupy only a few square meters (yards). Because stands of the plant are so small, they are vulnerable to surface disturbances that reroute the needed water supply. This can occur from ditching, diking, or other watershed perturbations that alter surface water flow (e.g., roads, trails, ruts of vehicle tracks, footpaths, or mining construction) to a peat fen in which the Penland alpine fen mustard grows. Desiccation and loss of a peat fen can cause a loss of *E. penlandii* plants, and reduction in the amount of its highly specialized habitat.

Old mines occur near every *E. penlandii* population, but the plant is not found in habitats that have been significantly altered by mining. Records show that most mining claims on public land are active (i.e., claims have not been allowed to lapse). Virtually all of the public land in the area, including *E. penlandii* habitat, is staked for mining claims under the Mining Act of 1872. For example, there are 2,500 mining claims on the South Park Ranger District of the U.S. Forest Service (Steve Currey, Clint Kyhl; U.S. Forest Service, pers. comm., 1992).

Mining activity includes such activities as prospecting, annual assessment work to validate a claim, and actual mineral extraction. Prospecting and assessment work are currently occurring in and near areas occupied by *E. penlandii*, and mineral extraction may resume whenever market and other conditions are favorable. The Hoosier Ridge area, the type location and largest population of *E. penlandii*, is under intense scrutiny for mining. If mining occurs there as planned, extirpation of that population appears imminent.

In a recent appeal to the establishment of a Hoosier Ridge Research Natural Area (HRRNA), St. Mary Minerals, Incorporated, stated:

> The proposed boundary of the HRRNA overlaps seven active lode mining claims * * * staked between 1980 and 1987 * * * we have both gold anomalies and high trace metal concentrations, which together indicate the possible presence of a mineral deposit in the area where the three watersheds originate (the HRRNA) * * * Sampling and analyses of rocks along the ridge which constitutes the eastern boundary of the proposed HRRNA * * * reveal zones of mineralized rock with elevated gold values, some of which are of ore-grade (economic concentrations).

The Hoosier Ridge area is one of the largest populations of *E. penlandii* and the type locality. Active prospecting and establishment of new claims has continued in this area through 1992. Threats to this population are imminent at this locality and at others as well. Thus, the Service believes that mining activities, including prospecting and annual assessments, threaten *E. penlandii* populations.

Full-scale mineral extraction is not necessary for mining to constitute a threat to *E. penlandii*. One trip by a drilling rig on the way to drilling a prospect hole could alter the hydrology of sensitive areas sufficiently to decimate a subpopulation or even a population of *E. penlandii*. In addition, Service biologists find that several *E. penlandii* subpopulations are in such close proximity that more than one could be severely impacted and perhaps lost due to a single upslope disturbance, such as a road, trail, or mine that would alter surface drainage patterns. Extensive mining activity will likely increase if economic conditions become more propitious. In that case, it is likely that several subpopulations would be impacted and perhaps extirpated.

Half of the *E. penlandii* populations occur on private land (patented mining claims) that was once Federal land. Although mineral extraction is not currently occurring on these claims, it could resume if market conditions become favorable. If public opinion favors reform of the 1872 mining law, many claimants may expedite patenting mining claims and thus convert even more Federal land and *E. penlandii* populations to private land. Under current law, only a few stipulations need be met to transfer public lands to private ownership at costs as low as $2.50 to $5 per 0.4 hectare (1 acre). *E. penlandii* plants on private land are not protected by Federal or State law, nor will they be after the species is listed as threatened.

Recreational activities are increasing in alpine areas of the Mosquito Range. Although many forms of outdoor recreation, such as hiking, appear benign, participation by enough people can lead to braided trail formation, soil compaction, and disruption of water flow from snowfields and in wetlands as people hike around or through them. Hiking has increased in the Mosquito Range and up to 4,000 people are now hiking during the short wildflower

season in some locations near *E. penlandii* populations (Sharon Kyhl, U.S. Forest Service, pers. comm., 1992). The plant occurs on gentle terrain below steep slopes, and these areas attract hikers because they appear as lush wildflower gardens that are adjacent to water.

Motorcycles, 4-wheel drive vehicles, and other off-road vehicles are adversely impacting alpine areas of the Mosquito Range. Numerous roads associated with tracts of privately owned mining claims provide vehicular access to most alpine areas. The Service finds that 8 of the 14 areas occupied by *E. penlandii* have roads or off-road vehicle trails that lead to them. The primary author of this rule observed direct impacts to *E. penlandii* plants at Mosquito Pass due to off-road vehicle use, indicating that motorized vehicles can, and in many instances do, go anywhere. Surface disturbances by vehicles can crush plants and directly impact *E. penlandii* populations, and rutting and other disturbance can degrade and destroy the alpine wetlands in which the plant grows.

B. *Overutilization for commercial, recreational, scientific, or educational purposes.* No overutilization of *E. penlandii* has been documented. However, the existence of a threatened plant on Federal lands could be perceived by claim holders and others as a potential obstruction that could cause curtailment of the assessment work needed to retain a mining claim and convert Federal land to private ownership. Listing the plant also could place further environmental requirements on mining extraction. Thus, claim holders and others may destroy plants.

This species is a relict plant whose closest relative occurs in the Arctic. Listing the species could increase its value to plant collectors and lead to more taking. To help minimize these threats, the Service has not proposed critical habitat as this action requires delineation of the species' specific habitats (see "Critical Habitat" section of this rule).

C. *Disease or predation.* No serious threats are known. There is evidence that pika and microtine rodents feed on the plants, but these interactions are considered part of the natural history of *E. penlandii* (Naumann 1991). The significance of such herbivory is unknown; however, pikas may assist in seed dispersal by moving them to storage areas (Naumann 1991).

D. *The inadequacy of existing regulatory mechanisms.* No Federal or State laws protect *E. penlandii*. A Research Natural Area was proposed for the Hoosier Ridge population on U.S. Forest Service land. However, several mining companies appealed this proposal because of their intent to conduct future mining operations in the area. The U.S. Forest Service then withdrew its proposal. Since that time, these mining companies have filed claims and are prospecting for minerals over the entire proposed area.

The research area proposal for Hoosier Ridge was developed over a 10-year period by several cooperating agencies, including the U.S. Forest Service and the Colorado Natural Areas Program. The proposed Hoosier Ridge area represented one of the most floristically complete and pristine alpine areas remaining in the Nation. Abandonment of this proposed research area concept in response to the appeal by mining companies leaves the type locality, one of the largest populations of *E. penlandii*, without protection and under imminent threat. Because Region 2 of the Forest Service does not include the plant as a sensitive species, *E. penlandii* habitat does not have any regulatory, planning, or policy protection.

The Bureau of Land Management treats *E. penlandii* as a sensitive species for management planning purposes. However, the species and its habitat are not necessarily given priority in multiple-use considerations. The area around Mosquito Pass has been nominated as an Area of Critical Environmental Concern (ACEC). Designation as an ACEC flags an area and the values for which the ACEC was established so that managers can take those values into consideration when developing resource management plans. However, a manager has the prerogative of disregarding or not giving high priority to those values if other values appear to have more importance. It is questionable whether the nominated area will become an ACEC. Even if it does, designation of *E. penlandii* habitat as an ACEC will not necessarily confer the level of protection the Service deems necessary, because not all *E. penlandii* populations are included in the nominated area. The Act would provide additional protection and encourage active management through the **Available Conservation Measures** discussed below.

E. *Other natural or manmade factors affecting its continued existence. E. penlandii* has a pattern of rarity (i.e., a few small populations on small areas of specialized habitat) that makes it particularly vulnerable to the threats described above, as well as to localized environmental catastrophes such as fungal blight, drought, or insect infestations. Alpine tundra is a harsh environment for plant growth. If climatic changes (local or global) reduce the amount of persistent snowfields, *E. penlandii* habitat might be further reduced, and the plant may become more rare than it is at present. In addition, the Service finds that several of the subpopulations and populations are located in such a small area that they are vulnerable to perhaps a single upslope surface disturbance.

The Service has carefully assessed the best scientific and commercial information available regarding the past, present, and future threats to this species in determining to make this final rule. Based on this evaluation, and cognizant of the debate about the imminence and magnitude of threats to *E. penlandii* populations and habitat posed by activities in alpine areas, the Service believes *Eutrema penlandii* warrants listing as threatened.

Eutrema penlandii is a restricted endemic species, a relict of past glaciation whose fragile wetland habitat is being threatened by anthropogenic development. Threats include mining and recreational activities. Mining is presently at a low level, but the area supporting the plant is being extensively prospected, converted to mining claims, and patented to private mining lands. Miners are continuing assessment work on public lands, and they are not allowing their mining claims to lapse. Mining companies have indicated that economically viable deposits of various minerals occur and that these can be mined. As mining becomes more profitable, more public land will be patented and transferred to private ownership. Because *E. penlandii* populations are predominantly associated with areas under consideration for mining, it appears only a matter of time before extensive areas of its habitat are altered.

Recreational activities that are potentially disruptive to alpine wetland hydrology, such as backpacking, hiking, mountain biking, trail riding with horse and burro, and off-road vehicle use are gaining in popularity and increasing in the alpine areas where *E. penlandii* occurs. Roads now provide access to most *E. penlandii* populations. Many of these populations are very small and vulnerable to changes in local topography that would affect their water supply.

At present levels, these identified threats to *E. penlandii* and its habitat are not likely to result in the species' extinction in the foreseeable future. However, threats are acting on *E. penlandii*'s small populations and limited range, and this species is likely to become endangered within the

foreseeable future in all or a significant portion of its range. Thus, *E. penlandii* is a threatened species as defined by the Act. For reasons given below, it is not considered prudent to designate critical habitat.

Critical Habitat

Section 4(a)(3) of the Act, as amended, requires that, to the maximum extent prudent and determinable, the Secretary designate critical habitat at the time the species is determined to be endangered or threatened. The Service finds that designation of critical habitat is not presently prudent for *E. penlandii* because possible adverse consequences from vandalism would likely outweigh the minimal benefits accruing from critical habitat designation.

As noted under Factor B, *E. penlandii* is vulnerable to taking. Publication of precise maps and descriptions of critical habitat in the **Federal Register** would make this plant more vulnerable to incidents of vandalism and could contribute to the decline of the species. This has been documented with other listed species (e.g., *Hudsonia montana;* N. Murdock, U.S. Fish and Wildlife Service, pers. comm., 1991). Lacking mobility, plants are more vulnerable to vandalism than animals. A listing of *E. penlandii* as threatened would also publicize the rarity of this plant and encourage taking by researchers or collectors of rare plants. *E. penlandii* is a relict plant, and it is the only representative of its genus in the lower 48 States. Its rarity and biogeographic status would likely stimulate greater interest for collectors than most other species. Theft of an entire small population of another listed plant, *Asclepias meadii* (Mead's milkweed), in Illinois exemplifies the problem (U.S. Fish and Wildlife Service 1991).

Few additional benefits would be provided to the species by designating critical habitat that would not already be provided by listing the species as threatened. Any Federal action (e.g., approving a new road, etc.) that would impact the plant's habitat would also affect rooted plants; therefore, this impact would be addressed through Section 7 consultation. In addition, Section 9(a)(2)(B) of the Act makes it unlawful to remove and reduce to possession any threatened species of plant from areas under Federal jurisdiction. The Forest Service and the Bureau of Land Management are aware of the occurrence of *E. penlandii* on their lands and of their obligations under the Act.

The adverse modification standard for critical habitat under Section 7(a)(2) of the Act does not apply to private land if there is no Federal involvement. Thus, if Federal Agencies have no jurisdiction over activities on private land, designation of critical habitat on private land does not afford additional protection to listed species.

For the reasons discussed above, it would not be prudent to designate critical habitat for *E. penlandii.*

Available Conservation Measures

Conservation measures provided to species listed as endangered or threatened under the Endangered Species Act include recognition, recovery actions, requirements for Federal protection, and prohibitions against certain activities. Recognition through listing encourages and results in conservation actions by Federal, State, and private agencies, groups, and individuals. The Endangered Species Act provides for possible land acquisition and cooperation with the States and requires that recovery actions be carried out for all listed species. The protection required of Federal Agencies and the prohibitions against certain activities involving listed plants are discussed, in part, below.

Section 7(a) of the Act, as amended, requires Federal Agencies to evaluate their actions with respect to proposed or listed species and with respect to critical habitat, if any is being designated. Regulations implementing this interagency cooperation provision of the Act are codified at 50 CFR part 402. Section 7(a)(4) requires Federal Agencies to confer informally with the Service on any action likely to jeopardize the continued existence of a proposed species or result in destruction or adverse modification of proposed critical habitat. If a species is listed subsequently, section 7(a)(2) requires Federal Agencies to insure that activities they authorize, fund, or carry out are not likely to jeopardize the continued existence of such a species or to destroy or adversely modify its critical habitat. If a Federal action may affect a listed species or its critical habitat, the responsible Federal Agency must enter into formal consultation with the Service.

The largest populations of *Eutrema penlandii* occur on Federal land administered by the Forest Service and Bureau of Land Management. Their involvement could include section 7 consultation on mining activities and land exchanges. A recreational plan is needed to manage off-road vehicle and other recreational use. On both Federal and private land, the Service expects that listing would elevate the awareness of this plant's status and foster efforts for its conservation.

The Act and its implementing regulations found at 50 CFR 17.71 and 17.72 set forth a series of general prohibitions and exceptions that apply to all threatened plants. All taking and trade prohibitions of section 9(a)(2) of the Act, implemented by 50 CFR 17.71, apply. These prohibitions, in part, make it illegal for any person subject to the jurisdiction of the United States to import or export, transport in interstate or foreign commerce in the course of a commercial activity, sell or offer for sale listed species in interstate or foreign commerce, or to remove and reduce it to possession from areas under Federal jurisdiction. Seeds from cultivated specimens are exempt from these prohibitions provided that a statement of "cultivated origin" appears on their containers. In addition, for endangered plants, the 1988 amendments (Pub. L. 100–478) to the Act prohibit the malicious damage or destruction on Federal lands and the removal, cutting up, digging up, or damaging or destroying of endangered plants in knowing violation of any State law or regulation, including State criminal trespass law. Section 4(d) of the Act allows for the provision of such protection to threatened species through regulations. This protection may apply to Penland alpine fen mustard once revised regulations are promulgated. Certain exceptions to the prohibitions apply to agents of the Service and State conservation agencies.

The Act and 50 CFR 17.72 also provide for the issuance of permits to carry out otherwise prohibited activities involving threatened plants under certain circumstances. With regard to *E. penlandii,* it is anticipated that few, if any, trade permits would ever be sought or issued because this species is not in cultivation or common in the wild. Requests for copies of the regulations on listed plants and inquiries regarding prohibitions and permits may be addressed to the Office of Management Authority, U.S. Fish and Wildlife Service, room 432, 4401 North Fairfax Drive, Arlington, Virginia 22203 (703/358–2104).

National Environmental Policy Act

The Service has determined that an Environmental Assessment, as defined under the authority of the National Environmental Policy Act of 1969, need not be prepared in connection with regulations adopted pursuant to section 4(a) of the Endangered Species Act of 1973, as amended. A notice outlining the Service's reasons for this determination was published in the **Federal Register** on October 25, 1983 (48 FR 49244).

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Author

The principal authors of this final rule are Dr. Lucy A. Jordan, U.S. Fish and Wildlife Service, John L. Anderson, Botanist, formerly with the U.S. Fish and Wildlife Service (see **ADDRESSES** above), and Dr. Harold M. Tyus, U.S. Fish and Wildlife Service, Denver Regional Office.

List of Subjects in 50 CFR Part 17

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

Regulation Promulgation

Accordingly, part 17, subchapter B of chapter I, title 50 of the Code of Federal Regulations is amended, as set forth below:

PART 17—[AMENDED]

1. The authority citation for Part 17 continues to read as follows:

Authority: 16 U.S.C. 1361–1407; 16 U.S.C. 1531–1544; 16 U.S.C. 4201–4245; Pub. L. 99–625, 100 Stat. 3500, unless otherwise noted.

2. Amend § 17.12(h) by adding the following in alphabetical order under the family Brassicaceae to the List of Endangered and Threatened Plants:

§ 17.12 Endangered and threatened plants.

* * * * *

(h) * * *

Species		Historic range	Status	When listed	Critical habitat	Special rules
Scientific name	Common name					
* * *		*	*	*	*	*
Brassicaceae—Mustard family:						
* * *		*	*	*	*	*
Eutrema penlandii	Penland alpine fen mustard.	U.S.A. (CO)	T	509	NA	NA
* * *		*	*	*	*	*

Dated: June 24, 1993.

Richard N. Smith,

Acting Director, Fish and Wildlife Service.

[FR Doc. 93–17933 Filed 7–27–93; 8:45 am]

BILLING CODE 4310–55–P

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50 CFR Part 17

RIN 1018–AB56

Endangered and Threatened Wildlife and Plants; Determination of Endangered Status for the Plant Astragalus applegatei (Applegate's Milk-vetch)

AGENCY: Fish and Wildlife Service, Interior.

ACTION: Final rule.

SUMMARY: The U.S. Fish and Wildlife Service (Service) determines the plant *Astragalus applegatei* (Applegate's milk-vetch) to be an endangered species under the authority contained in the Endangered Species Act of 1973, as amended (Act). This species has two extant populations in Klamath County, Oregon. The largest population is found on 6 acres of private land estimated to contain up to 30,000 individuals. The Nature Conservancy has leased this land on a year-by-year basis for *Astragalus applegatei* management. However, it is zoned for commercial development. The second site, on State of Oregon land, supports approximately 30 to 80 plants in three patches scattered over 1 acre (J. Kagan, Oregon Heritage Program, pers. comm., 1992). Survival of this species is threatened primarily by the loss of habitat from past and potential development and road construction. The increased number of plants observed in recent surveys is believed to be a result of studies more quantitative in nature, not an expansion or improvement of the species habitat. Wildlife grazing has been determined to be another serious threat to the two remaining populations. This plant's palatability to cattle is an additional factor contributing to its current status. This rule implements the protection and

recovery provisions provided by the Act for this plant.

EFFECTIVE DATE: This rule is effective on August 27, 1993.

ADDRESSES: The complete file for this rule is available for public inspection, by appointment, during normal business hours at the Boise Field Office, 4696 Overland Road, room 576, Boise, Idaho 83705.

FOR FURTHER INFORMATION CONTACT: Robert Parenti at the above address (telephone number 208–334–1931).

SUPPLEMENTARY INFORMATION:

Background

Astragalus applegatei was first discovered near Klamath Falls, Oregon, in 1927 by Morton Peck. Peck subsequently collected the species 2 miles (3.2 kilometers) east of Keno, Oregon, in 1931 and then described it (Peck 1936). It was thought to be extinct until its rediscovery in 1983 by James Kagan of the Oregon Natural Heritage Program (Kagan 1983). This perennial herbaceous plant of the pea family (Fabaceae) grows to approximately 1 foot (0.3 meters) in height and reproduces only by seed. The Melissa blue butterfly (*Lycaedies argycogromon*) is a specific known pollinator. The anthers and stigma ripen simultaneously, enabling self-pollination. Plants produce light purple, pea-like flowers, and 0.3–0.5 inch (8–13 millimeter) seed pods during June and July. *Astragalus applegatei* can be distinguished from other species of *Astragalus* in the area by its slightly curved stems, the number and location of flowers, and apparent inability to colonize dry, disturbed areas.

Astragalus applegatei grows in flat, open, seasonally moist remnants of floodplain alkaline grassland of the Klamath Basin. The species is a member of the *Poa nevadensis-Puccinellia lemmonii* grassland community (Yamamoto 1985). This community is characterized as a bunchgrass flat, with about 10 to 20 percent exposed ground. The substrate is poorly drained, fine silt loam with an underlying hardpan at depths of 20 to 40 inches (51 to 102 centimeters). Periodic flooding was probably a natural feature of this habitat type. The adjacent community is alkaline open shrubland dominated by *Sarcobatus vermiculatus* and *Distichlis stricta*. *Sarcobatus vermiculatus* occasionally occurs in the grassland community.

Astragalus applegatei historically occurred at three sites near Klamath Falls, Oregon. Extensive agriculture use has apparently extirpated one site near Keno, Oregon. The last known observation/collection at this site was in 1931. Further survey efforts near the Keno, Oregon, site have failed to locate the plant(s) (Yamamoto 1985; James Kagan, Oregon Natural Heritage Program, pers. comm., 1992).

