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

WHO: The Office of the Federal Register.

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

1. The regulatory process, with a focus on the Federal Register system and the public's role in the development of regulations.
2. The relationship between the Federal Register and Code of Federal Regulations.
3. The important elements of typical Federal Register documents.
4. An introduction to the finding aids of the FR/CFR system.

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

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When: September 15 at 9:30 a.m.
Where: Jimmy Carter Presidential Library, One Copenhill Avenue, Atlanta, GA
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WASHINGTON, DC

(two briefings)

When: September 17 at 9:00 am and 1:30 pm
Where: Office of the Federal Register, 7th Floor Conference Room, 800 North Capitol Street NW, Washington, DC (3 blocks north of Union Station Metro)
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Free **Electronic Bulletin Board** service for Public Law numbers, Federal Register finding aids, and a list of Clinton Administration officials is available on 202–275–1538 or 275–0920.

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

DEPARTMENT OF AGRICULTURE

Farmers Home Administration

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

Rural Development Administration

7 CFR Part 4284

RIN 0570–AAOO

Community Facility Loans and Grants

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

ACTION: Final rule.

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

EFFECTIVE DATE: August 11, 1993.

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

SUPPLEMENTARY INFORMATION:

Classification

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

Intergovernmental Review

The program is listed in the Catalog of Federal Domestic Assistance under number 10.770, Water and Waste Disposal Loans and Grants (Section 306C) and are subject to the provisions of Executive Order 12372 which requires intergovernmental consultation with State and local officials.

Environmental Impact Statement

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

Compliance With Executive Order 12778

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

Paperwork Reduction Act

The information collection requirements contained in 7 CFR part 4284, subpart E have been approved by the Office of Management and Budget (OMB) under the provisions of the Paperwork Reduction Act (44 U.S.C. 3507), and have been assigned OMB control number 0570–0001. The revised information collection contained in 7 CFR 1944–J will be submitted for approval to OMB. Please send written comments to the Office of Information and Regulatory Affairs, OMB, Attention: Desk Officer for USDA, Washington, DC 20503. Please send a copy of your comments to Jack Holston, Agency Clearance Officer, USDA–FmHA, Washington, DC 20250.

Cross References of Regulations

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

Background

Section 2327 of Public Law 101–624 authorized loans and grants to only communities whose residents face significant health risks because of no access to adequate affordable water supply systems or waste disposal facilities. The loans and grants provide financing of water and waste disposal projects in rural areas that primarily service residents of low income counties with a high unemployment rate. Water and/or waste disposal systems can obtain loans and grants to provide services to residents, including costs of connecting those residents to the system. The water and waste disposal systems can also obtain funds from RDA to make loans and grants available to individuals to pay the costs of improvements needed to facilitate the use of the system. Individuals can receive loans and/or grants to pay the cost of making improvements needed to use or connecting their residences to a community water and/or waste disposal system. The improvements or connection of individual residents will

facilitate the use of water supply and/or waste disposal systems. This action develops new regulations to implement the program authorized by Public Law 101–624 and set forth in section 306C of the Consolidated Farm and Rural Development Act (7 U.S.C. 1926c). Public Law 101–624 contains no geographic restrictions on the program, however, the "Agriculture, Rural Development, Food and Drug Administration, and Related Agencies Appropriations Act, 1993" authorizes $25,000,000 in grant funding for this program to benefit the colonias along the U.S./Mexico border.

Comments on the Interim Final Rule

RDA and FmHA published an interim final rule in the **Federal Register** on January 22, 1993, (58 FR 5564) and asked for written comments on or before March 23, 1993. Seven comments were received from the public review process. All comments were considered when preparing the final rule; however, all comments have not been addressed separately since many could be addressed collectively. Responses to comments received are grouped according to subject matter.

Applicant Eligibility

Three respondents stated that individual residents of colonias may not have to file a federal income tax form and other methods of income documentation should be included. The Agencies agree with this suggestion and amended the interim final rule to authorize other means of documenting income.

One respondent commented that the eligibility criteria in § 4284.412 should be strengthened. The commenter was of the opinion that criteria like significant, adequate, and affordable was too subjective. RDA did not adopt this suggestion. The eligibility criteria in § 4284.412 is the same as the criteria in Public Law 101–624 and the Agency has no authority to change it.

One respondent stated that in many of the south Texas colonias there could be a second dwelling unit located on a lot in which a relative of the land owner might reside. The respondent wanted to know if only the owner of the property could receive a grant or if both families could receive assistance. RDA's and FmHA's position on this issue is that if the second home is occupied by a relative and they can show this is their official residence and is separate and apart from the owners residence, both families can receive a grant. No change was made to the rule because we believe current definitions were broad enough to accommodate the situation.

Cooperative Agreement

One respondent stated that the term "cooperative agreement" used in part 4284, subpart E should be changed to avoid possible confusion with terms currently used in the area of Federal assistance. RDA agrees with this suggestion and had changed the term to "Memorandum of Agreement."

Prompt Reimbursement

Three respondents stated that prompt reimbursement to contractors should be the rule. RDA agrees with these comments; however, the one year disbursement in § 4284.441 is for grants made to individuals, not payments to contractors. This section only applies to a water and/or sewer system that has elected to participate in providing grants to individuals to assist them in connecting and using the system. The purpose of the one year disbursement requirement is to give a water and/or sewer system one year after the service is in place to get all the individual residents connected to and using the system. RDA will be monitoring the water and sewer systems disbursement of the grant funds to individuals to assure that they are being promptly disbursed. RDA will promptly advance grant funds to water and/or sewer systems as funds are needed to pay project costs. RDA did not adopt these suggestions.

Timelines

Three respondents stated that there were no timelines established for the amount of time RDA and FmHA has to process an application. RDA and FmHA did not adopt these suggestions. RDA processes application for grants to water and sewer systems in accordance with subpart A of part 1942 and FmHA processes individual grants in accordance with subpart J of part 1944. Both of these subparts contain timelines to assure prompt consideration and processing of all applications.

Delinquent on Federal Debt

One respondent stated that a better definition of "delinquent" was needed. RDA did not adopt this suggestion. This is a requirement of OMB Circular A–128 and RDA cannot change this requirement.

Earmarks

One respondent stated that language in the rule should specifically state that the fiscal year 1993 funds are intended for colonias on the U.S./Mexico border. RDA agrees and provided further explanation in the background section of the **Federal Register** document.

Definition of Rural Area

One respondent stated that cities and towns populations over 10,000 inhabitants should be eligible to receive a RDA grant to serve a colonia. RDA did not adopt this suggestion. All of RDA's programs are directed to improving the quality of life in rural America. In the implementation of this program, the Agency elected to restrict eligibility to rural communities that provide service to rural areas. This is consistent with the funding for this and other RDA water and waste disposal programs, which are restricted to unincorporated areas and any city or town with a population not in excess of 10,000 inhabitants.

Individual Applications

One respondent stated that it would be more cost effective to include individual hook-ups as a bid item in the construction of a water or sewer system rather than process individual applications. The rule allows individual hook-ups to be included as a separate bid item in the construction of a water or sewer system. Therefore, no change was made in the rule.

One respondent stated that the costs of removing or filling-in existing sewer systems or water wells should be allowed. RDA and FmHA agree with this suggestion and the rule has been revised to authorize these costs.

One respondent suggested that costs should be allowed for arriving at a cost estimate to pay charges or fees for connecting to a system. There would be no construction activity involved in paying charges or fees to connect to a water or sewer system. The charges or fees for connecting to a water and/or sewer system are established by the systems and all residential users would pay the same costs. However, for other activities that involve construction, the rule is broad enough to cover cost estimates and the development of construction specifications when needed. No change was made in the rule.

One respondent stated that clarification is needed relating to the word "construction". The word "construction" in the rule pertains to the addition of a bathroom if there is no space in the dwelling for the bathroom. The respondent also stated that the size to the bathroom be increased to 80 square feet. The rule authorizes a bathroom not to exceed 48 square feet which is large enough for a standard size bathroom. The Agency understands that there are some large families in the colonias, however, to provide assistance to the largest number of families,

reasonable limitations on size to the bathroom had to be made. No change was made in the rule.

List of Individual's Requesting Assistance

One respondent suggested that the application by water and/or sewer systems to provide individual grants only show the location address and estimated total costs rather than individual names and costs. The rule does not specify how the amount of funds needed by a system to implement its individual grant program will be determined. However, RDA needs the most accurate estimate of the costs associated with connecting individuals to the system before committing grant funds for this purpose. The need for these grant funds is expected to exceed the amount of funds available and the Agency does not wish to commit funds to a particular project in excess of the amount actually needed. No change was made in the rule.

List of Subjects

7 CFR Part 1901

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

7 CFR Part 1940

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

7 CFR Part 1944

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

7 CFR Part 1951

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

7 CFR Part 1956

Accounting, Loan programs—Agriculture, Rural areas.

7 CFR Part 2003

Organization and functions (government agencies).

7 CFR Part 4284

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

Therefore, chapters XVIII and XLII, title 7, Code of Federal Regulations are amended by adopting the interim final rule published on January 22, 1993 (58 FR 5564), as a final rule with amendments as follows:

PART 1944—HOUSING

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

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

Subpart J—Section 504 Rural Housing Loans and Grants

2. Exhibit D to subpart J is amended by adding paragraph III(f) and by revising paragraphs V(b) and VI(b) to read as follows:

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

* * * * *

III. * * *

(f) Pay reasonable costs for closing abandoned septic tanks and water wells when necessary to protect the health and safety of recipients of a grant in paragraph III(a) or III(b) of this exhibit and is required by local or State law.

* * * * *

V. * * *

(b) Have a total taxable income from all individuals residing in the household that is below the most recent poverty income guidelines established by the Department of Health and Human Services. The latest Federal income tax form should be used to verify the household income. However, if the residents of a household did not file a Federal income tax form, income will be verified by third party or self-certification.

* * * * *

VI. * * *

(b) The applicant must furnish a copy of the most recent tax returns for all individuals residing in the household. For individuals residing in the household that were not required to file a Federal income tax form, they must furnish income verification from a third party or a self-certification. The self-certification is only acceptable when the use of third party verification is not practical because of income sources.

PART 4284—GRANTS

3. The authority citation for part 4284 continues to read as follows:

Authority: 7 U.S.C. 1989; 16 U.S.C. 1005; 5 U.S.C. 301; 7 CFR 2.23; 7 CFR 2.70.

Subpart E—Section 306C WWD Loans and Grants

4. Section 4284.413 is amended by removing the words "and FmHA State and District office" in the first and second sentences of paragraph (b); by removing the words "and FmHA State and District office" in the introductory text of paragraph (d); and by removing in paragraph (d)(6) the words "and FmHA State and District office".

5. Section 4284.421 is amended by adding paragraph (b)(6) to read as follows:

§ 4284.421 Use of funds.

* * * * *

(b) * * *

(6) Pay reasonable costs for closing abandoned septic tanks and water wells when necessary to protect the health and safety of recipients of a grant in paragraphs (b)(1) or (b)(2) of this section and is required by local or State law.

6. Section 4284.441 is amended by revising the introductory text of paragraph (b) to read as follows:

§ 4284.441 Individual loans and grants.

* * * * *

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

§ 4284.443 [Amended]

* * * * *

7. Section 4284.443 is amended by revising the words "(all available in any RDA office and FmHA State and District office)" to read "(Exhibits B and C of this subpart are available in any RDA office)".

8. Exhibit A to subpart E is amended by revising the heading to read "Memorandum of Agreement Between _____ and the Rural Development Administration (RDA)"; by revising in the first sentence of the introductory text the word "Cooperative" to read "Memorandum of"; by revising paragraphs A. 3. and B. 2.; and by adding paragraph D. 5. to read as follows:

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

* * * * *

A. * * *

3. Have a total taxable household income of not more than 125 percent of

the most recent poverty income guidelines established by Department of Health and Human Services. The household income will be based on the latest Federal income tax form or signed statement that their income is below the level required to file a Federal income tax form from all individuals residing in the household; and

* * * * *

B. * * *

2. Have a total taxable household income that is below the most recent poverty income guidelines established by Department of Health and Human Services. The household income will be based on the latest Federal income tax form or signed statement that their income is below the level required to file a Federal income tax form from all individuals residing in the household; and

* * * * *

D. * * *

5. Pay reasonable costs for closing abandoned septic tanks and water wells when necessary to protect the health and safety of recipients of a grant in paragraphs D.1 or D.2 of this exhibit and is required by local or State law.

* * * * *

Dated: June 21, 1993.

Bob J. Nash,

Under Secretary for Small Community and Rural Development.

[FR Doc. 93–19195 Filed 8–10–93; 8:45 am]

BILLING CODE 3410–07–M

DEPARTMENT OF THE TREASURY

Office of the Comptroller of the Currency

12 CFR Part 34

FEDERAL RESERVE SYSTEM

12 CFR Part 225

FEDERAL DEPOSIT INSURANCE CORPORATION

12 CFR Part 323

DEPARTMENT OF THE TREASURY

Office of Thrift Supervision

12 CFR Part 564

NATIONAL CREDIT UNION ADMINISTRATION

12 CFR Part 722

Real Estate Appraisal Exceptions in Major Disaster Areas

AGENCIES: Office of the Comptroller of the Currency, Treasury; Board of Governors of the Federal Reserve System; Federal Deposit Insurance Corporation; Office of Thrift Supervision, Treasury; and National Credit Union Administration.

ACTION: Statement and order; temporary exceptions.

SUMMARY: Section 2 of the Depository Institutions Disaster Relief Act of 1992 (DIDRA) authorizes the Federal financial institutions regulatory agencies to make exceptions to statutory and regulatory requirements relating to appraisals for certain transactions. The exceptions are available for transactions that involve real property in major disaster areas when the exceptions would facilitate recovery from the disaster and would be consistent with safety and soundness. Expiration dates for certain transactions are set out in the **SUPPLEMENTARY INFORMATION** section.

DATES: This order is effective on August 11, 1993, and expires for specific areas on the dates indicated in the **SUPPLEMENTARY INFORMATION** section.

FOR FURTHER INFORMATION CONTACT:

Office of the Comptroller of the Currency (OCC)

Thomas E. Watson, National Bank Examiner, (202) 874–5350, or William C. Kerr, National Bank Examiner, (202) 874–5170, Office of the Chief National Bank Examiner; or Horace G. Sneed, Senior Attorney, (202) 874–4460, Bank Operations and Assets Division, 250 E Street, SW., Washington, DC 20219.

Board of Governors of the Federal Reserve System (Board)

Roger T. Cole, Deputy Associate Director, (202) 452–2618, Rhoger H. Pugh, Assistant Director (202) 728–5883, Stanley B. Rediger, Supervisory Financial Analyst, (202) 452–2629, Virginia M. Gibbs, Supervisory Financial Analyst, (202) 452–2521, Division of Banking Supervision and Regulation; or Christopher J. Bellini, Attorney, (202) 452–3269, Legal Division. For the hearing impaired only, contact Dorothea Thompson, Telecommunications Device for the Deaf (TDD), (202) 452–3544, Board of Governors of the Federal Reserve System, 20th and Constitution Avenue, NW., Washington, DC 20551.

Federal Deposit Insurance Corporation (FDIC)

Robert F. Miailovich, Associate Director, (202) 898–6918, James D. Leitner, Examination Specialist, (202) 898-6790, Division of Supervision; or Walter P. Doyle, Counsel, (202) 898–3682, Legal Division, 550 17th Street NW., Washington, DC 20429.

Office of Thrift Supervision (OTS)

Robert Fishman, Program Manager, Credit Risk, (202) 906–5672; Deirdre Kvartunas, Program Analyst, (202) 906–7933; Diana Garmus, Deputy Assistant Director, Corporate Activities, (202) 906–5683; Ellen J. Sazzman, Attorney, Regulations and Legislation Division, Chief Counsel's Office, (202) 907–7133; 1700 G Street, NW., Washington, DC 20552.

National Credit Union Administration (NCUA)

Michael J. McKenna, Office of General Counsel, (202) 682–9630, or Alonzo Swann, Office of Examination and Insurance, (202) 682–9640; 1776 G Street NW., Washington, DC 20456.

SUPPLEMENTARY INFORMATION:

Statement

Section 2 of DIDRA, 12 U.S.C. 3352, authorizes the agencies to make exceptions to statutory and regulatory appraisal requirements for transactions with respect to real property located in areas that the President has determined, pursuant to section 5170 of title 42, that a major disaster exists, provided that the exception would facilitate recovery from the major disaster and is consistent with safety and soundness.[1] Such exceptions

[1] The agencies must make the exception no later than 30 months after the date on which the

expire not later than three years after the date of the President's determination that a major disaster exists in the area.

During the summer of 1993, the President determined that major disasters existed in several Midwestern states because of the extensive flooding that had occurred and is continuing in those areas in April through July of 1993. The agencies believe that granting relief from the appraisal requirements for certain real estate transactions in all such areas affected by this summer's flooding is consistent with the provisions of the DIDRA.

The agencies have determined that the disruption of real estate markets in all such affected areas interferes with the ability of depository institutions to obtain appraisals that comply with statutory and regulatory requirements and, therefore, would impede institutions in making loans and engaging in other transactions that would aid in the reconstruction and rehabilitation of the affected areas. Accordingly, the agencies have determined that recovery from the major disasters would be facilitated by excepting transactions involving real estate located in those areas directly affected by this summer's flooding from the real estate appraisal requirements of title XI of the Financial Institutions Reform, Recovery, and Enforcement Act of 1989 (FIRREA) and regulations promulgated thereto. This has the effect of excluding transactions to which the exceptions apply from the definition of "federally related transactions."

The agencies have also determined safety and soundness would not be adversely affected by such exceptions so long as the depository institution's records relating to any such excepted transaction clearly indicate either that the property involved was directly affected by the major disaster or that the transaction would facilitate recovery from the disaster and there is a binding commitment to fund the transaction within three years after the date the major disaster was declared. In addition, the transaction must continue to be subject to review by management and by the agencies in the course of examination of the institution under normal supervisory standards relating to safety and soundness, though the transactions need not comply with the specific requirements of title XI of FIRREA and the agencies' appraisal regulations.

President determines that a major disaster exists in the area.

Expiration Dates

Any exceptions provided under the order shall expire not later than 3 years after the date on which the President determines, pursuant to section 401 of the Robert T. Stafford Disaster Relief and Emergency Assistance Act, 42 U.S.C. 5170, that a major disaster exists in the area. Accordingly, exceptions for the major disasters declared due to the flooding in Minnesota and Wisconsin counties expire on June 11, 1996 and July 2, 1996, respectively; in Missouri, Iowa, and Illinois counties on July 9, 1996; and in Nebraska and South Dakota counties on July 19, 1996. Exceptions for any other areas that have been declared major disasters by the President expire 3 years after the date of such declaration.

Order

In accordance with section 2 of DIDRA, relief is hereby granted from the provisions of title XI of FIRREA and the agencies' appraisal regulations for any real estate-related financial transaction that requires an appraiser under those provisions, provided that:

(1) The transaction involves real estate located in an area that the President has determined, pursuant to section 401 of the Robert T. Stafford Disaster Relief and Emergency Assistance Act, 42 U.S.C. 5170, is a major disaster area as a result of the extensive flooding in the Midwest and has been designated eligible for Federal assistance by the Federal Emergency Management Agency (FEMA);[2]

(2)(a) The real property involved was directly affected by the major disaster; or

(b) The real property involved was not directly affected by the major disaster but the institution's records explain how the transaction would facilitate recovery from the disaster;

(3) There is a binding commitment to fund a transaction that is made within three years after the date the major disaster was declared by the President; and

(4) The institution retains in its files, for examiner review, appropriate documentation supporting the property's valuation.

Appendix

Minnesota: Brown, Cottonwood, Lincoln, Lyon, Murray, Nobles, Pipestone, Redwood, Rock, Blue Earth, Nicollet, Renville, Sibley, Watonwan, Yellow Medicine, Carver, Chippewa, Faribault, Jackson, Le Sueur, Martin, McLeod, Scott, Goodhue, Washington, Dakota, Houston, Ramsey, Big Stone, Clay, Stevens, Swift, Traverse.

Wsiconsin: Calumet, Clark, Columbia, Dunn, Eau Claire, Fond du Lac, Green Lake, Jackson, Marquette, Outagamie, Portage, Saulk, Trempealeau, Waupaca, Waushara, Winnebago, Wood, Adams, Buffalo, Chippewa, Crawford, Dane, Green, Grant, Iowa, Juneau, LaCrosse, Lafayette, Lincoln, Marathon, Pepin, Pierce, Price, Rock, Rusk, St. Croix, Vernon.

Missouri: Lewis, Lincoln, Marion, Pike, St. Charles, Andrew, Atchison, Barry, Bates, Boone, Buchanan, Callaway, Camden, Carroll, Cape Girardeau, Chariton, Clark, Clay, Cole, Cooper, Daviess, Franklin, Gasconade, Gentry, Harrison, Holt, Howard, Jackson, Jefferson, Lafayette, McDonald, Miller, Moniteau, Montgomery, Newton, Nodaway, Osage, Perry, Platte, Pulaski, Ralls, Ray, Saline, Shelby, St. Louis, St. Louis City, St. Genevieve, Stone, Warren, Worth.

Iowa: Clayton, Clinton, Des Moines, Dickinson, Humboldt, Jackson, Louisa, Muscaine, Scott, Wapello, Polk, Lyon, Osceola, Emmet, Kossuth, Winnebago, Worth, Mitchell, Howard, Winneshiek, Allamakee, Fayette, Chickasaw, Floyd, Cerro Gordo, Hancock, Palo Alto, Clay, O'Brien, Sioux, Plymouth, Cherokee, Buena Vista, Pocahontas, Wright, Franklin, Butler, Bremer, Dubuque, Delaware, Buchanan, Black Hawk, Grundy, Hardin, Hamilton, Webster, Calhoun, Sac, Ida, Woodbury, Monora, Crawford, Carroll, Greene, Boone, Story, Marshall, Tama, Benton, Linn, Jones, Cedar, Iowa, Poweshiek, Jasper, Dallas, Guthrie, Audubon, Shelby, Harrison, Pottawattamie, Cass, Adair, Madison, Warren, Marion, Mahaska, Keokuk, Washington, Henry, Jefferson, Monroe, Lacas, Clarke, Union, Adams, Montgomery, Mills, Fremont, Page, Taylor, Ringgold, Decatur, Wayne, Appanoosa, Davis, Van Buren, Lee.

Illinois: Adams, Calhoun, Carroll, Hancock, Henderson, Henry, Jersey, Jo Daviess, Mercer, Pike, Rock Island, Whiteside, Madison, Monroe, St. Clair, Boone, Lake, McHenry, Stephenson, Winnebago, Alexander, Jackson, Randolph, Union.

Nebraska: Buffalo, Cass, Lancaster, Sarpy, Seward, Washington, Adams, Hall, Kearney, Phelps.

South Dakota: Bon Homme, Brookings, Clay, Davison, Hanson, Hutchinson, Kinsbury, Lake, Lincoln, McCook, Miner, Minnehaha, Moody, Sanborn, Turner, Union, Yankton.

Dated: July 27, 1993.

Office of the Comptroller of the Currency, Department of the Treasury.

Eugene A. Ludwig,

Comptroller of the Currency.

Dated: July 30, 1993.

[2] These areas include counties in Minnesota, Wisconsin, Missouri, Iowa, Illinois, Nebraska, and South Dakota which have been declared major disaster areas and are listed in the attached Appendix. The exception would also include any other such areas that the President declares are major disaster areas as a result of this summer's flooding in the Midwest.

Board of Governors of the Federal Reserve System.

William W. Wiles,

Secretary of the Board.

July 26, 1993.

Federal Deposit Insurance Corporation.

Robert E. Feldman,

Deputy Executive Secretary.

Dated: July 29, 1993.

Office of Thrift Supervision, Department of the Treasury.

Jonathan L. Fiechter,

Acting Director.

Dated: August 2, 1993.

National Credit Union Administration.

Becky Baker,

Secretary of the Board.

[FR Doc. 93-19227 Filed 8-10-93; 8:45 am]

BILLING CODE 6210-01-M

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. 93-NM-06-AD; Amdt. 39-8631; AD 93-14-07]

Airworthiness Directives; Aerospatiale Model ATR72-100 and -200 Series Airplanes

AGENCY: Federal Aviation Administration, DOT.

ACTION: Final rule.

SUMMARY: This amendment adopts a new airworthiness directive (AD), applicable to certain Aerospatiale Model ATR72-100 and -200 series airplanes, that requires an initial inspection of a floor beam and pressure plate to detect cracks, and repetitive inspections or modification or repair of the floor beam area, as necessary. This amendment also requires eventual repair or modification of the floor beam area; when accomplished, this repair or modification terminates the need for the repetitive inspections. This amendment is prompted by in-service and full-scale test reports of cracks in a floor beam and pressure plate. The actions specified by this AD are intended to prevent loss of structural strength of a floor beam and pressure plate, or loss of cabin pressurization.

DATES: Effective September 10, 1993.

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

ADDRESSES: The service information referenced in this AD may be obtained from Aerospatiale, 316 Route de Bayonne, 31060 Toulouse, Cedex 03, France. This information may be examined at the Federal Aviation Administration (FAA), Transport Airplane Directorate, Rules Docket, 1601 Lind Avenue SW., Renton, Washington; or at the Office of the Federal Register, 800 North Capitol Street NW., suite 700, Washington, DC.

FOR FURTHER INFORMATION CONTACT: Gary Lium, Aerospace Engineer, Standardization Branch, ANM-113, FAA, Transport Airplane Directorate, 1601 Lind Avenue SW., Renton, Washington 98055-4056; telephone (206) 227-1112; fax (206) 227-1320.

SUPPLEMENTARY INFORMATION: A proposal to amend part 39 of the Federal Aviation Regulations to include an airworthiness directive (AD) that is applicable to certain Aerospatiale Model ATR72-100 and -200 series airplanes was published in the **Federal Register** on March 23, 1993 (58 FR 15441). That action proposed to require an initial inspection of a floor beam and pressure plate to detect cracks, and repetitive inspections or modification or repair of the floor beam area, as necessary. That action also proposed to require eventual repair or modification of the floor beam area; when accomplished, this repair or modification terminates the need for the repetitive inspections.