Astragalus applegatei remains at two sites. The largest population, limited to 6 acres estimated to support up to 30,000 individuals (D. Salzer, Oregon Chapter of The Nature Conservancy, *in litt.*, 1991), is 1 mile south of downtown Klamath Falls. The initial 1,000 plant estimate for this site was a very rough estimate made without quantitative sampling. Field surveys conducted from 1988 through 1991, and extrapolations from those data, projected the population estimate to be up to 30,000 plants (Salzer, *in litt.*, 1991). The increased number of plants observed in recent surveys is believed to be a result of the more intensive studies, not an expansion or improvement of the species' habitat (Kagan, pers. comm., 1993).

The threats to this population include urban development and road construction. Portions of the population and remaining habitat for *Astragalus applegatei* have already been destroyed by the construction of a major four-lane avenue bisecting this population (Kagan, pers. comm., 1992). An additional road may soon be under construction through the remaining plant habitat. Remaining plants within this population occur on adjacent land that is zoned for light industrial, general commercial, or heavy industrial use. This area is posted with signs advertising future commercial development (Yamamoto 1985; Kagan, pers. comm., 1992). Extensive urban development has occurred in this area for many years and is continuing. If current land use patterns continue, this area will be further developed, eliminating this plant species (Kagan, pers. comm., 1992).

The third site, occurring on less than 1 acre, is located on the State's Klamath Management Area, approximately 6 miles from the above population. This site supports an estimated 30 to 80 plants. The plants appear to be older with no evidence of reproduction. Low population numbers, loss of habitat, wildlife grazing (rabbits), and management controls altering natural regimes (periodic wildfire and flooding) pose serious threats to this population (Kagan, pers. comm., 1992).

Astragalus applegatei is affected by the lack of seasonal flooding. Seasonal flooding may provide openings for the establishment of *Astragalus applegatei* and limit the dominance of other species (Yamamoto 1985).

Previous Federal Action

Federal action on this species began because of section 12 of the Act, which directed the Secretary of the Smithsonian Institution to prepare a report on plants considered endangered, threatened, or extinct in the United States. This report, designated as House Document No. 94–51, was presented to Congress on January 9, 1975. In that document, *Astragalus applegatei* was considered to be threatened. The Service published a notice on July 1, 1975, in the **Federal Register** (40 FR 27823) accepting the report as a petition within the context of section 4(c)(2) (now section 4(b)(3)(A)) of the Act and gave notice of its intention to review the status of the plant taxa named therein. As a result of that review, the Service published a proposed rule on June 16, 1976, in the **Federal Register** (41 FR 24523) to determine endangered status pursuant to section 4 of the Act for approximately 1,700 vascular plant species. The list of 1,700 plant taxa was assembled based on comments and data received by the Smithsonian Institution and the Service in response to House Document No. 94–51 and the July 1, 1975, **Federal Register** publication. In 1978, amendments to the Act required that all proposals over 2 years old be withdrawn. A 1-year grace period was given to proposals already over 2 years old. The Service published a notice on December 10, 1979, in the **Federal Register** (44 FR 70796) of the withdrawal of that portion of the June 16, 1976, proposal that had not been made final, along with four other proposals that had expired.

The Service published an updated notice of review for plants on December 15, 1980 (45 FR 82480), September 27, 1985 (50 FR 39525), and February 21, 1990 (55 FR 6183). In all three cases, *Astragalus applegatei* was treated as a category 1 candidate. Taxa in category 1 are those for which the Service has on file substantial information on biological vulnerability and threats to support preparation of listing proposals.

Section 4(b)(3)(B) of the Act, as amended in 1982, requires the Secretary to make findings on pending petitions within 12 months of their receipt. Section 2(b)(1) of the 1982 amendments further requires all petitions pending on October 13, 1982, to be treated as being newly submitted on that date. That was the case for *Astragalus applegatei* because of the acceptance of the 1975 Smithsonian report as a petition. On October 13, 1983, the Service found that the petitioned listing of this species was warranted but precluded by other pending listing actions, according to

section 4(b)(3)(B)(iii) of the Act. Notification of this finding was published on January 20, 1984 (49 FR 2485). Such a finding requires the petition to be recycled, pursuant to section 4(b)(3)(C)(i) of the Act. In October of 1984, 1985, 1986, 1987, 1988, 1989, and 1990, the Service found that the petition to list *Astragalus applegatei* was warranted but precluded by listing actions of higher priority.

The Service published a proposal on November 26, 1991, to list *Astragalus applegatei* as an endangered species (56 FR 59917). This proposal was based, in large part, on additional survey information and occurrence data, and information on pending projects that would adversely affect the plant. The Service now determines *Astragalus applegatei* to be an endangered species with the publication of this rule.

Summary of Comments and Recommendations

In the November 26, 1991, proposed rule (56 FR 59917) and associated notifications, all interested parties were requested to submit factual reports or information that might contribute to the development of a final listing decision. The public comment period ended on February 3, 1992. Appropriate State agencies, county and city governments, Federal agencies, scientific organizations, and other interested parties were contacted and requested to comment. The Service received two comments during the comment period. One comment expressed support for the listing proposal, while the other comment opposed listing. The comment opposing the listing proposal and the Service's response is summarized as follows:

Issue: The commenter said the government has not shown sufficient effort, study, or facts to substantiate this listing. The commenter also said that populations of vetch exist throughout the county, State, and entire northwest. Furthermore, initial taxonomical work and subsequent verification were not extensive enough to imply that this subspecies is threatened.

Service Response: This plant was first discovered near Klamath Falls, Oregon, in 1927, and collected again in 1931 near Keno, Oregon. The Keno, Oregon, area was carefully searched in 1982, 1983, 1984, 1985, and more recently in 1990, 1991, and 1992. Exhaustive survey efforts for many years have failed to locate plants at this site.

The largest Klamath Falls population, containing up to an estimated 30,000 plants on 6 acres, is 1 mile south of downtown Klamath Falls. Threats include expanding urban development and road construction. Part of this population and most of its habitat have already been destroyed by a four-lane avenue bisecting the population (Kagan, pers. comm., 1992). Another part of the population is situated on land posted with signs advertising future development.

Most *Astragalus* species are plants adapted to growing in moisture deficient environments. However, *Astragalus applegatei* is a plant growing in a moderately moist environment (Barneby 1964). Extensive field surveys conducted in potential habitat of *Astragalus applegatei* have failed to yield additional locations.

No alternative taxonomic treatments are known. The last major comprehensive treatment for the genus *Astragalus* was made by Barneby (1964). No taxonomic changes were made on this species. There is no evidence that *Astragalus applegatei* was ever classified as a subspecies.

Summary of Factors Affecting the Species

After a thorough review and consideration of all information available, the Service has determined that *Astragalus applegatei* should be classified as an endangered species. Procedures found at section 4 of the Endangered Species Act (16 U.S.C. 1533) and regulations (50 CFR part 424) promulgated to implement the listing provisions of the Act were followed. A species may be determined to be an endangered or threatened species due to one or more of the five factors described in section 4(a)(1). These factors and their application to *Astragalus applegatei* Peck (Applegate's milk-vetch) are as follows:

A. *The present or threatened destruction, modification, or curtailment of its habitat or range. Astragalus applegatei* has historically been reported from three sites in Klamath County, Oregon. Extensive agricultural use has extirpated one of these populations located 2 miles east of Keno, Oregon. Recent survey efforts in the Keno area have failed to locate the species since its observation/collection in 1931 (Kagan, pers. comm., 1992).

A second, and the largest population, with up to 30,000 plants on 6 acres, is 1 mile south of downtown Klamath Falls. A major four-lane avenue bisecting this population was constructed, resulting in the elimination of some of the plants and most of the species habitat. Recent construction of a culvert over a large ditch that bisects the population has also destroyed plants and their habitat. The construction destroyed plants and their habitat by compacting the soil, denuding the surface, and crushing plants under dumped dirt and wheels of construction equipment. An additional road may soon be under construction through the remaining plant habitat (Kagan, pers. comm., 1992). Another portion of the population is situated on land posted with signs advertising future commercial development (Yamamoto 1985; Kagan, pers. comm., 1992). The Oregon Field Office of The Nature Conservancy has a year-to-year lease to manage the area for the plant. However, they have been unsuccessful in negotiating the acquisition of the property from the private landowner. It continues to be zoned for commercial development. This population is probably the only viable population left. If this area is commercially developed, *Astragalus applegatei* will probably be lost as a viable species (Kagan, pers. comm., 1992).

The third site contains 30 to 80 plants in an area less than 1 acre in size on the State's Klamath Wildlife Management Area. The plants are older and show no evidence of reproduction. This site is threatened by low population numbers, loss of habitat, wildlife grazing (rabbits), and management controls that alter natural fire and flooding regimes (Kagan, pers. comm., 1992).

Astragalus applegatei is adversely affected by lack of seasonal flooding. Irrigation and water control along the Klamath River have eliminated the seasonal flooding that once occurred along floodplains supporting the species. Seasonal flooding is important in that it may provide openings for the establishment of *Astragalus applegatei* and limit the dominance of other species (Yamamoto 1985).

B. *Overutilization for commercial, recreational, scientific, or educational purposes. Astragalus applegatei* was only recently rediscovered. Six collections of the species exist. Because the plants are easily accessible by road, illegal collecting for scientific or horticulture purposes or excessive visits by individuals interested in seeing rare plants could become a threat.

C. *Disease or predation.* Chewed stems and rabbit-like pellets were found at the remaining extant populations. Rabbit predation has become one of the major obstacles to the survival of *Astragalus applegatei* (D. Borgois, The Nature Conservancy, pers. comm., 1992). The palatability of *Astragalus applegatei* to cattle is a factor in the absence of this species in areas grazed by cattle (Kagan, pers. obs., 1985 and 1992).

D. *The inadequacy of existing regulatory mechanisms.* Under the

Oregon Endangered Species Act (OAR 564.100–564.135) and pursuant regulations (OAR 603, Division 73) the Oregon Department of Agriculture has listed *Astragalus applegatei* as endangered. This statute prohibits the "take" of State-listed plants on State-owned or State-leased lands only. The smaller of the two remaining populations of *Astragalus applegatei* occurs on State-owned land. The larger population occurs on private land where the plant is not protected from actions the landowner may take that would adversely affect the species. The landowner has indicated that the private land is being held for development purposes (Kagan, pers. comm., 1992).

Some of the habitat occupied by *Astragalus applegatei* may be regulated as wetlands and subject to regulation under section 404 of the Clean Water Act by the U.S. Army Corps of Engineers (Corps). Under section 404 of the Clean Water Act, the Corps regulates the discharge of fill into waters of the United States, including wetlands. Nationwide Permit No. 26 has been issued to regulate fill in wetlands under 10 acres. This nationwide permit would apply to all sites where *Astragalus applegatei* occurs. The Corps circulates a predischarge notification to the Service and other interested parties for comment under this permit program.

Individual permits are normally just required for fill in wetlands greater than 10 acres. However, the Corps has discretionary authority and can require an individual permit if resources are believed to be important regardless of the wetland's size. In practice, however, the Corps rarely requires an individual permit when a project would qualify for a nationwide permit, unless a threatened or endangered species occurs on the site. The Corps is required to consult under section 7 of the Act prior to issuing nationwide or individual permits that may affect a federally listed species (see below under "Available Conservation Measures"). The review process for the issuance of individual permits is more extensive, and conditions may be included that require the avoidance or mitigation of environmental effects.

E. *Other natural or manmade factors affecting its continued existence.* *Astragalus applegatei* has a poor reproductive potential due to its apparent inability to colonize dry, disturbed areas and ability to reproduce only by seed. The small number of populations, and small number of individual plants for each population of this species, increases the potential for extinction from stochastic events such as flood or fire. The limited gene pool may depress reproductive vigor, or a single human-caused or natural environmental disturbance could destroy many of the individuals of this species.

The Klamath Wildlife Management Area population is threatened by extensive flooding. Although seasonal flooding may provide openings for the establishment of *Astragalus applegatei*, this population occurs in a small, localized area near the river, which could be destroyed if extensive flooding were to occur. The largest Klamath Falls' population is also vulnerable to extirpation. Continued reduction of the size of this population would render this site more susceptible to other human-caused or natural disturbances. In addition, genetic integrity would be lost, if the largest and only viable population continues to shrink (Kagan, pers. comm., 1992).

The Service has carefully assessed the best scientific and commercial information available concerning the past, present, and future threats faced by this species. Based on this evaluation, the preferred course of action is to list *Astragalus applegatei* as endangered. The small number of individuals left, poor species reproductive potential, and vulnerability to destruction by development and road building show that the species is in danger of extinction throughout all or a significant portion of its range, and therefore fits the Act's definition of endangered. Critical habitat is not being designated for this species for reasons discussed in the **Critical Habitat** section of this rule.

Critical Habitat

Section 4(a)(3) of the Act, as amended, requires that to the maximum extent prudent and determinable, the Secretary designate critical habitat at the time the species is determined to be endangered or threatened. The Service finds that designation of critical habitat is not prudent for this species. Such a determination would result in no known benefit to *Astragalus applegatei*. Publication of precise maps and descriptions required when critical habitat is designated would increase the degree of threat to this plant from possible take, collection, or vandalism. This would in turn contribute to its decline and increase enforcement problems. All involved parties and principal landowners have been notified of the importance of protecting this species' habitat. Protection of this species' habitat will be addressed through the recovery process and the section 7 consultation process. Therefore, the Service finds that designation of critical habitat for *Astragalus applegatei* is not prudent at this time.

Available Conservation Measures

Conservation measures provided to species listed as endangered or threatened under the Act include recognition, recovery actions, requirements for Federal protection, and prohibitions against certain activities. Recognition through listing encourages and results in conservation actions by Federal, State, and private agencies, groups, and individuals. The Act provides for possible land acquisition and cooperation with the States and requires that recovery actions be carried out for all listed species. The protection required by Federal agencies and the prohibitions against certain activities involving listed plants are discussed, in part, below.

Section 7(a) of the Act, as amended, requires Federal agencies to evaluate their actions with respect to any species that is proposed or listed as endangered or threatened and with respect to its critical habitat, if any is being designated. Regulations implementing this interagency cooperation provision of the Act are codified at 50 CFR part 402. Section 7(a)(2) requires Federal agencies to insure that activities they authorize, fund, or carry out are not likely to jeopardize the continued existence of a listed species or to destroy or adversely modify its critical habitat. If a Federal action may affect a listed species or its critical habitat, the responsible Federal agency must enter into formal consultation with the Service.

Astragalus applegatei does not occur on Federal land. Habitat for this plant may be regulated by the U.S. Army Corps of Engineers under section 404 of the Clean Water Act. Individual or nationwide permits may not be issued where a federally listed endangered or threatened species would be affected by a proposed project without first completing formal consultation pursuant to section 7 of the Act.

The Act and its implementing regulations found at 50 CFR 17.61, 17.62, and 17.63 for endangered plant species set forth a series of general prohibitions and exceptions that apply to all endangered plants. With respect to *Astragalus applegatei*, all trade prohibitions of section 9(a)(2) of the Act, implemented by 50 CFR 17.61, would apply. These prohibitions, in part, make it illegal for any person subject to the jurisdiction of the United States to import or export; transport in interstate or foreign commerce during a commercial activity; sell or offer for sale in interstate or foreign commerce;

remove and reduce to possession the species from areas under Federal jurisdiction; maliciously damage or destroy any such plants on any area under Federal jurisdiction; or remove, cut, dig up, damage, or destroy the plant on any other area in knowing violation of any State law or regulation, or during any violation of a State criminal trespass law. Certain exceptions apply to agents of the Service and State conservation agencies. The Act and 50 CFR 17.62 and 17.63 also provide for the issuance of permits to carry out otherwise prohibited activities involving endangered plant species under certain circumstances.

It is anticipated that few trade permits would ever be sought or issued because the species is uncommon in cultivation and is very rare in the wild.

Requests for copies of the regulations on plants and inquiries regarding them may be addressed to the Office of Management Authority, U.S. Fish and Wildlife Service, 4401 North Fairfax Drive, room 432, Arlington, Virginia 22203–3507 (telephone number 703–358–2104).

National Environmental Policy Act

The Fish and Wildlife Service has determined that an Environmental Assessment, as defined under the authority of the National Environmental Policy Act of 1969, need not be prepared in connection with regulations adopted pursuant to section 4(a) of the Act of 1973, as amended. A notice outlining the Service's reasons for this determination was published in the **Federal Register** on October 25, 1983 (48 FR 49244).

References Cited

Barneby, R.D. 1964. Atlas of North America *Astragalus*. Memoirs of The New York Botanical Garden, Vol. 13. 1188 pp.

Kagan, J. 1983. Unpublished field report for *Astragalus applegatei*. The Nature Conservancy, Portland, Oregon.

Peck, M.E. 1936. Six new plants from Oregon. Proc. Biol. Soc. Wash. 49:111.

Yamamoto, S. 1985. Unpublished status report for *Astragalus applegatei*. Oregon Natural Heritage Data Base, Portland, Oregon. 35 pp.

Author

The primary author of this final rule is Dr. Robert Parenti, U.S. Fish and Wildlife Service, 4696 Overland Road, Boise, Idaho 83705 (telephone number 208–334–1931).

List of Subjects in 50 CFR Part 17

Endangered and threatened species, Exports, Imports, Reporting and Recordkeeping requirements, Transportation.

Regulation Promulgation

Accordingly, part 17, subchapter B of chapter I, title 50 of the Code of Federal Regulations, is hereby amended as set forth below:

PART 17—[AMENDED]

1. The authority citation for part 17 continues to read as follows:

Authority: 16 U.S.C. 1361–1407; 16 U.S.C. 1531–1544; 16 U.S.C. 4201–4245; Pub. L. 99–625, 100 Stat. 3500; unless otherwise noted.

2. Amend § 17.12(h) by adding the following, in alphabetical order under the family Fabaceae, to the List of Endangered and Threatened Plants to read as follows:

§ 17.12 Endangered and threatened plants.

* * * * *

(h) * * *

Species		Historic range	Status	When listed	Critical habitat	Special rules
Scientific name	Common name					
* * *	*	*	*	*	*	
Fabaceae—Pea family:						
* * *	*	*	*	*	*	
Astragalus applegatei	Applegate's milk-vetch.	U.S.A. (OR)	E	510	NA	NA
* * *	*	*	*	*	*	

Dated: July 12, 1993.

Richard N. Smith,

Acting Director, U.S. Fish and Wildlife Service.

[FR Doc. 93–17934 Filed 7–27–93; 8:45 am]

BILLING CODE 4310–55–M

federal register

Wednesday
July 28, 1993

Part IV

Department of Education

Bilingual Education Programs; Notices

DEPARTMENT OF EDUCATION

[CFDA No.: 84.003G]

Bilingual Education: Academic Excellence Program; Inviting Applications for New Awards for Fiscal Year (FY) 1994

Purpose of Program: To provide assistance to identify and disseminate effective bilingual education practices for limited English proficient (LEP) students.

Eligible Applicants: Local educational agencies (LEAs); institutions of higher education, including junior or community colleges; and nonprofit private organizations applying separately or jointly.

In order to be considered for assistance under this part, an applicant must administer a program of transitional bilingual education, developmental bilingual education, or special alternative instruction that is either nominated by its State educational agency (SEA) in accordance with 34 CFR 524.20 or approved by the Program Effectiveness Panel (PEP) as defined in 34 CFR 785.5.

Deadline for Transmittal of Applications: January 28, 1994.

Deadline for Intergovernmental Review: March 29, 1994.

Applications Available: October 28, 1993.

Available Funds: $1.8 million.

Estimated Range of Awards: $100,000–$200,000.

Estimated Average Size of Awards: $150,000.

Estimated Number of Awards: 12.

Note: The Department is not bound by any estimates in this notice.

Project Period: 36 months.

Applicable Regulations: (a) The Education Department General Administrative Regulations (EDGAR) in 34 CFR Parts 74, 75, 77, 79, 80, 81, 82, 85, and 86; and (b) The regulations for this program in 34 CFR Parts 500 and 524.

Selection Criteria: In evaluating applications for grants under this program, the Secretary uses the selection criteria in 34 CFR 524.31.

In addition to the maximum of 100 points awarded under 34 CFR 524.31, the program regulations in 34 CFR 524.32(b) provide that the Secretary distributes 15 additional points among the factors listed in 34 CFR 524.32(a). For this competition the Secretary distributes the 15 additional points as follows:

(1) How dissemination and adoption of the model program would relate to—

(i) The need to assist LEP children who have been historically underserved by programs for limited English proficient persons (34 CFR 524.32(a)(1)(i))—5 points.

(ii) The need to provide funding according to the distribution of LEP children throughout the Nation and within each of the States (34 CFR 524.32(a)(1)(ii))—8 points.

(2) The relative numbers of children from low-income families likely to be benefited by the project (34 CFR 524.32(a)(2))—2 points.

For Applications or Information Contact: Dr. Mary T. Mahony, U.S. Department of Education, 400 Maryland Avenue, SW., room 5086, Switzer Building, Washington, DC 20202–6642. Telephone: (202) 205–8722. 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.

Program Authority: 20 U.S.C. 3291.

Dated: July 21, 1993.

Gilbert N. Garcia,

Acting Deputy Director, Office of Bilingual Education and Minority Languages Affairs.

[FR Doc. 93–17963 Filed 7–27–93; 8:45 am]

BILLING CODE 4000–01–P

[CFDA No.: 84.003C]

Bilingual Education: Program of Developmental Bilingual Education; Inviting Applications for New Awards for Fiscal Year (FY) 1994

Purpose of Program: To provide assistance to establish, operate, or improve programs of developmental bilingual education for limited English proficient (LEP) children.

Eligible Applicants: Local educational agencies (LEAs); and institutions of higher education, including junior or community colleges, that apply jointly with one or more LEAs.

Deadline for Transmittal of Applications: November 19, 1993.

Deadline for Intergovernmental Review: January 18, 1994.

Applications Available: September 1, 1993.

Available Funds: $1 million.

Estimated Range of Awards: $75,000–$300,000.

Estimated Average Size of Awards: $167,000.

Estimated Number of Awards: 6.

Note: The Department is not bound by any estimates in this notice.

Project Period: 36 months.

Applicable Regulations: (a) The Education Department General Administrative Regulations (EDGAR) in 34 CFR parts 74, 75, 77, 79, 80, 81, 82, 85, and 86; and (b) The regulations for this program in 34 CFR parts 500 and 501.

Priorities: Under 34 CFR 75.105(c)(1) the Secretary is particularly interested in applications that meet one or more of the following invitational priorities. However, an application that meets one or more of these invitational priorities does not receive competitive or absolute preference over other applications:

Invitational Priority 1—Secondary School Projects

Projects that serve one or more grade levels from grades six through twelve. These projects should implement instructional practices, curriculum development, staff development, and other program activities in coordination with any existing developmental bilingual education programs serving elementary grade levels in the school district.

The Secretary encourages applicants under this priority to consider the National Education Goals, particularly Goal 2 and Goal 3, in developing their applications. Goal 2 aims to increase the high school graduation rate to at least 90 percent. Goal 3 calls for students to demonstrate competency in challenging subject matter, including English, mathematics, science, history, geography, foreign languages, and the arts.

Invitational Priority 2—Certain Languages

Projects providing instruction in one of the following languages, in addition to English: Arabic, French, German, Hindustani, Italian, Japanese, Portuguese, Russian, Serbo-Croatian, Spanish, Vietnamese, or one of the Chinese languages. The special interest in programs of instruction in these major world languages is due to their importance in developing our international competitiveness.

The Secretary encourages applicants under this priority to consider the National Education Goals, particularly Goal 3 and Goal 5, in developing their applications. Goal 3 calls for students to demonstrate competency in challenging subject matter, including English and foreign languages, and for schools to prepare students for productive employment in our modern economy. Goal 5 calls for every adult American to be literate and to possess the knowledge and skills necessary to compete in a global economy.

Invitational Priority 3—Projects With Summer School Components in the Arts and Humanities

Projects that include supplementary summer school activities in the arts and humanities. These activities should be designed to provide participants increased opportunities to improve their proficiency in English and a second language through involvement in public speaking, drama, or other areas of the arts and humanities.

The Secretary encourages applicants under this priority to consider the National Education Goals, particularly Goal 3, in developing their applications. Goal 3 calls for students to demonstrate competency in challenging subject matter, including English, foreign languages, and the arts, and for schools to prepare students for responsible citizenship, further learning, and productive employment in our modern economy.

Invitational Priority 4—Parent Involvement

Projects that, in addition to their basic goal of providing children an instructional program in English and a second language, contain training components that provide parents of participating children instruction in English and the second language used in the project. The training should prepare parents to serve as classroom and home tutors and second language-learning role models for their children.

The Secretary encourages applicants under this priority to consider the National Education Goals, particularly Goal 1 and Goal 5, in developing their applications. Goal 1 calls for all children in America to start school ready to learn. Goal 5 calls for every adult American to be literate and to possess the knowledge and skills necessary to compete in a global economy and exercise the rights and responsibilities of citizenship.

Selection Criteria: In evaluating applications for grants under this program, the Secretary uses the selection criteria in 34 CFR 501.31.

In addition to the maximum of 100 points awarded under 34 CFR 501.31, the program regulations in 34 CFR 501.32(b) provide that the Secretary distributes 15 additional points among the factors listed in 34 CFR 501.32(a). For this competition the Secretary distributes the 15 additional points as follows:

(1) The need to assist LEP children who have been historically underserved by programs for limited English proficient persons (34 CFR 501.32(a)(1))—1 point.

(2) The relative need of the particular LEA(s) for the proposed program (34 CFR 501.32(a)(2))—6 points.

(3) The geographical distribution of LEP children. The Secretary considers the need to provide assistance in proportion to the distribution of LEP children throughout the Nation and within each of the States (34 CFR 501.32(a)(3))—7 points.

(4) The number and proportion of children from low-income families to be benefited by the program (34 CFR 501.32(a)(4))—1 point.

For Applications or Information Contact: Dr. Alex Stein, U.S. Department of Education, 400 Maryland Avenue, SW., room 5086, Switzer Building, Washington, DC 20202–6641. Telephone: (202) 205–9700. 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.

Program Authority: 20 U.S.C. 3291.

Dated: July 21, 1993.

Gilbert N. Garcia,

Acting Deputy Director, Office of Bilingual Education and Minority Languages Affairs.

[FR Doc. 93–17953 Filed 7–27–93; 8:45 am]

BILLING CODE 4000–01–P

[CFDA No.: 84.195R]

Bilingual Education: Educational Personnel Training Program; Inviting Applications for New Awards for Fiscal Year (FY) 1994

Purpose of Program: To provide assistance to meet the need for additional or better trained educational personnel for programs for limited English proficient (LEP) persons.

Eligible Applicants: Institutions of higher education.

Deadline for Transmittal of Applications: January 27, 1994.

Deadline for Intergovernmental Review: March 28, 1994.

Applications Available: September 1, 1993.

Available Funds: $4.8 million.

Estimated Range of Awards: $65,000–$190,000.

Estimated Average Size of Awards: $150,000.

Estimated Number of Awards: 32.

Note: The Department is not bound by any estimates in this notice.

Project Period: 36 months.

Applicable Regulations: (a) The Education Department General Administrative Regulations (EDGAR) in 34 CFR parts 74, 75, 77, 79, 81, 82, 85, and 86; and (b) The regulations for this program in 34 CFR parts 500 and 561.

Priorities: Under 34 CFR 75.105(c)(1) the Secretary is particularly interested in applications that meet one or both of the following invitational priorities. However, an application that meets one or both of these invitational priorities does not receive competitive or absolute preference over other applications:

Invitational Priority 1—Preparation of Master Teachers

Projects designed to prepare master teachers to serve as staff development experts in programs for limited English proficient students in elementary or secondary schools. These projects should emphasize training in effective and innovative instructional practices and appropriate student assessment strategies.

Invitational Priority 2—Career Ladder Training for Paraprofessionals

Projects designed to provide career ladder training for classroom teacher aides and other paraprofessionals. These projects should coordinate the following activities with local educational agencies: Recruitment and selection of participants, development of the scope and design of the program, and evaluation of the program. Projects that provide training at junior or community colleges should ensure that credit earned by students through this training is transferable to baccalaureate programs at four-year institutions of higher education.

The Secretary encourages applicants under either of the invitational priorities specified in this notice to consider the National Education Goals, particularly Goal 3, in developing their applications. Goal 3 calls for students to demonstrate competency in challenging subject matter, including English, mathematics, science, history, geography, foreign languages, and the arts, and for schools to prepare students for responsible citizenship, further learning, and productive employment in our modern economy. Projects implemented under one or both of the priorities should be designed to improve the skills of educational personnel in helping limited English proficient students and their schools achieve this goal.

Selection Criteria: In evaluating applications for grants under this program, the Secretary uses the selection criteria in 34 CFR 561.31.

In addition to the maximum of 100 points awarded under 34 CFR 561.31, the program regulations in 34 CFR 561.32(b) provide that the Secretary distributes 10 additional points among the factors listed in 34 CFR 561.32(a).

For this competition, the Secretary distributes the 10 additional points as follows:

(1) Job placement and development (34 CFR 561.32(a)(1))—1 point.

(2) Evidence of prior participant's success in serving LEP children in accordance with the needs identified in the prior project (34 CFR 561.32(a)(2))—1 point.

(3) Evidence of demonstrated capacity and cost effectiveness as described in 34 CFR 561.31 (d) and (f) (34 CFR 561.32(a)(3))—8 points.

For Applications or Information Contact: Cynthia J. Ryan, U.S. Department of Education, 400 Maryland Avenue, SW., Room 5086, Switzer Building, Washington, DC 20202–6642. Telephone: (202) 205–8722. 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.

Program Authority: 20 U.S.C. 3321.

Dated: July 21, 1993.

Gilbert N. Garcia,

Acting Deputy Director, Office of Bilingual Education and Minority Languages Affairs.

[FR Doc. 93–17960 Filed 7–27–93; 8:45 am]

BILLING CODE 4000–01–P

[CFDA No.: 84.003J]

Bilingual Education: Family English Literacy Program; Inviting Applications for New Awards for Fiscal Year (FY) 1994

Purpose of Program: To provide assistance to establish, operate, and improve family English literacy programs for limited English proficient (LEP) persons and their families.

Eligible Applicants: Local educational agencies (LEAs); institutions of higher education, including junior or community colleges; and nonprofit private organizations, applying separately or jointly.

Deadline for Transmittal of Applications: November 12, 1993.

Deadline for Intergovernmental Review: January 11, 1994.

Applications Available: September 1, 1993.

Available Funds: $3.3 million.

Estimated Range of Awards: $50,000–150,000.

Estimated Average Size of Awards: $125,000.

Estimated Number of Awards: 26.

Note: The Department is not bound by any estimates in this notice.

Project Period: 36 months.

Applicable Regulations: (a) The Education Department General Administrative Regulations (EDGAR) in 34 CFR parts 74, 75, 77, 79, 80, 81, 82, 85, and 86; and (b) The regulations for this program in 34 CFR parts 500 and 525.

Selection Criteria: In evaluating applications for grants under this program, the Secretary uses the selection criteria in 34 CFR 525.31.

In addition to the maximum of 100 points awarded under 34 CFR 525.31, the program regulations in 34 CFR 525.32(b) provide that the Secretary distributes 15 additional points among the factors listed in 34 CFR 525.32(a). For this competition the Secretary distributes the 15 additional points as follows:

(1) The need to assist LEP children who have been historically underserved by programs for limited English proficient persons (34 CFR 525.32(a)(1))—5 points.

(2) The need to provide assistance in proportion to the distribution or LEP children throughout the Nation and within each of the States (34 CFR 525.32(a)(2))—5 points.

(3) The need for financial assistance to establish, operate, or improve programs for limited English proficient persons (34 CFR 525.32(a)(3))—3 points.

(4) The relative numbers of children from low-income families sought to be benefited by the program (34 CFR 525.32(a)(4))—2 points.

For Applications or Information Contact: Dr. Mary T. Mahony, U.S. Department of Education, 400 Maryland Avenue, SW., room 5086, Switzer Building, Washington, DC 20202-6642. Telephone: (202) 205–8722. 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.

Program Authority: 20 U.S.C. 3291.

Dated: July 21, 1993.

Gilbert N. Garcia,

Acting Deputy Director, Office of Bilingual Education and Minority Languages Affairs.

[FR Doc. 93–17954 Filed 7–27–93; 8:45 am]

BILLING CODE 4000–01–P

(CFDA No.: 84.195T)

Bilingual Education: Fellowship Program; Inviting Applications for New Awards for Fiscal Year (FY) 1994

Purpose of Program: To provide assistance, through approved institutions of higher education, to full-time students pursuing a graduate degree in areas related to programs for limited English proficient (LEP) persons.

Eligible Applicants: Institutions of higher education (IHEs).

Note: Any individual wishing to obtain a fellowship must apply to an IHE approved for participation in this program, not to the U.S. Department of Education.

Deadline for Transmittal of Applications: January 12, 1994.

Applications Available: October 15, 1993.

Available Funds: $1.8 million.

Estimated Range of Awards: $2,000–29,000 per individual fellow; $35,000–300,000 per IHE.

Estimated Average Size of Awards: $12,000 per individual fellow; $120,000 per IHE.

Estimated Number of Awards: 150 individual fellowships; 15 participating IHEs.

Note: The Department is not bound by any estimates in this notice.

Project Period: Up to 24 months for a master's program; up to 36 months for a doctoral program.

Applicable Regulations: (a) The Education Department General Administrative Regulations (EDGAR) in 34 CFR parts 74, 75, 77, 81, 82, 85, and 86; and (b). The regulations for this program in 34 CFR Parts 500 and 562.

Priority: Under 34 CFR 75.105(c)(1) the Secretary is particularly interested in applications that meet the following invitational priority. However, an application that meets this invitational priority does not receive competitive or absolute preference over other applications:

Doctoral Programs of Study in Teacher Training

Applications proposing programs of study that prepare teacher trainers and lead to a doctoral degree.

For Applications or Information Contact: Joyce M. Brown, U.S. Department of Education, 400 Maryland Avenue, SW., room 5086, Switzer Building, Washington, DC 20202-6642. Telephone: (202) 205-9727 or (202) 205-9729. 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.

Program Authority: 20 U.S.C. 3323.

Dated: July 21, 1993.

Gilbert N. Garcia,

Acting Deputy Director, Office of Bilingual Education and Minority Languages Affairs.

[FR Doc. 93–17959 Filed 7–27–93; 8:45 am]

BILLING CODE 4000–01–P

(CFDA No.: 84.195V)

Bilingual Education: Short-Term Training Program; Inviting Applications for New Awards for Fiscal Year (FY) 1994

Purpose of Program: To provide assistance to improve the skills of educational personnel and parents participating in programs for limited English proficient (LEP) persons.

Eligible Applicants: Local educational agencies (LEAs); State educational agencies (SEAs); and institutions of higher education (IHEs), including junior or community colleges, and private for-profit or nonprofit organizations that apply (1) after consultation with one or more LEAs or SEAs or (2) jointly with one or more LEAs or SEAs.

Deadline for Transmittal of Applications: November 5, 1993.

Deadline for Intergovernmental Review: January 4, 1994.

Applications Available: September 1, 1993.

Available Funds: $3.5 million.

Estimated Range of Awards: $75,000–150,000.

Estimated Average Size of Awards: $120,000.

Estimated Number of Awards: 29.

Note: The Department is not bound by any estimates in this notice.

Project Period: Up to 36 months.

Applicable Regulations: (a) The Education Department General Administrative Regulations (EDGAR) in 34 CFR parts 74, 75, 77, 79, 80, 81, 82, 85, and 86; and (b) The regulations for this program in 34 CFR parts 500 and 574.

Priorities

Competitive Priorities: Under 34 CFR 75.105(c)(2)(i) and 34 CFR 574.30(a) the Secretary gives preference to applications that meet one or both of the following competitive priorities. The Secretary awards up to 10 points to an application that meets one or both of these competitive priorities in a particularly effective way. These points are in addition to any points the application earns under the selection criteria for the program:

Competitive Priority 1—Instructional Competence of Teachers

Training designed to improve the instructional competence of teachers in carrying out their responsibilities in programs for limited English proficient persons (34 CFR 574.10(a)).

Competitive Priority 2—Skills of Other Educational Personnel

Training designed to improve the skills of educational personnel other than teachers, in carrying out their responsibilities in programs for limited English proficient persons (34 CFR 574.10(b)).

The Secretary encourages applicants under one or both of these competitive priorities to consider the National Education Goals, particularly Goal 2 and Goal 3, in developing their applications. Goal 2 aims to increase the high school graduation rate to at least 90 percent. Goal 3 calls for students to demonstrate competency in challenging subject matter, including English, mathematics, science, history, geography, foreign languages, and the arts, and for schools to prepare students for responsible citizenship, further learning, and productive employment in our modern economy.

Invitational Priorities: Within the competitive priorities specified in this notice, the Secretary is particularly interested in applications that meet one or more of the following invitational priorities. However, under 34 CFR 75.105(c)(1), an application that meets one or more of these invitational priorities does not receive competitive or absolute preference over other applications:

Invitational Priority 1—Regular Elementary Classroom Teachers

Training designed to improve the competence of teachers in regular classrooms in providing instruction to limited English proficient (LEP) students at elementary grade levels.

Invitational Priority 2—Teachers of Secondary Core Subjects

Training designed to improve the competence of teachers in regular classrooms in providing instruction in English, mathematics, science, history, geography, and the arts to LEP students at secondary grade levels.

Invitational Priority 3—Whole School Training

Projects that focus on improving teaching, learning, and the school climate by providing training designed to increase the instructional competence of teachers and the knowledge and skills of other educational personnel, and to facilitate cooperation and collaboration among all school personnel involved in the education of LEP students, including bilingual teachers, English-as-a-second-language (ESL) teachers, regular classroom teachers, counselors, and administrators. The school or schools selected for participation in a project should enroll the children most in need of assistance within the LEA.

Invitational Priority 4—LEA–IHE Collaboration in Interdisciplinary Training

Projects conducted by LEAs that utilize IHE faculty for training in interdisciplinary instructional approaches involving bilingual education, English, mathematics, science, history, geography, economics, psychology, the arts, and related disciplines.

Selection Criteria: In evaluating applications for grants under this program, the Secretary uses the selection criteria in 34 CFR 574.32.

In addition to the maximum of 100 points awarded under 34 CFR 574.32, the program regulations in 34 CFR 574.33(b) provide that the Secretary distributes 10 additional points among the factors listed in 34 CFR 574.33(a). For this competition, the Secretary distributes the 10 additional points as follows:

(1) Evidence of prior participants' success in serving LEP children in accordance with needs identified in the prior project (34 CFR 574.33(a)(1))—1 point.

(2) Evidence of demonstrated capacity and cost effectiveness as provided in 34 CFR 574.32(d) and (f) (34 CFR 574.33(a)(2))—9 points.

For Applications or Information Contact: Petraine A. Johnson, U.S. Department of Education, 400 Maryland Avenue, SW., Room 5086, Switzer Building, Washington, DC 20202–6642. Telephone: (202) 205–8722. 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.

Program Authority: 20 U.S.C. 3321.

Dated: July 20, 1993.

Reńe Gonzalez,

Acting Director, Office of Bilingual Education and Minority Languages Affairs.

[FR Doc. 93–17958 Filed 7–27–93; 8:45 am]

BILLING CODE 4000–01–P

[CFDA No.: 84.003E]

Bilingual Education: Special Alternative Instructional Program; Inviting Applications for New Awards for Fiscal Year (FY) 1994

Purpose of Program: To provide assistance to establish, operate, or improve special alternative instructional programs for limited English proficient (LEP) children.

Eligible Applicants: Local educational agencies (LEAs); and institutions of higher education, including junior or community colleges, that apply jointly with one or more LEAs.

Deadline for Transmittal of Applications: November 19, 1993.

Deadline for Intergovernmental Review: January 18, 1994.

Applications Available: September 1, 1993.

Available Funds: $8 million.

Estimated Range of Awards: $75,000–$300,000.

Estimated Average Size of Awards: $174,000.

Estimated Number of Awards: 46.

Note: The Department is not bound by any estimates in this notice.

Project Period: 36 months.

Applicable Regulations: (a) The Education Department General Administrative Regulations (EDGAR) in 34 CFR parts 74, 75, 77, 79, 80, 81, 82, 85, and 86; and (b) The regulations for this program in 34 CFR parts 500 and 501.

Priorities: Under 34 CFR 75.105(c)(1) the Secretary is particularly interested in applications that meet one or more of the following invitational priorities. However, an application that meets one or more of these invitational priorities does not receive competitive or absolute preference over other applications:

Invitational Priority 1—Preparation for Postsecondary Concentration in Mathematics or Science

Projects that focus on preparing participants in one or more grade levels, from grades six through twelve, to meet secondary school requirements for pursuing a major in mathematics or science at an institution of higher education (IHE). These projects should emphasize both content instruction and development of literacy, study, and test-taking skills to prepare the participants for successful study at IHEs.

The Secretary encourages applicants under this priority to consider the National Education Goals, particularly Goal 2, Goal 3, and Goal 4, in developing their applications. Goal 2 aims to increase the high school graduation rate to at least 90 percent. Goal 3 calls for students to demonstrate competency in challenging subject matter, including mathematics and science, and for schools to prepare students for further learning. Goal 4 calls for American students to be first in the world in mathematics and science achievement.