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

The commenter supports the proposed rule.

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

The FAA estimates that 11 airplanes of U.S. registry will be affected by this AD, that it will take approximately 4 work hours per airplane to accomplish the required actions, and that the average labor rate is $55 per work hour. Based on these figures, the total cost impact of the AD on U.S. operators is estimated to be $2,420, or $220 per airplane.

The FAA has been advised that 9 U.S.-registered airplanes have been modified previously in accordance with the requirements of this AD. Therefore, the future economic cost impact of this rule on U.S. operators is now only $440.

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:

93-14-07 Aerospatiale: Amendment 39-8631. Docket 93-NM-06-AD.

Applicability: Model ATR72-100 and -200 series airplanes; on which either Modification 03616, as described in Aerospatiale Service Bulletin ATR72-53-1027, dated December 18, 1992, or Modification 03584 have not been accomplished; certificated in any category.

Compliance: Required as indicated, unless accomplished previously.

To prevent loss of structural strength of the floor beam and pressure plate, or loss of

cabin pressurization, accomplish the following:

(a) Prior to the accumulation of 1,000 total flight cycles, or within the next 30 days after the effective date of this AD, whichever occurs later, perform a detailed visual inspection to detect cracks of the floor beam at frame 26 of the fuselage in the buttock line 0 area, in accordance with Aerospatiale Service Bulletin ATR72–53–1026, Revision 1, dated January 22, 1993.

(1) If no crack is found, accomplish either paragraph (a)(1)(i) or (a)(1)(ii) of this AD:

(i) Thereafter, at intervals not to exceed 1,000 flight cycles, repeat the detailed visual inspection.

(ii) Within the next 1,000 flight cycles, install Modification 03616 in accordance with Aerospatiale Service Bulletin ATR72–53–1027, dated December 18, 1992. No further action is required by this AD.

(2) If a single crack is found that is less than 65 millimeters (mm) in length, accomplish either paragraph (a)(2)(i) or (a)(2)(ii) of this AD.

(i) Thereafter, at intervals not to exceed 750 flight cycles, repeat the detailed visual inspection.

(ii) Within the next 750 flight cycles after crack discovery, repair the crack in accordance with Aerospatiale Service Bulletin ATR72–53–1028, dated January 18, 1993. No further action is required by this AD.

(3) If a single crack is found that is equal to or greater than 65 mm but less than 80 mm in length: Within the next 250 flight cycles after crack discovery, repair the crack in accordance with Aerospatiale Service Bulletin ATR72–53–1028, dated January 18, 1993. No further action is required by this AD.

(4) If a single crack is found that is equal to or greater than 80 mm in length: Prior to further flight, repair the crack in accordance with Aerospatiale Service Bulletin ATR72–53–1028, dated January 18, 1993. No further action is required by this AD.

(5) If two or more cracks are found: Prior to further flight, repair the cracks in accordance with Aerospatiale Service Bulletin ATR72–53–1028, dated January 18, 1993. No further action is required by this AD.

(b) Prior to the accumulation of 1,000 total flight cycles, or within the next 30 days after the effective date of this AD, whichever occurs later, perform a high frequency eddy current (HFEC) inspection of the pressure plate forward and aft of the floor beam at frame 26 of the fuselage at buttock line 0, in accordance with Aerospatiale Service Bulletin ATR72–53–1026, Revision 1, dated January 22, 1993.

(1) If no crack is found, accomplish either paragraph (b)(1)(i) or (b)(1)(ii) of this AD:

(i) Thereafter, at intervals not to exceed 1,000 flight cycles, repeat the HFEC inspection.

(ii) Within the next 1,000 flight cycles, install Modification 03616 in accordance with Aerospatiale Service Bulletin ATR72–53–1027, dated December 18, 1992. No further action is required by this AD.

(2) If a single crack is found that is less than 65 millimeters (mm) in length, accomplish either paragraph (b)(2)(i) or (b)(2)(ii) of this AD:

(i) Thereafter, at intervals not to exceed 500 flight cycles, repeat the HFEC inspection.

(ii) Within the next 500 flight cycles after crack discovery, repair the crack in accordance with Aerospatiale Service Bulletin ATR72–53–1028, dated January 18, 1993. No further action is required by this AD.

(3) If a single crack is found that is equal to or greater than 65 mm but less than 80 mm in length: Within the next 250 flight cycles after crack discovery, repair the crack in accordance with Aerospatiale Service Bulletin ATR72–53–1028, dated January 18, 1993. No further action is required by this AD.

(4) If a single crack is found that is equal to or greater than 80 mm in length: Prior to further flight, repair the crack in accordance with Aerospatiale Service Bulletin ATR72–53–1028, dated January 18, 1993. No further action is required by this AD.

(5) If two or more cracks are found: Prior to further flight, repair the cracks in accordance with Aerospatiale Service Bulletin ATR72–53–1028, dated January 18, 1993. No further action is required by this AD.

(c) Within 6 months after the effective date of this AD, if no crack is present, install Modification 03616 in accordance with Aerospatiale Service Bulletin ATR72–53–1027, dated December 18, 1992; or, if any crack is present, repair in accordance with Aerospatiale Service Bulletin ATR72–53–1028, dated January 18, 1993.

(d) Installation of Modification 03616 in accordance with Aerospatiale Service Bulletin ATR72–53–1027, dated December 18, 1992, or repair in accordance with Aerospatiale Service Bulletin ATR72–53–1028, dated January 18, 1993, constitutes terminating action for the repetitive detailed visual inspections of the floor beam and repetitive HFEC inspections of the pressure plate required by this AD.

(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, Standardization Branch, ANM–113, FAA, Transport Airplane Directorate. Operators shall submit their requests through an appropriate FAA Principal Maintenance Inspector, who may add comments and then send it to the Manager, Standardization Branch, ANM–113.

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

(f) 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.

(g) The inspection shall be done in accordance with Aerospatiale Service Bulletin ATR72–53–1026, Revision 1, dated January 22, 1993. The installation shall be done in accordance with Aerospatiale Service Bulletin ATR72–53–1027, dated December 18, 1992. The repair shall be done in accordance with Aerospatiale Service Bulletin ATR72–53–1028, dated January 18, 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 Aerospatiale, 316 Route de Bayonne, 31060 Toulouse, Cedex 03, France. Copies may be inspected at the FAA, Transport Airplane Directorate, 1601 Lind Avenue, SW., Renton, Washington; or at the Office of the Federal Register, 800 North Capitol Street NW., suite 700, Washington, DC.

(h) This amendment becomes effective on September 10, 1993.

Issued in Renton, Washington, on July 14, 1993.

Gary L. Killion,

Acting Manager, Transport Airplane Directorate, Aircraft Certification Service.

[FR Doc. 93–19205 Filed 8–10–93; 8:45 am]

BILLING CODE 4910–13–P

14 CFR Part 91

[Docket No. 24456; Amendment No. 91–233]

Airpace Reclassification; Correction

AGENCY: Federal Aviation Administrative (FAA), DOT.

ACTION: Final rule; correction.

SUMMARY: This document corrects an error to the Final Rule, on "Airspace Reclassification", which was published on Friday, July 30, 1993 (58 FR 40736).

FOR FURTHER INFORMATION CONTACT: Mr. Aaron I Boxer, Air Traffic Rules Branch (ATP–239), Airspace-Rules and Aeronautical Information Division, 800 Independence Avenue SW., Washington, DC 20591, telephone (202) 267–8783.

SUPPLEMENTARY INFORMATION: FR Doc. 93–18207, which was published on July 30, 1993, (58 FR 40736), in the Heading, Amendment 91–233, should read Amendment 91–232.

Debbie Swank,

Program Management Staff, Office of Chief Counsel.

[FR Doc. 93–19245 Filed 8–10–93; 8:45 am]

BILLING CODE 4910–13–M

COMMODITY FUTURES TRADING COMMISSION

17 CFR Part 1

Fees for Registered Futures Association and Exchange Rule Enforcement and Financial Reviews

AGENCY: Commodity Futures Trading Commission.

ACTION: Final rule and final schedule of fees.

SUMMARY: The Commission is adopting a revision to its method of calculating annual fees for rule enforcement, sales practice and financial reviews of exchanges and registered futures association. After reviewing requests by some of the smaller commodity exchanges the Commission's formula for determining fees charged to exchanges has been changed from one based only on actual costs to one based on actual costs which also considers trading volume.

EFFECTIVE DATE: September 10, 1993. Fees are due to be received November 9, 1993.

FOR FURTHER INFORMATION CONTACT: Gerry Smith, Special Assistant to the Executive Director, Office of the Executive Director, Commodity Futures Trading Commission, 2033 K Street NW., Washington, DC 20581, telephone number 202–254–6090.

SUPPLEMENTARY INFORMATION: The Commission recently proposed a revision to its method of calculating annual fees for rule enforcement, sales practice and financial reviews of exchanges and registered futures association. (58 FR 28365, May 13, 1993.) The Futures Trading Act of 1982, (Pub. L. 97–444, 96 Stat. 2294, 2326, January 11, 1983) amended section 26 of the Futures Trading Act of 1978 (7 U.S.C. 16a) to add specific authority for the Commission.

* * * [t]o promulgate, after notice and opportunity for hearing, a schedule of appropriate fees to be charged for services rendered and activities and functions performed by the Commission in conjunction with its administration and enforcement of the Commodity Exchange Act: *Provided,* That the fees for any specific service or activity or function shall not exceed the actual cost thereof to the Commission.

The Conference Report accompanying the legislation (H.R. Rep. No. 964, 97th Cong. 2nd Sess. 57 (1982)) states that "the conferees intend that the fee schedule addressed by the Conference substitute be strictly limited to Commission activities directly related to "eight enumerated Commission functions including registered futures association and contract market rule enforcement reviews and financial reviews".

The formula for determining these fees was last amended on May 11, 1990 (55 FR 19725) when the formula changed from 65% to 100% of actual average three-year costs.

Under the new fee formula being adopted herein, the total amount collected by the Commission will continue be based upon the average costs incurred by the Commission in conducting rule enforcement and financial reviews during the previous three fiscal years. However, the fee will provide relief for low-volume exchanges as explained below. Under this revised formula, the Commission will continue to calculate actual costs and determine exchange volume as a percent of total volume across all exchanges each year. The Commission will continue to publish a list of the annual fees for each exchange. The computation of FY 1993 fees under this revised formula appears below.

In response to its May 13, 1993 proposed revisions, the Commission has received three comment letters from commodity exchanges on these proposed changes. All of the commenters supported the proposed revisions. The Commission has now determined to adopt the revisions as proposed.

Background Information

I. Computation of Fees

In accordance with the Futures Trading Act of 1982 (7 U.S.C. 16a) the Commission has established fees for certain activities and functions performed by the Commission.[1] In calculating the actual cost of performing registered futures association and exchange rule enforcement and financial reviews the Commission takes into account personnel costs, benefits and administrative costs.

The Commission first determines personnel costs by extracting data from the agency's Management Accounting Structured Code (MASC) system. Employees of the Commission record the time spent on each project under the MASC system. The Commission then adds an overhead factor for benefits, including retirement, insurance and leave, based on a government-wide standard established by the Office of Management and Budget in Circular A–76. An overhead factor is also added for general and administrative costs, such as space, equipment and utilities. These general and administrative costs are derived by computing the percentage of Commission appropriations spent on these non-personnel items. The overhead calculations fluctuate slightly due to changes in government-wide benefits and the percentage of Commission appropriations applied to non-personnel costs from year to year. The actual overhead factor for the preceding fiscal years is as follows: FY 1990—98%; FY 1991—94%; FY 1992—99%.

[1] For a broader discussion of the history of Commission fees, see 52 FR 46070 (Dec. 4, 1987).

Once the total personnel costs and overhead for each project have been determined, the costs for FY 1990, FY 1991 and FY 1992 are averaged. This results in a calculation of the average annual cost for each project over the three-year period. The average annual costs for rule enforcement reviews and financial reviews for each exchange are as follows:

Exchange	FY1990–1992 average annual costs for review services
Chicago Board of Trade	$212,959.11
Chicago Mercantile Exchange	216,088.48
Commodity Exchange, Inc.	106,396.81
Coffee, Sugar and Cocoa Exchange	78,137.34
New York Mercantile Exchange	94,035.16
New York Cotton Exchange	129,969.30
Kansas City Board of Trade	52,919.18
New York Futures Exchange	149,498.63
Minneapolis Grain Exchange	69,220.55
Philadelphia Board of Trade	4,056.41
Amex Commodity Corporation	1,507.53
Total	1,114,788.51

The average annual cost for the national Futures Association is $319,438.13.

Under this formula, the Commission looks at volume for the three fiscal years to determine the actual volume for each exchange and its percentage of total trading volume across all exchanges during that same period.

Exchange	Three years average volume	Percentage of total volume across exchanges
Chicago Board of Trade	450,833,151	44.2899
Chicago Mercantile Exchange	334,384,010	32.8499
Commodity Exchange, Inc.	50,604,292	4.9714
Coffee, Sugar and Cocoa Exchange	31,198,484	3.0649
New York Mercantile Exchange	127,408,895	12.5167
New York Cotton Exchange	12,545,785	1.2325
Kansas City Board of Trade	4,316,023	.4240
New York Futures Exchange	4,788,844	.4705

Exchange	Three years average volume	Percentage of total volume across exchanges
Minneapolis Grain Exchange	1,766,214	.1735
Philadelphia Board of Trade	68,990	.0068
Amex Commodity Corporation	0	.0
Total	1,017,914,688	100.0000

The formula for calculating the fee is as follows:

0.5a+0.5vt
where:
a = actual cost
v = % of total volume
= total cost for all exchanges

If the calculated fee using this formula is higher than actual costs the exchange would pay only actual costs. If the calculated fee using the formula is less than actual costs then the exchange would pay the calculated fee. No exchange would pay more than actual costs. Also, if an exchange has no volume over the three year period they pay a flat 50% of actual costs. The National Futures Association will continue to be charged 100% of its actual costs.

For example:

The Minneapolis Grain Exchange had an actual cost of $69,220.55 (a), and its three-year volume was 0.1735% of the total three year volume. As a result, the exchange's fee for FY 1993 would be;

(.5) ($69,220.55)+(.5) (.001735) ($1,114,788.51)=or
34,610.27+967.09=35,577.36

Based upon this formula the fees for all of the exchanges and the NFA for FY 1993 are as follows:

Exchange/NFA	Fee
Chicago Board of Trade	$212,959
Chicago Mercantile Exchange ...	216,088
Commodity Exchange, Inc	80,909
Coffee, Sugar and Cocoa Exchange	56,152
New York Mercantile Exchange .	94,035
New York Cotton Exchange	71,855
Kansas City Board of Trade	28,823
New York Futures Exchange	77,372
Minneapolis Grain Exchange	35,577
Philadelphia Board of Trade	2,066
Amex Commodity Corporation ...	754
National Futures Association	319,438
Total	1,196,028

As in the calculation of fees in previous years, the FY 1993 fee for the Chicago Board of Trade includes the MidAmerica Commodity Exchange and the Chicago Rice and Cotton Exchange.

II. Regulatory Flexibility Act

The Regulatory Flexibility Act ("RFA"), 5 U.S.C. 601 *et seq.*, requires agencies to consider the impact of rules on small businesses. The fees implemented in this release affect contract markets (also referred to as "exchanges") and registered futures associations. The Commission has previously determined that contract markets are not "small entities" for purposes of the Regulatory Flexibility Act, 5 U.S.C. 601 *et seq.* 47 FR 18618 (April 30, 1982). Registered futures associations also are not considered "small entities" by the Commission. Therefore, the requirements of the Regulatory Flexibility Act do not apply to contract markets or registered futures associations. Accordingly, the Chairman, on behalf of the Commission, certifies that the fees implemented herein do not have a significant economic impact on a substantial number of small entities.

List of Subjects in 17 CFR Part 1

Brokers, Commodity futures, Consumer protection, Contract markets, Reporting and recordkeeping requirements.

For the reasons set out in the preamble and pursuant to the authority contained in the Commodity Exchange Act, the Commission amends part 1 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, 6n, 6o, 7, 7a, 7b, 8, 12, 12a, 12c, 13a, 13a–1, 16, 16a, 19, 21, 23, and 24, unless otherwise noted.

2. In appendix B, paragraph (b) is revised to read as follows:

Appendix B [Amended]

* * * * *

(b) The Commission determines fees changed fees charged to exchanges based upon a formula which considers both actual costs and trading volume.

* * * * *

Issued in Washington, DC on August 2, 1993, by the Commission.

Jean A. Webb,

Secretary of the Commission.

[FR Doc. 93–19232 Filed 8–10–93; 8:45 am]

BILLING CODE 6351–01–M

DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT

Office of the Assistant Secretary for Housing—Federal Housing Commissioner

24 CFR Parts 203, 213, and 234

[Docket No. R–93–1557; FR–2867–F–02]

RIN 2502–AF07

Single Family Mortgage Insurance Program Mortgage Assumability and Release Requirements

AGENCY: Office of the Assistant Secretary for Housing—Federal Housing Commissioner, HUD.

ACTION: Final rule.

SUMMARY: Section 203(r) of the National Housing Act (the Act) requires HUD to take certain actions under the single family mortgage insurance programs, including a requirement that only creditworthy persons may acquire ownership of property encumbered by FHA-insured mortgages, and a requirement for HUD advice to the original mortgagor about procedures for release from personal liability on a mortgage that is assumed. Section 203(g) of the Act generally restricts ownership of property encumbered by FHA-insured mortgages to a person occupying the property as his or her principal residence. This rule implements these provisions of sections 203 (g) and (r) of the National Act, and other related HUD policies currently stated in administrative issuances other than regulations on the subjects of restrictions on sale or transfer of mortgage property, assumability of insured single family mortgages and release of personal liability of selling mortgagors.

EFFECTIVE DATE: September 10, 1993.

FOR FURTHER INFORMATION CONTACT: John J. Coonts, Director, Office of Insured Single Family Housing, room 9266, Department of Housing and Urban Development, 451 Seventh Street SW., Washington, DC 20410. Telephone (202) 708–3046; TDD (202) 708–4594. (These are not toll-free numbers.)

SUPPLEMENTARY INFORMATION: On November 21, 1991, the Department published a proposed rule (56 FR 8762) to amend 24 CFR parts 203, 213 and 234 to set forth a number of related requirements, based on existing policy, relating to two main subjects: (1) The policy permitting free assumability of insured mortgages under the single family mortgage insurance programs, and exceptions to this policy, and (2) release of a mortgagor's personal

liability on such a mortgage upon transfer of the property by the mortgagor. Most of the requirements were derived from sections 203(g) or 203(r) of the National Housing Act, or mortgagee letters, HUD handbooks, and various internal HUD memoranda implementing these sections or otherwise setting forth and describing current policy.

One action HUD must take under section 203(r) is to require that only creditworthy persons shall acquire ownership of property encumbered by an FHA-insured mortgage. The proposed rule contained a new § 203.512 to implement this requirement. That section would also have restricted acquisition of property so encumbered as a secondary residence or by an investor, pursuant to section 203(g).

The proposed new requirement represented an exception to HUD's traditional policy against restraints on alienability of mortgaged property which restrict the assumability of insured mortgages. The proposed rule would have placed that traditional policy in regulations for the first time in proposed new §§ 203.41 and 234.66. Other policy exceptions, notably regarding the permitted use of restrictions for affordable housing programs, would be addressed in detail in those sections.

Another action required under section 203(r) is HUD advice to the original mortgagor about procedures for release from personal liability on a mortgage which is assumed. The proposed rule contained a new § 203.510 to implement this requirement. Section 203(r) also provides for release of a selling mortgagor in certain circumstances when five years have elapsed from the date a purchaser assumed the mortgage. This provision would also have been implemented in the proposed new § 203.510.

The Department received five comments in response to the proposed rule. Four of the commenters were from Hawaii. The public comments are summarized by issue, with HUD's response following.

Comment: Assumptions should involve a more limited credit review than for mortgage originations. This is not required by § 203.512(b).

HUD Response: The Department previously considered this issue when it issued Mortgagee Letter 89–31. The policy which was adopted at that time applied the same credit review for assumptions as for originations, except that a few steps could be omitted if the loan-to-value ratio at the time of assumption was 75% or less. The Department considers the credit review requirement for assumptions to be an important reform and necessary to protect the insurance funds. The reform would be weakened by giving special treatment for assumptions beyond the provisions of Mortgagee Letter 89–31. However, HUD has recently provided more flexibility to mortgagees that are conducting creditworthiness reviews, both for originations and assumptions, through Mortgagee Letter 91–51, which authorizes alternatives to the traditional verification of employment (VOE) and verification of deposit (VOD) forms and procedures. That change is partially responsive to the commenter's concern over burdensome credit reviews. No change has been made in the final rule text of this point.

Comment: Sections 203.41(a)(1) and 234.66(d)(1) define low- or moderate-income housing in terms of affordability to households with incomes up to 115 percent of the median area income. For Hawaii, the limit should be 140 percent of the median area income.

HUD Response: The Department recognizes that Hawaii and a few other areas have such high housing costs that affordable housing programs need to be available to households with incomes higher than 115 percent of the median area income. The final rule permits the Department to approve higher limits, up to 140 percent, upon request. The Department will approve a 140 percent limit for Hawaii.

Comment: Sections 203.41(d)(1) and 234.66(d)(1) require that an affordable housing program permitted by the rule must enable the seller mortgagor to receive a reasonable share of any appreciation in home value. The rule preamble indicated that HUD intended to establish 50 percent as a minimum reasonable share. Two commenters argued against any requirement for sellers to share in appreciation and one commenter suggested a minimum seller share equal to 1 percent of the original sales price and cost of improvements.

HUD Response: The Department continues to believe that homeowners need to be able to receive some of the benefit of appreciation in the value of their homes. This is one of the basic differences between homeownership and renting. The Department understands that many affordable housing programs rely on sharing in appreciation as a means of continued funding. Thus, up to half of the appreciation can be available for reuse by the affordable housing program without HUD objection. However, at least half of the appreciation should normally be available to the selling mortgagor. The Department notes that there are special cases, such as the HOPE and HOME programs and a State program noted by the commenters, which operate under legal requirements which allow some smaller minimum appreciation for the selling mortgagor than the share appreciation requirement under this section.

Comment: Sections 203.41(d)(4) and 234.66(d)(4) also require a 50 percent share of appreciation for the selling mortgagor, but in the context of an option price to be paid by a party purchasing through exercise of an option. A commenter objected to this provision and suggested that the option price should only need to provide for the selling mortgagor to receive appreciation up to 1 percent of the original selling price plus the cost of improvements.

HUD Response: The policy with respect to sales through options must match the policy for other sales. Otherwise, parties permitted to retain options under the rule could circumvent the Department's policy and claim all or most of the appreciation by exercising the option whenever the mortgagor was ready to sell the home. As stated previously, the Department will consider special cases if the facts justify a smaller share of appreciation for the selling mortgagor.

Comment: The right to hold rights of first refusal or options triggered by a home sale should not be limited to governments or nonprofit organizations as under §§ 203.41(d)(3) and 234.66(d)(3) of the proposed rule, but should be available to others such as individuals or corporations. Any concern with windfall profits should be addressed by restricting the price at which the home could later be resold.

HUD Response: HUD generally does not want to grant mortgage insurance for a home that cannot be freely transferred by the mortgagor at its current market value. The proposed rule would have permitted governments and nonprofit organizations involved with affordable housing programs to hold options or first refusal rights but this was intended only as a small exception to permit the programs to keep homes affordable to low- and moderate-income people, since such programs are committed to reselling with this objective. An exception was also made for the HOME and HOPE programs. Other corporations and individuals would not ordinarily be purchasing homes with the specific objective of preserving the affordable nature of the homes. Even if the Department limited the resale price, that limitation would be difficult to police outside the context of established programs. Nevertheless, there may be

unusual situations in which others would be committed to maintaining the affordability of particular homes. For example, certain employers in areas with little or no affordable housing might assist employees with housing costs as long as the employer could control subsequent disposition of the home to ensure continued occupancy by another employee. Thus, the final rule permits rights of first refusal to be held by others in addition to governments and nonprofit organizations, but only with specific HUD approval. This provision is not intended to permit condominium associations to have rights of first refusal, and HUD approval should not be requested for rights held by a condominium association, or rights held by others if a condominium unit is not involved in an affordable housing program.

Comment: A commenter asked whether the holder of an option or right of first refusal on a home as permitted by the proposed rule could require the holder's approval for any encumbrances on the home.

HUD Response: The final rule will not prevent this arrangement. Otherwise, the value of the option or first refusal might be diminished.

HUD has also revised § 203.512(b) slightly to reflect recent developments. Language has been added in the final rule to specifically restrict the sale or transfer of beneficial interests in trust owning mortgage property so that the new beneficiary must be creditworthy. This reflects the current mortgage language that HUD announced in Mortgagee Letter 91–8 pursuant to the regulatory authority in § 203.17(a). Sections 203.512(b)(4) and (5) in the proposed rule have been deleted because they merely addressed past situations: By acknowledging that assumptions were not restricted for loans with applications before December 1, 1986, and that assumption restrictions did not exceed 24 months for any mortgages approved before December 15, 1989. Because the 24-month period for restricted assumability has now expired for these older mortgages, HUD is simplifying the rule language. In lieu of listing the specific assumption policies for older mortgages, the final rule simply notes that the credit review requirements in the rule apply to a sale or transfer if mortgage approval of the sale or transfer is required by the mortgage. Each insured mortgage should state the specific assumption restrictions applicable to that mortgage.

HUD has also added §§ 203.41(d)(8) and 234.66(d)(7) to clarify that the rule will not rescind HUD written approval of restrictions prior to the effective date of the rule as long as the restrictions are terminable as required by §§ 203.41(c)(2) and 234.66(c)(2). Section 234.66(a)(3)(ii) similarly recognizes that HUD has previously approved some existing condominiums for insurance although the condominium association held rights of first refusal; the rule does not rescind the approvals.