Invitational Priority 2—Magnet Middle School Projects

Projects that serve one or more grade levels, from grades six through nine, in a district-wide magnet school. These projects should demonstrate effective approaches to academic achievement and dropout prevention. The approaches should focus on one or more of the following curriculum areas: English language arts, mathematics, science, history, civics, or the arts.

The Secretary encourages applicants under this priority to consider the National Education Goals, particularly Goal 2, Goal 3, and Goal 4, in developing their applications. Goal 2 aims to increase the high school graduation rate to at least 90 percent. Goal 3 calls for students to demonstrate competency in challenging subject matter, including English, mathematics, science, history, and the arts, and for schools to prepare students for responsible citizenship. Goal 4 calls for American students to be first in the world in science and mathematics achievement.

Invitational Priority 3—Newcomer Centers

Projects to establish and operate "newcomer" or "intake" centers for limited English proficient students and their parents. These centers should assess the English language and academic skills and needs of the students. In addition, the centers should provide intensive English-as-a-second-language (ESL) instruction, orientation on the educational process, and other short-term services to prepare students to participate in appropriate programs in their assigned schools, and to prepare their parents to assist in their education.

The Secretary encourages applicants under this priority to consider the National Education Goals, particularly Goal 1, Goal 2, and Goal 5, in developing their applications. Goal 1 calls for all children in America to start school ready to learn. Goal 2 aims to increase the high school graduation rate to at least 90 percent. Goal 5 calls for every adult American to be literate and to possess the knowledge and skills necessary to exercise the rights and responsibilities of citizenship.

Selection Criteria: In evaluating applications for grants under this program, the Secretary uses the selection criteria in 34 CFR 501.31.

In addition to the maximum of 100 points awarded under 34 CFR 501.31, the program regulations in 34 CFR 501.32(b) provide that the Secretary distributes 15 additional points among the factors listed in 34 CFR 501.32(a). For this competition the Secretary distributes the 15 additional points as follows:

(1) The need to assist LEP children who have been historically underserved by programs for limited English proficient persons (34 CFR 501.32(a)(1))—4 points.

(2) The relative need of the particular LEA(s) for the proposed program (34 CFR 501.32(a)(2))—4 points.

(3) The geographical distribution of LEP children. The Secretary considers the need to provide assistance in proportion to the distribution of LEP children throughout the Nation and within each of the States (34 CFR 501.32(a)(3))—3 points.

(4) The number and proportion of children from low-income families to be benefited by the program (34 CFR 501.32(a)(4))—4 points.

In addition to the 15 points distributed among the factors listed in 34 CFR 501.32(a), the program regulations in 34 CFR 501.33(b) provide that the Secretary may distribute 5 additional points among the factors listed in 34 CFR 501.33(a). For this competition the Secretary distributes the 5 additional points as follows:

(1) The administrative impracticability of establishing a bilingual education program due to the presence of a small number of students of a particular native language (34 CFR 501.33(a)(1))—2 points.

(2) The unavailability of personnel qualified to provide bilingual instructional services (34 CFR 501.33(a)(2))—2 points.

(3) The presence of a small number of LEP students in the LEA's schools and the LEA's inability to obtain native language teachers because of isolation or regional location (34 CFR 501.33(a)(3))—1 point.

For Applications or Information Contact: Robert M. Trifiletti, U.S. Department of Education, 400 Maryland Avenue, SW., room 5086, Switzer Building, Washington, DC. 20202–6641. Telephone: (202) 205–9700. 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.

Program Authority: 20 U.S.C. 3291.

Dated: July 21, 1993.

Gilbert N. Garcia,

Acting Deputy Director, Office of Bilingual Education and Minority Languages Affairs.

[FR Doc. 93–17961 Filed 7–27–93; 8:45 am]

BILLING CODE 4000–01–P

[CFDA No.: 84.003L]

Bilingual Education: Special Populations Program; Inviting Applications for New Awards for Fiscal Year (FY) 1994

Purpose of Program: To provide assistance to preschool, special education, and gifted and talented programs for limited English proficient (LEP) children that are preparatory or supplementary to programs such as those assisted under the Bilingual Education Act.

Eligible Applicants: Local educational agencies (LEAs); institutions of higher education, including junior or community colleges; and nonprofit private organizations.

Deadline for Transmittal of Applications: October 20, 1993.

Deadline for Intergovernmental Review: December 20, 1993.

Applications Available: September 1, 1993.

Available Funds: $3 million.

Estimated Range of Awards: $130,000–250,000.

Estimated Average Size of Awards: $176,000.

Estimated Number of Awards: 17.

Note: The Department is not bound by any estimates in this notice.

Project Period: 36 months.

Applicable Regulations: (a) The Education Department General Administrative Regulations (EDGAR) in 34 CFR Parts 74, 75, 77, 79, 80, 81, 82, 85, and 86; and (b) The regulations for this program in 34 CFR Parts 500 and 526.

Priorities

Competitive Priority: Under 34 CFR 75.105(c)(2) and 34 CFR 526.30(a) the Secretary gives preference to applications that meet the following competitive priority. The Secretary may select an application that meets this competitive priority over applications of comparable merit that do not meet the priority:

Preschool Projects for LEP Children

Projects that establish, operate and improve preparatory or supplementary programs for LEP children who have not reached elementary school age.

The Secretary encourages applicants under this priority to consider the National Education Goals, particularly Goal 1, in developing their applications. Goal 1 calls for all children in America to start school ready to learn.

Selection Criteria: In evaluating applications for grants under this program, the Secretary uses the selection criteria in 34 CFR 526.32.

In addition to the maximum of 100 points awarded under 34 CFR 526.32, the program regulations in 34 CFR 526.31(b) and 34 CFR 525.32(b) provide that the Secretary distributes 15 additional points among the factors listed in 34 CFR 525.32(a). For this competition the Secretary distributes the 15 additional points as follows:

(1) The need to assist LEP children who have been historically underserved by programs for limited English proficient persons (34 CFR 525.32(a)(1))—5 points.

(2) The need to provide assistance in proportion to the distribution of LEP children throughout the Nation and within each of the States (34 CFR 525.32(a)(2))—6 points.

(3) The need for financial assistance to establish, operate, or improve programs for limited English proficient persons (34 CFR 525.32(a)(3))—1 point.

(4) The relative numbers of children from low-income families sought to be benefited by the program (34 CFR 525.32(a)(4))—3 points.

For Applications or Information Contact: Barbara J. Wells, U.S. Department of Education, 400 Maryland Avenue, SW., room 5086, Switzer Building, Washington, DC 20202–6642. Telephone: (202) 205–8840. 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.

Program Authority: 20 U.S.C. 3291.

Dated: July 21, 1993.

Gilbert N. Garcia,

Acting Deputy Director, Office of Bilingual Education and Minority Languages Affairs.

[FR Doc. 93–17962 Filed 7–27–93; 8:45 am]

BILLING CODE 4000–01–P

[CFDA No.: 84.003A]

Bilingual Education: Program of Transitional Bilingual Education; Inviting Applications for New Awards for Fiscal Year (FY) 1994

Purpose of Program: To provide assistance to establish, operate, or improve programs of transitional bilingual education for limited English proficient (LEP) children.

Eligible Applicants: Local educational agencies (LEAs); and institutions of higher education, including junior or community colleges, that apply jointly with one or more LEAs.

Deadline for Transmittal of Applications: November 19, 1993.

Deadline for Intergovernmental Review: January 18, 1994.

Applications Available: September 1, 1993.

Available Funds: $16 million.

Estimated Range of Awards: $75,000–$300,000.

Estimated Average Size of Awards: $174,000.

Estimated Number of Awards: 92.

Note: The Department is not bound by any estimates in this notice.

Project Period: 36 months.

Applicable Regulations: (a) The Education Department General Administrative Regulations (EDGAR) in 34 CFR parts 74, 75, 77, 79, 80, 81, 82, 85, and 86; and (b) The regulations for this program in 34 CFR parts 500 and 501.

Priorities: Under 34 CFR 75.105(c)(1) the Secretary is particularly interested in applications that meet one or more of the following invitational priorities. However, an application that meets one or more of these invitational priorities does not receive competitive or absolute preference over other applications:

Invitational Priority 1—Mathematics or Science Achievement

Projects serving one or more elementary or secondary grade levels that focus on improving achievement in one or both of the following curriculum areas: mathematics or science. These projects should emphasize the application of principles of mathematics and science, such as principles involving critical thinking and problem-solving skills, to other curricular areas.

The Secretary encourages applicants under this priority to consider the National Education Goals, particularly Goal 3 and Goal 4, in developing their applications. Goal 3 calls for students to demonstrate competency in challenging subject matter, including mathematics and science. Goal 4 calls for American students to be first in the world in mathematics and science achievement.

Invitational Priority 2—Preparation for Postsecondary Concentration in Mathematics or Science

Projects that focus on preparing participants in one or more grade levels, from grades six through twelve, to meet secondary school requirements for pursuing a major in mathematics or science at an institution of higher education (IHE). These projects should emphasize both content instruction and development of literacy, study, and test-taking skills to prepare the participants for successful study at IHEs.

The Secretary encourages applicants under this priority to consider the National Education Goals, particularly Goal 2, Goal 3, and Goal 4, in

developing their applications. Goal 2 aims to increase the high school graduation rate to at least 90 percent. Goal 3 calls for students to demonstrate competency in challenging subject matter, including mathematics and science, and for schools to prepare students for further learning. Goal 4 calls for American students to be first in the world in mathematics and science achievement.

Invitational Priority 3—Secondary School Projects With Summer Components in the Arts and Humanities

Projects serving one or more grade levels, from grades six through twelve, that include supplementary summer school activities in the arts and humanities. These activities should be designed to provide participants increased opportunities to improve their English proficiency through involvement in public speaking, drama, or other areas of the arts and humanities.

The Secretary encourages applicants under this priority to consider the National Education Goals, particularly Goal 2 and Goal 3, in developing their applications. Goal 2 aims to increase the high school graduation rate to at least 90 percent. Goal 3 calls for students to demonstrate competency in challenging subject matter, including English and the arts.

Invitational Priority 4—Parent Involvement

Projects that, in addition to their basic goal of providing an instructional program for limited English proficient children, contain training components designed to improve the skills of parents in assisting in the education of children participating in these projects. These parent-training components should include intensive English-as-a-second-language (ESL) instruction and training in effective tutoring strategies and use of educational technologies.

The Secretary encourages applicants under this priority to consider the National Education Goals, particularly Goal 2 and Goal 5, in developing their applications. Goal 2 aims to increase the high school graduation rate to at least 90 percent. Goal 5 calls for every adult American to be literate and to possess the knowledge and skills necessary to compete in a global economy and exercise the rights and responsibilities of citizenship.

Selection Criteria: In evaluating applications for grants under this program, the Secretary uses the selection criteria in 34 CFR 501.31.

In addition to the maximum of 100 points awarded under 34 CFR 501.31, the program regulations in 34 CFR 501.32(b) provide that the Secretary distributes 15 additional points among the factors listed in 34 CFR 501.32(a). For this competition the Secretary distributes the 15 additional points as follows:

(1) The need to assist LEP children who have been historically underserved by programs for limited English proficient persons (34 CFR 501.32(a)(1))—4 points.

(2) The relative need of the particular LEA(s) for the proposed program (34 CFR 501.32(a)(2))—4 points.

(3) The geographical distribution of LEP children. The Secretary considers the need to provide assistance in proportion to the distribution of LEP children throughout the Nation and within each of the States (34 CFR 501.32(a)(3))—3 points.

(4) The number and proportion of children from low-income families to be benefited by the program (34 CFR 501.32(a)(4))—4 points.

For Applications or Information Contact: Luis A. Catarineau, U.S. Department of Education, 400 Maryland Avenue, SW., room 5086, Switzer Building, Washington, DC 20202–6641. Telephone: (202) 205–9700. 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.

Program Authority: 20 U.S.C. 3291.

Dated: July 21, 1993.

Gilbert N. Garcia,

Acting Deputy Director, Office of Bilingual Education and Minority Languages Affairs.

[FR Doc. 93–17952 Filed 7–27–93; 8:45 am]

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federal register

Wednesday
July 28, 1993

Part V

Department of Transportation

Federal Aviation Administration

14 CFR Part 61
Annual and Biennial Flight Review Requirements; Rule

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 61

[Docket No. 26927; Amdt. No. 61-93]

RIN 2120-AE11

Amendment of the Annual and Biennial Flight Review Requirements

AGENCY: Federal Aviation Administration (FAA.)

ACTION: Final Rule.

SUMMARY: This final rule amends the Federal Aviation Regulations (FAR) by deleting the requirement that recreational pilots and noninstrument-rated private pilots with fewer than 400 hours of flight time (hereafter, the "affected pilots") receive 1 hour of ground and 1 hour of flight instruction annually. The final rule also amends the FAR by requiring that the biennial flight review (BFR) for all pilots consists of a minimum of 1 hour of ground instruction and 1 hour of flight instruction. This action is needed to establish a minimum standard 2-hour requirement for the BFR for all pilots. The intended effect is to eliminate inadequate flight reviews while not unduly restricting the flight instructor from requiring additional instruction. Additionally with this final rule, flight instructors who renew their flight instruction's certificate by means of an approved flight instructor refresher course (FIRC) need not accomplish the 1 hour of ground instruction previously required in the BFR. In a minor conforming change, this final rule retains, in the BFR, alternate means of compliance for glider pilots, which was contained in the annual flight review requirement.

EFFECTIVE DATE: August 31, 1993.

FOR FURTHER INFORMATION CONTACT: Thomas Glista, Regulations Branch (AFS-850), General Aviation and Commercial Division, 800 Independence Avenue, SW., Washington, DC 20591; telephone (202) 267-8150.

SUPPLEMENTARY INFORMATION:

Background

The requirement for an annual flight review for the affected pilots originated, in part, from a petition for rulemaking submitted by the National Association of Flight Instructors (NAFI) [47 FR 11026, March 15, 1982]. The Federal Aviation Administration (FAA) proposed the requirement in Notice of Proposed Rulemaking (NPRM) No. 85-13 [50 FR 26286, June 25, 1985].

In a comment to the NPRM dated October 24, 1985, the Aircraft Owners and Pilot Association (AOPA) objected to the NPRM because the FAA proposed to attach additional training requirements for already certificated pilots to NAFI's proposal for an additional pilot certificate. AOPA disputed the justification for the FAA's proposal for the annual flight review, and provided data to indicate that there was no significant difference in the accident profile of the affected pilots as compared to the profile for all pilots. The FAA, however, evaluated the data in a different manner which supported the annual review requirement.

The annual flight review requirement was issued in a final rule titled "Certification of Recreational Pilots and Annual Flight Review Requirements for Recreational Pilots and Non-Instrument-Rated Private Pilots with Fewer than 400 Flight Hours" [54 FR 13028, March 29, 1989].

By letter dated May 22, 1989, AOPA petitioned the FAA to revise FAR § 61.56(d) by deleting the annual flight review requirement. AOPA urged reconsideration of the annual flight review requirement and provided additional accident data for review. Also, by letter dated July 25, 1989, the Experimental Aircraft Association (EAA) petitioned the FAA to delete the annual flight review requirement for the affected pilots.

As a result of the data presented in the AOPA petition, representatives of AOPA and EAA met with FAA representatives on July 13, 1990. A record of that meeting is in Docket No. 24695. In that meeting, AOPA representatives stated that the safety data do not support singling out one particular segment of pilots for an annual flight review. EAA representatives noted the continuing decline in general aviation and commented that the general aviation public is unduly burdened by additional rules. AOPA and EAA agreed that the current BFR requirement is vague and that the standards for completion of the review vary considerably between different instructors. In lieu of the annual flight review, AOPA and EAA expressed support for a minimum hour requirement for the BFR.

As a result of petitions from the AOPA and the EAA to delete the annual flight review, and numerous other inquiries questioning the sufficiency of the data used to justify the annual flight review requirement, the FAA initiated a review of the documents and data that were used to justify the adoption of the annual flight review requirement. This review is described below in a section entitled, "Analysis of the Annual Flight Review." On March 27, 1990, the FAA completed this review and concluded that the data used in the development of the annual flight review rule may have been insufficient to justify imposing this requirement on the affected pilots. Therefore, on November 30, 1990, the FAA extended the compliance date for the annual flight review rule [§ 61.56(d)] to August 31, 1991 (Amendment No. 61-89, 55 FR 50312). This amendment also contained a request for comments. As a result of unforeseen delays in developing a proposed rule, on September 5, 1991, the FAA again extended the compliance date for the annual flight review until August 31, 1993 (Amendment No. 61-91, 56 FR 43970). Finally, on July 22, 1992, the FAA issued Notice No. 92-8 [57 FR 32680] that proposed to delete the annual flight review.

FAA Analysis of the Annual Flight Review

In March 1990, the FAA completed a reevaluation of the data that was the basis for adopting the annual flight review requirement for the affected pilots [§ 61.56(d)]. These data show the private pilot accident totals from 1976 to 1981; it was organized into fatal and nonfatal accidents, and by pilot age and total flight hours. Accidents totals were provided for the various experience levels in 100-hour increments (through 999 hours).

Because the total number of accidents was higher in each of the first four 100-hour increments than in any of the other increments, the 400-hour pilot time level was selected as the time level for the annual flight review requirement. The FAA determined on reevaluation, however, that the data did not show whether the higher accident totals for these subgroups reflected higher accident rates per pilot, or greater activity levels (i.e., exposure), or a combination of these factors.

Also, the accident data did not distinguish between instrument-rated and noninstrument-rated pilots. Thus, it was impossible to determine the extent to which relatively inexperienced instrument-rated pilots may have contributed to the accident totals.

As a result of this review, the FAA determined that the documents and data sources it used to develop the annual flight review requirement were insufficient.

FAA Analysis of Biennial Flight Review Requirements

Currently, the flight review requirements of § 61.56 are very general. Section 61.56(a) requires a review of the

current general operating and flight rules of part 91 of the FAR and a review of those maneuvers and procedures which, at the discretion of the person giving the review, are necessary for the pilot to demonstrate the safe exercise of the privileges of the pilot certificate. This requirement could be interpreted in many different ways. At one extreme, a flight review could consist of a short discussion during preflight and a 10-minute flight with one takeoff and one landing. At the other extreme, a flight review could consist of a multihour oral and flight review of all of the maneuvers and procedures listed in the practical test standards for each certificate and rating the applicant holds.

To assist the general aviation public in maintaining proficiency, the FAA created the "Pilot Proficiency Award Program" (Wings) to provide pilots with the opportunity to establish and participate in a personal recurrent training program. This voluntary program has been very successful in reducing the number of accidents for participating pilots. The Report of the Safety Review Task Force of the Federal Aviation Administration Flight Safety Program, August 1985, stated that the Wings program has an outstanding record. Only 81 accidents, with a total of 10 fatalities, have occurred among the group of 45,000 airmen who have participated in the program since 1979. In addition, statistics show that participation in the Wings program has increased 51 percent from 8,738 Wings awarded in calendar year 1986 to 13,837 awarded in calendar year 1991. Data for the full year 1992 are not available. This trend indicates that the general aviation public recognizes the need for recurrent training. Amendment 61–90 [56 FR 11308, March 15, 1991] amended § 61.56 to state that persons who have satisfactorily completed one or more phases of an FAA-sponsored pilot proficiency award program need not accomplish the flight review.

In spite of recognizing the need for recurrent training by the majority of general aviation pilots, the FAA has determined that a segment of the pilot population currently may not receive a satisfactory flight review. Therefore, a minimum of 1 hour of ground instruction and 1 hour of flight instruction should be required biennially to ensure that each person receiving a BFR receives a satisfactory review commensurate to the certificates and ratings held.

Requiring a minimum of 1 hour of flight instruction and 1 hour of ground instruction will help to eliminate inadequate flight reviews while not restricting the flight instructor from requiring additional instruction if, in the instructors opinion, it is needed to ensure that the pilot is capable of exercising the privileges of the certificates and ratings held.

The FAA assumes that 1 hour of flight instruction and 1 hour of ground instruction is the average duration of a flight review for pilots who have recently and consistently been exercising the privilege of their certificates and ratings. This is consistent with the recommendations of Advisory Circular AC–61–98A, described below. The FAA realizes that there are occasions when a flight review will require more than 1 hour of ground instruction and/or 1 hour of flight instruction. For example, if the pilot being reviewed has not exercised the privileges of the certificate for an extended period, it is very likely that the flight instructor would require the pilot to receive more than 1 hour of ground instruction and/or 1 hour of flight instruction. Thus, this minimum requirement of 1 hour of ground instruction and 1 hour of flight instruction does not restrict the flight instructor from requiring additional instruction, as needed, depending on the experience and skills of the pilot.

In addition, in response to comments that the FAA should publish guidelines concerning maneuvers and procedures, the FAA has developed AC–61–98A, Currency and Additional Qualification Requirements for Certified Pilots. The purpose of AC 61–98A, in part, is to provide information for certified pilots and flight instructors to use in complying with the flight review required by § 61.56. Advisory Circular 61–98A recommends that all flight reviews consist of a minimum of 1 hour of flight instruction and 1 hour of ground instruction for all pilots. The FAA has determined, however, that setting specific maneuvers and procedures requirements in the rules would unduly restrict a flight instructor's discretion in reviewing an individual's ability to safely exercise the privileges of the certificates and ratings held. Due to different pilot abilities, experience levels, type of operation, certificates, ratings, and aircraft, the flight review needs to be tailored to the individual pilot. Thus, guidance in the form of an AC will supplement this final rule and will continue to provide a useful reference source in putting together a BFR appropriate for the person receiving the review. The goals and objectives of the BFR still must be met.

Current Safety Enhancement Activities

The FAA has adopted a new approach to identifying and developing solutions for general aviation safety issues. An FAA-industry partnership called the General Aviation Action Plan Coalition (GAAPC) has been formed to address safety problems. The GAAPC consists of representatives from the FAA, Aircraft Owners and Pilots Association, Air Safety Foundation, National Business Aircraft Association, General Aviation Manufacturers Association, Experimental Aircraft Association, Helicopter Association International, National Air Transport Association, Sport Aircraft Manufacturers Association, and National Association of State Aviation Officials.

Through the GAAPC, the FAA and the general aviation community are seeking to enhance and promote general aviation. To this end, the GAAPC is working to identify problems, identify and develop the data needed to study these problems, and, where possible, suggest non-regulatory solutions to these problems. If the GAAPC determines that a solution to a problem would require regulatory action, it will forward such a recommendation to the FAA Aviation Rulemaking Advisory Committee.

The work of the GAAPC has superseded the general aviation safety studies discussed in Notice No. 92–8. Within the GAAPC, Working Group B studies issues involving initial, recurrent, and transition flight training. Priorities established for Working Group B include the BFR, complex aircraft training, and revision to the FAA's Flight Training Handbook.

Finally, the FAA currently is conducting a review of parts 61, 141, and 143. In connection with this review, the FAA is completing a thorough assessment of the skills that are needed for the different types of pilot certificates, ratings, and operations.

Other, Conforming Changes

On October 5, 1989, the FAA issued an amendment to the recreational pilot rule [Amendment No. 61–86, 54 FR 41234]. This amendment, in part, modified the annual flight review requirements for certain glider-rated private pilots. The amendment allowed glider-rated private pilots to substitute three instructional flights in a glider, each of which included a 360-degree turn, in lieu of the 1 hour of flight instruction. That change resulted, part, from comments submitted by the Soaring Society of America on the requirements for an annual review contained in the recreational pilot rule.

The FAA has determined that the change to the BFR should provide glider-rated pilots the same option for complying with the 1 hour of ground instruction and 1 hour of flight instruction as provided in Amendment No. 61–86 for glider-rated private pilots receiving the annual flight review.

Discussion of Public Comments

The FAA received 49 comments in response to Notice No. 92–8 mostly from private pilots and certified flight instructors (CFI's). The following organizations also submitted comments: the National Association of Flight Instructors (NAFI), the Air Line Pilots Association (ALPA), the Experimental Aircraft Association (EAA), the National Transportation Safety Board (NTSB), and the Aircraft Owners and Pilots Association (AOPA).

Several commenters, including EAA and AOPA, support the proposal to delete the annual flight review requirement; however, other commenters, including NAFI, ALPA, and the NTSB, are opposed to deleting the annual flight review requirement. In addition to the annual flight review requirement, other comments received in response to this NPRM reference the BFR requirement, the cost impact of the proposal, and recommended alternatives to the proposal.

Annual Flight Review Requirements

Sixteen commenters, including the EAA and AOPA, agree with the proposal to delete the annual flight review requirement indicating that this requirement should never have been imposed and that it would be beneficial for general aviation to delete it. Five other commenters, however, including the NTSB, NAFI, and ALPA, are opposed to deleting the annual flight review requirement indicating that there is a definite need for an annual flight review which is valuable in training all pilots operating in the aviation system to high standards of proficiency and performance. As a result of the reevaluation of the information used to justify the annual flight review requirements, the FAA concluded that the data used was insufficient to justify imposing this requirement on the affected pilots. Consequently, until analysis supports an annual flight review for a certain segment of the pilot population, the FAA has determined that the annual flight review requirement for the affected pilots should be removed.

Two commenters believe that the decision to delete the annual flight review requirement is based on preliminary work and incomplete studies. In March 1990, the FAA completed a review of the data used as the basis for adopting the annual flight review requirement. The FAA concluded that the data used to develop the annual flight review rule did not justify imposing it.

Biennial Flight Review Requirement

Sixteen commenters, including the NTSB, agree with the proposed requirement for 1 hour of ground and 1 hour of flight instruction indicating that it would enhance safety, apply a more specific framework to the BFR, and provide a greater measure of standardization.

Other commenters oppose the proposed requirement for 1 hour of ground and 1 hour of flight instruction. Two commenters believe that any competent instructor should be able to determine if pilots being reviewed are competent to exercise the privileges of their certificate in less than 1 hour of flight and 1 hour of ground instruction. Eight commenters, including the EAA, believe that the time spent on a flight review should be at the discretion of the person giving the review. Five commenters, including NAFI, indicate that there is no justification for requiring the 1 hour of flight and 1 hour of ground instruction until the studies that the FAA is conducting are complete. Although the FAA believes that most pilots are receiving a satisfactory flight review, the FAA has determined that a segment of the pilot population may not receive a satisfactory flight review. The FAA believes that requiring a minimum of 1 hour of flight instruction and 1 hour of ground instruction should help eliminate inadequate flight reviews while not unduly restricting the flight instructor from requiring additional instruction if, in the judgement of the flight instructor, it is needed to ensure that the pilot is capable of exercising the privileges of the certificates and ratings held. Additionally, the FAA has published guidelines concerning maneuvers and procedures in Advisory Circular AC–61–98A entitled "Currency and Additional Qualification Requirements for Certified Pilots." If an instructor follows the recommendations contained in AC–61–98A, a BFR would take at least 1 hour of flight instruction and 1 hour of ground instruction.

Cost Impact

Thirteen commenters believe that Notice 92–8 does not address the cost impact of the proposal which, they believe, will place additional financial burdens on aircraft owners and pilots who already are faced with the high cost of insurance, maintenance, annual inspections, and medicals. By contrast, however, AOPA commented that eliminating the annual flight review requirement would be cost-effective in that the general aviation community would avoid an estimated cost of $75 to $250 per pilot/per year. The FAA has prepared a detailed economic evaluation of this rule and placed it in the docket. As a result of this evaluation, the FAA has concluded that this final rule is cost beneficial. For a summary of this evaluation, refer to the "Regulatory Evaluation Summary" in this preamble.

Recommendations

NAFI indicates that, while it has no objection to the minimum requirement for 1 hour of ground and 1 hour of flight instruction for holders of private pilot certificates, it does oppose the requirement for commercial and ATP certificate holders who fly for a part 135 operator are required to have recurrent testing every 12 calendar months (§ 135.293). A pilot in command of an aircraft under instrument flight rules must accomplish an instrument proficiency check every 6 calendar months (§ 135.297). Commercial and ATP certificate holders who fly for a part 125 operator must comply with recurrent testing similar to part 135 pilots (§§ 125.287 and 125.291). Commercial and ATP certificate holders who fly for a part 121 operator are required to take 6-and-12-month proficiency checks listed in § 121.441. This recurrent testing fulfills the BFR requirement. Some commercial and ATP certificate holders, however, are not required, by other regulations, to have any recurrent training (i.e., flight instructors operating under part 61, sightseeing operations, parachute operators, and others). To maintain a level of safety commensurate with the operation and certificate held, the FAA has determined that requiring the 1 hour of flight instruction and 1 hour of ground instruction for commercial and ATP certificate holders is necessary.

One commenter suggests that an annual flight review be required for pilots who fly less than 20 hours per year. Another commenter suggests that an annual flight review be required if a pilot does not log more than 24 flights and 12 hours within the previous 12 months. Neither commenter provides any statistics to support this suggestion. As discussed previously under "Current Safety Enhancement Activities," Working Group B, within the GAAPC has been tasked to study issues involving initial, recurrent, and transition flight training.

Two commenters believe that the proposal should be modified to exempt CFI's from any flight review requirement or, at the very least, exempt the CFI from the ground instruction requirement. The FAA has determined that there is a difference between the ability to instruct and the ability to pilot an aircraft. The FAA has determined that, in certain situations, exempting the flight instructor from the 1 hour of ground instruction has merit. One of the avenues flight instructors have for renewing their flight instructor certificate is to successfully complete, within 90 days before the application for renewal of their certificate, an approved FIRC consisting of not less than 24 hours of ground or flight instruction or both [§ 61.197(c)]. Since an approved FIRC contains a review of the general operating and flight rules of part 91, the FAA has determined that flight instructors who have completed an approved FIRC will not be required to receive a minimum of 1 hour of ground instruction. The final rule reflects this change.

One commenter believes that the 1 hour of ground and 1 hour of flight instruction will become a de facto standard. The goal of the flight review requirement is to assure that the pilot being reviewed has the knowledge and skill necessary to exercise the privileges of the pilot certificate held. The FAA holds the flight instructor responsible for assuring that this performance standard is met. Since the ultimate goal is a performance standard, the FAA sees no reason that the minimum hour requirements for the flight review will become de facto.

One commenter suggests that the FAA require that the standards established in the Practical Test Standards be completion standards for the BFR, while another commenter suggests that the FAA consider the addition of a standardized curriculum for the BFR. The NTSB suggests adding specific required content for the BFR. The FAA has determined that setting specific maneuvers and procedures requirements in the rules would unduly restrict a flight instructor's discretion in reviewing an individual's ability to safely exercise the privileges of the certificates and ratings held. Due to different pilot abilities, experience levels, type of operation, certificates, ratings, and aircraft, the flight review needs to be tailored to the individual pilot. The FAA has, however, developed Advisory Circular AC–61–98A, Currency and Additional Qualification Requirements for Certified Pilots. The purpose of AC 61–98A, in part, is to provide information for certified pilots and light instructors to use in complying with the flight review required by § 61.56.

Three commenters, including the EAA, suggest implementing either a voluntary or mandatory Wings program. Section 61.56(e) provides the option to satisfactorily complete one or more phases of an FAA-sponsored pilot proficiency award program (i.e., Wings program) in lieu of the BFR requirement. To satisfactorily complete one phase of the Wings program, a pilot must attend at least one meeting and receive at least 3 hours of flight instruction within a 12-month period. Since the cost of completing one phase of the Wings program would be much greater than receiving 1 hour each of flight and ground instruction, the FAA has determined that requiring attendance in this type of program would place an undue economic burden on the general aviation public, but should remain an option.

Additional Comments

The FAA received additional comments in response to the NPRM. Some commenters suggest that the FAA remove the BFR requirement from the regulations while other commenters suggest that the FAA require separate or supplementary flight reviews for each category of aircraft on which the pilot wishes to operate. These comments are beyond the scope of this project.

Two comments were received on Amendment No. 61–89 and two comments were received on Amendment No. 61–91. All four commenters agree with the deletion of the annual flight review requirement for the affected pilots.

Regulatory Evaluation Summary

Introduction

Executive Order 12291, dated February 17, 1981, directs Federal Agencies to promulgate new regulations or modifying existing regulations only if benefits to society for each regulatory change outweigh potential costs. Accordingly, the FAA has prepared a detailed economic evaluation of this rule and placed it in the docket. The evaluation identifies and analyzes both the quantifiable and nonquantifiable economic effects of this final rule. Based on the results of its investigation, the FAA has concluded that this final rule is cost-beneficial.

This section contains a summary of the benefits and costs analyzed in the regulatory evaluation. In addition, it includes a regulatory determination required by the 1980 Regulatory Flexibility Act and an international trade impact assessment. If more detailed economic information is desired than is presented in this summary, the reader is referred to the full regulatory evaluation contained in the docket.

Benefit/Cost Comparison

On January 1, 1994, this final rule will cover approximately 450,000 active pilots. The FAA assumes that most pilots already receive 1 hour of flight instruction and 1 hour of ground instruction in their BFR's. Based on discussions with FAA field representatives and comments from the docket, however, some pilots are receiving 1 hour of flight instruction but only ½ hour of ground instruction during their BFR's. For the purpose of this analysis, this rule will require those pilots to incur costs of an additional ½ hour of ground instruction. Because the rule requires a biennial flight review, only half of the affected pilots would incur costs each year.

In 1994, the rule will cost affected pilots $2.1 million. For the years 1994–2003, the total costs will be $16.2 million discounted at 7 percent ($14.5 million discounted at 10 percent).

The rule will provide two categories of benefits. First, there will be a cost-savings from the elimination of the annual flight review requirement for the affected pilots. In addition, flight instructors who renew their flight instructor's certificate by means of an approved FIRC need not accomplish the 1 hour of ground instruction currently required in the BFR. Second, a more comprehensive BFR is expected to maintain and even enhance safety.

In 1994, the cost-savings to the affected pilots will be $17.8 million. For the years 1994–2003, the total cost-savings will be $135.3 million discounted at 7 percent ($121.6 million discounted at 10 percent). Because the discounted costs of the rule at 7 percent will be $16.2 million over the years 1994–2003, the rule is cost beneficial. The FAA also estimates that, if only 1 percent of the accidents that potentially could have been prevented by a more comprehensive BFR were avoided, safety benefits in 1991 would have been between $5.9 million and $7.7 million.

The cost-savings for this final rule is greater than the cost estimate shown in the final rule for an annual flight review [54 FR 13028 March 29, 1989] because the cost-savings estimated for this final rule include an estimate of the value of time for the affected pilots.

International Trade Impact Analysis

This final rule has a negligible impact on trade opportunities for U.S. firms

doing business overseas or on foreign firms doing business in the U.S. The final rule primarily affects recreational pilots and noninstrument-rated private pilots with fewer than 400 hours of flight time, not businesses involved in the sale of aviation products or services.

Regulatory Flexibility Determination

This final rule does not have a significant economic impact, positive or negative, on small entities. Pilots, rather than business entities, will be affected by this final rule. Where an affected pilot is also the sole proprietor of a small business, and exercises the privileges of his or her certificate in operations that are incidental to that business, this final rule has only a negligible cost impact. This final rule is, however, likely to reduce revenues for flight instructors who potentially could receive income from administering an annual flight review. In 1994, approximately 131,000 pilots will be affected by repeal of the annual flight review requirements. These pilots will each receive a cost-savings of $44 annually (2 hours at $22 per hour). The total instructor-related cost-savings to affected pilots will be $5.76 million. On December 31, 1991, there were 69,209 flight instructor certificates. Assuming that all of the certificates were active, the income to flight instructors will be reduced by approximately $83 each annually. This is not a significant impact.

Federalism Impact

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

Paperwork Reduction Act

In accordance with the Paperwork Reduction Act of 1980, (Pub. L. 96–511), there are no requirements for information collection associated with this rule.

Conclusion

For the reasons discussed in the preamble, and based on the findings in the Regulatory Flexibility Determination and the International Trade Impact Analysis, the FAA has determined that this final rule is not major under Executive Order 12291. In addition, the FAA certifies that this rule 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. This rule is considered significant under Department of Transportation Regulatory Policies and Procedures (44 FR 11034 February 26, 1979). A regulatory evaluation of this rule, including a Regulatory Flexibility Determination and International Trade Impact Analysis, has been placed in the docket. A copy may be obtained by contacting the person identified under "FOR FURTHER INFORMATION CONTACT."

List of Subjects in 14 CFR 61

Aeronautical knowledge, Aviation safety, Cross-country flight privileges, Eligibility requirements, Limitations, Operational experience, Student pilots.

The Amendment

In consideration of the foregoing, the Federal Aviation Administration amends part 61 of the Federal Aviation Regulations (14 CFR part 61) as follows:

PART 61—CERTIFICATION: PILOTS AND FLIGHT INSTRUCTORS

1. The authority citation for part 61 is revised to read as follows:

Authority: 49 U.S.C. Appendix 1354(a), 1355, 1421, 1422, and 1427; 49 U.S.C. 106(g).

2. Section 61.56 is revised to read as follows:

§ 61.56 Flight review

(a) A flight review consists of a minimum of 1 hour of flight instruction and 1 hour of ground instruction. The review must include—

(1) A review of the current general operating and flight rules of part 91 of this chapter; and

(2) A review of those maneuvers and procedures which, at the discretion of the person giving the review, are necessary for the pilot to demonstrate the safe exercise of the privileges of the pilot certificate.

(b) Glider pilots may substitute a minimum of three instructional flights in a glider, each of which includes a 360-degree turn, in lieu of the 1 hour of flight instruction required in paragraph (a) of this section.

(c) Except as provided in paragraphs (d) and (e) of this section, no person may act as pilot in command of an aircraft unless, since the beginning of the 24th calendar month before the month in which that pilot acts as pilot in command, that person has—

(1) Accomplished a flight review given in an aircraft for which that pilot is rated by an appropriately rated instructor certificated under this part or other person designated by the Administrator; and

(2) A logbook endorsed by the person who gave the review certifying that the person has satisfactorily completed the review.

(d) A person who has, within the period specified in paragraph (c) of this section, satisfactorily completed a pilot proficiency check conducted by the FAA, an approved pilot check airman, or a U.S. Armed Force, for a pilot certificate, rating, or operating privilege, need not accomplish the flight review required by this section.

(e) A person who has, within the period specified in paragraph (c) of this section, satisfactorily completed one or more phases of an FAA-sponsored pilot proficiency award program need not accomplish the flight review required by this section.

(f) A person who holds a current flight instructor certificate who has, within the period specified in paragraph (c) of this section, satisfactorily completed a renewal of a flight instructor certificate under the provisions on § 61.197(c), need not accomplish the 1 hour of ground instruction specified in subparagraph (a)(1) of this section.

(g) The requirements of this section may be accomplished in combination with the requirements of § 61.57 and other applicable recency requirements at the discretion of the instructor.

Issued in Washington, DC, on July 19, 1993.

Joseph M. Del Balzo,

Acting Administrator.

[FR Doc. 93–17975 Filed 7–27–93; 8:45 am]

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federal register

Wednesday
July 28, 1993

Part VI

Environmental Protection Agency

40 CFR Part 258
Solid Waste Disposal Facility Criteria; Delay of the Effective Date; Proposed Rule

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 258

[FRL-4684-3/EPA530-Z-93-010]

Solid Waste Disposal Facility Criteria; Delay of the Effective Date

AGENCY: Environmental Protection Agency (EPA).

ACTION: Proposed rule.

SUMMARY: On October 9, 1991, EPA promulgated revised Federal criteria for Municipal Solid Waste Landfills (MSWLFs) under Subtitle D of the Resource Conservation and Recovery Act (RCRA). EPA is proposing to amend these criteria by delaying the effective date for six months for certain small landfills and by delaying the effective date for one year of the financial assurance requirements for all landfills. The Agency has received a considerable number of requests from States, localities, and other groups to extend the effective date. This proposal is not intended to change the MSWLF criteria, but would provide certain owners/operators with additional time to come into compliance with the MSWLF criteria requirements.

This proposal announces future changes to the small landfill exemption related to ground-water monitoring and modifies the timing of compliance with the closure requirements for owners/operators that cease receipt of waste prior to the effective date.

DATES: Comments on this proposed rule must be submitted on or before August 27, 1993.

ADDRESSES: Commenters must send an original and two copies of their comments to: Docket Clerk, OSW (OS-305), Docket No. F-93-XMLP-FFFFF, U.S. Environmental Protection Agency Headquarters, 401 M Street, SW., Washington, DC 20460. Comments should include the docket number F-93-XMLP-FFFFF. The public docket is located in M2616 at EPA Headquarters and is available for viewing from 9 a.m. to 4 p.m., Monday through Friday, excluding Federal holidays. Appointments may be made by calling (202) 260-9327. Copies cost $0.15/page. Charges under $25.00 are waived.

FOR FURTHER INFORMATION CONTACT: For general information, contact the RCRA/Superfund Hotline, Office of Solid Waste, U.S. Environmental Protection Agency, 401 M Street, SW., Washington, DC 20460, (800) 424-9346, TDD (800) 553-7672 (hearing impaired); in the Washington, DC metropolitan area the number is (703) 920-9810, TDD (703) 486-3323.