Other Matters

A Finding of No Significant Impact with respect to the environment has been made in accordance with HUD regulations at 24 CFR part 50 that implement section 102(2)(C) of the National Environmental Policy Act of 1969, 42 U.S.C. 4332. The Finding is available for public inspection and copying between 7:30 a.m. and 5:30 p.m. each weekday in the Office of the Rules Docket Clerk, room 10276, 451 Seventh Street SW., Washington, DC 20410.

This rule does not constitute a "major rule" as that term is defined in section (b) of Executive Order 12291 on Federal Regulation issued by the President on February 17, 1981. Analysis of the proposed rule indicates that it will not (1) have an annual effect on the economy of $100 million or more; (2) cause a major increase in costs or prices for consumers, individual industries, Federal, State or local government agencies, or geographic regions; or (3) have a significant adverse effect on competition, employment, investment, productivity, innovation, or the ability of United States-based enterprises to compete with foreign based enterprises in domestic or export markets.

This rule was listed as item number 1451 in the Department's Semiannual Agenda of Regulations published on April 26, 1993 (58 FR 24382, 24411) under Executive Order 12291 and the Regulatory Flexibility Act.

The Catalog of Federal Domestic Assistance program numbers are 14.117, 14.132 and 14.133.

The Secretary, in accordance with the Regulatory Flexibility Act (5 U.S.C. 605(b)), has reviewed this rule before publication and by approving it certifies that it will not have a significant economic impact on a substantial number of small entities. The rule puts in regulatory form existing statutory and administrative policies. Moreover, the economic impact of this rule will be minimal and will affect small and large entities equally.

The General Counsel, as the Designated Official under section 6(a) of Executive Order 12612, Federalism, has determined that the policies contained in this rule do not have Federalism implications and, thus, are not subject to review under the Order. The rule continues existing practice regarding mortgage insurance for homes under State or local government affordable housing programs, and otherwise is limited in effect to private lenders and homeowners. No programmatic or policy changes result from its promulgation which would affect existing relationships between the Federal Government and State and local governments.

The General Counsel, as Designated Official under Executive Order 12606, The Family, has determined that this rule does not have a potential significant impact on family formation, maintenance, and general well being, and, thus, is not subject to review under the Order. No significant change in existing HUD policies or programs will result from promulgation of this rule.

There are no information collection requirements contained in this rule.

Lists of Subjects

24 CFR Part 203

Hawaiian Natives, Home improvement, Indians-lands, Loan programs-housing and community development, Mortgage insurance, Reporting and recordkeeping requirements, Solar energy.

24 CFR Part 213

Cooperatives, Mortgage insurance, Reporting and recordkeeping requirements.

24 CFR Part 234

Condominiums, Mortgage insurance, Reporting and recordkeeping requirements.

Accordingly, 24 CFR part 203, 213 and 234 are amended as follows:

PART 203—SINGLE FAMILY MORTGAGE INSURANCE

1. The authority citation for part 203 continues to read as follows:

Authority: 12 U.S.C. 1709, 1710, and 1715b; 42 U.S.C. 3535(d). In addition, subpart C is also issued under 12 U.S.C. 1715u.

2. Paragraph (b) and the introductory language of paragraph (c) of § 203.32 are revised to read as follows:

§ 203.32 Mortgage lien.

* * * * *

(b) With prior approval of the Secretary, the mortgaged property may be subject to a secondary mortgage or loan made or insured, or other secondary lien held, by a Federal, State, or local government agency or instrumentality, or an entity designated

in the homeownership plan submitted by an applicant for an implementation grant under the Homeownership and Opportunity for People Everywhere (HOPE) program, or an eligible nonprofit organization as defined in § 203.41(a)(5) of this part, provided that the required monthly payments under the insured mortgage and the secondary mortgage or lien shall not exceed the mortgagor's reasonable ability to pay as determined by the Secretary.

(c) With the prior approval of the Secretary, the mortgaged property may be subject to a second mortgage held by a mortgagee not described in paragraph (b) of this section. Unless the mortgage is for the purpose described in paragraph (d) of this section, it shall meet the following requirements:

* * * * *

3. Part 203, subpart A, is amended by adding a new § 203.41 to read as follows:

§ 203.41 Free assumability; exceptions.

(a) *Definitions.* As used in this section:

(1) *Low- or moderate-income housing* means housing which is designed to be affordable, taking into account available financing, to individuals or families whose household income does not exceed 115 percent of the median income for the area, as determined by the Secretary with adjustments for smaller and larger families. The Secretary may approve a higher percentage up to 140 percent.

(2) *Eligible governmental or nonprofit program* means a program operated pursuant to a program established by Federal law, operated by a State or local government, or operated by an eligible nonprofit organization, if the program is designed to assist the purchase of low- or moderate-income housing including rental housing.

(3) *Legal restrictions on conveyance* means any provision in any legal instrument, law or regulation applicable to the mortgagor or the mortgaged property, including but not limited to a lease, deed, sales contract, declaration of covenants, declaration of condominium, option, right of first refusal, will, or trust agreement, that attempts to cause a conveyance (including a lease) made by the mortgagor to:

(i) Be void or voidable by a third party;

(ii) Be the basis of contractual liability of the mortgagor for breach of an agreement not to convey, including rights of first refusal, pre-emptive rights or options related to mortgagor efforts to convey;

(iii) Terminate or subject to termination all or a part of the interest held by the mortgagor in the mortgaged property if a conveyance is attempted;

(iv) Be subject to the consent of a third party;

(v) Be subject to limits on the amount of sales proceeds retainable by the seller; or

(vi) Be grounds for acceleration of the insured mortgage or increase in the interest rate.

(4) *Tax-exempt bond financing* means financing which is funded in whole or in part by the proceeds of qualified mortgage bonds described in section 143 of the Internal Revenue code of 1986, or any successor section, on which the interest is exempt from Federal income tax. The term does not include financing by qualified veteran's mortgage bonds as defined in section 143(b) of the Code.

(5) *Eligible nonprofit organization* means an organization of the type described in section 501(c)(3) of the Internal Revenue Code of 1986 as an organization exempt under section 501(a) of the Code, which has:

(i) Two years experience as a provider of low- or moderate-income housing;

(ii) A voluntary board; and

(iii) No part of its net earnings inuring to the benefit of any member, founder, contributor or individual.

(b) *Policy of free assumability with no restrictions.* A mortgage shall not be eligible for insurance if the mortgaged property is subject to legal restrictions on conveyance, except as permitted by this part.

(c) *Exception for eligible governmental or nonprofit programs.* Legal restrictions on conveyance are acceptable if:

(1) The restrictions are part of an eligible governmental or nonprofit program and are permitted by paragraph (d) of this section; and

(2) The restrictions will automatically terminate if title to the mortgaged property is transferred by foreclosure or deed-in-lieu of foreclosure, or if the mortgage is assigned to the Secretary.

(d) *Exception for eligible governmental or nonprofit programs—specific policies.* For purposes of paragraph (c) of this section, restrictions of the following types are permitted for eligible governmental or nonprofit programs, provided that a violation of legal restrictions on conveyance may not be grounds for acceleration of the insured mortgaged or for an increase in the interest rate, or for voiding a conveyance of the mortgagor's interest in the property, terminating the mortgagor's interest in the property, or subjecting the mortgagor to contractual liability other than requiring repayment (at a reasonable rate of interest) of assistance provided to make the property affordable as low- or moderate-income housing:

(1) Except as otherwise provided in the HOME Investment Partnerships (HOME) and the Homeownership and Opportunity for People Everywhere (HOPE) programs, the mortgagor may be prohibited from selling the property at a price greater than the price permitted under the program, or the mortgagor may be required to pay a portion of the sales proceeds to a governmental body or an eligible nonprofit organization, as long as the mortgagor is not prohibited from recovering:

(i) The sum of the mortgagor's original purchase price, the mortgagor's reasonable costs of sale, the reasonable costs of improvements made by the mortgagor, and any negative amortization on a graduated payment mortgage insured under § 203.45 of this part; and

(ii) A reasonable share, as determined by the Secretary, of the appreciation in value which shall be the sales price reduced by the sum determined under paragraph (d)(1)(i) of this section.

(2) Legal restrictions on conveyance may extend beyond the term of the mortgage, subject to paragraph (c)(2) of this section and any limitations applicable in the jurisdiction.

(3) Except as otherwise required by the HOME and HOPE programs, rights under an option to purchase, pre-emptive rights to purchase or rights of first refusal shall only be held by a governmental body or eligible nonprofit organization, or another individual or organization approved by the Secretary, and shall be exercised by them (or an assignee who will purchase and occupy the property) only within a reasonable time after the event permitting exercise of the rights occurs, not to exceed a period of time determined by the Secretary. The Secretary may approve another individual or organization under the preceding sentence even if the restriction is not part of an eligible governmental or nonprofit program.

(4) In addition to the restrictions stated in paragraph (d)(3) of this section, the purchase price under an option may not be less than the sum of the mortgagor's original purchase price, the mortgagor's reasonable costs of sale, the reasonable costs of improvements made by seller, and a reasonable share, as determined by the Secretary, of the appreciation in value.

(5) The mortgagor may be required to continue to be an owner-occupant.

(6) The mortgagor may be limited in his or her ability to choose a purchaser for the property, but only to the extent

necessary to ensure that the property is preserved as low- or moderate-income housing.

(7) The mortgagor for a rehabilitation loan insured under § 203.50 of this part may hold title subject to a condition subsequent, provided that the holder of the right of entry for condition broken also executes the mortgage, and that the right is exercisable only for failure by the mortgagor to complete the rehabilitation or occupy the property as agreed by the mortgagor.

(8) Property may be subject to a legal restriction on conveyance to the extent approved in writing by an authorized representative of the Secretary prior to September 10, 1993.

(e) *Exception for tax-exempt bond financing.* A mortgage may be funded through tax-exempt bond financing and may include a due-on-sale provision in a form approved by the Secretary which permits the mortgagee to accelerate a mortgage that no longer meets Federal requirements for tax-exempt bond financing or for other reasons acceptable to the Secretary. Except as provided in this paragraph (e), a mortgage funded through tax-exempt bond financing shall comply with all form requirements prescribed under § 203.17(a) of this part and shall contain no other provisions designed to enforce compliance with Federal or State requirements for tax-exempt bond financing. Other legal restrictions on conveyance are permitted as provided in other paragraphs of this section.

(f) *Exception for protective covenants excluding non-elderly.* Mortgaged property may be subject to protective covenants which prohibit or restrict occupancy by, or transfer to, persons who are not elderly if:

(1) The restrictions do not have an undue effect on marketability; and

(2) The restrictions do not constitute illegal discrimination and are consistent with the Fair Housing Act and all other applicable nondiscrimination laws.

(g) *Exceptions for specific jurisdictions.* Notwithstanding the provisions of paragraph (b) of this section, mortgages insured on certain Indian land or Hawaiian home lands under sections 247 and 248 of the National Housing Act and §§ 203.43h and 203.43i of this part, or on property in the Northern Mariana Islands or American Samoa, shall not be ineligible for insurance under this section solely because applicable law does not permit free alienability of title to all persons.

4. Part 203, subpart C, would be amended by adding a new § 203.510 to read as follows:

§ 203.510 Release of personal liability.

(a) *Procedures.* The mortgagee shall release a selling mortgagor from any personal liability for payment of the mortgage debt, if release is permitted by § 203.258 of this part, in accordance with the following procedures:

(1) The mortgagee receives a request for a creditworthiness determination for a prospective purchaser of all or part of the mortgaged property;

(2) The mortgagee or servicer performs a creditworthiness determination under § 203.512(b)(1) of this part if the mortgagee or servicer is approved for participation in the Direct Endorsement program, or the mortgagee requests a creditworthiness determination by the Secretary;

(3) The prospective purchaser is determined to be creditworthy under the standards applicable when a release of the selling mortgagor is intended;

(4) The prospective purchaser assumes personal liability by agreeing to pay the mortgage debt; and

(5) The mortgagee provides the selling mortgagor with a release of personal liability on a form approved by the Secretary.

(b) *Release after 5 years.* (1) If a selling mortgagor is not released under the procedures described in paragraph (a) of this section, either because no request for a creditworthiness determination is submitted under paragraph (a)(1) of this section, or because there is no affirmative determination of creditworthiness under paragraph (a)(3) of this section, then the selling mortgagor is automatically released from any personal liability for payment of the mortgage debt because of section 203(r) of the National Housing Act if:

(i) The purchasing mortgagor has assumed personal liability by agreeing to pay the mortgage debt;

(ii) Five years have elapsed after the assumption; and

(iii) The purchasing mortgagor is not in default under the mortgage at the end of the five-year period.

(2) If the conditions of this paragraph (b) for a release are satisfied, the mortgagee shall provide a written release upon request to the selling mortgagor.

(3) This paragraph (b) only applies to a mortgage originated pursuant to an application by the mortgagor on or after December 1, 1986 on a form approved by the Secretary.

(c) *Mortgagee to provide notice.* A mortgagee shall inform mortgagors (including prospective mortgagors seeking information) about the procedures for release of personal liability by providing a notice approved by the Secretary when required by the Secretary.

5. Part 203, subpart C, would be amended by adding a new § 203.512 to read as follows:

§ 203.512 Free assumability; exceptions.

(a) *Policy of free assumability with no restrictions.* A mortgagee shall not impose, agree to or enforce legal restrictions on conveyance, as defined in § 203.41(a)(3) of this part, or restrictions on assumption of the insured mortgage, unless specifically permitted by this part or contained in a junior lien granted to the mortgagee after settlement on the insured mortgage.

(b) *Credit review.* If approval is required by the mortgage, the mortgagee shall not approve the sale or other transfer of all or part of the mortgaged property, or the sale or transfer of a trust owning all or part of the property, whether or not any person acquires personal liability under the mortgage in connection with the sale or other transfer, unless:

(1) At least one of the persons acquiring ownership is determined to be creditworthy under applicable standards prescribed by the Secretary;

(2) The selling mortgagor retains an ownership interest in the property; or

(3) The transfer is by devise or descent.

(c) *Investors and secondary residences.* The mortgagee shall not approve the sale or other transfer or mortgaged property to a person who cannot be approved as a substitute mortgagor as provided in § 203.258 of this part, because the property will not be a primary residence or a secondary residence permitted by that section.

(d) *Due-on-sale clause.* Each mortgage shall contain a due-on-sale clause permitting acceleration, in a form prescribed by the Secretary. If a sale or other transfer occurs without mortgagee approval and a prohibition in paragraphs (b) or (c) of this section applies, a mortgagee shall enforce this section by requesting approval from the Secretary to accelerate the mortgage, provided that acceleration is permitted by applicable law. The mortgagee shall accelerate if approval is granted. This paragraph applies only if the application by the mortgagor on a form approved by the Secretary is dated on or after December 1, 1986.

PART 213—COOPERATIVE HOUSING MORTGAGE INSURANCE

6. The authority citation for part 213 continues to read as follows:

Authority: 12 U.S.C. 1715b, 1715e; 42 U.S.C. 3535(d).

7. Paragraph (b) of § 213.520 is revised to read as follows:

§ 213.520 Mortgage lien.

* * * * *

(b) With prior approval of the Secretary, the mortgaged property may be subject to a secondary mortgage or loan made or insured, or other secondary lien held, by a Federal, State, or local government agency or instrumentality, or an eligible nonprofit organization as defined in § 203.41(a)(5) of this chapter, provided that the required monthly payments under the insured mortgage and the secondary mortgage or lien shall not exceed the mortgagor's reasonable ability to pay as determined by the Secretary.

8. Part 213, subpart C, is amended by adding a new § 213.527 to read as follows:

§ 213.527 Free assumability; exceptions.

A mortgage shall not be eligible for insurance if the mortgaged property is subject to legal restrictions on conveyance, as defined in § 203.41(a) of this chapter, except to the extent permitted for mortgages insured under part 203 of this chapter.

PART 234—CONDOMINIUM OWNERSHIP MORTGAGE INSURANCE

9. The authority citation for part 234 continues to read as follows:

Authority: 12 U.S.C. 1715b, 1715y; 42 U.S.C. 3535(d).

10. Paragraph (b) and the introductory text of paragraph (c) of § 234.55 are revised to read as follows:

§ 234.55 Mortgage lien.

* * * * *

(b) With prior approval of the Secretary, the mortgaged property may be subject to a secondary mortgage or loan made or insured, or other secondary lien held, by a Federal, State, or local government agency or instrumentality, or an entity designated in the homeownership plan submitted by an applicant for an implementation grant under the Homeownership and Opportunity for People Everywhere program (HOPE), or an eligible nonprofit organization as defined in § 234.66(f)(5) of this part, provided that the required monthly payments under the insured mortgage and the secondary mortgage or lien shall not exceed the mortgagor's reasonable ability to pay as determined by the Secretary.

(c) With the prior approval of the Secretary, the mortgaged property may be subject to a second mortgage held by a mortgagee not described in paragraph (b) of this section. Unless the mortgage is for the purpose described in paragraph (d) of this section, it shall meet the following requirements:

* * * * *

11. Part 234, subpart A, is amended by adding a new § 234.66 to read as follows:

§ 234.66 Free assumability; exceptions.

(a) *Definitions.* As used in this section:

(1) *Low- or moderate-income housing* means housing which is designed to be affordable, taking into account available financing, to individuals or families whose household income does not exceed 115 percent of the median income for the area, as determined by the Secretary with adjustments for smaller and larger families. The Secretary may approve a higher percentage up to 140 percent.

(2) *Eligible governmental or nonprofit program* means a program operated pursuant to a program established by Federal law, operated by a State or local government, or operated by an eligible nonprofit organization, if the program is designed to assist the purchase of low- or moderate-income housing including rental housing.

(3) *Legal restrictions on conveyance* means any provision in any legal instrument, law or regulation applicable to the mortgagor or the mortgaged property, including but not limited to a lease, deed, sales contract, declaration of covenants, declaration of condominium, option, right of first refusal, will, or trust agreement, that attempts to cause a conveyance (including a lease) made by the mortgagor to:

(i) Be void or voidable by a third party;

(ii) Be the basis of contractual liability of the mortgagor for breach of an agreement not to convey, including rights of first refusal, preemptive rights or options related to mortgagor efforts to convey (except for tights of first refusal held by a condominium association for a project approved by the Secretary under this subpart prior to September 10, 1993.

(iii) Terminate or subject to termination all or a part of the interest held by the mortgagor in the mortgaged property, if a conveyance is attempted;

(iv) Be subject to the consent of a third party;

(v) Be subject to limits on the amount of sales proceeds retainable by the seller; or

(vi) Be grounds for acceleration of the insured mortgage or increase in the interest rate.

(4) *Tax-exempt bond financing* means financing which is funded in whole or in part by the proceeds of qualified mortgage bonds described in section 143 of the Internal Revenue Code of 1986, or any successor section, on which the interest is exempt from Federal income tax. The term does not include financing funded by veteran's mortgage bonds as defined in section 143(b) of the Code.

(5) *Eligible nonprofit organization* means an organization of the type described in section 501(c)(3) of the Internal Revenue Code of 1986 as an organization exempt under section 501(a) of the Code, which has:

(i) Two years experience as a provider of low- or moderate-income housing;

(ii) A voluntary board; and

(iii) No part of its net earnings inuring to the benefit of any member, founder, contributor or individual.

(b) *Policy of free assumability with no restrictions.* A mortgage shall not be eligible for insurance if the mortgaged property is subject to legal restrictions on conveyance, except as permitted by this part.

(c) *Exception for eligible governmental or nonprofit programs.* Legal restrictions on conveyance are acceptable if:

(1) The restrictions are part of an eligible governmental or nonprofit program and are permitted by paragraph (d) of this section; and

(2) The restrictions will automatically terminate if title to the mortgaged property is transferred by foreclosure or deed-in-lieu of foreclosure, or if the mortgage is assigned to the Secretary.

(d) *Exception for eligible governmental or nonprofit programs—specific policies.* For purposes of paragraph (c) of this section, restrictions of the following types are permitted for eligible governmental or nonprofit programs, provided that a violation of legal restrictions on conveyance may not be grounds for acceleration of the insured mortgage or for an increase in the interest rate, or for voiding a conveyance of the mortgagor's interest in the property, terminating the mortgagor's interest in the property, or subjecting the mortgagor to contractual liability other than requiring repayment (at a reasonable rate of interest) of assistance provided to make the property affordable as low- or moderate-income housing:

(1) Except as otherwise provided in the HOME Investment Partnerships (HOME) and the Homeownership and Opportunity for People Everywhere (HOPE) programs, the mortgagor may be prohibited from selling the property at a price greater than the price permitted under the program, or the mortgagor

may be required to pay a portion of the sales proceeds to a governmental body or an eligible non profit organization, as long as the mortgagor is not prohibited from recovering:

(i) The sum of the mortgagor's original purchase price, the mortgagor's reasonable costs of sale, the reasonable costs of improvements made by the mortgagor, and any negative amortization on a graduated payment mortgage insured under § 234.75 of this part; and

(ii) A reasonable share, as determined by the Secretary, of the appreciation in value which shall be the sales price, reduced by the sum determined under paragraph (d)(1)(i) of this section.

(2) Legal restrictions on conveyance may extend beyond the term of the mortgage, subject to paragraph (c)(2) of this section and any limitations applicable in the jurisdiction.

(3) Except as otherwise required by the HOME and HOPE programs, pre-emptive rights to purchase or rights of first refusal shall only be held by a governmental body or eligible nonprofit organization, or another individual or entity approved by the Secretary, and shall be exercised by them (or an assignee who will purchase and occupy the property) only within a reasonable time after the event permitting exercise of the rights occurs, not to exceed a period of time determined by the Secretary. The Secretary may approve another individual or organization under the preceding sentence even if the restriction is not part of an eligible governmental or nonprofit program.

(4) In addition to the restrictions stated in paragraph (d)(3) of this section, the purchase price under an option may not be less than the sum of the mortgagor's original purchase price, the mortgagor's reasonable costs of sale, the reasonable costs of improvements made by seller, and a reasonable share, as determined by the Secretary, of the appreciation in value.

(5) The mortgagor may be required to continue to be an owner-occupant.

(6) The mortgagor may be limited in his or her ability to choose a purchaser for the property, but only the extent necessary to ensure that the property is preserved as low- or moderate-income housing.

(7) Property may be subject to a legal restriction on conveyance to the extent approved in writing by an authorized representative of the Secretary prior to September 10, 1993.

(e) *Exception for tax-exempt bond financing.* A mortgage may be funded through tax-exempt bond financing and may include a due-on-sale provision in a form approved by the Secretary which permits the mortgagee to accelerate a mortgage that no longer meets Federal requirements for tax-exempt bond financing or for other reasons acceptable to the Secretary. Except as provided in this paragraph (e), a mortgage funded through tax-exempt bond financing shall comply with all form requirements prescribed under § 234.25(a) of this part and shall contain no other provisions designed to enforce compliance with Federal and State requirements for tax-exempt bond financing. Other legal restrictions on conveyance are permitted as provided in other paragraphs of this section.

(f) *Exception for protective covenants excluding non-elderly.* Mortgaged property may be subject to protective covenants which prohibit or restrict occupancy by, or transfer to, persons who are not elderly if:

(1) The restrictions do not have an undue effect on marketability; and

(2) The restrictions do not constitute illegal discrimination and are consistent with the Fair Housing Act and all other applicable nondiscrimination laws.

(g) *Exceptions for specific jurisdictions.* Notwithstanding the provisions of paragraph (b) of this section, mortgages insured on property in the Northern Mariana Islands or American Samoa shall not be ineligible for insurance under this section solely because applicable law does not permit free alienability of title to all persons.

Dated: August 4, 1993.

Nicolas P. Retsinas,

Assistant Secretary for Housing-Federal Housing Commissioner.

[FR Doc. 93–19180 Filed 8–10–93; 8:45 am]

BILLING CODE 4210–27–M

DEPARTMENT OF EDUCATION

34 CFR Parts 631, 632, 633, 634, and 635

RIN 1840–AB68

Cooperative Education Program—General; Administration Projects; Demonstration Projects; Research Projects; and Training Projects

AGENCY: Department of Education.

ACTION: Final regulations.

SUMMARY: The Secretary amends the regulations governing the Cooperative Education Program. These amendments are needed to implement changes made in Title VIII of the Higher Education Act of 1965 by the Higher Education Amendments of 1992 (1992 HEA Amendments).

EFFECTIVE DATE: These regulations take effect either 45 days after publication in the Federal Register or later if the Congress takes certain adjournments. If you want to know the effective date of these regulations, call or write the Department of Education contact person. A document announcing the effective date will be published in the Federal Register.

FOR FURTHER INFORMATION CONTACT: John E. Bonas. Telephone: (202) 708–9407. 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: These regulations amend the regulations governing the Cooperative Education Program (34 CFR parts 631–635). These amendments are necessary to implement Title VIII of the Higher Education Act of 1965 (HEA), as amended by the 1992 HEA Amendments (Pub. L. 102–325), enacted July 23, 1992.

The Cooperative Education Program provides grants to institutions of higher education to encourage institutions to offer their students work experiences that will aid these students in their future careers and support them financially while in school. The program is also designed to improve the quality of cooperative education through demonstration, research, and training projects.

The Cooperative Education Program addresses Goal 5 of the National Education Goals, that every adult American will be literate and will possess the knowledge and skills necessary to compete in a global economy and exercise the rights and responsibilities of citizenship. The program furthers the objectives of Goal 5 by enabling institutions to provide students paid work opportunities related to their academic or occupational objectives, thereby strengthening the connection between education and work.

On May 19, 1993, the Secretary published a notice of proposed rulemaking for this program in the Federal Register (58 FR 29157). In this notice, the Secretary solicited public comment on the proposed regulations.

Analysis of Comments and Changes

In response to the Secretary's invitation in the NPRM, 14 parties submitted comments on the proposed regulations. An analysis of the comments follows.

Major issues are grouped according to subject, with appropriate sections of the regulations referenced in parentheses.

Other substantive issues are discussed under the section of the regulations to which they pertain.