For more detailed information on specific aspects of this proposed rule, contact Allen Geswein or Andrew Teplitzky, Office of Solid Waste (OS-301), U.S. Environmental Protection Agency, 401 M Street, SW., Washington, DC 20460, (202) 260-1099.

SUPPLEMENTARY INFORMATION:

Preamble Outline

I. Authority

EPA is proposing today's regulations under the authority of sections 2002 and 4010(c) of the Resource Conservation and Recovery Act of 1976, as amended. RCRA section 2002 provides the EPA Administrator with the authority to promulgate regulations as are necessary to carry out her functions under the Act. 42 U.S.C. 6912. Under section 4010(c) of RCRA, the EPA Administrator is required to promulgate revised criteria for facilities that may receive household hazardous waste (HHW) or small quantity generator (SQG) waste. The criteria shall be those necessary to protect human health and the environment. At the same time, in promulgating these revised criteria, the Administrator may take into account the practicable capabilities of facilities that may receive HHW or SQG waste. 42 U.S.C. 6949a(c). EPA has interpreted "practicable capability" to include both the costs which facilities will incur in complying with the revised criteria and the technical capability of facilities that must comply with the regulations. 56 FR 50978, 50983-84 (October 9, 1991); 53 FR 33314, 3325 (August 30, 1988). EPA has taken practicable capability of MSWLF owners/operators into account in proposing to modify the effective date of the revised criteria as set forth in this **Federal Register** notice.

II. Background

A. Overview of Subtitle D Current Effective Dates

On October 9, 1991, EPA promulgated a rule under Subtitle D of the Resource Conservation and Recovery Act and section 405 of the Clean Water Act pertaining to the disposal of solid waste and sewage sludge in municipal solid waste landfills (56 FR 50978 (October 9, 1991)). These regulations apply to owners and operators of all municipal solid waste landfill units that receive waste on or after October 9, 1993. Landfill owners/operators that stopped accepting waste before October 9, 1991 are not required to comply with the regulations. Landfill owners and operators that stop accepting waste between October 9, 1991 and October 9, 1993 are exempt from all of the regulatory requirements except for the final cover requirement (found in 40 CFR 258.60(a)), which must be applied within six months of last receipt of waste. While owners and operators that continue to receive waste beyond the effective date must comply with the remainder of the landfill regulations (including location restrictions, operation, design, ground-water monitoring and corrective action, closure and post-closure, and financial assurance), the regulations provide for a phase-in of two of the more costly requirements: The financial assurance requirements (April 9, 1994) and ground-water monitoring and corrective action requirements (October 9, 1994 through October 9, 1996).

B. Implementation of the MSWLF Criteria

Section 4005(c)(1)(B) of RCRA, as amended, requires states to develop and implement permit programs or other systems of prior approval and conditions to ensure that the MSWLFs are complying with the MSWLF Criteria. EPA's role is to review and approve these programs. EPA believes that for permit programs to be considered adequate, a state must have the capability of issuing permits or some other form of prior approval for all

MSWLFs in the state, and must establish requirements adequate to ensure owners and operators will comply with the federal landfill criteria. A state also must be able to ensure compliance through monitoring and enforcement actions and must provide for public participation.

The Agency intends to extend to Indian Tribes the same opportunity to apply for permit program approval as is available to states. Providing Tribes with the opportunity to apply for approval to adopt and implement MSWLF permit programs, while not a statutory requirement in RCRA section 4005(c)(1)(B), is consistent with EPA's Indian Policy. The Agency plans to propose the concept of Tribal permit program approval when a tentative notice of permit program adequacy is published for the first Indian Tribe seeking program approval.

If EPA approves a state/Tribal program, a state/Tribe has the opportunity for more flexibility and discretion in implementing the criteria according to local conditions and needs. Owners and operators located in a state/Tribe with an approved program may benefit from this potential flexibility, which extends to many parts of the MSWLF regulations. For example, owners and operators in unapproved states/Tribes must design their landfill with a composite liner in compliance with 40 CFR 258.40(b), whereas approved states/Tribes may allow an owner/operator to use an alternative design based on the performance standard described in 40 CFR 258.40(a). Because of the tremendous flexibility provided in an approved permit program, and because it is mandated by section 4005(c)(1)(B) of RCRA, EPA fully expects that most states will apply for and receive full approval of their MSWLF permit programs, thereby maintaining the lead role in implementing and enforcing the MSWLF Criteria promulgated under 40 CFR part 258. States are currently in various stages of the program approval process. Several states have received "partial" program approval, whereby only some portions of the state program have been approved while the remainder of the program is awaiting approval pending completion of statutory and/or regulatory changes by the state. In situations where a state program is not approved, or where portions of a program are not approved (in the case of a partial approval), the MSWLF criteria are implemented by the owner and operator, with no Federal permitting program or interaction. In situations where the Criteria are self-implementing, each owner/operator must document compliance and maintain this documentation in his/her operating record.

C. Summary of Features in the Criteria That Serve to Facilitate Compliance

When the MSWLF Criteria were developed, the Agency realized that owners and operators of MSWLFs would need time to come into compliance with the regulations and that some flexibility in the regulations would be necessary because one standard set of regulations would not necessarily accommodate the variety of conditions that exist at each landfill location across the country. Taking into account the practicable capability of MSWLF owners/operators, the MSWLF Criteria contain a number of features that serve to facilitate compliance.

1. Phased Effective Dates

First, the current effective date of the Criteria is two years after the date of promulgation in order to provide sufficient time for facilities to acquire sufficient capital and resources to either upgrade their facilities or close and find an alternative waste management option. The Agency also recognized that a delayed effective date would provide time to review the adequacy of a state/Tribal permit program. The two-year window also accommodates owners and operators of MSWLFs that wish to close their landfills to avoid having to comply with all of the Criteria. These individuals may accept waste up until the effective date and then take another six months to complete closure, thereby maximizing the time available to secure an alternative method of waste management and procure funding and professional services to close the landfill.

In addition to a two-year effective date window, the Criteria also provide phased effective dates for certain provisions of the rule. First, ground-water monitoring requirements for existing units and lateral expansions of existing units are phased-in between October 9, 1994 and October 9, 1996, according to a schedule set by an approved state or, in a unapproved state, depending on the proximity of the MSWLF unit to a drinking water intake. As discussed in the October 9, 1991 preamble to the Final Rule, this additional time was provided to compensate for the lack of qualified drilling firms and hydrogeologists that would have been necessary to bring everyone into compliance at the same time. 56 FR 50978, 51062–51063 (Oct. 9, 1991).

Second, the effective date of the financial assurance requirements is April 9, 1994, or 30 months following the publication of the Final Rule. As discussed in the preamble to the Final Rule, this additional time was provided to accommodate promulgation of a financial test for local governments and corporations, to allow the financial market sufficient time to respond to new demands for financial instruments, and to provide time for local governments and corporations to plan for and obtain any needed financial assurance. 56 FR 51104 (Oct. 9, 1991).

EPA also included provisions in the rule that in some way phase in certain requirements. For example, should an existing unit not be able to comply with the location restrictions for airport safety, floodplains, or unstable areas, owners/operators would have until at least 1996, and potentially later if the landfill is located in an approved state, to close. In addition, the landfill Criteria do not require a liner for existing portions of MSWLF units; the owner or operator need not install a liner until the unit is expanded laterally.

Thus, for existing MSWLF units, this generally means that the only requirements that immediately take effect on October 9, 1993 are the operating criteria, which include "good housekeeping" requirements such as access control, liquid restrictions, and procedures to exclude the receipt of regulated hazardous wastes and polychlorinated biphenyls (PCBs).

2. Small Landfill Exemption

Section 258.1(f) of the MSWLF Criteria includes an exemption from the design, ground-water monitoring, and corrective action requirements for some very small, remote MSWLFs, so long as these landfills show no evidence of ground-water contamination. The Agency's Regulatory Impact Analysis found that these three regulatory requirements as the costliest elements of the regulations. In adopting this exemption, EPA maintained that it had complied with the statutory standard to protect human health and the environment, taking into account the practicable capabilities of small landfill owners and operators. However, on May 7, 1993, the United States Court of Appeals for the District of Columbia Circuit Court issued an opinion pertaining to a Sierra Club and Natural Resources Defense Counsel (NRDC) challenge to the MSWLF Criteria (*Sierra Club* v. *United States Environmental Protection Agency*, No. 92–1003 (D.C. Cir. May 7, 1993), which vacated the small landfill exemption relating to ground-water monitoring. Thus, all MSWLFs, regardless of size, are now required to perform ground-water

monitoring. Small landfills that meet the criteria set forth in 40 CFR 258.1(f)(1) will continue to be eligible for the exemption from the design requirements.

3. Additional Flexibility Available to Owners/Operators in States With EPA-Approved Permit Programs

As mentioned earlier, states/Tribes with EPA-approved permit programs acquire a significant amount of flexibility with respect to the way in which they implement the MSWLF criteria, potentially resulting in considerable cost savings to the owner and operator. In addition to the example of flexibility discussed earlier with respect to an alternative liner design, an approved state/Tribe may use alternative approaches to the federal requirements that would apply in unapproved states/Tribes, while still protecting human health and the environment. Examples include: allowing siting in certain locations where owners/operators in unapproved states/Tribes could not; allowing an alternative cover material, other than six inches of soil, to be applied at the end of each operating day; altering groundwater monitoring frequencies and clean-up standards; allowing for alternative landfill cover designs; shortening the post-closure care period; and permitting the use of an alternative financial assurance mechanism.

III. Delay of the Effective Date

A. Reasons Cited for a Delay of the Effective Date

Despite the existing features of the Criteria that serve to facilitate compliance with the Subtitle D regulations, the Agency has received a considerable number of requests to extend the effective date. These requests have come largely from local governments that own/operate small MSWLFs, and a number of the national organizations who represent local government interests. These requestors cited a number of reasons for a delay of the effective date, which are summarized below.

1. Inability To Comply With Unfunded Federal Programs

The Agency has received a number of letters stressing the struggle that local governments are experiencing in their attempt to comply with an "overwhelming" number of "unfunded" federal requirements. In addition to the MSWLF criteria, local governments must deal with a variety of compliance costs of such environmental programs as the underground storage tank program, the safe drinking water program, and the wastewater treatment program, all of which are competing for already scarce local government funds. Local governments have requested a delay in the effective date of the MSWLF Criteria to give them additional time to put the financing in place to either upgrade their existing landfill(s) or close their landfill(s) and procure an alternative form of waste management.

2. Unavailability of Flexibility in Unapproved States

Because most states are in the process of having their permit programs approved by EPA, local governments have expressed uncertainty regarding the regulatory requirements they will be subject to on the effective date of the criteria. This creates a potentially confusing situation where, on October 9, 1993, owners/operators in unapproved states would be subject to "overlapping" federal and state requirements. In addition, where a state is not approved before the effective date, owners and operators in that state would not be afforded the flexibility that could be available in approved states to allow for consideration of local conditions and needs when designing and operating a landfill. For example, owners/operators in an unapproved state are required to place six inches of earthen material on top of their waste at the end of each operating day (known as "daily cover"); whereas an approved state would have the flexibility to allow owners/operators to use an alternative "daily" cover, such as foam, should it meet a general performance standard. These alternative daily covers could save valuable landfill space and result in considerable cost savings to the owner/operator.

3. Delays in Gaining Access to a New Waste Management Facility

Local governments that plan to close their own landfills and join a regional facility are experiencing delays in gaining access to the new facility due to difficulties in: Securing financial backing, acquiring permits and other approvals, and/or completing timely construction of a transfer station and/or the new landfill; information provided to EPA indicate that this is especially true for communities with smaller landfills (e.g., accepting less than 100 TPD) that are more likely to close existing units and join a regional facility. In some states, the permitting process is unable to handle the influx of applications for new landfill permits and for modifications of existing landfill permits, thereby delaying an owner's/operator's ability to meet the criteria on the effective date. In addition, many local governments have experienced continued opposition to the siting of new regional facilities by local opposition groups, who have initiated litigation to challenge siting decisions. Bond issues, tax increases, and tipping fee charges needed to finance the closure or construction of MSWLFs have had to go through the legal processes required for approval of such actions. Some local governments have had to seek new statutory authorization from their states to allow the local governments to form regional districts or to finance facilities. Because many state legislatures meet only for a few months each year, this task is just now getting completed in some places. These local governments are requesting a delay in the effective date so that, until the new landfill is complete, they can keep their local landfill(s) open without being subject to the new regulatory requirements (especially costly groundwater monitoring, post-closure care, and corrective action requirements).

B. Proposal To Extend the Effective Date

In response to these concerns, the Agency today proposes a one-time extension of the effective date of the MSWLF criteria for a period of six months—from October 9, 1993 to April 9, 1994—for owners and operators of relatively small MSWLF units (existing and lateral expansions) if certain conditions are met. EPA is not proposing any changes in the substantive requirements of the criteria. To qualify for the extension, the following proposed conditions would need to be met: (1) The landfill receives 100 tons per day (TPD) or less of any combination of household, commercial, or industrial solid waste on an annual average basis; (2) the landfill is located in a state that has submitted an application for program approval to EPA by October 9, 1993 or is located on Tribal lands; and (3) the landfill is not currently on the Superfund National Priorities List (NPL). A further discussion of individual aspects of this proposed extension follows. It should be noted that a state/Tribe, regardless of its permit program approval status, may impose more stringent effective dates and/or more stringent criteria for qualifying for an extension.

1. Basis for Six-Month Timeframe

As discussed earlier, owners and operators have expressed concern that the federal criteria may be effective before their respective states obtain EPA approval of their permit programs, thereby subjecting such localities to a changing set of federal-then-state regulations over a short period of time

and initially limiting the flexibility available to, and potentially increasing design and operating costs for, owners and operators in states with EPA-approved permit programs. EPA's current data indicate that nearly all states will submit an application for approval by October 9, 1993. The Agency has found that the approval process for a state's application takes approximately six months. A six-month delay of the effective date would mean that most states will have an approved permit program by April 9, 1994. Therefore, by delaying the effective date for six months—until April 9, 1994—the vast majority of owners and operators will be able to take advantage of the flexibility afforded to states with approved programs and to take advantage of the potential cost savings that the flexibility may provide. In addition, because many state programs are expected to be approved in the period between October 9, 1993 and April 9, 1994; extending the effective date six months will allow many local governments to avoid the situation of gearing up to meet federal standards and then, a few months later, changing to meet newly approved state standards.

EPA has received comments from a number of communities that state that it has been impracticable for them to obtain a permit for a new facility within the current two year effective date time frame or to reach agreements with other communities to establish a regional landfill. The additional six months included in this proposal would provide communities that have already initiated attempts to utilize alternative disposal facilities with time to obtain either the permits for a new facility or to reach agreements with other communities. In addition, the six month delay will assure that communities that have already sought alternative disposal facilities, or have initiated efforts to modify their existing MSWLF to comply with the rule, will have the additional time to obtain adequate financing to support such efforts. Thus, the proposed six-month extension in the effective date takes into account the practicable capabilities of the owners/operators of MSWLFs in accordance with RCRA section 4010(c). Communities' efforts and their difficulties to comply with the rule by October 9, 1993 also are discussed in the next section of the preamble.

2. The Extension Is Limited to Landfills Accepting 100 Tons Per Day or Less of Solid Waste

Based on the information gathered by the Agency regarding the need for a delay of the effective date, it appears that the primary concern is the impact of the criteria on smaller community landfills where financial conditions and geography create significant obstacles to compliance, despite good-faith efforts to comply. In response to the MSWLF criteria and other factors, many of the smaller landfills may close and their users will instead send their waste to a regional waste management facility that can take advantage of an economy of scale. (EPA data indicate that average annual household payments in 1987 for environmental services in a sample of over 8,000 cities, towns, and townships were above average for cities of less than 50,000 and below average for cities of greater than 50,000, suggesting that economies of scale are available to communities of greater than 50,000.) The process of closing their own landfill and arranging for a regional facility has taken more time than many communities anticipated, hence the intense interest of small communities in a delay of the criteria effective date.

Based on available information, landfills accepting 100 tons per day or less of solid waste appear to be experiencing the most severe budget and technical problems that have led to a request for an extension. Such landfills generally serve communities with a population up to a range of 45,000 to 57,000. It is important to note that the effective date for MSWLF units accepting greater than 100 TPD continues to be October 9, 1993.

The Agency is concerned that some landfill owners/operators will alter the amount of waste they are presently accepting in order to take advantage of today's proposed six-month extension. For example, some landfills accepting greater than 100 TPD, on average, may want to achieve an extended effective date by suddenly reducing the amount of waste they receive to meet the 100 TPD cutoff. Because today's extension is intended for smaller landfills already in existence, the Agency is today proposing a method of determining whether an owner/operator meets the 100 TPD limit.

To determine whether one meets the 100 TPD limitation to qualify and continue to be eligible for the extension, the owner/operator must meet two conditions. First, to qualify for the extension, the owner/operator must assure that the average daily tonnage received over the one-year period extending October 9, 1991 through October 9, 1992 is 100 TPD or less. This should provide a reasonable "snapshot" of landfill size.

Second, the owner/operator also must assure that the daily tonnage received on a monthly basis during each month of the six-month extension period is 100 TPD or less. The Agency considered establishing a daily maximum of 100 tons, but decided that the use of monthly averages was a more flexible approach. This allows an owner/operator to occasionally receive above 100 tons per day without jeopardizing the extension, as long as the average received per day during the month was less than 100 TPD.

The Agency is not establishing mandatory recordkeeping and reporting requirements. Owners/operators of very small landfills (receiving far less than 100 TPD) probably need little or no documentation. However, owners/operators that handle close to 100 TPD may wish to retain evidence that they are eligible for the extended effective date.

To determine the average tons received per day over the one year period, the owner/operator could simply divide the total annual amount of waste received by 365 days. The Agency realizes that many small landfills do not have scales or other means to weigh the trash hauling vehicles as they enter the landfill. If no scales are available, owners/operators may use other means to assure they meet the ton per day limit. For example, the owner/operator could conduct a one-time measurement of typical full trash hauling vehicles. This could then be used to determine average tons per day. Other options include estimating weight from volume of trash hauling vehicles by using a conversion factor (e.g., one ton equal to three cubic yards), or using sales/acceptance receipts from trash haulers.

The Agency solicits comments on whether these two calculations are necessary in order to avoid extending the effective date for historically larger facilities. The Agency also seeks comment on the methods of calculating the tons per day.

While the MSWLF criteria apply only to landfills that accept household waste, the Agency is aware that many of these landfills also accept commercial and non-hazardous industrial solid waste. The definitions of household, commercial, and industrial solid waste may be found in 40 CFR 258.2. Data contained in the EPA Report "Characterization of Municipal Solid Waste in the United States: 1992 Update," indicate that 55 to 65 percent of municipal solid waste comes from residential sources and 35 to 45 percent comes from commercial sources. Other data compiled by the Agency suggest that, while the vast amount of nonhazardous industrial waste is generated by manufacturers and is

managed on-site, a small percentage of industrial waste is sent to MSWLFs. When deliberating over the qualifications for the proposed extension in today's rule, the Agency considered prohibiting MSWLFs that qualify for the extension from accepting non-hazardous industrial waste. For several reasons, however, the Agency decided against a prohibition of accepting industrial waste. Specifically, (1) This waste stream typically represents a small fraction of the entire waste sent to a MSWLF, (2) prohibition of certain waste streams would be difficult to enforce, (3) for some industries, the local MSWLF represents the only economical method of disposal of their waste, and (4) the extension would be granted for only a short period of time. Therefore, today's proposed extension applies to MSWLFs accepting 100 tons per day or less of any type of solid waste, which may include household waste, commercial solid waste, and industrial solid waste as defined in 40 CFR 258.2.

Finally, today's proposed extension, while providing an extension for a majority of the landfills in the country, will have little effect on the majority of waste disposed in landfills. Overall, limiting the extension to landfills receiving 100 TPD or less would extend the effective date for approximately 75 percent of the MSWLFs in the country, but would apply to less than 15 percent of the total waste stream.

3. The Extension Is Limited to Existing MSWLF Units and Lateral Expansions of Existing Units

The Agency, in § 258.2, defines an existing MSWLF unit as any unit that is receiving solid waste as of the effective date of the landfill criteria (currently set at October 9, 1993). The Agency has interpreted this to mean that an existing unit is defined by the areal extent of waste (sometimes referred to as the waste "footprint") placed as of October 9, 1993. A lateral expansion is defined as the horizontal expansion of the waste boundaries of an existing unit. A new MSWLF unit is any unit that has not received waste prior to the effective date (October 9, 1993). Today's proposed extension of the effective date for landfills accepting less than 100 TPD does not apply to new units. If a unit has not received waste by October 8, 1993, it is a new unit and must comply with the Part 258 requirements on October 9, 1993. The major rationale for today's proposed limited extension is to allow existing landfill units in small localities to remain open while they complete their plans for alternative waste management methods or for coming into full compliance with the criteria. Today's proposed extension is not intended to provide relief for owners/operators who wish to open new units. The Agency is allowing owners and operators of MSWLF units receiving less than 100 TPD and that meet the other criteria discussed herein, to laterally expand their units during this delay period so as not to disrupt the trench and area fill practices that occur at many of the smaller landfills in the U.S. For example, in a trench fill operation, a small trench is excavated, filled, and covered in a relatively short period of time. As the old trench is filled, it is extended to accommodate additional waste. This extension is by definition a lateral expansion. Limiting today's proposal to existing units would therefore limit the extension to considerably fewer landfills than intended.

4. The MSWLF Is Located in a State That Has Submitted an Application for Permit Program Approval by October 9, 1993 or Is Located on Indian Lands

As previously mentioned, among the reasons for today's proposed extension is the need to provide more time for states/Tribes to obtain EPA approval of their permitting programs so that many of the owners and operators will be able to take advantage of state/Tribal flexibility upon the new effective date and so that localities can avoid the re-tooling that would be necessary to meet federal standards in October and then different state standards several months later. The Agency's current data indicate that nearly all states are likely to have received final approval by April 9, 1994. In order to assure that this occurs, and to provide further incentives to the states, the Agency decided to limit today's proposed extension to owners and operators of MSWLF units receiving 100 TPD or less in states that have submitted an application for permit program approval. The Agency is linking today's proposed extension to the state permit program approval process so as not to slow the pace of state program approval. Conversely, this linkage may indeed serve as impetus for states to submit their applications sooner rather than later.

The Agency recognizes that, for an owner/operator to take advantage of this extension, that owner/operator must know whether their state has submitted an application for permit program approval on or before October 9, 1993. Therefore, when the Agency publishes the final rule for this extension, it will include a list of states who have submitted an application by the date on which the final rule was signed. EPA will subsequently acknowledge receipt of application for those States who submit their applications after this date but on or before October 9, 1993. Owners/operators with MSWLF units located in states that do not appear on this list in the final rule should contact their state to find out whether EPA has notified the state that it has officially submitted an application by October 9, 1993.

While states are required by RCRA Section 4005(c)(1)(B) to develop a permit program for MSWLFs, the statute does not require Indian Tribes to do the same. As mentioned previously in this preamble, the Agency plans to propose to extend this opportunity to Indian Tribes at the time the Agency publishes its first tentative decision to approve an Indian Tribe's permit program. Because many of the landfills on Indian lands could qualify for today's proposed six-month extension by virtue of the fact that they accept less than 100 TPD and are not on the National Priorities List, the Agency is proposing to allow MSWLF units on Indian lands to take advantage of the six-month extension, even if the Indian Tribe has not submitted an application for permit program approval by October 9, 1993.

For the purpose of today's proposal, an Indian Tribe is defined as any Indian tribe, band, nation, or community recognized by the Secretary of the Interior and exercising substantial governmental duties and powers within Indian country. Indian lands means: (a) All land within the limits of any Indian reservation under the jurisdiction of the United States Government, notwithstanding the issuance of any patent, and including rights-of-way running throughout the reservation, (b) all dependent Indian communities within the borders of the United States, whether original or subsequently acquired territory thereof, and whether within or without the limits of a state, and (c) all Indian allotments, the Indian titles to which have not been extinguished, including rights of way running through the same.

While the definition of Tribes in today's proposal does not explicitly include Alaska Native Villages, EPA believes that, to the extent these entities exercise substantial governmental duties and powers, they would be eligible to apply for permit program approval. For purposes of today's proposal, as with Indian Lands in other States, EPA is allowing that landfills on Native Village Lands be eligible for the six-month extension whether or not the Village has submitted an application for permit program approval.

5. The MSWLF is not Currently on the National Priorities List

Prior to publishing the proposed rule for the MSWLF criteria in 1988 (see 53 FR 33313), the Agency examined the characteristics of landfills in the Superfund data base. Of the 27,000 sites in the Superfund data base in 1986, almost one fourth were MSWLFs. In addition, as of May 1986, 22 percent of the sites on the Superfund National Priorities List (NPL) were identified as MSWLFs, as of May, 1986. Because the Agency does not wish to perpetuate any problems associated with MSWLFs currently on the NPL, today's proposed extension does not apply to landfills currently on the NPL as published in appendix B to 40 CFR part 300.

6. Issues Pertaining to Sewage Sludge

As discussed in the preamble to the October 9, 1991 final rule, the MSWLF criteria in 40 CFR part 258 fulfill a portion of the Clean Water Act (CWA) section 405(d) mandate that EPA promulgate regulations governing the use and disposal of sewage sludge. For this reason, the part 258 criteria were jointly promulgated under CWA and RCRA authorities and apply to all MSWLFs in which sewage sludge is co-disposed with household wastes. Section 307(b)(1) of the CWA provides that publicly owned treatment works (POTWs) may relieve industrial dischargers from pretreatment requirements for a pollutant (i.e., grant a "removal credit") under certain conditions, to avoid duplicative wastewater treatment by the POTW and industrial pretreater.

40 CFR 403.7(a)(3) of EPA's removal credits regulations provides that a POTW may be authorized to grant removal credits only if "the granting of removal credits will not cause the POTW to violate the local, state, and Federal sludge requirements which apply to the sludge management method chosen by the POTW." Where the management method is co-disposal in a MSWLF, the applicable regulations are spelled out in 40 CFR part 258. As stated in the preamble to the final rule for the MSWLF criteria, "EPA has determined that POTWs should not be authorized to grant removal credits until the MSWLF to which the POTW sends its sludge is in compliance with all the part 258 requirements * * *" In addition to the operating requirements, these would include location standards, design, ground-water monitoring, and financial assurance requirements. Despite any extensions to the effective date that may be promulgated, EPA will not grant removal credit authority to a POTW unless it sends its sludge to a MSWLF that complies with the full panoply of the part 258 rule requirements. Therefore, POTWs will not be eligible to receive removal credits if they send their sludge to small landfills that choose to take advantage of the six-month extension.

IV. Delay of the Financial Assurance Requirements

A. Reasons for a Delay of the Financial Assurance Requirements

In the final MSWLF criteria rule, the Agency promulgated an effective date of October 9, 1993 for most of the provisions of the rule; however, because the Agency was not prepared at that time to promulgate a financial test for local governments and for corporations, the Agency delayed the effective date of the financial responsibility provisions until April 9, 1994. In doing so, the Agency intended to provide adequate time to promulgate a financial test for local governments and another for corporations before the effective date of the financial assurance provisions. The financial test would allow owners and operators to demonstrate that they can satisfy the goals of financial assurance on their own, and that they do not need to procure a third-party instrument to assure that the obligations associated with their landfill will be met. Because an owner or operator using a financial test would not have to secure a third-party instrument, the cost of financial assurance to the regulated community would decrease.

The delayed effective date also was intended to provide owners and operators sufficient time to determine whether they satisfy the applicable financial test criteria for all of the obligations associated with their facilities, and obtain a guarantor or an alternate instrument, if necessary. The Agency also recognized that local governments, in particular, require notice of the requirements in order to plan their budgets for the upcoming year. However, the Agency encountered unanticipated delays in the rulemaking process during the development of both the local government and corporate financial tests. As a result, neither financial test will be promulgated within the timeframe anticipated when the Agency established the April 9, 1994 effective date for the financial responsibility provisions.

The Agency believes that it is important to have these financial tests in place before the financial responsibility provisions become effective. This will allow owners and operators that satisfy the requirements of a financial test to realize a significant decrease in the cost of compliance with the financial responsibility requirements, while assuring that the costs associated with MSWLFs will be met. It also will provide time for the remaining owners and operators to budget for and acquire the appropriate financial assurance mechanism.

B. Proposal To Delay the Financial Assurance Requirements

Today's proposal includes a delay of the effective date of the financial assurance requirements to respond to the delay in promulgating final financial test rules. Today's rulemaking proposes to establish the effective date of subpart G, Financial Assurance, to be April 9, 1995. The Agency believes that this additional time will be adequate to complete the promulgation of the financial test rule and provide notice to affected parties. This one-year extension would be limited to the financial responsibility provisions published in subpart G of the final MSWLF criteria published on October 9, 1991. This one-year extension is not limited to small landfills. It is available to owners and operators of all MSWLFs required to comply with the financial responsibility requirements whether or not it is located in a state having submitted an application for permit program approval.

V. Modifications to the Exemption for Very Small Landfills in § 258.1(f)

A. Background

The October 9, 1991 Final Rule for the MSWLF Criteria included an exemption for owners and operators of certain small MSWLF units (existing, new, or lateral expansion) from the design (Subpart D) and ground-water monitoring and corrective action (Subpart E) requirements of the Criteria. See 40 CFR 258.1(f). To qualify for the exemption, the small landfill had to accept less than 20 tons per day, on an average annual basis, exhibit no evidence of ground-water contamination, and serve either:

(i) A community that experiences an annual interruption of at least three consecutive months of surface transportation that prevents access to a regional waste management facility, or

(ii) A community that has no practicable waste management alternative and the landfill unit is located in an area that annually receives less than or equal to 25 inches of precipitation.

In adopting this limited exemption, the Agency maintained that it had complied with the statutory standard to

protect human health and the environment, taking into account the practicable capabilities of small landfill owners and operators. See discussion in 56 FR 50991.

In January 1992, the Sierra Club and the Natural Resources Defense Council (NRDC) filed petitions with the U.S. Court of Appeals, District of Columbia Circuit, for review of the Subtitle D criteria. The Sierra Club and NRDC suit alleged, among other things, that EPA acted illegally when it exempted these small landfills from the ground-water monitoring requirements. On May 7, 1993, the United States Court of Appeals for the District of Columbia Circuit issued an opinion pertaining to the Sierra Club and NRDC challenge to the small landfill exemption. *Sierra Club* v. *United States Environmental Protection Agency*, No. 92–1003 (D.C. Cir. May 7, 1993).

The Court held that under section 4010(c), the only factor EPA could consider in determining whether facilities must monitor their ground water was whether such monitoring was "necessary to detect contamination," not whether such monitoring is "practicable." The Court noted that while EPA could consider the practicable capabilities of facilities in determining the extent or kind of ground-water monitoring that a landfill owner/operator must conduct, EPA could not justify the complete exemption from ground-water monitoring requirements. Thus, the Court vacated the small landfill exemption as it pertains to ground-water monitoring, directing the Agency to "* * * revise its rule to require ground-water monitoring at all landfills."

B. Changes to the Small Landfill Exemption Regarding Ground-Water Monitoring

As a result of the May 7, 1993 U.S. Court of Appeals decision requiring ground-water monitoring at all landfills that receive household hazardous waste or small quantity generator waste, the Agency, as part of today's proposal, is issuing a regulatory notice that announces conforming changes to the small landfill exemption. Based on the Court's decision, owners and operators of MSWLF units that meet the qualifications outlined in 40 CFR 258.1(f) are no longer exempt from ground-water monitoring requirements in 40 CFR 258.50–258.55. It is important to note that Sierra Club and NRDC challenged only that portion of the small landfill exemption relating to ground-water monitoring requirements, and the Court's opinion addressed only that portion of the exemption.

The Court's opinion only vacated that part of the exemption pertaining to ground-water monitoring and does not explicitly mention corrective action. However, the ground-water monitoring and corrective action requirements are highly inter-related parts of the regulatory program. (EPA promulgated these requirements together in subpart E of part 258.) Under the current regulations, these small facilities are not exempt from corrective action because the entire small landfill exemption under § 258.1(f) is eliminated if an owner/operator of a MSWLF unit has knowledge of ground-water contamination resulting from the unit. Therefore, in this circumstance, the existing regulations already subject owners/operators to all of the provisions in subpart E, including corrective action. Today's modification to § 258.1(f) reflects the current regulatory requirements by exempting owners/operators only from the design requirements under subpart D of part 258. It also is important to note that state/Tribal programs may be more stringent and may not allow such an exemption.

Today's notice serves to formalize the U.S. Court of Appeals decision by removing the exemption for small landfills from the ground-water monitoring requirements. In its decision, however, the U.S. Court of Appeals does not preclude the possibility that the Agency could undertake a rulemaking process to establish separate ground-water monitoring standards for small landfills that take such factors as size, location, and climate into account. The Agency continues to be sympathetic to the difficulties that these small, arid, and remote communities face with respect to meeting the landfill criteria. Accordingly, the Agency today solicits comment on alternative ground-water monitoring programs that could accommodate the practicable capability of small landfill owners/operators through consideration of size, location, and climate, while ensuring that the program is adequate to detect contamination.

C. Proposal to Delay the Effective Date for Landfills That Qualify for the Small Landfill Exemption

Owners and operators of very small landfills that qualified for the small landfill exemption in 40 CFR 258.1(f)(1) and made a decision to remain open based on their exemption from ground-water monitoring will now need to reevaluate their waste management alternatives in light of the U.S. Court of Appeals decision. Such landfills acted in good faith under the then existing regulatory requirements in making operational and financial decisions during the period that the exemption from ground-water monitoring was to have been available. The court's decision announced on May 7, 1993, changes the situation dramatically for many of these small landfills by making them subject for the first time to the often expensive ground-water monitoring requirements. EPA believes that these facilities should be given the same amount of time that all other facilities (not meeting the small landfill exemption) have had to deal with the Criteria and to make alternative waste management decisions, as appropriate.

The Agency considered two options for these small landfills: (1) Extend the effective date only for the ground-water monitoring requirements and exempt owners/operators from ground-water monitoring during the post-closure care period if they cease receipt of waste prior to the delayed effective date of ground-water monitoring, or (2) extend the effective date for all of the requirements of the criteria.

The first option considers the fact that the Court decision only affected ground-water monitoring and not the other criteria requirements. Therefore, these small landfills should be required to comply with all requirements that they would have had to comply with should they remain open. Should they decide to cease receipt of waste prior to the delayed effective date of ground-water monitoring, they would not have to expend any additional money to comply because they would be exempt from ground-water monitoring during the post-closure period.

The second option considers the fact that had small landfill owners/operators known on the October 9, 1991 promulgation date that they were subject to ground-water monitoring, it is probable that some, perhaps many, could have made arrangements to close their landfill and seek alternative waste management options. Now, almost two years later, these owners/operators find themselves re-evaluating whether it is within their practicable capability to comply not only with certain of the criteria requirements (namely location restrictions and operating criteria, subparts B and C, respectively), but also ground-water monitoring requirements.

Because the Agency believes that these small landfills should be given the opportunity to make a decision regarding closure and future waste management options under the same circumstances that all other landfill owners/operators had (i.e., not subject to any portion of the criteria) and

because EPA considers that compliance with all of the rule's requirements may be beyond the practicable capability of MSWLFs that meet the exemption criteria in the short term, the Agency, as part of today's proposed rule, proposes to extend the effective date for all requirements of the MSWLF criteria for a period of two years for all MSWLF units that qualify for the small landfill exemption under § 258.1(f). The Agency solicits comment on today's proposal to extend the effective date of all of the criteria, rather than just the ground-water monitoring requirements, for this select group of very small landfills.

Today's proposed two-year extension for these very small landfills would mean that the effective date for the location restrictions, operating requirements, and financial assurance would be October 9, 1995. The effective date for the ground-water monitoring and corrective action requirements would be adjusted to correspond, to some degree, with the current phase-in for all other MSWLF units as described in § 258.50(c). Therefore, EPA proposes that very small MSWLF units which meet the exemption criteria in § 258.1(f)(1) and are located less than two miles from a drinking water intake must be in compliance with the ground-water monitoring requirements by October 9, 1995 and those very small MSWLF units located greater than two miles from a drinking water intake must be in compliance by October 9, 1996. (Existing units and lateral expansions that do not meet the very small landfill exemption criteria under § 258.1(f) and are located less than one mile from a drinking water intake must still comply with the ground-water monitoring requirements by October 9, 1994. See 40 CFR 258.50(c)(1).)

Today's proposal to extend the effective date for two years for all requirements of Part 258 would be available to any MSWLF unit that meets the qualifications for the small landfill exemption in § 258.1(f). The Agency wishes to stress that owners/operators of these MSWLF units, must, in addition to meeting the tonnage requirements of less than 20 TPD and the requirement that there be no evidence of ground-water contamination, be able to document either of the following sets of conditions in order to qualify for the two-year extension: (1) An interruption in surface transportation for three consecutive months that would prevent access to a regional facility, or (2) no practicable waste management alternative exists and the MSWLF unit is located in an area that receives less than or equal to 25 inches of precipitation.

It should be noted that this extension for very small landfills that qualify for the exemption under § 258.1(f) is independent of today's proposed six-month extension for MSWLF units accepting less than 100 TPD. Landfills qualifying for the exemption under § 258.1(f) need not meet all the qualifications proposed for the six-month extension for MSWLF units accepting less than 100 TPD.

VI. Modification of Closure Provisions for Facilities Ceasing Receipt of Waste by Their Respective Effective Date

The Final Rule for the MSWLF criteria requires owners and operators of MSWLF units accepting waste after October 9, 1991, but ceasing receipt of waste before October 9, 1993, to complete closure activities at their MSWLF unit within six months of last receipt of waste by placing a cover on the unit that is in compliance with the cover requirements of 40 CFR 258.60(a). Owners and operators who fail to complete cover installation within this six month period are subject to all of the requirements of the landfill criteria.

Since publication of the Final Rule, the Agency has received a number of inquiries regarding the practicality of requiring cover to be placed within six months of last receipt of waste. Owners and operators that wish to accept waste until the last possible date before being subject to the full Subtitle D criteria (i.e., cease receipt of waste by October 9, 1993) would be required to close during the late fall/winter months of October through March. Construction of a landfill cover during winter weather in some parts of the country would be most difficult and would be subject to the most delays that would make it difficult, if not impossible, to complete within the six month timeframe required.

To facilitate cover installation for those landfill owners and operators who intend to cease receipt of waste by their respective effective date, the Agency is today proposing to modify the requirement that a cover be placed within six months of last receipt of waste by replacing it with a requirement that cover installation be completed by a date certain—October 9, 1994. Again, should the owner/operator fail to install a cover by this new date, they would be subject to all of the requirements of part 258. Owners and operators of landfills that are subject to the October 9, 1993 effective date would then have one year to install a cover, while owners and operators of landfills that would be subject to the proposed April 9, 1994 effective date would have six months to install a cover. Both time frames will provide at least six months of moderate weather during which to plan and install a landfill cover. To accommodate the weather concerns of owners and operators of landfills that qualify for the small landfill exemption (under § 258.1(f)) and intend to cease receipt of waste before the proposed October 9, 1995 effective date, today's proposed rule would require cover installation by October 9, 1996.

VII. Summary of This Proposed Rule

Table I provides a summary of the changes to the effective dates of the MSWLF criteria as outlined in today's proposed rule.

TABLE I.—SUMMARY OF PROPOSED CHANGES TO THE EFFECTIVE DATES OF THE MSWLF CRITERIA

	New, existing, and lateral expansion MSWLF units accepting greater than 100 TPD	Existing and lateral expansion MSWLF units accepting less than 100 TPD; are located in a state that has submitted an application for approval by 10/9/93 or are located on Tribal lands; and are not on the NPL	MSWLF units that meet the small landfill exemption in 40 CFR § 258.1(f)
General effective date[1]. This is the effective date for location, operation, design, and closure/post-closure	Oct. 9, 1993	Apr. 9, 1994	Oct. 9, 1995.

TABLE I.—SUMMARY OF PROPOSED CHANGES TO THE EFFECTIVE DATES OF THE MSWLF CRITERIA—Continued

	New, existing, and lateral expansion MSWLF units accepting greater than 100 TPD	Existing and lateral expansion MSWLF units accepting less than 100 TPD; are located in a state that has submitted an application for approval by 10/9/93 or are located on Tribal lands; and are not on the NPL	MSWLF units that meet the small landfill exemption in 40 CFR § 258.1(f)
Date by which closure activities must be completed if cease receipt of waste by the general effective date.	Oct. 9, 1994	Oct. 9, 1994	Oct. 9, 1996.
Effective date of ground-water monitoring and corrective action.	Prior to receipt of waste of new units; Oct. 9, 1994 through Oct. 9, 1996 for existing units and lateral expansions.	Oct. 9, 1993 for new units; Oct. 9, 1994 through Oct. 9, 1996 for existing and lateral expansions.	Oct. 9, 1995 for MSWLF units less than 2 miles from a drinking water intake; Oct. 9, 1996 for MSWLF units greater than 2 miles from a drinking water intake.
Effective date of financial assurance requirements.	Apr. 9, 1995	Apr. 9, 1995	Oct. 9, 1995.