Technical and other minor changes—and suggested changes the Secretary is not legally authorized to make under the applicable statutory authority—are not addressed.

Underrepresented Populations—(§ 631.5(b))

Comments: One commenter suggested that South Asians and Pacific Islanders be included in the definition of "underrepresented populations."

Discussion: The Secretary does not agree that the suggested change is necessary. The definition of "underrepresented populations" neither includes nor excludes South Asians or Pacific Islanders. The Secretary believes that South Asians and Pacific Islanders could be identified as "underrepresented populations" if authoritative demographic or socioeconomic statistical data indicate their participation in the nation's skilled, technical, or professional work force is less than their proportionate representation in the general population.

Changes: No change.

Definition of Comprehensive Cooperative Education Program—(§§ 631.5(b) and 635.4(b)(5)(ii))

Comments: Several commenters suggested that a liaison role with secondary schools should not be a mandatory component of the definition of a "comprehensive cooperative education program." These commenters suggested that this function is not necessary for a cooperative education program to be considered comprehensive.

Discussion: The Secretary does not agree with the change suggested by these commenters. The Secretary believes outreach to new populations is an important purpose of this program. One of the most important ways to fulfill this purpose is to advise secondary school students of the availability and advantages of cooperative education.

Changes: No change.

Unallowable Activities—(§ 631.31(a)(3))

Comments: Several commenters suggested revising the unallowable cost provision prohibiting the use of grant funds for admissions activities. Commenters suggested allowing the use of grant funds for admissions activities related to the recruitment of students to an institution's cooperative education program.

Discussion: The Secretary does not believe the change suggested by these commenters is necessary. Section 631.31(a)(3) of the regulations reflects the Department's traditional prohibition on the use of grant funds for admissions recruitment purposes by college personnel, except where authorized by statute. The Secretary notes that grant funds may be used under § 631.30(h) of the regulations for expenses related to developing, printing, and disseminating materials related to the project, including materials designed to recruit nontraditional students, students from special and underrepresented populations, and secondary schools and undergraduate postsecondary schools. In addition, activities that are related to encouraging participation in cooperative education are allowable. Office of Management and Budget Circular A–21, which is made applicable to this program through 34 CFR 74.172, sets forth the criteria for determining whether a cost is allowable. One of these criteria is whether a particular activity is allocable (or related) to a program. Under this criterion, activities that encourage participation in cooperative education are allowable because they are allocable to cooperative education projects.

Changes: No change.

Funding the Project From Non-Federal Sources—(§ 632.10(d)(2))

Comments: Several commenters suggested revising the maintenance-of-effort requirement in § 632.10(d)(2) of the regulations to provide, after the project period, that the applicant will fund the project at a level that is not less than the total amount expended during the first year of Federal assistance. This change would make § 632.10(d)(2) consistent with § 632.21(b) of the regulations and section 803(b)(4) of the HEA. The change would also effectively delete the reference "from non-Federal sources," and thus, permit other Federal sources of funds to be used for cooperative education programs after the project period ends.

Discussion: The Secretary believes other Federal sources of funds can be used for cooperative education purposes after the end of the grant period, if allowed under the statutes and regulations of the other Federal programs which are the source of these funds.

Changes: The Secretary has revised § 632.10(d)(2) to provide that the applicant will fund the project, after the end of the project period, at a level that is not less than the total amount expended by the applicant during the first year of Federal assistance.

Hiring of Cooperative Education Students for Permanent Positions After Graduation—(§ 632.21(a)(3))

Comments: Several commenters objected to the language in one of the special consideration factors in § 632.21(a)(3) of the regulations that requires applicants to cite data on their graduates who are hired for permanent positions by employers following completion of the former students' cooperative education experiences. The commenters believe that this provision unfairly penalizes applicants who have not previously operated cooperative education programs, or who have programs that have not developed to the point that employers have hired more than a few, if any, graduates for permanent positions.

Discussion: The Secretary agrees that the provision imposes an undue burden on applicants that do not have established cooperative education programs with substantial employer support.

Changes: The Secretary has revised § 632.21(a)(3) to provide that IHEs need only report the number of employers who accept cooperative education students. The Secretary will delete the requirement that an IHE report the number of cooperative education students employers hire for permanent positions after graduation.

Limitations on the Amount of a Grant for a New Project—§ 632.22(b)

Comments: Several commenters requested that an institution that is currently receiving funds for a multi-year noncompeting continuation (NCC) award continue to be subject to the institutional matching requirements in its original grant, rather than be subject to the more stringent institutional matching requirements in section 803(c)(2) of the HEA. These commenters contend that it would be overly burdensome to subject NCCs to these new matching requirements and may force many institutions to forego continued participation in the program.

Discussion: The Secretary believes that NCCs are subject to the institutional matching requirements in section 803(c)(2) of the HEA. There is no provision in the HEA that exempts NCCs from the new institutional matching requirements enacted in the HEA.

Changes: No change.

Limitations on Amount of Grant for an Existing Project—(§ 632.23(b))

Comments: Several commenters suggested revising the formula for determining the grant amount an

institution will receive for performing an existing Administration project. The proposed regulations provide that the amount received by an institution from available funds in a fiscal year bears the same ratio as the number of unduplicated students placed in cooperative education jobs during the preceding year by that institution bears to the total number of unduplicated students placed in cooperative education jobs during the preceding year by all eligible existing institutions applying for grants. Commenters contend that some institutions applying for grants will not be approved for an award because of their failure to satisfy certain restrictions on eligibility. Therefore, commenters believe the denominator of the award ratio should be revised to include only the number of unduplicated students placed in cooperative education jobs during the preceding fiscal year by all eligible institutions with approved applications.

Discussion: The Secretary concurs with the change suggested by these commenters.

Changes: The Secretary has revised the denominator of the award ratio to be the total number of unduplicated students placed in cooperative education jobs during the preceding year by all eligible existing institutions with approved applications.

Awarding of Academic Credit for Work Experience—(§ 632.30(c))

Comments: Several commenters objected to § 632.30(c) of the regulations which states that academic credit may be awarded at the discretion of the institution. The commenters contend that the statement is misplaced, creates confusion for applicants and field reviewers, and should be relocated under the proposed section on evaluation of student work experience.

Discussion: The Secretary agrees that the statement on academic credit is misplaced and may create confusion for applicants.

Changes: The Secretary has deleted § 632.30(c) and added a new § 632.31(b) to the regulations.

Determination of Grant Status and Funding Eligibility When Institutions Merge—(§ 632.51)

Comments: Several commenters suggested changing the requirement that the eligibility of a merged institution be based on the remaining eligibility of the formerly separate institution with the least number of years of remaining eligibility. These commenters proposed that the Secretary base the funding eligibility of a merged institution on the remaining eligibility of the formerly separate institution with the largest enrollment. This change would permit a smaller institution to extend its eligibility by merging with a larger institution where the larger institution has a greater number of years of eligibility remaining under the program.

Discussion: The Secretary does not agree with the change suggested by these commenters. The Secretary believes that the five-year limitation for both new and existing projects under section 803(c)(1)(A) and (B) of the HEA and § 632.50 of the regulations applies in all circumstances, including those cases where institutions merge. In the case of a merged institution, the five-year limitation is fulfilled by maintaining the requirement proposed in the NPRM.

Changes: No change.

Eligibility for Participation in a Demonstration Project—(§ 633.3)

Comments: Several commenters recommended that the requirement that an individual be a "student" to participate in a Demonstration project be deleted from the regulations. These commenters contend that not only students should be eligible to participate in Demonstration projects, but also administrators and faculty.

Discussion: Section 801(b) of the HEA defines cooperative education as education providing paid work experiences to students. Section 804(a)(1) of the HEA defines Demonstration projects as projects designed to demonstrate or determine the feasibility or value of innovative methods of cooperative education. The Secretary believes that only students are eligible to participate in a Demonstration project since students—and not administrators or faculty—are the intended beneficiaries of cooperative education programs.

Changes: No change.

Eligibility for Training and Resource Center Grants—(§ 635.2)

Comment: One commenter proposed that combinations of public or private agencies or organizations be included among those eligible for Training and Resource Center project grants.

Discussion: The Secretary does not agree with the change suggested by this commenter. Section 804(b)(1)(B) of the HEA states that public or private nonprofit agencies or organizations are eligible for a grant. A combination of public or private nonprofit agencies or organizations is not listed as an eligible applicant. A public or private nonprofit agency or organization can work with another agency or organization on a project, but only one agency or organization is considered an eligible applicant.

Changes: No change.

Executive Order 12291

These proposed regulations have been reviewed in accordance with Executive Order 12291. They are not classified as major because they do not meet the criteria for major regulations established in the order.

Intergovernmental Review

This program is subject to the requirements of Executive Order 12372 and the regulations in 34 CFR Part 79. The objective of the Executive Order is to foster an intergovernmental partnership and a strengthened federalism by relying on processes developed by State and local governments for coordination and review of proposed Federal financial assistance.

In accordance with the order, this document is intended to provide early notification of the Department's specific plans and actions for this program.

Assessment of Education Impact

In the notice of proposed rulemaking, the Secretary requested comments on whether the proposed regulations would require transmission of information that is being gathered by or is available from any other agency or authority of the United States.

Based on the response to the proposed rules and on its own review, the Department has determined that the regulations in this document do not require transmission of information that is being gathered by or is available from any other agency or authority of the United States.

List of Subjects in 34 CFR parts 631 Through 635

College and universities, Grant program-education, Reporting and recordkeeping requirements.

(Catalog of Federal Domestic Assistance Number 84.055—Cooperative Education Program)

Dated: August 5, 1993.

Richard W. Riley,

Secretary of Education.

The Secretary amends Title 34 of the Code of Federal Regulations by revising Parts 631 through 635 to read as follows:

PART 631—COOPERATIVE EDUCATION PROGRAM—GENERAL

Subpart A—General

Sec.

631.1 What is the Cooperative Education Program?
631.2 Who is eligible for a grant?

Sec.

631.3 What kinds of projects may the Secretary fund?
631.4 What regulations apply?
631.5 What definitions apply?

Subpart B—How Does One Apply for an Award?

631.10 What limitations apply to the number of applications that may be submitted?

Subpart C—How Does the Secretary Make an Award?

631.20 How does the Secretary evaluate an application?

Subpart D—What Conditions Must Be Met After an Award?

631.30 What costs are allowable?
631.31 What costs are unallowable?

Authority: 20 U.S.C. 1133–1133c, unless otherwise noted.

Subpart A—General

§ 631.1 What is the Cooperative Education Program?

The Cooperative Education Program provides—

(a) Grants to encourage institutions to offer their students work experiences that will aid them in their future careers and support them financially while in school; and

(b) Grants and contracts to improve the quality of cooperative education through demonstration, research, and training.

(Authority: 20 U.S.C. 1133–1133c)

§ 631.2 Who is eligible for a grant?

Eligibility for each of the four kinds of projects authorized under this program is as follows:

(a) Eligibility for a Cooperative Education Administration project grant is described in 34 CFR 632.3.

(b) Eligibility for a Cooperative Education Demonstration project grant is described in 34 CFR 633.2.

(c) Eligibility for a Cooperative Education Research project grant is described in 34 CFR 634.2.

(d) Eligibility for a Cooperative Education Training and Resource Center project grant is described in 34 CFR 635.2.

(Authority: 20 U.S.C. 1133b, 1133c)

§ 631.3 What kind of projects may the Secretary fund?

Under the Cooperative Education Program, the Secretary awards—

(a) Cooperative Education Administration project grants, as described in 34 CFR 632.1;

(b) Cooperative Education Demonstration project grants, as described in 34 CFR 633.1;

(c) Cooperative Education Research project grants, as described in 34 CFR 634.1; and

(d) Cooperative Education Training and Resource Center project grants, as described in 34 CFR 635.1.

(Authority: 20 U.S.C. 1133b, 1133c)

§ 631.4 What regulations apply?

The following regulations apply to the Cooperative Education Program:

(a) The Education Department General Administrative Regulations (EDGAR) as follows:

(1) 34 CFR part 74 (Administration of Grants to Institutions of Higher Education, Hospitals, and Nonprofit Organizations).

(2) 34 CFR part 75 (Direct Grant Programs).

(3) 34 CFR part 77 (Definitions that Apply to Department Regulations).

(4) 34 CFR part 79 (Intergovernmental Review of Department of Education Programs and Activities).

(15) 34 CFR part 80 (Uniform Administrative Requirements for Grants and Cooperative Agreements to State and Local Governments).

(6) 34 CFR part 82 (New Restrictions on Lobbying).

(7) 34 CFR part 85 (Governmentwide Debarment and Suspension (Nonprocurement) and Governmentwide Requirements for Drug-Free Workplace (Grants)).

(8) 34 CFR part 86 (Drug-Free Schools and Campuses).

(b) The Federal Acquisition Regulation (FAR) in 48 CFR Chapter 1 and the Department of Education Acquisition Regulation (EDAR) in 48 CFR chapter 34.

(c) The regulations in this part.

(d) The regulations in the following parts, as applicable:

(1) 34 CFR part 632 (Cooperative Education Program—Administration Projects).

(2) 34 CFR part 633 (Cooperative Education Program—Demonstration Projects).

(3) 34 CFR part 634 (Cooperative Education Program—Research Projects).

(4) 34 CFR part 635 (Cooperative Education Program—Training and Resource Center Projects).

(Authority: 20 U.S.C. 1133b, 1133c)

§ 631.5 What definitions apply?

(a) *Definitions in EDGAR.* The following terms used in this part are defined in 34 CFR 77.1:

Applicant
Application
Award
Budget period
Contract
ED
EDGAR
Equipment
Grant
Grantee
Nonprofit
Private
Project
Project period
Public
Secretary
State

(b) *Other definitions.* The following definitions also apply to terms used in 34 CFR parts 631 through 635:

Alternating periods of study and employment means alternating academic terms of classroom study and periods of monitored and supervised paid public or private employment of a cooperative education student.

Approved application means an application from an institution for an Administration project grant for an existing project that—

(i) Satisfies the definition of an existing cooperative education program, as described in § 632.2(b); and

(ii) Achieves a minimum score based on the selection criteria in § 632.20.

(Authority: 20 U.S.C. 1133b)

Combination of institutions of higher education means two or more institutions of higher education that have joined together for the purpose of applying for a grant under the Cooperative Education Program.

Comprehensive cooperative education program means an established program of cooperative education in an institution of higher education that—

(i) Integrates cooperative education into all or nearly all of the academic disciplines or departments of the institution;

(ii) Enrolls in its cooperative education program all or nearly all of the institution's students who are eligible to participate and choose to participate in the cooperative education program;

(iii) Enables students to participate in work experiences with a variety of employers; and

(iv) Acts as a liaison between the institution and secondary schools to advise secondary school students of the availability and advantages of cooperative education.

Cooperative education means a method of education that includes—

(i) Alternating or parallel periods of study and employment;

(ii) Formal work experience agreements among the institution of higher education, the student, and the employer;

(iii) Work experiences that are of sufficient number and duration, as explained in § 632.30;

(iv) Work experiences that are related to the students' academic programs of study or career goals;

(v) Student work experiences that are monitored, supervised, and evaluated; and

(vi) Student employment that is compensated in conformity with Federal, State, and local laws.

Existing cooperative education program means a program of cooperative education in an institution of higher education that—

(i) Has operated a cooperative education program for three successive academic years immediately preceding the year for which the institution applies for Federal support under Parts 632–635; and

(ii) Has placed in paid public or private employment a minimum of 100 unduplicated students in the three years immediately preceding the year for which the institution applies for support.

HEA means the Higher Education Act of 1965, as amended.

Institution of higher education (or institution) means an educational institution as defined in section 1201(a) of the HEA, but excludes an institution that does not meet the provisions of section 1201(a)(3) of the HEA.

Institutional matching funds means the amount of funds contributed by an institution of higher education from non-Federal funds for the purposes of a project.

Minorities means Alaskan Natives, American Indians, Asian-Americans, Blacks (African-Americans), Hispanic Americans, Native Hawaiians, Pacific Islanders, or other ethnic groups underrepresented in cooperative education, as indicated in standard statistical references, or as documented on a case-by-case basis by national survey data submitted to and accepted by the Secretary.

Model cooperative education program means a comprehensive cooperative education program recognized regionally or nationally for its effective or exemplary practices as validated by demonstrated positive outcomes and for the fact that its practices may be replicated in other institutions in the nation.

National need means demonstrated national demand for people in certain occupations, as determined by the Secretary.

Nontraditional students means students other than traditional college-going persons of 18–24 years of age. Nontraditional students include, but are not limited to, older adults, displaced workers, and homemakers returning to the work force.

Parallel periods of study and employment means periods of both classroom study and public or private employment of a student in a cooperative education program in which the student carries at least a half-time academic course load and works at least 20 hours per week in a cooperative education job.

Special populations means women, individuals with disabilities, and African-American, Mexican-American, Puerto Rican, Cuban, other Hispanic, American Indian, Alaska Native, Aleut, Native Hawaiian, American Samoan, Micronesian, Guamanian (Chamorro), or Northern Marianian students.

Student means a person—

(i) Enrolled in an institution of higher education other than by correspondence;

(ii) Enrolled in—

(A) A graduate degree program;

(B) An undergraduate degree program of not less than two academic years; or

(C) An undergraduate certificate program of not less than one academic year if the program is provided by an institution of higher education that offers a two-year program that is acceptable for full credit toward a bachelor's degree; and

(iii) Carrying at least one half the academic workload normally required of persons who are full-time degree candidates.

Underrepresented populations means persons of ethnic or racial groups whose participation in the skilled, technical, or professional work force of the United States is less than their proportionate representation in the general population.

Unduplicated cooperative education student means a student who—

(i) Has been accepted into a cooperative education program;

(ii) Has been placed in a cooperative education job; and

(iii) Is counted only once for each year he or she is either enrolled in a cooperative education program or engaged in a cooperative education work experience.

(Authority: 20 U.S.C. 1133, 1133c)

Subpart B—How Does One Apply for an Award?

§ 631.10 What limitations apply to the number of applications that may be submitted?

For any single fiscal year, the Secretary accepts no more than one application from the same applicant under each of the four kinds of projects listed in § 631.3.

(Authority: 20 U.S.C. 1133b)

Subpart C—How Does the Secretary Make an Award?

§ 631.20 How does the Secretary evaluate an application?

(a) The Secretary evaluates each application on the basis of the informational requirements for an Administration project application in § 632.10 and the selection criteria in §§ 632.20, 632.21, 633.20, 634.20, or 635.20, as applicable.

(b)(1) The Secretary awards up to 100 points for each set of program selection criteria.

(2) The maximum possible score for each criterion is indicated in parentheses.

(c) The Secretary may assign up to 20 additional points to applications under Administration Projects that address the special consideration factors in § 632.21.

(d) The Secretary funds an application from a public or private agency or organization under parts 633, 634, and 635 only if the application receives a score of 75 or more points.

(Approved by the Office of Management and Budget under control number 1840–0126)

(Authority: 20 U.S.C. 1133b, 1133c)

Subpart D—What Conditions Must Be Met After an Award?

§ 631.30 What costs are allowable?

Federal funds and institutional matching funds may be used for, but are not limited to, the following:

(a) Salaries for professional and clerical cooperative education project staff.

(b) Release or overload time for faculty involved in the project.

(c) Expenses associated with conducting cooperative education seminars or courses for students.

(d) Per diem and travel expenses of cooperative education project staff and faculty for project-related activities.

(e) Fees or honoraria, per diem, and travel expenses for project consultants.

(f) Supplies and telephone costs.

(g) In-service project staff, faculty, and employer training related to the project.

(h) Expenses for developing, printing, and disseminating materials related to the project, including materials designed to recruit nontraditional students, students from special and underrepresented populations, and secondary school and undergraduate postsecondary students.

(i) Registration fees for training sessions related to cooperative education.

(j) Student travel, but only if the cooperative education student is a member of an advisory board for the project.

(k) Computer hardware, project-specific software, and other equipment related to project activities.

(l) Cooperative education training expenses for secondary school professional personnel.

(Authority: 20 U.S.C. 1133b, 1133c)

§ 631.31 What costs are unallowable?

(a) A grantee shall not use Federal funds or institutional matching funds to pay for the following:

(1) Compensation of students for cooperative education work experiences.

(2) Teaching salaries for academic courses.

(3) Admissions activities to invite prospective students to enroll at the grantee institution.

(4) Individual membership fees in professional organizations directly related to cooperative education.

(5) Individual or institutional membership fees in organizations that devote a substantial part of their activities to influencing the passage or defeat of legislation.

(6) Planning the feasibility of establishing a cooperative education program.

(7) Indirect costs in excess of eight per cent of total direct costs.

(b) A grantee who is awarded a Demonstration, Research, or Training and Resource Center project grant shall use Federal funds only to supplement and, to the extent possible, increase the level of funds that otherwise would have been available from non-Federal sources to conduct the approved activities. The grantee may not use Federal funds to supplant funds from non-Federal sources.

(Authority: 20 U.S.C. 1133b, 1133c)

PART 632—COOPERATIVE EDUCATION PROGRAM—ADMINISTRATION PROJECTS

Subpart A—General

Sec.

632.1 What is an Administration project?
632.2 What distinguishes a new project from an existing project?
632.3 Who is eligible for a grant?
632.4 What students are eligible to participate?
632.5 What types of Administration projects are eligible for funding?
632.6 What regulations apply?

Subpart B—How Does One Apply for an Award?

632.10 What must be included in an application?

Subpart C—How Does the Secretary Make an Award?

632.20 What selection criteria does the Secretary use to evaluate an application?
632.21 What special consideration factors does the Secretary use?
632.22 What limitations apply to the amount of a grant for a new project?
632.23 What limitations apply to the amount of a grant for an existing project?

Subpart D—What Conditions Must Be Met After An Award?

632.30 What are the minimum requirements for the frequency and duration of work experiences?
632.31 How are student work experiences evaluated?
632.32 What are the fiscal requirements?

Subpart E—[Reserved]

Subpart F—What Limitations Apply to the Number of Years an Institution May Be Funded?

632.50 What is the duration of an Administration project grant?
632.51 How are grant status and funding eligibility determined if institutions merge?

Authority: 20 U.S.C. 1133–1133b, unless otherwise noted.

Subpart A—General

§ 632.1 What is an Administration project?

(a) An Administration project must be designed to provide students enrolled at institutions of higher education with opportunities to participate in cooperative education.

(b) Under this part, the Secretary awards two types of grants:

(1) Grants for new projects, as described in § 632.2(a).

(2) Grants for existing projects, as described in § 632.2(b).

(Authority: 20 U.S.C. 1133a, 1133b)

§ 632.2 What distinguishes a new project from an existing project?

(a) The Secretary awards a grant for a new project to an institution, or a combination of institutions, that has not received an Administration project grant in the 10-year period immediately preceding the date for which the institution or combination of institutions requests a grant under this part.

(b) The Secretary awards a grant for an existing project to an institution that is operating an existing cooperative education program.

(Authority: 20 U.S.C 1133a, 1133b)

§ 632.3 Who is eligible for a grant?

The following are eligible to apply for an Administration project grant:

(a) An institution of higher education, or a combination of institutions, is eligible to apply for a grant for a new project.

(b) An institution of higher education is eligible to apply for a grant for an existing project.

(Authority: 20 U.S.C. 1133a, 1133b)

§ 632.4 What students are eligible to participate?

An individual who meets the definition of "student" in § 631.5(b) is eligible to participate in a project under this part.

(Authority: 20 U.S.C. 1133)

§ 632.5 What types of Administration projects are eligible for funding?

(a) The Secretary awards a grant for a new project to fund the following activities:

(1) Planning cooperative education programs.

(2) Establishing cooperative education programs.

(3) Expanding cooperative education programs.

(4) Carrying out cooperative education programs.

(b) The Secretary awards a grant for an existing project to fund the following activities:

(1) Improving the quality of and expanding the participation in a cooperative education program.

(2) Providing outreach in new curricular areas.

(3) Providing outreach to potential participants, including nontraditional students and students from underrepresented populations.

(Authority: 20 U.S.C. 1133b)

§ 632.6 What regulations apply?

The following regulations apply to this part:

(a) The regulations cited in 34 CFR 631.4.

(b) The regulations in this part.

(Authority: 20 U.S.C. 1133b)

Subpart B—How Does One Apply for an Award?

§ 632.10 What must be included in an application?

An application for a grant must—

(a) Describe the project for which a grant is requested.

(b) Identify and describe each portion of the project that will be performed by a nonprofit organization or institution other than the applicant and the compensation to be paid to each organization or institution.

(c) Contain assurances that the applicant will not spend less than the amount expended for cooperative education in any fiscal year than the applicant expended for cooperative education during the previous fiscal year.

(d) Describe the plans the applicant will use to ensure that—

(1) The project will continue beyond the 5-year period of Federal assistance described in § 632.50; and

(2) The applicant will fund the project, after the end of the project period, at a level that is not less than the total amount expended by the applicant during the first year of Federal assistance.

(e) Contain a formal statement of the commitment in paragraph (d) of this section.

(f) Provide that, in the case of an institution that provides a 2-year program which is acceptable for full credit toward a bachelor's degree, the program will be available to students who are certificate or associate degree candidates and who carry at least one-half the normal full-time workload.

(g) Provide that the applicant will—

(1) Develop reports to ensure that the applicant is complying with the requirements of this part, including reports for the second and each succeeding fiscal year for which the applicant receives a grant. These reports must include data describing the impact of the project in the preceding fiscal year, including the—

(i) Number of unduplicated student applicants in the project;

(ii) Number of unduplicated students placed in cooperative education jobs;

(iii) Number of employers who have hired cooperative education students;

(iv) Income of students derived from working in cooperative education jobs; and

(v) Increase or decrease in the number of unduplicated students placed in cooperative education jobs in each fiscal year compared to the previous fiscal year; and

(2) Maintain reports that are essential to ensure that the applicant is complying with the requirements of this part, including the notation of cooperative education employment on the student's transcript.

(h) Describe the extent to which the applicant's project has had a favorable reception by public and private-sector employers.

(i) Describe the extent to which the institution is committed to extending cooperative education on an institution-wide basis for all students who can benefit.