[1] If receive waste on or after this date must comply with all of Part 258.

VIII. Request for Comments

Throughout today's proposed rule, the Agency solicited comments on a number of specific issues such as: (1) The types of calculations necessary to avoid extending the effective date for historically larger facilities accepting greater than 100 tons per day and (2) alternative ground-water monitoring programs that could accommodate the practicable capability of very small landfill owners/operators that are no longer exempt from ground-water monitoring due to the Court's decision.

While the Agency is interested in these specific comments, the Agency is requesting comments on all aspects of today's proposal. In particular, EPA is soliciting comments on the four major aspects of today's proposal: (1) To delay the effective date for landfills accepting 100 TPD or less and are located in either a state that has submitted an application for permit program approval by October 9, 1993 or are located on Indian lands; (2) to delay the effective date of all of the MSWLF criteria for two years for those landfills meeting the small landfill exemption in 258.1(f); (3) to delay the effective date of the financial assurance requirements for all MSWLFs until April 9, 1995; and (4) to require that those landfills ceasing receipt of waste by their respective effective date complete final cover installation by October 9, 1994.

In addition to the aforementioned issues, the Agency is concerned about the recent flooding in midwestern states and the ability of localities to manage the potentially dramatic increase in solid waste that may be generated as a result of clean-up efforts. These concerns include: (1) Whether certain MSWLFs that may have qualified for the six-month extension under today's proposed rule may no longer qualify because of the dramatic increase in waste generated as a result of the floods; (2) whether a six-month extension is an adequate time frame for owner/operators of MSWLFs in areas impacted by the flooding to meet the Part 258 requirements; and (3) whether MSWLFs accepting greater than 100 TPD of waste also may now require an effective date extension to accommodate the additional waste generated by the floods.

Given these concerns, EPA is today soliciting comments on how best to accommodate MSWLFs that have been directly affected by the flood waters and MSWLFs that may be located outside the flooded areas, but will receive a dramatic increase in waste as a result of flood. Examples of such accommodations could include an increase in the TPD criterion for an extension (i.e., greater than 100 TPD) or an additional time extension for these landfills (i.e., greater than six months).

IX. Economic and Regulatory Impacts

A. Regulatory Impact Analysis

Under Executive Order 12291, EPA must determine whether a new regulation is a "major" rule and prepare a Regulatory Impact Analysis (RIA) in connection with a major rule. A "major" rule is defined as one that is likely to result in: (1) An annual effect on the economy of $100 million or more; (2) a major increase in costs or prices for consumers, individual industries, Federal, state/Tribal, and local government agencies or geographic regions; or (3) significant adverse effects on competition, employment, investment, productivity, innovation or on the ability of U.S.-based enterprises to compete with foreign-based enterprises in domestic or export markets.

This proposal, if finalized, will have none of the above effects because amendments to the regulations outlined in this proposal will, except for the provision requiring dry/remote small landfills accepting less than 20 TPD to perform ground-water monitoring, reduce requirements imposed by the 40 CFR part 258 criteria. Agency data indicate that the costs of ground-water monitoring requirements for small landfills will not result in this rule being defined as a "major rule" for the purposes of determining whether to conduct an RIA. Moreover, under this proposal, owners/operators of MSWLFs that meet the small landfill exemption of § 258.1(f) are provided regulatory relief by a delayed effective date.

During the development of the revised Subtitle D Criteria (October 9, 1991), EPA developed rough cost estimates for a wide variety of regulatory options. EPA estimated that the annualized costs attributable to the revised criteria for landfills accepting less than 20 tons per day and located in areas receiving less than 25 inches of precipitation per year were approximately $13 million per year (represented in 1992 dollars). While these costs represent ground-water monitoring, design, closure, post-closure care and corrective action, the majority of the costs are ground-water monitoring and thus should represent a rough estimate of ground-water monitoring costs resulting from the court decision. These national costs were developed using the same

assumptions as those in the Regulatory Impact Analysis (RIA) developed for the revised Criteria. For example, EPA assumed reduced costs for ground-water monitoring for landfills located in states already requiring ground-water monitoring (39 states required ground-water monitoring in 1991). This cost estimate was based on an initial universe of 1020 small landfills that were assumed to close over time and were replaced by fewer larger, less expensive regionalized landfills.

The Agency does not believe a significant number of MSWLFs will experience corrective action costs due to the Court's decision for several reasons. First, of the small landfills that would have qualified for the small landfill exemption, it is difficult to estimate the number of these landfills that will continue to operate now that they are required to perform ground-water monitoring. Many will choose to close because of these new requirements. Second, it is highly unlikely that continued operation of these small landfills will result in ground-water contamination that requires corrective action. Because these landfills generally are located in dry areas receiving less than 25 inches of precipitation per year, very little leachate will be available for release to the ground water. Additionally, many of these small dry landfills are situated above aquifers that are located several hundred feet below the ground surface, thereby creating a significant natural barrier to threat of contamination. Third, even if these landfill owners/operators detected contamination that would trigger corrective action, the MSWLF criteria currently allow the Director of a state with an EPA-approved permit program to waive corrective action under the circumstances outlined in 40 CFR 258.57(e).

Thus, given these factors, it is difficult to estimate the national cost impact of corrective action on these small landfills. The Agency believes that few, if any, would contaminate ground water and be required to perform these clean-up activities. However, if a landfill did trigger corrective action in a state that required clean-up, the Agency estimates that the average total annualized cost (over 20 years) of corrective action for that landfill would range from approximately $160,000 to $350,000 per year. These costs assume pump and treat clean-up technology and a 40-year post-closure care period.

Again, most of the cost assumptions in this estimate are based on unit cost assumptions from the Regulatory Impact Analysis for the Revised Subtitle D Criteria found in docket number F–91–CMLF–FFFFF. The Agency requests comments on cost assumptions including specifically the estimated number of small landfills which would be affected by today's proposed rule, and the estimated costs of ground-water monitoring and corrective action.

Because the proposed rulemaking does not meet the definition of a major regulation, the Agency is not conducting a Regulatory Impact Analysis at this time. Today's proposal has been submitted to the Office of Management and Budget (OMB) for review as required by Executive Order 12291.

B. Regulatory Flexibility Act

The Regulatory Flexibility Act (5 U.S.C. 601 et seq.) requires an agency to prepare, and make available for public comment, a regulatory flexibility analysis that describes the impact of a proposed or final rule on small entities (i.e., small businesses, small organizations, and small governmental jurisdictions). No regulatory flexibility analysis is required if the head of an agency certifies the rule will not have significant economic impact on a substantial number of small entities.

The estimates of potential total annualized costs for specific landfills are discussed above in Section IX–A. However, not all landfills will experience these costs. Several landfills are located in states that already require ground-water monitoring, liners and covers, and/or corrective action and thus there would be little incremental cost to these landfills due to the court decision. In addition, EPA believes there will be a reduction in small landfills over time as these landfills close and communities regionalize. Therefore, one cannot use the unit cost figures cited below to provide a national estimate of cost impact due to the Court's decision.

The proposed amendments to 40 CFR part 258, except for the provision requiring dry/remote small landfills accepting less than 20 TPD to perform ground-water monitoring, has the general effect of reducing the requirements of the Part 258 criteria, thereby imposing no additional economic impact to small entities. The provision requiring dry/remote landfills accepting less than 20 TPD to perform ground-water monitoring could have a significant economic impact on these small entities. Agency data indicate that economic impact will vary with size, with larger landfills experiencing a relatively moderate cost increase when compared to smaller landfills where economies of scale are not available. Agency data indicate that the total annualized costs of ground-water monitoring for a MSWLF unit accepting approximately 10 TPD would cost about $40 to $50 per household, while for landfills accepting less than one TPD (the Agency estimates that approximately one-third to one-half of all MSWLF units that qualify for the exemption are in this size category), the annualized cost per household could range from $270 to $350 per household. The higher number in these ranges assumes that the existing landfill life will be 10 years and will be replaced by a new landfill with a life of 20 years. The larger number assumes an existing landfill life of 20 years. In making these estimates, the Agency assumed that 10 TPD facilities would install five ground-water monitoring wells, while the one TPD facilities would install three wells. These cost figures are a rough estimate using national unit costs; labor and equipment costs will vary per site and may be more expensive in rural, remote areas of the country.

The Agency has not estimated the number of small landfills that will be affected. According to the 1986 landfill survey, many of the small landfills had plans to close by 1995. Others have been closed as communities participate in regionalized waste management. Therefore, while in 1986 there were over 1,000 landfills that would be affected by today's rule, it is unclear how many are in this universe today.

While the Agency believes that these are substantial impacts, the court decision leaves the Agency no choice but to promulgate these changes. However, as mentioned earlier, the Agency is soliciting comment on alternative ground-water monitoring requirements that could accommodate the practicable capability of small landfills through consideration of size, location, and climate, while ensuring that the program is adequate to detect contamination.

C. Paperwork Reduction Act

The Agency has determined that there are no new reporting, notification, or recordkeeping provisions associated with today's proposed rule.

List of Subjects in 40 CFR Part 258

Corrective action, Ground-water monitoring, Household hazardous waste, Liner requirements, Liquids in landfills, State/Tribal permit program approval and adequacy, Security measures, Small quantity generators, Waste treatment and disposal, Water pollution control.

Dated: July 22, 1993.

Carol M. Browner,

Administrator.

For reasons set out in the preamble, title 40, chapter I, of the Code of Federal Regulations is proposed to be amended as follows:

PART 258—CRITERIA FOR MUNICIPAL SOLID WASTE LANDFILLS (EFF. 10–9–93)

1. The authority citation for part 258 continues to read as follows:

Authority: 42 U.S.C. 6907(a)(3), 6944(a) and 6949(c); 33 U.S.C. 1345(d) and (e).

2. Section 258.1 is amended by revising paragraphs (d), (e), (f)(1) introductory text, (f)(3), and (j) to read as follows:

§ 258.1 Purpose, scope, and applicability.

* * * * *

(d)(1) MSWLF units that meet the conditions of § 258.1(e)(2) and receive waste after October 9, 1991 but stop receiving waste before April 9, 1994, are exempt from all the requirements of this part 258, except the final cover requirement specified in § 258.60(a). The final cover must be installed by October 9, 1994. Owners or operators of MSWLF units described in this paragraph that fail to complete cover installation by October 9, 1994 will be subject to all the requirements of this part 258, unless otherwise specified.

(2) MSWLF units that meet the conditions of § 258.1(f)(1) and receive waste after October 9, 1991 but stop receiving waste before October 9, 1995, are exempt from all the requirements of this part 258, except the final cover requirement specified in § 258.60(a). The final cover must be installed by October 9, 1996. Owners or operators of MSWLF units described in this paragraph that fail to complete cover installation by October 9, 1996 will be subject to all the requirements of this part 258, unless otherwise specified.

(3) MSWLF units that do not meet the conditions of § 258.1(e)(2) or (f) and receive waste after October 9, 1991 but stop receiving waste before October 9, 1993, are exempt from all the requirements of this part 258, except the final cover requirement specified in § 258.60(a). The final cover must be installed by October 9, 1994. Owners or operators of MSWLF units described in this paragraph that fail to complete cover installation by October 9, 1994 will be subject to all the requirements of this part 258, unless otherwise specified.

(e)(1) All MSWLF units that receive waste on or after October 9, 1993, except those units that qualify for a delay under paragraph (e)(2) or (3) of this section, must comply with all requirements of this part 258 unless otherwise specified.

(2) The effective date is April 9, 1994 for an existing MSWLF unit or a lateral expansion of an existing MSWLF unit that meets the following conditions:

(i) The MSWLF unit disposed of 100 tons per day or less of solid waste between October 9, 1991 and October 9, 1992;

(ii) The unit does not dispose of more than an average of 100 TPD of solid waste each month between October 9, 1993 and April 9, 1994;

(iii) The MSWLF unit is located in a state that has submitted an application for permit program approval to EPA by October 9, 1993 or is located on Indian Lands or Indian Country; and

(iv) The MSWLF unit is not on the National Priorities List (NPL) as found in appendix B to 40 CFR part 300.

(3) The effective date is October 9, 1995 for a MSWLF unit that meets the conditions for the exemption in paragraph (f)(1) of this section.

(f)(1) Owners or operators of new MSWLF units, existing MSWLF units, and lateral expansions that dispose of less than twenty (20) tons of municipal solid waste daily, based on an annual average, are exempt from subpart D of this part, so long as there is no evidence of ground-water contamination from the MSWLF unit, and the MSWLF unit serves:

* * * * *

(3) If the owner or operator of a new MSWLF unit, existing MSWLF unit, or lateral expansion has knowledge of ground-water contamination resulting from the unit that has asserted the exemption in paragraph (f)(1)(i) or (f)(1)(ii) of this section, the owner or operator must notify the state Director of such contamination and, thereafter, comply with subpart D of this part.

* * * * *

(j) Subpart G of this part is effective April 9, 1995, except for MSWLF units meeting the requirements of paragraph (f)(1) of this section, in which case the effective date of subpart G is October 9, 1995.

* * * * *

3. Section 258.2 is amended by adding definitions for "Indian lands or Indian Country" and "Indian tribe or Tribe" in alphabetical order to read as follows:

§ 258.2 Definitions.

* * * * *

Indian lands or *Indian country* means:

(1) All land within the limits of any Indian reservation under the jurisdiction of the United States Government, notwithstanding the issuance of any patent, and including rights-of-way running throughout the reservation;

(2) All dependent Indian communities within the borders of the United States whether within the original or subsequently acquired territory thereof, and whether within or without the limits of the State; and

(3) All Indian allotments, the Indian titles to which have not been extinguished, including rights of way running through the same.

Indian Tribe or *Tribe* means any Indian tribe, band, nation, or community recognized by the Secretary of the Interior and exercising substantial governmental duties and powers on Indian lands.

* * * * *

4. Section 258.50 is amended by revising paragraph (c) introductory text, by redesignating paragraphs (e), (f) and (g) as paragraphs (f), (g), and (h); and by adding paragraph (e) to read as follows:

§ 258.50 Applicability.

* * * * *

(c) Owners and operators of MSWLF units, except those meeting the conditions of § 258.1(f), must comply with the ground-water monitoring requirements of this part according to the following schedule unless an alternative schedule is specified under paragraph (d) of this section:

* * * * *

(e) Owners and operators of all MSWLF units that meet the conditions of § 258.1(f)(1) must comply with the ground-water monitoring requirements of this part according to the following schedule:

(1) All MSWLF units less than two miles from a drinking water intake (surface or subsurface) must be in compliance with the ground-water monitoring requirements specified in §§ 258.51 through 258.55 by October 9, 1995;

(2) All MSWLF units greater than two miles from a drinking water intake (surface or subsurface) must be in compliance with the ground-water monitoring requirements specified in §§ 258.51 through 258.55 by October 9, 1996.

* * * * *

5. Section 258.70 is amended by revising paragraph (b) to read as follows:

§ 258.70 Applicability and effective date.

* * * * *

(b) The requirements of this section are effective April 9, 1995 except for MSWLF units meeting the conditions of

§ 258.1(f)(1), in which case the effective date is October 9, 1995.

6. Section 258.74 is amended by revising paragraph (a)(5) to read as follows:

§ 258.74 Allowable mechanisms.

* * * * *

(a) * * *

(5) The initial payment into the trust fund must be made before the initial receipt of waste or before the effective date of this section (April 9, 1995, or October 9, 1995 for MSWLF units meeting the conditions of § 258.1(f)(1)), whichever is later, in the case of closure and post-closure care, or no later than 120 days after the corrective action remedy has been selected in accordance with the requirements of § 258.58.* * *

* * * * *

7. Section 258.74 is amended by revising the third sentence of paragraph (b)(1); by revising the second sentence of paragraph (c)(1); and by revising the second sentence of paragraph (d)(1) to read as follows:

§ 258.74 Allowable mechanisms.

* * * * *

(b) * * *

(1) * * * The bond must be effective before the initial receipt of waste or before the effective date of this section (April 9, 1995, or October 9, 1995 for MSWLF units meeting the conditions of § 258.1(f)(1)), whichever is later, in the case of closure and post-closure care, or no later than 120 days after the corrective action remedy has been selected in accordance with the requirements of § 258.58.* * *

* * * * *

(c) * * *

(1) * * * The letter of credit must be effective before the initial receipt of waste or before the effective date of this section (April 9, 1995, or October 9, 1995 for MSWLF units meeting the conditions of § 258.1(f)(1)), whichever is later, in the case of closure and post-closure care, or no later than 120 days after the corrective action remedy has been selected in accordance with the requirements of § 258.58.* * *

* * * * *

(d) * * *

(1) * * * The insurance must be effective before the initial receipt of waste or before the effective date of this section (April 9, 1995, or October 9, 1995 for MSWLF units meeting the conditions of § 258.1(f)(1)), whichever is later, in the case of closure and post-closure care, or no later than 120 days after the corrective action remedy has been selected in accordance with the requirements of § 258.58.* * *

* * * * *

[FR Doc. 93–18008 Filed 7–27–93; 8:45 am]

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Wednesday, July 28, 1993

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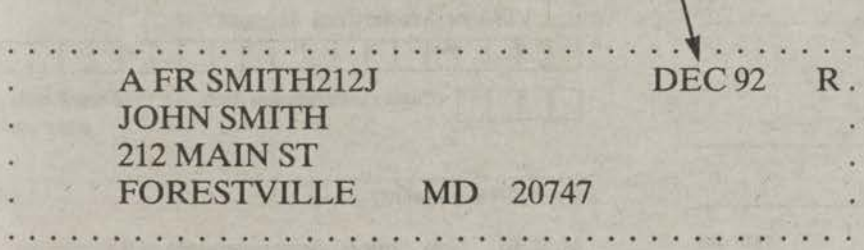

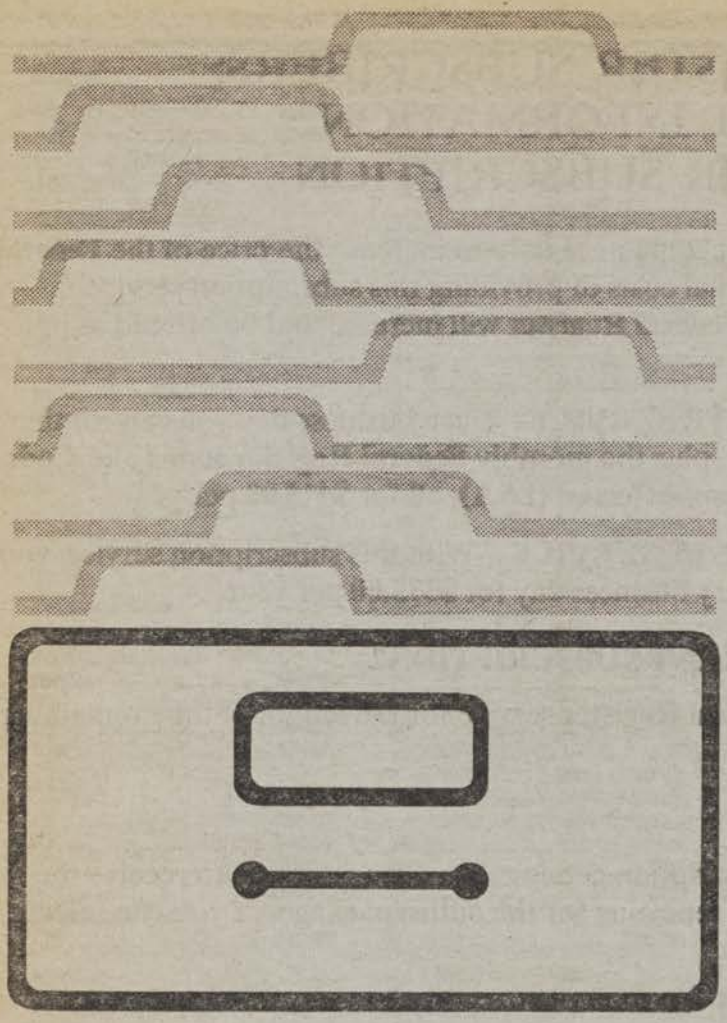

Guide to Record Retention Requirements

in the Code of Federal Regulations (CFR)

GUIDE: Revised January 1, 1992

SUPPLEMENT: Revised January 1, 1993

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The various abstracts in the GUIDE tell the user (1) what records must be kept, (2) who must keep them, and (3) how long they must be kept.

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