(j) Describe the plans the applicant will carry out to evaluate the applicant's project at the end of the project period.

(k) Provide fiscal control and fund accounting procedures that are necessary to assure the proper disbursement of, and accounting for, Federal funds received under this part.

(l) Demonstrate a commitment to serving special populations.

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(Authority: 20 U.S.C. 1133b)

Subpart C—How Does the Secretary Make an Award?

§ 632.20 What selection criteria does the Secretary use to evaluate an application?

The Secretary uses the following criteria to evaluate an application for a grant under this part:

(a) *Institutional commitment.* (10 points). The Secretary considers the extent of commitment by reviewing—

(1) The applicant's support for the concept of cooperative education as reflected, for example, by the inclusion of cooperative education in the institution's mission statement, long-range planning documents, budget, and catalog; and

(2) The support of the chief executive officer, other key administrators, faculty, and governing board for the project, including their involvement in planning and developing the project.

(b) *Plan of operation.* (60 points). The Secretary considers the quality, effectiveness, and extent of the following:

(1) Organizational structure of the project and its relationship to the institution's organizational and academic structure (3 points).

(2) Measurable objectives of the project (6 points).

(3) Strategy for implementing the project (36 points), including, as applicable—

(i) The activities to be conducted by the applicant and employers and any training or project development activities conducted by a nonprofit organization or institution;

(ii) The schedule that will be used for conducting project activities and meeting the objectives for each year Federal funds are being requested;

(iii) Plans for modifying the institution's academic calendar and course schedules to meet the needs of the students in the project;

(iv) Involvement and extent of participation of academic departments, divisions, or colleges within the institution; and

(v) Adequacy of resources, including adequacy of space and equipment.

(4) Provision of work experiences (10 points) based on—

(i) The relevance of the work experiences to the students' academic programs of study or career objectives;

(ii) The work and study calendars for alternating or parallel periods of study and employment;

(iii) The number, frequency, and duration of the work experiences; and

(iv) The level of monitoring and supervision of cooperative education students while they are on work assignments.

(5) Proposed procedures for administering the project, including fiscal control and fund accounting procedures, and for responding to unexpected problems and evaluation results (5 points).

(c) *Quality of key personnel.* (10 points). The Secretary considers the following in determining the quality of key project personnel:

(1) The qualifications of the project director, coordinators, and other key personnel.

(2) How the qualifications of each professional person involved in the project relate to the project's stated purposes and objectives.

(d) *Evaluation plan.* (10 points). The Secretary considers—

(1) The quality of the proposed evaluation plan and the extent to which the plan includes evaluation methods that are objective and produce quantifiable data that demonstrate the impact of the project; and

(2) Beginning in the second year of the project, the quality of the procedures to collect and record data on the impact of the project, including the notation of cooperative education employment on students' transcripts, and the—

(i) Enrollment and placement of unduplicated cooperative education students, including data on the students' academic and occupational interests, the type of cooperative education employment, and the students' jobs on graduation;

(ii) Income earned by students engaged in cooperative education jobs;

(iii) Number of employers who have hired cooperative education students enrolled in the project; and

(iv) Increase or decrease from year to year in the number of unduplicated students engaged in cooperative education work experiences as a result of the project.

(e) *Adequacy and reasonableness of the budget.* (10 points). The Secretary considers the extent to which the budget—

(1) Is reasonable in relation to the objectives and scope of the project and the number of students engaged in cooperative education jobs; and

(2) Is reasonable with respect to any costs to be paid to a nonprofit organization or to another institution that assists in the development or expansion of the project.

(Approved by the Office of Management and Budget under control number 1840–0126)

(Authority: 20 U.S.C. 1133b)

§ 632.21 What special consideration factors does the Secretary use?

The Secretary may assign up to 20 additional points to applications from institutions whose projects show the greatest promise of success on the basis of the following factors:

(a) The extent to which public and private-sector employers support the project and accept students for jobs that are related to the students' respective academic programs and career interests (5 points), as demonstrated by—

(1) The types of positions for which employers hire cooperative education students;

(2) The match between students' interests and their actual job experiences; and

(3) The number of employers who accept cooperative education students.

(b) The applicant's specific plan for continuing cooperative education after the termination of Federal financial assistance, including a formal statement of institutional commitment that assures that the applicant will continue the cooperative education program beyond the period of Federal assistance at a level not less than the total amount expended for the project during the first year of Federal assistance, and that refers specifically to the sources of support, amount of funds, personnel, and other resources that will be committed to the project (5 points).

(c) The extent to which the applicant is committed to extending opportunities for participation in cooperative education for all eligible students who can benefit from this form of education (5 points).

(d) The institution's demonstrated commitment to serving special populations (5 points).

(Approved by the Office of Management and Budget under control number 1840–0126)

(Authority: 20 U.S.C. 1133b)

§ 632.22 What limitations apply to the amount of a grant for a new project?

(a) In any fiscal year, a grant for a new project may not exceed $500,000.

(b) The Federal share for a grant for a new project may not exceed—

(1) 85 percent of the cost of carrying out the project in the first year the grantee receives the grant;

(2) 70 percent of the cost of the project in the second year the grantee receives the grant;

(3) 55 percent of the cost of the project in the third year the grantee receives the grant;

(4) 40 percent of the cost of the project in the fourth year the grantee receives the grant; and

(5) 25 percent of the cost of the project in the fifth year the grantee receives the grant.

(Authority: 20 U.S.C. 1133b)

§ 632.23 What limitations apply to the amount of a grant for an existing project?

(a) The Secretary awards a grant for an existing project to an eligible institution that has an approved application.

(b) In any fiscal year, an institution that satisfies the requirements of paragraph (a) of this section receives an amount of available funds in a fiscal year bearing the same ratio as the number of unduplicated students placed in cooperative education jobs during the preceding year by that institution (excluding work experiences arranged under Demonstration Projects) bears to the total number of unduplicated students placed in cooperative education jobs during the preceding year by all eligible existing institutions with approved applications.

(c) No eligible institution of higher education may receive a grant for an existing project in any fiscal year that exceeds 25 percent of that institution's personnel and operating budget devoted to cooperative education for the preceding year.

(d) The minimum annual grant for an existing project is $1,000.

(e) The maximum annual grant for an existing project is $75,000.

(Authority: 20 U.S.C. 1133b)

Subpart D—What Conditions Must Be Met After An Award?

§ 632.30 What are the minimum requirements for the frequency and duration of work experiences?

(a) An Administration project must provide at least one work experience for participating graduate students and undergraduate certificate students and at least two work experiences for other participating undergraduate students.

(b) The work experiences provided under paragraph (a) of this section must—

(1) Be of a duration that is consistent with the grantee's academic calendar, but not less than the equivalent of a quarter term; and

(2) Provide sufficient opportunities for each student to gain in-depth experience in an area related to his or her academic program or occupational objectives.

(Authority: 20 U.S.C. 1133b, 1134, 1134a)

§ 632.31 How are student work experiences evaluated?

(a) During a student's work experiences, the grantee must assess the student's progress to ensure that the work experiences satisfy the student's and the Administration project's objectives.

(b) Academic credit for work experiences may be awarded at the discretion of the institution.

(Authority: 20 U.S.C. 1133b)

§ 632.32 What are the fiscal requirements?

(a) A grantee may not expend less for cooperative education in a fiscal year than the amount the grantee expended from non-Federal funds for cooperative education during the previous fiscal year.

(b) If the Secretary determines that a grantee has failed to maintain the fiscal effort described in paragraph (a) of this section, the Secretary may elect not to make further grant payments to the recipient.

(Authority: 20 U.S.C. 1133b)

Subpart E—[Reserved]

Subpart F—What Limitations Apply to the Number of Years an Institution May Be Funded?

§ 632.50 What is the duration of an Administration project grant?

(a) The duration of a grant for a new project or an existing project is a maximum of five annual budget periods.

(b) The five-year limitation in paragraph (a) of this section applies to grants awarded after September 30, 1992.

(Authority: 20 U.S.C. 1133b)

§ 632.51 How are grant status and funding eligibility determined if institutions merge?

If two or more institutions of higher education merge to assume a new identity, the Secretary may review and renegotiate grants received under this part by any of the formerly separate institutions. The Secretary determines funding eligibility on the basis of the formerly separate institution whose grant has the least amount of annual budget periods remaining within the five-year limit.

(Authority: 20 U.S.C. 1133b)

PART 633—COOPERATIVE EDUCATION PROGRAM—DEMONSTRATION PROJECTS

Subpart A—General

Sec.

633.1 What is a Demonstration project?
633.2 Who is eligible for a grant?
633.3 Who is eligible to participate in a Demonstration project?
633.4 What types of Demonstration projects does the Secretary fund?
633.5 What regulations apply?

Subpart B—[Reserved]

Subpart C—How Does the Secretary Make an Award?

633.20 What selection criteria does the Secretary use to evaluate Demonstration project applications?
633.21 What priorities may the Secretary establish?

Authority: 20 U.S.C. 1133c, unless otherwise noted.

Subpart A—General

§ 633.1 What is a Demonstration project?

A Demonstration project must be designed to demonstrate or determine the feasibility or value of innovative cooperative education projects, as well as to disseminate information relating to innovative cooperative education projects.

(Authority: 20 U.S.C. 1133c)

§ 633.2 Who is eligible for a grant?

The following are eligible to apply for a Demonstration project grant:

(a) An institution of higher education.

(b) A combination of institutions of higher education.

(c) A public or private nonprofit agency or organization, if a grant to the agency or organization will make an especially significant contribution.

(Authority: 20 U.S.C. 1133c)

§ 633.3 Who is eligible to participate in a Demonstration project?

An individual who meets the definition of "student" in § 631.5(b) is eligible to participate in a project under this part.

(Authority: 20 U.S.C. 1133)

§ 633.4 What types of Demonstration projects does the Secretary fund?

The Secretary makes awards for projects that—

(a) Demonstrate or determine the value of existing, innovative methods of cooperative education that have not been fully evaluated;

(b) Demonstrate or determine the feasibility of a proposed innovative method of cooperative education; or

(c) Disseminate information on effective innovative projects.

(Authority: 20 U.S.C. 1133c)

§ 633.5 What regulations apply?

The following regulations apply to this part:

(a) The regulations cited in 34 CFR 631.4.

(b) The regulations in this part.

(Authority: 20 U.S.C. 1133c)

Subpart B—[Reserved]

Subpart C—How Does the Secretary Make an Award?

§ 633.20 What selection criteria does the Secretary use to evaluate Demonstration project applications?

The Secretary uses the following selection criteria to evaluate applications under this part:

(a) *Purposes and objectives of the project.* (20 points). The Secretary reviews each application to evaluate the following:

(1) The purposes of the project.

(2) The extent to which the project is designed to—

(i) Demonstrate or determine the value of existing, innovative methods of cooperative education that have not yet been fully evaluated;

(ii) Demonstrate or determine the feasibility of proposed, innovative methods of cooperative education; or

(iii) Disseminate information on effective innovative projects.

(3) Measurable objectives that relate to the purposes of the project for each year for which Federal funds have been requested.

(4) The expected outcomes of the project and how the outcomes will benefit cooperative education.

(b) *Project design and plan of operation.* (50 points). The Secretary considers the quality of—

(1) The project's design and the activities to be conducted, including the relationship between the activities and the project objectives; (10 points)

(2) The organizational structure of the project; (5 points)

(3) The schedule for implementing the project's activities and meeting its objectives that shows the use of resources in meeting each objective; (10 points)

(4) The plan for effectively and efficiently administering the project; (10 points)

(5) The staffing plan and the time each project person will devote to the project; (10 points) and

(6) Other resources, such as space and equipment, that will be available to the project. (5 points)

(c) *Quality of key personnel.* (10 points). The Secretary considers—

(1) The qualifications of the project director, other professional staff, faculty, and consultants, if used; and

(2) How the qualifications of each professional person involved in the project relate to the project's stated purposes and objectives.

(d) *Evaluation plan.* (10 points). The Secretary considers the quality of the proposed evaluation plan for the project, including the extent to which the methods of evaluation—

(1) Are appropriate to the project; and

(2) Are objective and produce quantifiable data that demonstrate the impact of the project.

(e) *Adequacy and reasonableness of the budget.* (10 points). The Secretary considers the extent to which—

(1) Costs for the project are adequate and reasonable, considering the project's objectives, design, staffing plan, and plan of operation; and

(2) Funds will be contributed by the applicant and consortium members of the project, if any.

(Approved by the Office of Management and Budget under control number 1840–0126)

(Authority: 20 U.S.C. 1133c)

§ 633.21 What priorities may the Secretary establish?

(a) Each year the Secretary may establish as a priority one or more of the following activities:

(1) Model cooperative education projects in the fields of science and mathematics for women and minorities who are underrepresented in those fields.

(2) Model cooperative education projects specializing in developing technical and professional work force skills for nontraditional students and students from special or underrepresented populations.

(3) Model cooperative education projects that focus on developing and establishing articulation and other cooperative arrangements between or among secondary and postsecondary educational institutions.

(b) The Secretary announces these priorities in a notice published in the Federal Register.

(Authority: 20 U.S.C. 1133c)

PART 634—COOPERATIVE EDUCATION PROGRAM—RESEARCH PROJECTS

Subpart A—General

Sec.
634.1 What is a Research project?
634.2 Who is eligible for a grant?
634.3 What types of Research projects does the Secretary fund?
634.4 What regulations apply?

Subpart B—[Reserved]

Subpart C—How Does the Secretary Make an Award?

634.20 What selection criteria does the Secretary use to evaluate Research project applications?
634.21 What priorities may the Secretary use?

Authority: 20 U.S.C. 1133c, unless otherwise noted.

Subpart A—General

§ 634.1 What is a Research project?

A Research project must conduct studies to improve, develop, or evaluate methods of cooperative education for the benefit of the cooperative education community.

(Authority: 20 U.S.C. 1133c)

§ 634.2 Who is eligible for a grant?

The following are eligible to apply for a grant under this part:

(a) An institution of higher education.

(b) A combination of institutions of higher education.

(c) A public or private nonprofit agency or organization if a grant to the agency or organization will make an especially significant contribution.

(Authority: 20 U.S.C. 1133c)

§ 634.3 What types of Research projects does the Secretary fund?

(a) The Secretary makes awards under this part for Research projects that include, but are not limited to, the following:

(1) Improving the effectiveness of cooperative education projects.

(2) Providing data on the usefulness of cooperative education as an alternative educational approach in assisting students to prepare for careers and to finance their educational pursuits.

(3) Developing better cooperation among secondary schools, institutions of higher education, business, and industry to enhance the opportunity for students to participate in work experiences related to their academic or career objectives.

(b) The Secretary does not fund a project designed to benefit only a single institution.

(Authority: 20 U.S.C. 1133c)

§ 634.4 What regulations apply?

The following regulations apply to this part:

(a) The regulations cited in 34 CFR 631.4.

(b) The regulations in this part.

(Authority: 20 U.S.C. 1133c)

Subpart B—[Reserved]

Subpart C—How Does the Secretary Make an Award?

§ 634.20 What selection criteria does the Secretary use to evaluate Research project applications?

The Secretary uses the following selection criteria in evaluating applications under the Cooperative Education Research program:

(a) *Relevancy of research.* (20 points). The Secretary considers the extent to which—

(1) The proposed research is responsive to a major problem or need in cooperative education; and

(2) The findings would be of value to institutions, faculty, students, or employers involved or interested in cooperative education.

(b) *Design of research.* (20 points). The Secretary considers the research design by assessing the objectivity and quality of the—

(1) Definition of the problem or objectives to which the research is directed;

(2) Research methods;

(3) Sampling method to be used, if applicable;

(4) Data collection method to be used, if applicable; and

(5) Plan for analyzing data.

(c) *Plan of operation.* (15 points). The Secretary considers the quality and the effectiveness of—

(1) The management plan, including the extent to which the plan ensures proper and efficient administration of the project;

(2) The schedule for implementing the project; and

(3) The way the applicant plans to use its resources and personnel to conduct the project.

(d) *Adequacy of resources.* (10 points). The Secretary considers the extent to which—

(1) The personnel resources the applicant plans to use are adequate;

(2) The facilities that the applicant plans to use are adequate; and

(3) The equipment and supplies that the applicant plans to use are adequate.

(e) *Quality of key personnel.* (20 points). The Secretary considers the quality of the key personnel the applicant plans to use on the project by reviewing—

(1) The qualifications of the project director or principal investigator;

(2) The qualifications of each of the other key personnel to be used in the project; and

(3) How the qualifications of each professional person involved in the project relate to the project's stated purposes and objectives.

(f) *Dissemination of results.* (5 points). The Secretary considers the extent to which the results of the research will be disseminated by reviewing—

(1) Publication plans;

(2) Methods of dissemination; and

(3) The dissemination schedule.

(g) *Budget.* (10 points). The Secretary reviews the budget to assure that it is reasonable considering the design of the project, the plan of operation, and plans for disseminating the results of the research.

(Approved by the Office of Management and Budget under control number 1840–0126)

(Authority: 20 U.S.C. 1133c)

§ 634.21 What priorities may the Secretary use?

(a) Each year the Secretary may establish as a priority one or more of the following activities:

(1) Longitudinal studies on former cooperative education students and non-cooperative education students to determine the relationship between the students' cooperative education work experiences and one or more of the following:

(i) Initial job placement.

(ii) Job advancement.

(iii) Long-term earnings.

(2) Assessing the impact of cooperative education on college retention rates and academic achievement of students participating in cooperative education, compared to non-participants.

(3) Assessing the impact of comprehensive cooperative education projects on—

(i) The institution;

(ii) Students at the institution;

(iii) Faculty;

(iv) Employment opportunities; and

(v) Factors influencing the successes and failures of comprehensive cooperative education projects.

(4) Identifying and assessing incentives and factors that influence an institution of higher education to continue its cooperative education project successfully after Federal financial assistance has ended.

(b) The Secretary announces these priorities in a notice published in the Federal Register.

(Authority: 20 U.S.C. 1133c)

PART 635—COOPERATIVE EDUCATION PROGRAM—TRAINING AND RESOURCE CENTER PROJECTS

Subpart A—General

Sec.

635.1 What is a Training and Resource Center project?
635.2 Who is eligible for a grant?
635.3 Who is eligible to participate?
635.4 What activities may the Secretary fund?
635.5 What regulations apply?

Subpart B—[Reserved]

Subpart C—How Does the Secretary Make an Award?

635.20 What selection criteria does the Secretary use to evaluate applications?
635.21 What priorities may the Secretary establish?

Authority: 20 U.S.C. 1133c, unless otherwise noted.

Subpart A—General

§ 635.1 What is a Training and Resource Center project?

A Training and Resource Center project must be designed to train and assist individuals who participate in, or are planning to participate in, planning, establishing, and administering cooperative education projects.

(Authority: 20 U.S.C. 1133c)

§ 635.2 Who is eligible for a grant?

The following are eligible to apply for a grant under this part:

(a) An institution of higher education.

(b) A combination of institutions of higher education.

(c) A public or private nonprofit agency or organization, whenever a grant to the agency or organization will make an especially significant contribution.

(Authority: 20 U.S.C. 1133c)

§ 635.3 Who is eligible to participate?

Individuals with a need for training, project-related materials, and technical assistance in planning, establishing, or administering a cooperative education project are eligible to participate in training projects assisted under this part. These individuals may include—

(a) Presidents and administrators of institutions of higher education, whether or not their institutions currently administer a federally-funded cooperative education project;

(b) Faculty and staff of institutions of higher education, whether or not their institutions currently administer a federally-funded cooperative education project;

(c) Secondary school personnel responsible for career and academic guidance; and

(d) Employers or prospective employers of students who are involved in a cooperative education project.

(Authority: 20 U.S.C. 1133c)

§ 635.4 What activities may the Secretary fund?

(a) The Secretary makes awards for projects designed to provide information and develop skills necessary to administer cooperative education projects.

(b) A grantee must conduct one or more of the following activities:

(1) Training for project directors, coordinators, faculty members, employers, and other persons in § 635.3 who are or will be involved in cooperative education.

(2) Improving materials used in cooperative education programs in conjunction with other activities described in this section.

(3) Providing technical assistance to institutions of higher education to increase their potential to continue cooperative education programs without Federal funds.

(4) Encouraging model cooperative education projects that furnish education and training in occupations for which there is a national need.

(5) Supporting partnerships in which an existing comprehensive cooperative education program assists one or more institutions to—

(i) Improve their existing cooperative education program; or

(ii) Establish, expand, or improve a comprehensive cooperative education program.

(6) Encouraging model cooperative education programs in the fields of science or mathematics for women or minorities who are underrepresented in these fields.

(Authority: 20 U.S.C. 1133c)

§ 635.5 What regulations apply?

The following regulations apply to this part:

(a) The regulations cited in 34 CFR 631.4.

(b) The regulations in this part.

(Authority: 20 U.S.C. 1133c)

Subpart B—[Reserved]

Subpart C—How Does the Secretary Make an Award?

§ 635.20 What selection criteria does the Secretary use to evaluate applications?

The Secretary uses the following selection criteria to evaluate an application under this part:

(a) *Needs assessment.* (21 points). The Secretary considers the extent to which the applicant provides evidence, as applicable, of current need for its project, including, but not limited to, need for—

(1) Training, technical assistance, and materials in its geographical area or in the nation;

(2) Training partnerships to assist in developing cooperative education programs; or

(3) Developing model cooperative education programs.

(b) *Purpose and scope of training and functions of the resource center.* (15 points). The Secretary considers the extent to which the purpose of the project and the scope of the project activities to be provided will address the needs of the constituency selected to receive training and information. The Secretary makes this determination based on needs analysis data.

(c) *Plan of operation.* (36 points). The Secretary considers—

(1) The extent to which the applicant provides evidence of thorough planning for the proposed project, including the procedures to be used in conducting the project and the commitment of personnel to be involved in conducting the project;

(2) The extent to which the objectives and proposed outcomes of the project relate to the project's purpose and the results of the needs assessment;

(3) The quality of the actual design of the project, including plans for dealing with unexpected problems and evaluation results;

(4) The quality of the activities to be conducted and their relationship to the criteria in paragraph (c)(2) of this section;

(5) The quality of the methods and procedures to be used in conducting the project's training plan;

(6) The proposed schedule for conducting project activities and training sessions;

(7) The extent to which the applicant will ensure that project participants who are otherwise eligible to participate are selected without regard to race, color, national origin, gender, age, or disabling condition;

(8) The quality of the plan for managing the project; and

(9) The extent to which the proposed project has promise of fulfilling the proposed objectives and current need for the project.

(d) *Quality of key personnel.* (9 points). The Secretary considers—

(1) The qualification and training skills of the project director;

(2) The qualifications of other professional personnel, including consultants, to be used in the project; and

(3) How the qualifications of each professional person involved in the project relate to the project's stated purposes and objectives.

(e) *Adequacy of resources.* (6 points). The Secretary considers the extent to which—

(1) Personnel resources are available and adequate for conducting the project's activities;

(2) Physical facilities are available and adequate for conducting the project's activities; and

(3) Necessary equipment and other required resources are available and adequate for conducting the project's activities.

(f) *Evaluation plan.* (10 points). The Secretary considers the quality of the proposed evaluation plan for the project, including the extent to which the methods of evaluation—

(1) Are appropriate to the project; and

(2) Are objective and produce quantifiable data that demonstrate the impact of the project.

(g) *Budget.* (3 points). The Secretary considers the extent to which the budget is reasonable considering the scope of training and the plan of operation.

(Approved by the Office of Management and Budget under control number 1840–0126)

(Authority: 20 U.S.C. 1133c)

§ 635.21 What priorities may the Secretary establish?

(a) Each year the Secretary may select as a priority one or more of the activities listed in § 635.4.

(b) The Secretary announces these priorities in a notice published in the **Federal Register.**

(Authority: 20 U.S.C. 1133c)

[FR Doc. 93–19266 Filed 8–10–93; 8:45 am]

BILLING CODE 4000–01–P

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34 CFR Part 636

RIN 1840–AB60

Urban Community Service Program

AGENCY: Department of Education.

ACTION: Final regulations.

SUMMARY: The Secretary promulgates regulations for the Urban Community Service Program. The Urban Community Service Program provides grants to urban academic institutions to work with private and civic organizations to devise and implement solutions to pressing and severe problems in their urban communities.

These regulations are needed to implement the provisions of the recently enacted Higher Education Amendments of 1992 (1992 Amendments). The regulations incorporate statutory requirements and provide rules for applying for and spending Federal funds under this program.

EFFECTIVE DATE: These regulations take effect either 45 days after publication in the **Federal Register** or later if the Congress takes certain adjournments. If you want to know the effective date of these regulations, call or write the Department of Education contact person. A document announcing the effective date will be published in the **Federal Register.**

FOR FURTHER INFORMATION CONTACT: Patricia W. Gore. Telephone: (202) 708–7389. 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: These final regulations implement the Urban Community Service Program, which is authorized by title XI, part A of the Higher Education Act of 1965 (HEA), as amended by the Higher Education Amendments of 1992 (Pub. L. 102–325), enacted July 23, 1992.

The Urban Community Service Program plays an important role in helping to achieve National Education Goal 5, that every adult American will be literate and will possess the knowledge and skills necessary to compete in a global economy and exercise the rights and responsibilities of citizenship. The program furthers the objectives of Goal 5 by affording students in urban academic institutions an opportunity to learn more about the problems in their communities and to participate in developing solutions to these problems.

On May 20, 1993, the Secretary published a notice of proposed rulemaking for this program in the **Federal Register** (58 FR 29373). In this notice, the Secretary solicited public comment on the proposed regulations.

Analysis of Comments and Changes

In response to the Secretary's invitation in the NPRM, four parties submitted comments on the proposed regulations. An analysis of the comments follows.

Technical and other minor changes—and suggested changes the Secretary is not legally authorized to make under the applicable statutory authority—are not addressed.

Comments: Section 1108(2)(B)(ii) of the HEA and § 636.2(b)(2) of the regulations require that an institution of higher education or consortium of institutions draw a "substantial portion of its undergraduate students" from the urban area in which the institution is located, or from contiguous areas, to be eligible for a grant. The Secretary defined "substantial portion of its undergraduate students" in § 636.7(b) of the proposed regulations to mean 50 percent or more of the enrolled undergraduate student population. All four commenters believe that this proposed definition set too high a threshold for eligibility. Commenters contended that 50 percent is an inappropriate threshold since the statute did not require a "majority."

Discussion: The Secretary agrees that the definition should be changed. The Secretary has changed the definition of "substantial portion of its undergraduate students" to mean 40 percent or more of the enrolled undergraduate student population.

Changes: The definition in § 636.7(b) of "substantial portion of its undergraduate students" is changed to mean 40 percent or more of the enrolled undergraduate student population.

Executive Order 12291

These proposed regulations have been reviewed in accordance with Executive Order 12291. They are not classified as major because they do not meet the criteria for major regulations established in the order.

Paperwork Reduction Act of 1980

Sections 636.10, 636.11, and 636 21 contain information collection requirements. As required by the Paperwork Reduction Act of 1980, the Department of Education will submit a copy of these sections to the Office of Management and Budget (OMB) for its review. (44 U.S.C. 3504(h))

Institutions of higher education are eligible to apply for grants under these regulations. The Department needs and uses the information to make grants. Annual public reporting burden for this collection of information is estimated to average 80 hours per response for 200 respondents, including the time for reviewing instructions, searching existing data sources, gathering and maintaining the data needed, and completing and reviewing the collection of information.

Organizations and individuals desiring to submit comments on the information collection requirements should direct them to the Office of Information and Regulatory Affairs, OMB, room 3002, New Executive Office Building, Washington, DC. 20503; Attention: Daniel J. Chenok.

Intergovernmental Review

This program is subject to the requirements of Executive Order 12372 and the regulations in 34 CFR part 79. The objective of the Executive order is to foster an intergovernmental partnership and a strengthened federalism by relying on processes developed by State and local governments for coordination and review of proposed Federal financial assistance.

In accordance with the order, this document is intended to provide early notification of the Department's specific plans and actions for this program.

Assessment of Education Impact

In the notice of proposed rulemaking, the Secretary requested comments on whether the proposed regulations would require transmission of information that is being gathered by or is available from

any other agency or authority of the United States.

Based on the response to the proposed rules and on its own review, the Department has determined that the regulations in this document do not require transmission of information that is being gathered by or is available from any other agency or authority of the United States.

List of Subjects in 34 CFR Part 636

College and universities, Grant program-education, Reporting and recordkeeping requirements.

(Catalog of Federal Domestic Assistance Number 84.252—Urban Community Service Program)

Dated: August 5, 1993.

Richard W. Riley,

Secretary of Education.

The Secretary amends title 34 of the Code of Federal Regulations by adding a new part 636 to read as follows:

PART 636—URBAN COMMUNITY SERVICE PROGRAM

Subpart A—General

Sec.

636.1 What is the Urban Community Service Program?
636.2 Who is eligible for a grant?
636.3 What activities may the Secretary support?
636.4 What is the duration of an Urban Community Service Program grant?
636.5 What are the matching contribution and planning consortium requirements?
636.6 What regulations apply?
636.7 What definitions apply?

Subpart B—How Does One Apply for an Award?

636.10 What must an application include?
636.11 How does an applicant request a waiver of the planning consortium requirement?

Subpart C—How Does the Secretary Make an Award?

636.20 How does the Secretary evaluate an application?
636.21 What selection criteria does the Secretary use to evaluate an application?
636.22 What additional factors does the Secretary consider?
636.23 What priorities does the Secretary establish?

Subpart D—How Does the Secretary Designate Urban Grant Institutions and Establish an Urban Grant Institutions Network?

636.30 How does the Secretary designate urban grant institutions?
636.31 How does the Secretary establish a network of urban grant institutions?

Authority: 20 U.S.C. 1136–1136h, unless otherwise noted.

Subpart A—General

§ 636.1 What is the Urban Community Service Program?

The Urban Community Service Program provides grants to urban academic institutions to work with private and civic organizations to devise and implement solutions to pressing and severe problems in their urban communities.

(Authority: 20 U.S.C. 1136, 1136a)

§ 636.2 Who is eligible for a grant?

The following institutions are eligible for grants under the Urban Community Service Program:

(a) A nonprofit municipal university, established by the governing body of the city in which it is located and operating as of July 23, 1992.

(b) An institution of higher education or a consortium of institutions with at least one member that satisfies all of the following requirements:

(1) Is located in an urban area.

(2) Draws a substantial portion of its undergraduate students from the urban area in which it is located or from contiguous areas.

(3) Carries out programs to make postsecondary educational opportunities more accessible to residents of the urban area or contiguous areas.

(4) Has the present capacity to provide resources responsive to the needs and priorities of the urban area and contiguous areas.

(5) Offers a range of professional, technical, or graduate programs sufficient to sustain the capacity of the institution to provide these resources.

(6) Has demonstrated and sustained a sense of responsibility to the urban area and contiguous areas and the people in those areas.

(Authority: 20 U.S.C. 1136g)

§ 636.3 What activities may the Secretary support?

(a) The Secretary awards grants under this program for the following activities:

(1) Planning.

(2) Applied research.

(3) Training.

(4) Resource exchanges or technology transfers.

(5) Delivery of services.

(6) Other activities to design and implement programs to assist urban communities to meet and address their pressing and severe problems.

(b) Examples of pressing and severe urban problems that applications may address include concerns such as the following:

(1) Work force preparation.

(2) Urban poverty and the alleviation of poverty.

(3) Health care, including delivery and access.

(4) Underperforming school systems and students.

(5) Problems faced by the elderly and individuals with disabilities in urban settings.

(6) Problems faced by families and children.

(7) Campus and community crime prevention, including enhanced security and safety awareness measures as well as coordinated programs addressing the root causes of crime.

(8) Urban housing.

(9) Urban infrastructure.

(10) Economic development.

(11) Urban environmental concerns.

(12) Other problem areas that participants of the planning consortium agree are of high priority in the urban area in which their institutions are located.

(13) Problems faced by individuals with disabilities regarding accessibility to institutions of higher education and other public and private community facilities.

(14) Lessening of existing attitudinal barriers that prevent full inclusion of individuals with disabilities within their community.

(Authority: 20 U.S.C. 1136c)

§ 636.4 What is the duration of an Urban Community Service Program grant?

The duration of an Urban Community Service Program grant is a maximum of five annual budget periods.

(Authority: 20 U.S.C. 1136d)

§ 636.5 What are the matching contribution and planning consortium requirements?

(a) The applicant and the local governments associated with its application shall contribute to the conduct of the project supported by the grant an amount, in cash or in-kind, from non-Federal funds equal to at least one-fourth of the amount of the grant.

(b) The applicant shall develop and include in its application a plan agreed to by the members of a planning consortium.

(Authority: 20 U.S.C. 1136b, 1136e)

§ 636.6 What regulations apply?

The following regulations apply to the Urban Community Service Program:

(a) The Education Department General Administrative Regulations (EDGAR) as follows:

(1) 34 CFR part 74 (Administration of Grants to Institutions of Higher Education, Hospitals, and Nonprofit Organizations).

(2) 34 CFR part 75 (Direct Grant Programs).

(3) 34 CFR part 77 (Definitions that Apply to Department Regulations).
(4) 34 CFR part 79 (Intergovernmental Review of Department of Education Programs and Activities).
(5) 34 CFR part 80 (Uniform Administrative Requirements for Grants and Cooperative Agreements to State and Local Governments).
(6) 34 CFR part 82 (New Restrictions on Lobbying).
(7) 34 CFR part 85 (Governmentwide Debarment and Suspension (Nonprocurement) and Governmentwide Requirements for Drug-Free Workplace (Grants)).
(8) 34 CFR part 86 (Drug-Free Schools and Campuses).
(b) The regulations in this part 636.

(Authority: 20 U.S.C. 1136, 1136a)

§ 636.7 What definitions apply?

(a) *Definitions in EDGAR.* The following terms used in this part are defined in 34 CFR 77.1:

Applicant
Application
Award
Budget period
Department
EDGAR
Grant
Project
Project period
Secretary

(b) *Other definitions.* The following definitions also apply to this part:

Contiguous areas means counties or independent cities sharing a part of a border with the metropolitan area within which an urban academic institution is located.

Consortium of institutions of higher education means two or more institutions of higher education that have entered into a cooperative arrangement for the purpose of carrying out common objectives.

Consortium of institutions of higher education means two or more institutions of higher education that have entered into a cooperative arrangement for the purpose of carrying out common objectives.

HEA means the Higher Education Act of 1965, as amended.

Individuals with disabilities means individuals who—
(i) Have physical or mental impairments that substantially limits one or more of the major life activities;
(ii) Have a record of physical or mental impairments; or
(iii) Are regarded as having physical or mental impairments.

Institution of higher education means an institution of higher education as defined in section 1201(a) of the HEA.

Local government means a city, town, township, county, or other unit of general government organized under State laws and given delegated taxing or expenditure authority for providing governmental services to local communities.

Metropolitan area means a metropolitan area or a consolidated metropolitan area, as designated by the United States Office of Management and Budget.

Nonprofit municipal university means an institution of higher education that—
(i) Is chartered or otherwise established as a not-for-profit institution by the governing body of the city in which it is located; and
(ii) Is accredited by an agency or association recognized by the Secretary.

Planning consortium means the applicant institution and one or more of the following:
(i) A community college.
(ii) An urban school system.
(iii) A local government.
(iv) A business or other employer.
(v) A nonprofit institution.

Substantial portion of its undergraduate students means 40 percent or more of the enrolled undergraduate student population.

Urban area means—
(i) A metropolitan area having a population of not less than 350,000;
(ii) Two contiguous metropolitan areas having a combined total population of not less than 350,000;
(iii) In any State that does not have a metropolitan area having a population of not less than 350,000, the one urban area designated by the entity of the State having an agreement under the HEA to make a designation; or
(iv) If a State entity does not have an agreement under the HEA to make a designation, the one urban area designated by the Secretary.

Urban infrastructure means the underlying mechanical or technological networks for providing goods and services, such as transportation systems (including mass transit), water and sewage systems, and communication systems (including telecommunications).

(Authority: 20 U.S.C. 1136a-1136g)

Subpart B—How Does One Apply for an Award?

§ 636.10 What must an application include?

An application must include the following:
(a) A description of the activities for which the grant is sought.
(b) The plan agreed to by each of the members of the planning consortium.
(c) An assurance that the applicant and the local governments associated with the application will contribute to the conduct of the project supported by the grant an amount, in cash or in-kind, from non-Federal funds equal to at least one-fourth of the amount of the grant.

(Authority: 20 U.S.C. 1136b)

§ 636.11 How does an applicant request a waiver of the planning consortium requirement?

(a) An applicant may request that the Secretary waive the requirement for a planning consortium by submitting as part of the application a request that includes the following:
(1) The reasons why the applicant seeks the waiver.
(2) Detailed information evidencing the applicant's integrated and coordinated plan to work with private and civic organizations to meet the pressing and severe problems of the urban community.
(b) The Secretary may grant the request for a waiver if the Secretary finds that—
(1) The applicant has shown an integrated and coordinated plan to meet the purposes of the Urban Community Service Program; and
(2) A planning consortium would not substantially improve the applicant's proposed project.

(Authority: 20 U.S.C. 1136b)

Subpart C—How Does the Secretary Make an Award?

§ 636.20 How does the Secretary evaluate an application?

(a) The Secretary evaluates an application on the basis of the selection criteria in § 636.21.
(b) The Secretary awards up to 100 points for these selection criteria.
(c) The maximum possible score for each criterion is indicated in parentheses.

(Authority: 20 U.S.C. 1136b)

§ 636.21 What selection criteria does the Secretary use to evaluate an application?

The Secretary uses the following criteria to evaluate an application under this part:

(a) *Determination of need for the project.* (10 points). The Secretary reviews each application to assess the effectiveness of the procedures used by the applicant in determining need for the project, including consideration of—
(1) The process used to ensure that the pressing and severe problems that are identified are in fact high priority problems for the urban area;
(2) The priority relationship of the problems addressed by the project to other pressing and severe problems identified for the urban area;

(3) The extent to which the problems addressed by the project represent pressing and severe problems in urban areas nationally;

(4) The process by which project participants review and comment on proposed project goals, objectives, and strategies; and

(5) The specific benefits to be gained by meeting the identified problems.

(b) *Quality of the applicant's organization for operation.* (20 points). The Secretary reviews each application to determine the quality of the organization for operation, including consideration of how the application describes the following:

(1) The cooperative arrangement between the applicant and any of the following that are appropriate for the conduct of the proposed project:

(i) Agencies of local government.

(ii) Public and private elementary and secondary schools.

(iii) Business organizations.

(iv) Labor organizations.

(v) Community service and advocacy organizations.

(vi) Community colleges.

(2)(i) Any previous working relationships between the applicant and the entities listed in paragraph (b)(1) of this section; and

(ii) The outcomes of those relationships.

(3) The agreement among project participants to commit their own resources in carrying out proposed project goals, objectives, and strategies.

(c) *Quality of project objectives.* (10 points). The Secretary reviews each application to determine the extent to which the objectives for each project component activity meet the purposes of the program, are realistic, and are defined in terms of measurable results.

(d) *Quality of implementation strategy.* (20 points). The Secretary reviews each application to determine the extent to which—

(1) The implementation strategy for each key project component activity is—

(i) Comprehensive;

(ii) Based on a sound rationale; and

(iii) Is a cost-effective approach for accomplishing project goals and objectives; and

(2) The described timetable for each project component and for the overall project is realistic.

(e) *Quality of evaluation plan.* (15 points). The Secretary reviews each application to determine the quality of the evaluation plan for the project, including the extent to which the applicant's methods of evaluation—

(1) Relate to the objectives of the project;

(2) Describe both process and product evaluation measures for each project component activity and outcome;

(3) Describe data collection procedures, instruments, and schedules for effective data collection;

(4) Describe how the data will be analyzed and reported so that adjustments and improvements can be made on a regular basis while the project is in operation;

(5) Describe a time-line chart that relates key evaluation processes and benchmarks to other project component processes and benchmarks; and

(6) Establish the potential for effectively disseminating project information that can be generalized, replicated, and applied throughout the Nation.

(f) *Quality of key personnel.* (10 points). The Secretary reviews each application to determine the qualifications of key personnel, including information that—

(1) The past work experience and training of key professional personnel are directly related to the stated activity purposes and objectives; and

(2) The time commitment of key personnel is realistic.

(g) *Budget.* (5 points). The Secretary reviews each application to determine whether the project has an adequate budget and is cost effective, including information that shows that—

(1) The budget for the project is adequate to support the project activities; and

(2) The costs are necessary and reasonable in relation to the project objectives and scope.

(h) *Institutional commitment.* (10 points). The Secretary reviews each application to determine the extent to which the application demonstrates a financial commitment on the part of the applicant and the local governments associated with its application, including the nature and amount of the matching contribution, and other institutional commitments from the applicant and other entities associated with the project, that are likely to assure the continuation of project activities for a significant time beyond the grant project period.

(Authority: 20 U.S.C. 1136b, 1136e)

§ 636.22 What additional factors does the Secretary consider?

(a) The Secretary awards grants in a manner that achieves an equitable geographic distribution of grants.

(b) No institution, individually or as a participant in a consortium of institutions, may receive an Urban Community Service Program grant for more than five years.

(Authority: 20 U.S.C. 1136e)

§ 636.23 What priorities does the Secretary establish?

In awarding grants, the Secretary gives an absolute preference to applicants that propose to conduct joint projects supported by other local, State, and Federal programs.

(Authority: 20 U.S.C. 1136b)

Subpart D—How Does the Secretary Designate Urban Grant Institutions and Establish an Urban Grant Institutions Network?

§ 636.30 How does the Secretary designate urban grant institutions?

(a) The Secretary identifies and designates the eligible institutions described in § 636.2 as urban grant institutions.

(b) The Secretary publishes a list of urban grant institutions in a notice published in the **Federal Register**

(Authority: 20 U.S.C. 1136f)

§ 636.31 How does the Secretary establish a network of urban grant institutions?

(a) The Secretary establishes a network of urban grant institutions consisting of the urban grant institutions designated in § 636.30.

(b) The Secretary invites institutions in the network of urban grant institutions to disseminate results and other information on individual projects that can be generalized, replicated, and applied throughout the Nation.

(Authority: 20 U.S.C. 1136f)

[FR Doc. 93–19267 Filed 8–10–93; 8:45 am]

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34 CFR Part 654

RIN 1840–AB77

Robert C. Byrd Honors Scholarship Program

AGENCY: Department of Education.

ACTION: Final regulations.

SUMMARY: The Secretary amends the regulations governing the Robert C. Byrd Honors Scholarship Program. These amendments are needed to implement the Higher Education Amendments of 1992 and to clarify the existing regulations governing the program.

EFFECTIVE DATE: These regulations take effect either 45 days after publication in the **Federal Register** or later if the Congress takes certain adjournments. If you want to know the effective date of these regulations, call or write the Department of Education contact person. A document announcing the

effective date will be published in the Federal Register.

FOR FURTHER INFORMATION CONTACT: Patricia Gore. Telephone: (202) 708–8849. 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: The Robert C. Byrd Honors Scholarship Program (program) is authorized by sections 419A–419K of the Higher Education Act of 1965 (HEA), as amended by the Higher Education Amendments of 1992 (Pub. L. 102–325), enacted July 23, 1992. Through this program, the Secretary provides grants to States to provide scholarships for study at institutions of higher education to outstanding high school graduates who show promise of continued excellence, in an effort to recognize and promote student excellence and achievement. By promoting student excellence and achievement, the program supports National Education Goal 4, that U.S. students be first in the world in math and science, and Goal 5, that every adult American be literate and possess the knowledge and skills necessary to compete in a global economy.

On May 14, 1993, the Secretary published a notice of proposed rulemaking (NPRM) for this program in the Federal Register (58 FR 28538). The major issues addressed by the regulations are discussed in the preamble to the NPRM. There are no major differences between the NPRM and the final regulations.

Analysis of Comments and Changes

Six commenters responded to the Secretary's invitation to comment on the NPRM. The following is an analysis of comments and changes in the regulations since publication of the NPRM. Substantive issues are discussed under the section of the regulations to which they pertain. Technical and other minor changes to the language published in the NPRM—and requests for changes the Secretary is not legally authorized to make under applicable statutory authority—may not be addressed.

Administrative Costs (§ 654.3)

Comment: All of the commenters objected to the elimination of the administrative cost allowance. In particular, commenters were concerned about the failure to provide an administrative cost allowance in light of the increase in State administrative burdens under this program. Some commenters specifically requested that they be permitted to use unexpended funds to cover administrative expenses.

Discussion: In the 1992 Amendments to the HEA, Congress amended the statute governing this program to remove sections 419E(5) and 419D(a)(2) to eliminate the provision for administrative expenses. At the same time, Congress expanded the scholarship period under the program from one to four years. A four-year scholarship period is inherently more burdensome on States because States must monitor the continuing eligibility of scholars for three more years. Accordingly, although the Secretary acknowledges increased State administrative burdens, the Secretary does not have authority under the statute to permit States to use Federal funds under this program, including carry over and other unexpended funds, to cover State administrative expenses.

Changes: None.

Applicable Regulations (§ 654.4)

Comment: One commenter recommended that this section be revised to include 34 CFR part 668 on the list of regulations that apply to this program.

Discussion: 34 CFR Part 668 contains the Student Assistance General Provisions that establish general rules that apply to an institution that participates in a student financial assistance program authorized by Title IV of the HEA. The Secretary previously determined in § 668.1(c) those Title IV programs to which the provisions of part 668 apply. This program is not among the programs listed in § 668.1(c). Those specific sections of part 668 that do apply to this program are cross-referenced in the regulations for this program.

Changes: None.

Award Year (§ 654.5(b))

Comment: Several commenters requested clarification of the definition of "award year." In particular, some commenters wondered whether the period of an award year, July 1 of one year through June 30 of the following year, would preclude the use of funds for students attending summer school, and if not, which award year the funds should come from.

Discussion: The definition of "award year" is taken from section 481(d) of the HEA. The term "award year" refers to the period for which the Secretary awards the funds to the States. Thus, a State must obligate funds received for a particular award year by June 30 of that award year.

The Secretary does not believe it is necessary to clarify the definition of "award year." Rather, the Secretary believes the comments reflect confusion about the term "year of study," which is the period of time for which a State awards scholarship funds to a scholar. "Year of study" is defined in terms of an institution's definition of the period of time necessary to complete one year of coursework. Scholarships must be pro-rated based on that period of time. For example, if an institution defines the period of time necessary to complete one year of coursework as two semesters, and a summer session at that institution is considered the equivalent of one semester, a student who attends for the spring semester and the summer session would be entitled to the full scholarship for that year of study. All of the funds could come from one award year, as long as the funds were obligated by the institution by June 30.

Changes: None.

Administrative Responsibilities (§ 654.11(a))

Comment: One commenter asked whether administrative responsibilities for this program could be handled by the financial aid offices of the institutions that the scholars attend.

Discussion: Section 419E of the HEA requires the Secretary to enter into an agreement with each State that assures that the SEA will administer the program. The Secretary believes that an SEA could, consistent with the agreement, subcontract for assistance in the day-to-day implementation and operation of the program, as long as overall responsibility for the program remains with the SEA.

Changes: None.

Selection of Scholars (§§ 654.40(a) and 654.41(b)(4)(i))

Comment: One commenter asked for clarification of the regulations containing requirements related to the selection process. In particular the commenter wondered whether students who are legal residents of one State but attend secondary school in another State are permitted to nominate themselves for consideration for a scholarship under this program.

Discussion: The Secretary declines to require States to adopt specific selection procedures, such as self-nomination, for out-of-State students. However, the Secretary believes that any procedure that precluded a legal resident who was attending secondary school out-of-State from applying would be inconsistent with § 654.41(b)(4)(i) of the regulations, which requires SEAs to establish selection criteria and procedures to

ensure that they select scholars without regard to whether the secondary school the scholar attends is within or outside the State.

Changes: None.

Equitable Geographic Distribution (§ 654.41(b)(3))

Comment: Several commenters asked for clarification of the requirement that States select scholars in a manner that ensures an "equitable geographic distribution." Some commenters recommended that Federal congressional districts be used as a basis for ensuring equitable geographic distribution. Other commenters suggested that the regulations be modified to permit States to define their own criteria, subject to the approval of the Secretary.

Discussion: The equitable geographic distribution requirement in the regulations is taken from section 419G(b) of the statute, which was revised to replace the specific requirements relating to distribution among congressional districts. The Secretary believes that distribution by congressional districts may be one way to ensure that the scholarships are equitably distributed, but leaves States the flexibility to develop their own criteria to meet the standard, subject to the Secretary's approval. No change in the regulations is necessary.

Changes: None.

Four-year Scholarship Period (§ 654.50(a))

Comment: Several commenters objected to the requirement in the regulations that SEAs disburse scholarship funds each year for a maximum of four years to each scholar that continues to meet the eligibility requirements. Commenters expressed the view that the statute does not state that scholarships shall be for four years only, and they requested the flexibility to provide awards on a one year basis or to provide five years of funding to scholars in five year programs. One commenter asked whether scholars who complete their undergraduate study in three years could be funded for their first year of graduate study.

Discussion: Section 419C(b) of the HEA provides that the scholarships shall be awarded for a period of "not more than" four years for the first four years of study. The language of the statute does not leave any room for an interpretation that five years of funding may be provided to a scholar in a five-year program. Moreover, since the 1992 Amendments removed the one-academic-year limit on the scholarship period that was previously provided under this program, the Secretary does not believe it would be consistent with legislative intent to permit States to limit scholarships to one year. The Secretary interprets "not more than" to mean that a scholar may receive less then four years of funding only if the scholar does not meet the continuing eligibility requirements.

Scholars who complete their course of study and receive an undergraduate degree in three years are eligible to receive scholarship funds under this program only for those three years of undergraduate study. Congress provided separate scholarship programs for graduate study under Title IX of the HEA, and this program is limited to undergraduates. The Secretary does not believe that Congress intended to provide graduate assistance under this program when it expanded the scholarship period from one to four years. Rather, the Secretary believes that Congress expanded the scholarship period to four years because that is the normal time period required to obtain an undergraduate degree.

Changes: None.

Total Financial Assistance (§ 654.50(b))

Comment: Two commenters requested clarification regarding both the requirement that the SEA ensure that the total amount of financial aid awarded to a scholar for a year of study does not exceed the cost of attendance and the requirement that loans be reduced prior to a scholarship under this program. In particular, the commenters wondered whether a Federal Pell grant can be reduced if a scholar receives a Federal Pell grant, a private donation, and a scholarship under this program. One commenter requested a definition of the term "cost of attendance."

Discussion: The requirement that the total amount of financial aid awarded to a scholar not exceed the total cost of attendance is taken from section 419H(a) of the HEA. The term "cost of attendance" is defined in section 472 of the HEA. The Secretary interprets the total amount of financial aid, for the purposes of section 419H, to mean the total amount of Federal financial assistance. Accordingly, a private donation should not be considered in determining the total amount of financial aid and should not be the basis for a reduction of a scholarship under this program.

On the other hand, a Federal Pell grant would be considered part of the total amount of financial aid. Since under 419J of the HEA a Federal Pell grant cannot be reduced on the basis of the receipt of a scholarship under this program, if the total amount of Federal financial assistance exceeds the cost of attendance, a scholarship under this program should be reduced prior to a Federal Pell grant.

The Secretary has determined that if a scholar under this program is due to receive a loan, however, the loan should be reduced prior to the scholarship under this program. This policy is not prohibited by the HEA and is consistent with the purpose of this program to provide scholarship assistance to students who demonstrate outstanding academic achievement. Moreover, the Secretary does not believe that students should be required to incur greater loan debt when they are eligible to receive grant funds that do not have to be repaid.

Changes: Paragraph (b) of § 654.5 has been revised to add a definition for "cost of attendance" that cross references the definition of that term in section 472 of the HEA.

Disbursement of Scholarship Funds (§ 654.50(c))

Comment: Several commenters asked for clarification regarding the requirement that scholars be selected and awards made prior to the end of each secondary school academic year. In particular, commenters wondered whether funds must actually be disbursed to scholars prior to the end of the secondary school academic year. A few commenters noted that the SEA may not receive the official award letter from the Department by that time.

Discussion: The requirement that scholars be selected and awards made prior to the end of the secondary school academic year is taken from section 419G(d) of the statute. The Secretary interprets this requirement to mean that scholars must be selected and notified in writing of their scholarship award prior to the end of the secondary school year. The Secretary does not believe that SEAs are required to actually disburse the scholarship funds to the scholars by that time.

Changes: None.

Continuing Eligibility Requirements (§§ 654.51 and 654.52)

Comment: A number of commenters objected to the eligibility requirements for scholars to continue to receive scholarship funds under this program. Several commenters objected to the requirement that scholars be enrolled full time, stating that it would put a strain on scholars who need to work or who are participating in co-op programs. A few commenters recommended removing references to pro-rating awards for part-time students.

Several commenters recommended that the continuing eligibility criteria be limited to the following three requirements: attendance at an eligible institution, the absence of a default on a Federal student loan, and the maintenance of satisfactory academic progress. One commenter suggested that States have flexibility to award scholarship funds to continuing scholars prior to receipt of certifications from institutions that the scholars meet the continuing eligibility requirements. Several commenters expressed the view that this program is not a loan program and therefore should not include any requirements for the repayment of funds when they are awarded to scholars who fail to meet the continuing eligibility criteria.

Discussion: Continuing eligibility criteria are necessary for this program for the first time because the 1992 Amendments expanded the scholarship period from one to four years. The Secretary believes the continuing eligibility requirements in § 654.51 of the proposed regulations are appropriate, and does not believe there is any basis for limiting the continuing eligibility criteria to the three criteria proposed by some commenters. For example, the Secretary believes the requirements related to citizenship, national, or legal resident status are equally applicable to new and continuing scholars and should be included in the requirements for continuing eligibility.

Moreover, the Secretary believes the regulations strike a fair compromise on the full-time attendance requirement, leaving it up to the SEA to permit part-time attendance after the first year in "unusual circumstances," as defined by the SEA. The Secretary believes that full-time attendance requirement is consistent with the intent of Congress because it will enable most scholars to graduate by the end of the four-year scholarship period.

Requiring the repayment of funds improperly awarded and the pro-ration of funds awarded for less than full-time attendance is simply responsible fiscal management of Federal funds. These provisions do not make this program a loan program. There are no requirements in the regulations for repayment of funds that are properly awarded.

States are responsible for setting up their own procedures to ensure that funds are properly awarded. To the extent that States establish systems that provide scholarship funds prior to receiving certification to document that the scholar meets the continuing eligibility requirements, the States risk awarding funds improperly. States are responsible for repaying funds that are improperly awarded even if they fail to recover them from the students.

Changes: None.

Study Abroad (§ 654.51(a)(2))

Comment: One commenter asked for clarification of the circumstances under which a student could receive scholarship funds under this program for a period during which they were studying abroad.

Discussion: Section 419H(b) of the HEA provides that the SEA must assure that a scholar under this program pursues a course of study at an "institution of higher education." An "institution of higher education" is defined under section 481 of the statute in terms of an educational institution in a "State." Accordingly, a scholar may not continue to receive funds under this program to pursue a course of study at an institution in a foreign country, with one exception. A scholar who is studying abroad through an institution of higher education that meets the definition in section 481 is considered to be eligible to receive funds under this program as long as the scholar is enrolled at and receiving credit from that institution of higher education.

Changes: None.

Carryover of Unexpended Funds (§ 654.60(b))

Comment: Several commenters requested clarification concerning how unexpended scholarship funds, including returned or collected funds, could be used. One commenter asked what happens to scholarship funds if a scholar who is notified of his or her award turns it down.

Discussion: The Education Department General Administrative Regulations (EDGAR), at 34 CFR 76.705, provide that States may carry over to the following fiscal year any funds that are not obligated by the end of the fiscal year for which Congress appropriated the funds. In addition, § 654.60(b) of the regulations expressly permits States to retain for the following award year any funds that are awarded but are subsequently returned or collected. Those funds may be used only to award scholarships.

In order to address the potential problem of unexpended funds because a student notified of his or her selection turned down the scholarship award, at which time it would likely be too late to select a new scholar for that year, the Secretary suggests that States consider setting up a procedure to select alternate scholars. Alternate scholars should be notified of their selection, along with other scholars, by the end of the secondary school year. Alternate scholars would be eligible for funds that became available prior to the beginning of their first year of postsecondary study.

Changes: None.

Priority for Continuing Scholars

Comment: Several commenters asked whether continuing scholars should be funded each year prior to new scholars.

Discussion: Funds for continuing scholars who meet the continuing eligibility requirements should be committed first, with the remaining funds used to award new scholarships. The Secretary believes that this is consistent with the intent of Congress to provide scholarships to students who show promise of continued academic achievement.

Changes: None.

Paperwork Burden (§§ 654.10, 654.11, 654.41, and 654.60)

Comment: One commenter expressed the view that the paperwork burden on States will exceed the estimated average of two hours since all States will be required to submit new applications this year. The commenter recommended increasing the estimate to six hours.

Discussion: The Secretary agrees with the commenter that the average paperwork burden this year is likely to exceed two hours because all States are required to submit new participation agreements.

Changes: The estimated average paperwork burden has been increased from two to six hours.

Executive Order 12291

These final regulations have been reviewed in accordance with Executive Order 12291. They are not classified as major because they do not meet the criteria for major regulations established in the order.

Intergovernmental Review

This program is subject to the requirements of Executive Order 12372 and the regulations in 34 CFR part 79. The objective of the Executive order is to foster an intergovernmental partnership and a strengthened federalism by relying on processes developed by State and local governments for coordination and review of proposed Federal financial assistance.

In accordance with the order, this document is intended to provide early notification of the Department's specific plans and actions for this program.

Assessment of Educational Impact

In the NPRM, the Secretary requested comments on whether the proposed regulations would require transmission of information that is being gathered by or is available from any other agency or authority of the United States.

Based on the response to the proposed regulations and on its own review, the Department has determined that the regulations in this document do not require transmission of information that is being gathered by or is available from any other agency or authority of the United States.

List of Subjects in 34 CFR Part 654

Education, Grant programs—education, State-administered education, Student aid.

(Catalog of Federal Domestic Assistance Number 84.185—Robert C. Byrd Honors Scholarship Program.)

Dated: August 5, 1993.

Richard W. Riley,

Secretary of Education.

The Secretary amends Title 34 of the Code of Federal Regulations by revising part 654 to read as follows:

PART 654—ROBERT C. BYRD HONORS SCHOLARSHIP PROGRAM

Subpart A—General

Sec.

654.1 What is the Robert C. Byrd Honors Scholarship Program?
654.2 Who is eligible for an award?
654.3 What kind of activity may be assisted?
654.4 What regulations apply?
654.5 What definitions apply?

Subpart B—How Does a State Apply for a Grant?

654.10 What must a State do to apply for a grant?
654.11 What is the content of a participation agreement?

Subpart C—How Does the Secretary Make a Grant to a State?

654.20 How does the Secretary approve a participation agreement?
654.21 How does the Secretary determine the amount of the grant to each participating State?

Subpart D—How Does a Student Apply to an SEA for a Scholarship?

654.30 How does a student apply to an SEA for a scholarship?

Subpart E—How Does an SEA Select an Eligible Student to Be Scholar?

654.40 Who is an eligible student?
654.41 What are the selection criteria and procedures?

Subpart F—How Does a Scholar Receive Scholarship Payments?

654.50 How does an SEA disburse scholarship funds?
654.51 What are the continuing eligibility criteria?
654.52 What are the consequences of a scholar's failure to meet the eligibility criteria?

Subpart G—What Post-Award Conditions Must an SEA Meet?

654.60 What requirements must an SEA meet in the administration of this program?

Authority: 20 U.S.C. 1070d–31 to 1070d–41, unless otherwise noted.

Subpart A—General

§ 654.1 What is the Robert C. Byrd Honors Scholarship Program?

Under the Robert C. Byrd Honors Scholarship Program, the Secretary makes grants to the States to provide scholarships for study at institutions of higher education to outstanding high school graduates who show promise of continued excellence, in an effort to recognize and promote student excellence and achievement.

(Authority: 20 U.S.C. 1070d–31, 1070d–33)

§ 654.2 Who is eligible for an award?

(a) States are eligible for grants under this program.

(b) Students who meet the eligibility criteria in §§ 654.40 and 654.51 are eligible for scholarships under this program.

(Authority: 20 U.S.C. 1070d–33, 1070d–36)

§ 654.3 What kind of activity may be assisted?

A State may use its funds under this program, including funds collected from scholars under § 654.60(a)(3), only to make scholarship payments to scholars.

(Authority: 20 U.S.C. 1070d–35, 1070d–38)

§ 654.4 What regulations apply?

The following regulations apply to this program:

(a) The Education Department General Administrative Regulations (EDGAR) as follows:

(1) 34 CFR 75.60–75.62 (regarding the ineligibility of certain individuals to receive assistance under part 75 (Direct Grant Programs)).

(2) 34 CFR part 76 (State-Administered Programs).

(3) 34 CFR part 77 (Definitions that Apply to Department Regulations).

(4) 34 CFR part 79 (Intergovernmental Review of Department of Education Programs and Activities).

(5) 34 CFR part 80 (Uniform Administrative Requirements for Grants and Cooperative Agreements to State and Local Governments).

(6) 34 CFR part 82 (New Restrictions on Lobbying).

(7) 34 CFR part 85 (Governmentwide Debarment and Suspension (Nonprocurement) and Governmentwide Requirements for Drug-Free Workplace (Grants)).

(8) 34 CFR part 86 (Drug-Free Schools and Campuses).

(b) The regulations in this part 654.

(Authority: 20 U.S.C. 1070d–31 *et seq.*)

§ 654.5 What definitions apply?

(a) *Definitions in EDGAR.* The following terms used in this part are defined in 34 CFR 77.1:

EDGAR
Fiscal year
Private
Public
Secretary
State
State educational agency

(b) *Other definitions.* The following definitions also apply to this part:

Award year means the period of time from July 1 of one year through June 30 of the following year.

Cost of attendance has the meaning given that term in section 472 of the HEA.

Full-time student means a student enrolled at an institution of higher education who is carrying a full-time academic workload, as determined by that institution under standards applicable to all students enrolled in that student's program.

HEA means the Higher Education Act of 1965, as amended.

High school graduate means an individual who has—

(i) A high school diploma;

(ii) A General Education Development (GED) Certificate; or

(iii) Any other evidence recognized by the State as the equivalent of a high school diploma.

Institution of higher education means any public or private nonprofit institution of higher education, proprietary institution of higher education, or postsecondary vocational institution, as defined in section 481 of the HEA.

Participating State means a State that has submitted a participation agreement that has been approved by the Secretary.

Scholar means an individual who is selected as a Byrd Scholar.

Scholarship means an award made to a scholar under this part.

Secondary school year means the period of time during which a secondary school is in session, as determined by State law.

Year of study means the period of time during which a full-time student at

an institution of higher education is expected to complete the equivalent of one year of course work, as defined by the institution.

(Authority: 20 U.S.C. 1070d–31 *et seq.*, 20 U.S.C. 1088)

Subpart B—How Does a State Apply for a Grant?

§ 654.10 What must a State do to apply for a grant?

(a) To apply for a grant under this program, a State must submit a participation agreement to the Secretary for review and approval by the deadline announced annually by the Secretary in the **Federal Register**.

(b) On the Secretary's approval of its initial participation agreement for fiscal year 1993 or thereafter, a State need not submit a new participation agreement to be considered for funding under this program in subsequent years, except that any changes in the State's criteria and procedures must be incorporated in a revised participation agreement which must be submitted to the Secretary for review and approval.

(Approved by the Office of Management and Budget under control number 1840–0612)

(Authority: 20 U.S.C. 1070d–35)

§ 654.11 What is the content of a participation agreement?

A State's participation agreement must include the following:

(a) A description of the criteria and procedures that the State, through its State educational agency (SEA), plans to use to administer this program in accordance with the requirements of this part, including the criteria and procedures it plans to use to—

(1) Publicize the availability of Byrd scholarships to students in the State, with particular emphasis on procedures designed to ensure that students from low- and moderate-income families know about their opportunity for participation in the program;

(2) Select eligible students;

(3) Notify scholars of their selections and scholarship awards;

(4) Monitor the continuing eligibility of scholars;

(5) Disburse scholarship funds in accordance with the requirements of § 654.50; and

(6) Collect scholarship funds improperly disbursed.

(b) Assurances that the SEA will—

(1) Comply with the criteria and procedures in its approved participation agreement;

(2) Submit for the prior written approval of the Secretary any changes in the criteria and procedures in the approved participation agreement; and

(3) Expend the payments it receives under this program only as provided in § 654.3.

(Approved by the Office of Management and Budget under control number 1840–0612)

(Authority: 20 U.S.C. 1070d–35 to 1070d–38)

Subpart C—How Does the Secretary Make a Grant to a State?

§ 654.20 How does the Secretary approve a participation agreement?

The Secretary approves a participation agreement if it contains all of the information and assurances required in § 654.11 and is in compliance with the requirements of this part.

(Authority: 20 U.S.C. 1070d–31 *et seq.*)

§ 654.21 How does the Secretary determine the amount of the grant to each participating State?

(a) From the funds appropriated for this program, the Secretary allots to each participating State a grant equal to $1,500 multiplied by the number of scholarships the Secretary determines to be available to that State on the basis of the formula described in paragraph (b) of this section.

(b) The number of scholarships that the Secretary allots to each participating State for any fiscal year bears the same ratio to the number of scholarships allotted to all participating States as each State's population ages 5 through 17 which is derived from the most recently available data from the U.S. Bureau of the Census bears to the population ages 5 through 17 in all participating States, except that—

(1) Not fewer than 10 scholarships are allotted to any participating State; and

(2) The District of Columbia, the Commonwealth of Puerto Rico, the U.S. Virgin Islands, American Samoa, the Commonwealth of Northern Mariana Islands, Guam, and the Trust Territory of the Pacific Islands (Palau) each are allotted 10 scholarships.

(Authority: 20 U.S.C. 1070d–34, 1070d–37)

Subpart D—How Does a Student Apply to an SEA for a Scholarship?

§ 654.30 How does a student apply to an SEA for a scholarship?

To apply for a scholarship under this program, a student must follow the application procedures established by the SEA in the student's State of legal residence.

(Authority: 20 U.S.C. 1070d–37)

Subpart E—How Does an SEA Select an Eligible Student To Be a Scholar?

§ 654.40 Who is an eligible student?

A student is eligible to be selected as a scholar if he or she—

(a) Is a legal resident of the State to which he or she is applying for a scholarship;

(b)(1) Is a U.S. citizen or national;

(2) Provides evidence from the U.S. Immigration and Naturalization Service that he or she—

(i) Is a permanent resident of the United States; or

(ii) Is in the United States for other than a temporary purpose with the intention of becoming a citizen or permanent resident; or

(3) Is a permanent resident of the Trust Territory of the Pacific Islands (Palau);

(c) Becomes a high school graduate in the same secondary school year in which he or she submits the scholarship application;

(d) Has applied or been accepted for enrollment as a full-time student at an institution of higher education;

(e) Is not ineligible to receive assistance as a result of default on a Federal student loan or other obligation, as provided under 34 CFR 75.60; and

(f) Files a Statement of Selective Service Registration Status, in accordance with the provisions of 34 CFR 668.33 of the Student Assistance General Provisions regulations, with the institution he or she plans to attend or is attending.

(Authority: 20 U.S.C. 1070d–36, 50 U.S.C. App. 462, 20 U.S.C. 1091)

§ 654.41 What are the selection criteria and procedures?

(a) The SEA shall establish criteria and procedures for the selection of scholars, in accordance with the requirements of this part, after consultation with school administrators, school boards, teachers, counselors, and parents.

(b) The SEA shall establish the selection criteria and procedures to ensure that it selects scholars—

(1) Who are eligible students under the criteria provided in § 654.40;

(2) Who have demonstrated outstanding academic achievement and show promise of continued achievement;

(3) In a manner that ensures an equitable geographic distribution of awards within the State; and

(4) Without regard to—

(i) Whether the secondary school each scholar attends is within or outside the scholar's State of legal residence;

(ii) Whether the institution of higher education each scholar plans to attend

is public or private or is within or outside the scholar's State of legal residence;

(iii) Race, color, national origin, sex, religion, disability, or economic background; and

(iv) The scholar's educational expenses or financial need.

(Approved by the Office of Management and Budget under control number 1840–0612)

(Authority: 20 U.S.C. 1070d–33, 1070d–35 to 1070d–37)

Subpart F—How Does a Scholar Receive Scholarship Payments?

§ 654.50 How does an SEA disburse scholarship funds?

(a) Except as provided in paragraph (b) of this section, the SEA shall disburse $1,500 for each year of study for a maximum of four years of study to each scholar who—

(1) Is selected in accordance with the criteria established under § 654.41; and

(2) Meets the requirements for continuing eligibility under § 654.51.

(b)(1) The SEA shall ensure that the total amount of financial aid awarded to a scholar for a year of study does not exceed the total cost of attendance.

(2) The SEA shall ensure that loans are reduced prior to reducing a scholarship awarded under this program.

(c) The SEA shall ensure that the selection process is completed, and the awards made, prior to the end of each secondary school academic year.

(Authority: 20 U.S.C. 1070d–38)

§ 654.51 What are the continuing eligibility criteria?

(a) A scholar continues to be eligible for scholarship funds as long as the scholar continues to—

(1) Meet the eligibility requirements in § 654.40(b), (e), and (f);

(2) Be enrolled as a full-time student at an institution of higher education except as provided in paragraph (b) of this section; and

(3) Maintain satisfactory progress as determined by the institution of higher education the scholar is attending, in accordance with the criteria established in 34 CFR 668.14(e) of the Student Assistance General Provisions regulations.

(b) In order to be eligible for scholarship funds, a scholar must be enrolled full-time for the first year of study. If after the first year of study, the SEA determines that unusual circumstances justify waiver of the full-time attendance requirement, the scholar may enroll part time and continue to receive a scholarship payment. The SEA shall prorate the payment according to the scholar's enrollment status for the academic period during which he or she continues to be enrolled on a part-time basis but remains otherwise eligible for the award. For example, if a scholar for whom the full-time enrollment requirement is waived by the SEA is enrolled as a half-time student for one semester, he or she is eligible to receive one-quarter of his or her scholarship during that semester.

(Authority: 20 U.S.C. 1070d–33, 1070d–36)

§ 654.52 What are the consequences of a scholar's failure to meet the eligibility criteria?

(a)(1) An SEA may permit a scholar to postpone or interrupt his or her enrollment at an institution of higher education without forfeiting his or her scholarship for up to 12 months, beginning on the date the scholar otherwise would have enrolled in the institution after the SEA awarded his or her scholarship or the date the scholar interrupts enrollment.

(2) A scholar who postpones or interrupts his or her enrollment at an institution of higher education in accordance with standards established by the SEA is not eligible to receive scholarship funds during the period of postponement or interruption, but is eligible to receive scholarship payments on enrollment or re-enrollment at an institution of higher education.

(3) A scholar's periods of postponement or interruption, taken in accordance with standards established by the SEA and not in excess of 12 months, are not considered periods of suspension for the purposes of calculating the 12 months provided for suspension prior to termination under paragraph (b)(2) of this section.

(b)(1) Except as provided in paragraph (a) of this section, if an SEA finds that a scholar fails to meet the requirements of § 654.51 within an award year, it shall suspend the scholar's eligibility to receive scholarship funds until the scholar is able to demonstrate to the satisfaction of the SEA that he or she meets these requirements.

(2) Except as provided in paragraph (b)(3) of this section, a scholar's eligibility for a scholarship is terminated when the total of his or her suspension periods exceeds 12 months.

(3) In exceptional circumstances, the SEA may extend the 12-month suspension period without terminating a scholar's eligibility under paragraph (b)(2) of this section, in accordance with standards established by the SEA.

(c) A scholar who receives an award for a period for which the SEA subsequently determines the scholar was ineligible under the requirements in § 654.40 or 654.51 shall repay to the SEA the total amount of the scholarship funds received for the period during which he or she was ineligible.

(Authority: 20 U.S.C. 1070d–35, 1070d–36 to 1070d–38)

Subpart G—What Post-Award Conditions Must an SEA Meet?

§ 654.60 What requirements must an SEA meet in the administration of this program?

(a) To receive and continue to receive payments under this part, an SEA shall—

(1) Comply with the criteria, procedures, and assurances in its approved participation agreement;

(2) Disburse the scholarship funds in accordance with § 654.50 to the scholar, the institution of higher education in which the scholar enrolls, or copayable to the scholar and the institution of higher education in which the scholar enrolls;

(3) Collect any scholarship funds improperly disbursed under § 654.50;

(4) Make reports to the Secretary that the Secretary deems necessary to carry out the Secretary's functions under this part; and

(5) Except as provided in paragraph (b) of this section, expend all funds received from the Secretary for scholarships during the award period specified by the Secretary for those funds.

(b) After awarding all scholarship funds during an award year, as required by paragraph (a)(5) of this section, an SEA may retain any funds that are subsequently returned or collected for scholarship awards in the following award period.

(Approved by the Office of Management and Budget under control number 1840–0612)

(Authority: 20 U.S.C. 1070d–33, 1070d–35)

[FR Doc. 93–19265 Filed 8–10–93; 8:45 am]

BILLING CODE 4000–01–P

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 52

[FRL–4691–7]

Approval and Promulgation of Implementation Plans; Ohio

AGENCY: United States Environmental Protection Agency (USEPA).

ACTION: Notice of State Implementation Plan (SIP) inadequacy and call for SIP revision for Lawrence County, Ohio.

SUMMARY: USEPA hereby gives notice that it has: Formally notified the

Governor of the State of Ohio, by letter dated May 24, 1993 (SIP Call Letter), that the Ohio State Implementation Plan is substantially inadequate under the Clean Air Act (CAA) to attain and maintain the National Ambient Air Quality Standards (NAAQS) for ozone in Lawrence County, Ohio; and called upon the State to submit to USEPA a SIP revision to correct the deficiency.

DATES: USEPA has requested that the State of Ohio submit, by July 27, 1993 (60 days from receipt of SIP Call letter), an action plan with a schedule setting forth dates and increments of progress for correcting the Lawrence County SIP deficiencies. The State must correct the plan deficiency elements and submit its fully approved Lawrence County ozone plan to the USEPA by November 28, 1993 (18 months from receipt of SIP Call letter).

ADDRESSES: Copies of the documents associated with this information notice are available for inspection during normal business hours at the following address: (It is recommended that you telephone Richard Schleyer at (312) 353–5089, before visiting the Region 5 Office): U.S. Environmental Protection Agency, Region 5, Air and Radiation Division, 77 West Jackson Boulevard, Chicago, Illinois 60604–3590.

A copy of today's information notice is available for inspection at: U.S. Environmental Protection Agency, Jerry Kurtzweg (ANR–443), 401 M Street SW., Washington, DC 20460.

FOR FURTHER INFORMATION CONTACT: Richard Schleyer, Air Enforcement Branch, Regulation Development Section (AE–17J), U.S. Environmental Protection Agency, Region 5, Chicago, Illinois 60604–3590, (312) 353–5089.

SUPPLEMENTARY INFORMATION:

I. Background

Section 110 of the CAA, 42 U.S.C. 7410, requires each State to adopt plans which provide for the attainment and maintenance of the NAAQS. In response to these requirements, Ohio submitted a SIP for ozone. This SIP was approved by USEPA on October 31, 1980 (45 FR 72120). Section 110 also requires that States revise the plan under certain conditions. More specifically, section 110(k)(5) provides that whenever USEPA finds that a SIP for an area is "substantially inadequate to attain or maintain" the relevant NAAQS, USEPA shall require the State to revise the plan as necessary to correct such inadequacies.

Information available to USEPA indicates that the NAAQS for ozone was violated in Lawrence County, Ohio. An ozone monitor, located in Ironton, Ohio (Lawrence County), has collected quality-assured monitoring data that indicate one exceedance of the ozone NAAQS occurred during 1990, and three exceedances occurred during 1991. This is a violation of the ozone NAAQS.

A letter dated May 24, 1993, was sent to George V. Voinovich, Governor of Ohio, from Valdas V. Adamkus, USEPA, Region 5, Regional Administrator, notifying the State that USEPA finds the Ohio SIP substantially inadequate to attain or maintain the NAAQS for ozone in Lawrence County, which is currently designated as an ozone attainment area (56 FR 56694). USEPA made this finding pursuant to sections 110(a)(2)(H)(ii) and 110(k)(5) of the CAA, based on a violation of the ozone NAAQS in Lawrence County. USEPA calls for the State of Ohio to revise the SIP for Lawrence County, as necessary, to assure attainment and maintenance of the NAAQS for ozone.

USEPA has requested that, within 60 days following receipt of the May 24, 1993, SIP Call letter, Ohio submit an action plan to USEPA with a schedule for identifying and adopting control strategies as part of the Ohio SIP to reduce ozone emissions in Lawrence County to attain and maintain the ozone NAAQS. The control strategies that will be adopted and implemented as part of the Ohio SIP must be submitted to USEPA within 18 months from receipt of the SIP Call letter, and must provide for attainment and maintenance of the ozone NAAQS within 5 years of receipt of the SIP Call letter. See e.g., Section 110(n)(2) of the CAA.

The finding of inadequacy and call for a SIP revision as set out in the May 24, 1993, letter represent a preliminary step in an ongoing administrative process. A final USEPA judgment regarding the appropriateness of the State's response to USEPA's action will be reached when USEPA makes a binding determination regarding the State's response. See e.g., CAA sections 110(k) and 307(b)(1); See also CAA sections 110(m) and 179.

USEPA encourages Ohio to work with the States of Kentucky and West Virginia, which are presently performing photochemical grid modeling, in order to support an interstate ozone attainment demonstration in the Huntington (West Virginia)—Ashland (Kentucky) area. This attainment demonstration and associated ozone SIP revisions for the Huntington-Ashland area are required to be submitted to the USEPA by November 15, 1994.

This information notice has been classified as a Table 3 action by the Regional Administrator under the procedures published in the Federal Register on January 19, 1989 (54 FR 2214–2225). On January 6, 1989, the Office of Management and Budget (OMB) waived Table Two and Three SIP revisions (54 FR 2222) from the requirements of section 3 of Executive Order 12291 for a period of 2 years. USEPA has submitted a request for a permanent waiver for Table 2 and Table 3 revisions. The OMB has agreed to continue the temporary waiver until such time as it rules on USEPA's request.

List of Subjects in 40 CFR Part 52

Air pollution control, Ozone, Volatile organic compounds.

Authority: 42 U.S.C. 7401–7671q.

Dated: July 15, 1993.

Valdas V. Adamkus,

Regional Administrator.

[FR Doc. 93–19251 Filed 8–10–93; 8:45 am]

BILLING CODE 6560–50–P

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40 CFR Part 180

[PP 9F3706/R2007; FRL–4636–1]

RIN 2070–AB78

Pesticide Tolerances for 1-[[2-(2,4-Dichlorophenyl)-4-Propyl-1,3-Dioxolan-2-yl]Methyl]-1H-1,2,4-Triazole and its Metabolites Determined as 2,4-Dichlorobenzoic Acid and Expressed as Parent Compound

AGENCY: Environmental Protection Agency (EPA).

ACTION: Final rule.

SUMMARY: This document amends existing tolerances (with an expiration date of January 31, 1994) for the fungicide 1-[[2-(2,4-dichlorophenyl)-4-propyl-1,3-dioxolan-2-yl]methyl]-1H-1,2,4-triazole and its metabolites, determined as 2,4-dichlorobenzoic acid and expressed as parent compound (also known as propiconazole), in or on the raw agricultural commodities grass forage, hay (straw), and seed screenings and kidney and liver of cattle, goats, hogs, horses, and sheep by extending the expiration date and raising several of the tolerance levels. This rule to establish the maximum permissible levels for residues of propiconazole in or on the commodities listed above was requested in petitions submitted by Ciba-Geigy Corp.

EFFECTIVE DATE: This regulation becomes effective July 30, 1993.

ADDRESSES: Written objections, identified by the document control number, [PP 9F3706/R2007], may be submitted to: Hearing Clerk (A-110),

Environmental Protection Agency, Rm. M3708, 401 M St., SW., Washington, DC 20460.

FOR FURTHER INFORMATION CONTACT: By mail: Clarence O. Lewis, III, Acting Product Manager (PM) 21, Registration Division (H7505C), Environmental Protection Agency, 401 M St., SW., Washington, DC 20460. Office location and telephone number: Rm. 227, CM #2, 1921 Jefferson Davis Hwy., Arlington, VA 22202, (703)-305-6900.

SUPPLEMENTARY INFORMATION: In the **Federal Register** of June 11, 1993 (58 FR 32620), EPA issued a proposed rule that gave notice that the Ciba-Geigy Corp., P.O. Box 18300, Greensboro, NC 27419, had submitted a pesticide petition (PP 9F3706) to EPA requesting that the Administrator, pursuant to section 408(d) of the Federal Food, Drug, and Cosmetic Act (21 U.S.C. 346a(d)), propose to amend 40 CFR 180.434 by establishing tolerances for the fungicide 1-[[2-(2,4-dichlorophenyl)-4-propyl-1,3-dioxolan-2-yl]methyl]-1*H*-1,2,4-triazole and its metabolites, determined as 2,4-dichlorobenzoic acid and expressed as parent compound, in or on the kidney and liver of cattle, goats, hogs, horses, and sheep at 2.0 parts per million (ppm) and grass forage at 0.5 ppm, grass hay (straw) at 40 ppm, and grass seed screenings at 60 ppm with an expiration date of 01/31/94 for all of these commodities.

There were no comments or requests for referral to an advisory committee received in response to the proposed rule.

The data submitted in the petition and other relevant material have been evaluated and discussed in the proposed rule. Based on the data and information considered, the Agency concludes that the tolerances will protect the public health. Therefore, the tolerances are established as set forth below.

Any person adversely affected by this regulation may, within 30 days after publication of this document in the **Federal Register**, file written objections 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 such issues, 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 30, 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 180.434 is amended in the table therein by revising the entries for cattle kidney and liver; goat kidney and liver; grass forage, hay, and seed screenings; hog kidney and liver; horse kidney and liver; and sheep kidney and liver, to read as follows:

§ 180.434 1-[[2-(2,4-Dichlorophyenyl)-4-propyl-1,3-dioxolan-2-yl]methyl]-1H-1,2,4-triazole; tolerances for residues.

* * * * *

Commodity	Parts per million	Expiration date
• • • • •		
Cattle, kidney	2.0	01/31/94
Cattle, liver	2.0	01/31/94
• • • • •		
Goats, kidney	2.0	01/31/94
Goats, liver	2.0	01/31/94
• • • • •		
Grass, forage	0.5	01/31/94
Grass, hay (straw)	40.0	01/31/94
Grass, seed screenings	60.0	01/31/94
• • • • •		
Hogs, kidney	2.0	01/31/94
Hogs, liver	2.0	01/31/94
• • • • •		
Horses, kidney ..	2.0	01/31/94
Horses, liver	2.0	01/31/94
• • • • •		
Sheep, kidney ...	2.0	01/31/94
Sheep, liver	2.0	01/31/94
• • • • •		

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[FR Doc. 93–18966 Filed 8–10–93; 8:45 am]

BILLING CODE 6560–50–F

40 CFR Parts 180 and 186

[PP 7F3516 and 6F3417/R2005; FRL–4630–4]

RIN 2070–AB78

Pesticide Tolerances for Thiodicarb; Extension of Tolerances

AGENCY: Environmental Protection Agency (EPA).

ACTION: Final rule.

SUMMARY: This rule extends tolerances for the residues of the insecticide thiodicarb in or on certain raw agricultural commodities. This regulation to extend the effective date for tolerances for maximum permissible levels of residues of thiodicarb in or on these commodities was requested by Rhone Poulenc Ag Co.

EFFECTIVE DATE: Effective August 11, 1993.

ADDRESSES: Written objections, identified by the document control number, [PP 7F3516 and 6F3417/R2005], may be submitted to: Hearing Clerk (A-110), Environmental Protection Agency, Rm. 3708, 401 M St., SW., Washington, DC 20460.

FOR FURTHER INFORMATION CONTACT: By mail: Dennis H. Edwards, Jr., Product Manager (PM) 19, Registration Division (H7505C), Environmental Protection Agency, 401 M St., SW., Washington,

DC 20460. Office location and telephone number: Rm. 207, CM #2, 1921 Jefferson Davis Hwy., Arlington, VA 22202, (703)-305-6386.

SUPPLEMENTARY INFORMATION: Pursuant to petitions from Rhone Poulenc Ag Co., EPA issued final rules establishing tolerances for residues of the insecticide thiodcarb in or on (1) leafy vegetables at 35 ppm; and (2) broccoli, cabbage, and cauliflower at 7 ppm (see the Federal Register of January 15, 1992 (57 FR 1648) and February 14, 1992 (57 FR 5389), respectively).

To be consistent with conditional registrations for thiodicarb on leafy vegetables and broccoli/cabbage/cauliflower, which are due to expire July 15, 1993 and August 12, 1993, respectively, the Agency established these tolerances with expiration date of July 15, 1994, and August 15, 1994, to cover residues expected to be present from use during the period of conditional registration.

The conditional registrations required the following information to be submitted:

1. A metabolism study (with the parent chemical) in an appropriate species (primate), and information on whether there is a species-specific metabolic conversion of thiodicarb to acetamide.

2. Substantiation of the isomeric form of the registered product.

3. Studies designed to identify and measure (as the glucuronide or other conjugate) the *N*-hydroxy acetamide metabolite.

These studies were required because the data base for acetamide is incomplete to fully address its carcinogenic potential and to determine whether there may be a species-related difference in conversion of syn-methomyl to anti-methomyl and resultant excretion as acetonitrile to metabolic hydroysis to acetamide. Acetamide was identified as a potential metabolite of thiodicarb in an animal metabolism study. The toxicology data base for thiodicarb includes two valid oncogenicity studies that were negative for oncogenic effects.

On February 17, 1993, and December 21, 1992, Rhone Poulenc provided the Agency with the required studies. These studies are currently undergoing review. However, final review is not expected to be completed for some time. On the basis of the Registrant's compliance with the requirements of the conditional registrations, the Agency is extending the conditional registrations for the use of thiodicarb on leafy vegetables and broccoli/cabbage/cauliflower. The extension for these uses will expire on August 15, 1994. On June 18, 1993, EPA published a petition in the Federal Register from Rhone Poulenc requesting an extension of the tolerances for thiodicarb on leafy vegetables and broccoli/cabbage/cauliflower until August 15, 1994 (58 FR 33631). No comments were received in response to this notice of filing.

Based on a 2-year rat feeding study with a NOEL of 3.0 mg/kg/day and using an uncertainty factor of 100, the reference dose (RfD) for humans is 0.03 mg/kg/body weight/day. The theoretical maximum residue contribution (TMRC) for this chemical utilizes 1.833 percent of the RfD. The tolerances represent a theoretical maximum residue contribution of 0.013094 mg/kg/body weight/day and represent 43.6% of the ADI. This results in a total contribution of 0.013644 mg/kg/body weight/day, and a total utilization of 45.5% of the ADI.

The data submitted in support of these tolerances and other relevant material have been reviewed. The toxicological data considered in support of these tolerances are discussed in detail in related documents, published in the Federal Register of January 15, 1992 (57 FR 1648), and February 14, 1992 (57 FR 5389).

There are no regulatory actions pending against the registration of thiodicarb. The metabolism of thiodicarb in plants and animals is adequately understood. Adequate analytical methods involving gas chromatography with a flame photometric detector selective for sulfur-containing compounds and gas chromatography/mass spectrometry are available for enforcement purposes. The methodology has been published in the Food and Drug Administration's Pesticide Analytical Manual (PAM), Vol. II.

On the basis of the available studies on acetamide and the chronic carcinogenicity studies for thiodicarb, the Agency has concluded that the human risk posed by the use of thiodicarb on leafy vegetables and broccoli/cabbage/cauliflower does not raise significant concerns. The Agency has determined that extending the tolerances will protect the human health. Therefore, as set forth below, the tolerances are extended to August 15, 1995, to cover residues existing from the continued conditional registration of thiodicarb. The tolerances could be made permanent if full registration is subsequently granted. Notice of further action on these tolerances will be published for comment in the Federal Register.

Residues remaining in or on the above raw agricultural commodities after expiration of these tolerances will not be considered actionable if the pesticide is legally applied during the term, and in accordance with, provisions of the conditional registrations.

Any person adversely affected by these regulations may, within 30 days after publication of this document in the Federal Register, file written objections with the Hearing Clerk, at the address given above (40 CFR 178.20). The objections submitted must specify the provisions of the regulations 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 such issues, 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.

Dated: July 26, 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. In § 180.407 *Thiodicarb; tolerances for residues* by amending paragraph (b) introductory text by changing "July 15, 1994" to read "August 15, 1995" and by amending paragraph (c) introductory text by changing "August 15, 1994" to read "August 15, 1995."

[FR Doc. 93–19125 Filed 8–10–93; 8:45 am]
BILLING CODE 6560–50–F

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40 CFR Part 716

[OPPTS–84014D; FRL–4179–6]

Health and Safety Data Reporting Period Terminations

AGENCY: Environmental Protection Agency.

ACTION: Final rule.

SUMMARY: EPA is terminating the reporting periods for 92 chemical substances by amending the sunset dates on the list of substances, mixtures, and categories in the Toxic Substances Control Act (TSCA) section 8(d) model Health and Safety Data Reporting rule. Pursuant to 40 CFR 716.65, EPA has reviewed all of the substances listed in § 716.120 and determined that at this time the Agency no longer needs continuing health and safety data reporting on these 92 chemical substances. For these chemicals, reporting under the section 8(d) model rule is no longer required except for those studies which were initiated before the end of the sunset period or were ongoing at the end of the sunset period. Persons who believe that EPA should not terminate the reporting requirements for these substances on the section 8(d) model rule may notify EPA and provide their reasons.

DATES: This rule becomes effective on November 9, 1993. Written comments should be received by EPA by September 10, 1993.

ADDRESSES: All comments should include the docket control number OPPTS–84014D and should be sent in triplicate to: TSCA Document Receipt Office (TS–790), Office of Pollution Prevention and Toxics, Environmental Protection Agency, 401 M St., Rm. E–G99, Washington, DC 20460.

FOR FURTHER INFORMATION CONTACT: Susan B. Hazen, Director, Environmental Assistance Division (TS–799), Office of Pollution Prevention and Toxics, Environmental Protection Agency, Rm. EB–44, 401 M St., SW., Washington, DC 20460, Telephone: (202) 554–1404, TDD: (202) 554–0551

SUPPLEMENTARY INFORMATION:

I. Background

Pursuant to section 8(d) of the Toxic Substances Control Act (TSCA), EPA promulgated a model Health and Safety Data Reporting Rule (40 CFR part 716). The section 8(d) model rule requires past, current, and prospective manufacturers, importers, and processors of listed chemical substances and mixtures (henceforth referred to as substances) to submit to EPA copies and lists of unpublished health and safety studies on the listed substances that they manufacture, import, or process. These studies provide EPA with useful information and have provided significant support for EPA's decisionmaking.

By adding a substance to part 716, EPA triggers the section 8(d) model rule's reporting requirements. Past, current, and prospective manufacturers, importers, and processors of the listed substance are required to submit certain information at the time the substance is listed. Further submissions are required of those who later initiate a study of the listed substance or who later propose to manufacture, import, or process the listed substance up to 10 years from the effective date of the rule. The only reporting requirement unaffected by the sunset provision found at § 716.65(a) applies to those manufacturers, importers, and processors who initiate a study on a listed substance before the reporting period terminates. These studies must be submitted upon their completion regardless of the completion date (§ 716.65(c)). It should be noted that on October 4, 1992, 304 chemicals listed in § 716.120 reached their sunset date, on January 3, 1993, 5 chemicals listed in § 716.120 reached their sunset date, and on April 29, 1993, 39 chemicals listed in § 716.120 reached their sunset date. For these chemicals, reporting under the section 8(d) model rule is no longer required except for those studies which were initiated before the end of the sunset period or were ongoing at the end of the sunset period.

In addition to the 10–year sunset provision to prevent unnecessary reporting burdens, EPA has instituted a biennial review process to identify and terminate the reporting periods for those substances for which the Agency does not currently need continued health and safety data reporting (40 CFR 716.65(b)). Pursuant to this process, the EPA Office of Pollution Prevention and Toxics requested from other EPA offices and certain other Federal agencies all reasonable justifications for retaining each substance or mixture from the list at § 716.120. As a result, EPA has determined that the Agency's health and safety data needs no longer justify continued health and safety data reporting for 92 chemical substances presently listed in the section 8(d) model rule. Amending the reporting sunset date for a substance listed in § 716.120(a) and (d) to reflect the effective date of this rule terminates the reporting period for the substance. This action eliminates the potential reporting burdens for prospective manufacturers, importers, and processors of the substance, and removes the requirement that current manufacturers, importers, and processors of the substance must notify EPA whenever they initiate a study of the substance. However, any manufacturer, importer, or processor who initiates a study on the substance before its removal from the 8(d) list must notify EPA of the study's initiation and submit the study upon its completion regardless of the completion date (§ 716.65(c)). For the foregoing reason, EPA is amending the reporting sunset dates for the substances rather than removing all reference to the substances.

Authority for this action is stated in § 716.65 of the section 8(d) model rule. This section directs the EPA Office of Pollution Prevention and Toxics to conduct a biennial review of all the chemical substances and mixtures listed in § 716.120, and to request from other EPA offices and certain Federal agencies all reasonable justifications for retaining each substance or mixture on, or removing each substance or mixture from, the § 716.120 list. EPA is issuing this action without prior proposal in accordance with 40 CFR 716.65(b). This final rule terminates the reporting periods for 92 substances on the § 716.120 list 90 days following publication of this rule in the Federal Register. Persons are invited to comment on the determinations presented in this document. If a reasonable justification is received for requiring continued health and safety data reporting for any of these 92 substances on the section 8(d) model rule, EPA will, by notice published in the Federal Register, withdraw the sunset date amendment for the substance from the final rule prior to the final rule's effective date.

II. Amendments to 40 CFR 716.120

In order to affect the termination of health and safety data reporting on the chemical substances and categories for

which there exists no justification for continuing reporting, § 716.120 will be amended. Sunset dates for 92 chemical substances will be amended to reflect the effective date of this rule. As previously stated, once a sunset date is reached, the reporting period for the chemical substance is terminated except as provided in § 716.65(c). Fifty-four of the substances subject to sunset date amendment are listed in § 716.120(a). These include the following chemical substances:

CAS No.	Substance
75-88-7	Ethane, 2-chloro- 1,1,1-trifluoro
84-65-1	Anthraquinone--9,10-Anthracenedione
90-42-6	[1,1'-Bicyclohexyl]-2-one
96-37-7	Methylcyclopentane--Cyclopentane, methyl-
98-83-9	Benzene, (1-methylethenyl)-
100-40-3	4-Vinylcyclohexene
100-70-9	2-Pyridinecarbonitrile
104-49-4	Benzene, 1,4-diisocyanato-
115-96-8	Ethanol, 2-chloro-, phosphate (3:1)
123-61-5	Benzene, 1,3-diisocyanato-
128-39-2	Phenol, 2,6-bis(1,1-dimethylethyl)-
128-86-9	2,6-Anthracenedisulfonic acid, 4,8-diamino-9, 10-dihydro-1,5-dihydroxy-9,10-dioxo-
139-25-3	Benzene, 1,1 1-methylenebis[4-isocyanato-3-methyl-
306-83-2	Ethane, 2,2-dichloro-1,1,1-trifluoro
328-84-7	3,4-Dichlorobenzotrifluoride--Benzene, 1,2-dichloro- 4-(trifluoromethyl)-
354-33-6	Ethane, pentafluoro
526-73-8	1,2,3-Trimethylbenzene--Benzene, 1,2,3-trimethyl-
580-51-8	[1,1'-Biphenyl]-3-ol
685-91-6	Acetamide, *N,N*-diethyl-
811-97-2	Ethane, 1,1,2-tetrafluoro-
939-97-9	*p-tert*-Butylbenzaldehyde--Benzaldehyde, 4-(1,1-dimethylethyl)-
1208-52-2	Benzenamine, 2-[(4-aminophenyl)methyl]-
1321-38-6	Benzene, diisocyanatomethyl-(unspecified isomer)
1331-47-1	[1,1'-Biphenyl]-4,4'-diamino, dichloro
1717-00-6	Ethane, 1,1-dichloro-1-fluoro-
2536-05-2	Benzene, 1,1'-methylenebis[2-isocyanato-
2556-36-7	Cyclohexane, 1,4-diisocyanato
2778-42-9	Benzene, 1,3-bis(1-isocyanato-1-methylethyl-
2873-89-0	Ethane, 2-chloro-1,1,1,2-tetrafluoro-
3618-72-2	Acetamide, *N*-[5-[bis[2-(acetyloxy)ethyl]amino]-2- [(2-bromo-4,6-dinitrophenyl)azo]-4- methoxyphenyl]-
3618-73-3	Acetamide, *N*-[5-[bis[2-(acetyloxy)ethyl]amino]- 2-[(2-chloro-4,6-dinitrophenyl)azo]-4-methoxyphenyl]-
3956-55-6	Acetamide, *N*-[5-[bis[2-(acetyloxy)ethyl]-amino]-2- [(2-bromo-4,6-dinitrophenyl)azo]-4-ethoxyphenyl
5873-54-1	Benzene, 1-isocyanato-2-[4-isocyanatophenyl)methyl]-
6145-73-9	1-Propanol, 2-chloro-, phosphate (3:1)
6247-34-3	2-Anthracenesulfonic acid, 4-[[4-(acetylamino) phenyl]amino]-1-amino-9,10-dihydro-9,10-dioxo-
12217-79-7	9,10-Anthracenedione, 1,5-diamino-chloro-4,8-dihydroxy-
13414-54-5	Methallyl 2-nitrophenyl ether--Benzene, 1-[(2-methyl-2-propenyl)oxy]-2-nitro-
13674-84-5	2-Propanol, 1-chloro-, phosphate (3:1)
15646-96-5	Hexane, 1,6-diisocyanato-2,4,4-trimethyl-
16938-22-0	Hexane, 1,6-diisocyanato-2,2,4-trimethyl-
21429-43-6	Acetamide, *N*-[5-[bis[2-(acetyloxy)ethyl] amino]-2-[(2-chloro- 4,6-dinitrophenyl)azo]-4-methoxyphenyl]-
25168-06-3	Isopropyl phenol--Phenol, (1-methylethyl)-
25640-78-2	Isopropyl biphenyl--1,1'-Biphenyl, (1-methylethyl)-
32052-51-0	Isocyanic acid, trimethylcyclohexyl ester
33125-86-9	Phosphoric acid, 1,2-ethanediyl tetrakis (2-chloroethyl) ester
38661-72-2	Cyclohexane, 1,3-bis(isocyanatomethyl)-
68153-35-5	Ethanaminium, 2-amino-*N*-(2-aminoethyl-*N*-(2-hydroxyethyl)-*N*-methyl-, *N,N*-ditallow acyl derivatives, methyl sulfates (salts)
68389-88-8	Poly(oxy-1,2-ethanediyl), α-[2-[bis(2-aminoethyl)methylammonio]ethyl]-ω-hydroxy-, *N,N*-dicoco acyl derivatives, methyl sulfates (salts)
68389-89-9	Poly(oxy-1,2-ethanediyl), α-[2-[bis(2-aminoethyl) methylammonio]ethyl]-ω-hydroxy-,*N,N*-bis(hydrogenated tallow acyl) derivatives, methyl sulfates (salts)
68413-04-7	Poly[oxy(methyl-1,2-ethanediyl)], α-[2-[bis (2-aminoethyl)methylammonio] methylethyl]-ω-hydroxy-, *N,N*-ditallow acyl derivatives, methyl sulfates (salts)
68554-06-3	Poly(oxy-1,2-ethanediyl), α-[3-[bis(2-aminoethyl) methylammonio]-2-hydroxy-propyl]-ω-hydroxy-, *N*-coco acyl derivatives, methyl sulfates (salts)
68611-64-3	Urea, reaction products with formaldehyde
75790-84-0	Benzene, 2-isocyanato-4-[(4-isocyanato-phenyl)methyl]-1-methyl-
75790-87-3	Benzene, 1-isocyanato-2-[(4-isocyanato-phenyl)thio]-

Thirty-eight substances subject to sunset date amendment are listed in § 716.120(d). These substances are identified as, "listed members of categories" and are listed as follows:

Alkyl phosphates:	
126-71-6	Phosphoric acid, tris(2-methylpropyl) ester
812-00-0	Phosphoric acid, monomethyl ester
1070-03-7	Phosphoric acid, mono(2-ethylhexyl)ester
1498-51-7	Phosphorodichloridic acid, ethyl ester
1623-15-0	Phosphoric acid, monobutyl ester
1623-24-1	Phosphoric acid, mono(1-methylethyl)ester
2958-09-0	Phosphoric acid, monooctadecyl ester
3900-04-7	Phosphoric acid, monohexyl ester
3991-73-9	Phosphoric acid, monooctyl ester
7057-92-3	Phosphoric acid, didodecyl ester
7332-46-9	Ethanol, 2-(2-butoxyethoxy)-, phosphate (3:1)
12645-31-7	Phosphoric acid, 2-ethylhexyl ester
12751-23-4	Phosphoric acid, dodecyl ester
27215-10-7	Phosphoric acid, diisoocyti ester
Brominated flame retardants:	
25327-89-3	Benzene, 1,1'-(1-methylethylidene)bis (3,5-dibromo-4-(2-propenyloxy)-
88497-56-7	Benzene, ethenyl-, homopolymer, brominated
Isocyanates:	
100-28-7	Benzene, 1-isocyanato-4-nitro-
110-78-1	Propane, 1-isocyanato-
112-96-9	Octadecane, 1-isocyanato-
614-68-6	Benzene, 1-isocyanato-2-methyl-
622-58-2	Benzene, 1-isocyanato-4-methyl-
1476-23-9	1-Propene, 3-isocyanato-
2422-91-5	Benzene, 1,1',1"-methylidynetris(4-isocyanato-
2493-02-9	Benzene, 1-bromo-4-isocyanato-
2909-38-8	Benzene, 1-chloro-3-isocyanato-
2949-22-6	Acetic acid, isocyanato-, ethyl ester
3173-53-3	Cyclohexane, isocyanato-
4035-89-6	Imidodicarbonic diamine, N,N'-2-tris(6-isocyanato- hexyl)-
4151-51-3	Phenyl, 4-isocyanato-, phosphorothioate (3:1) (ester)
10031-75-1	Benzene, 1,1'-(diisocyanatomethylene)bis-
25854-16-4	Benzene, bis(isocyanatomethyl)-
26603-40-7	1,3,5,-Triazine-2,4,6(1H.3H.5H.trione, 1,3,5-tris(3- isocyanatomethylphenyl)-
26747-90-0	1,3-Diazetidine-2,4-dione, 1,3-bis(3-isocyanato methylphenyl)-
28178-42-9	Benzene, 2-isocyanato- 1,3-bis(1-methylethyl)-
28556-81-2	Benzene, 2-isocyanato- 1,3-dimethyl-, ester
34893-92-0	Benzene, 1,3-dichloro-5-isocyanato-
68239-06-5	Cyclohexane, 2-heptyl-3,4-bis (9-isocyanatononyl)-1- pentyl-
73597-26-9	2-Propenoic acid, 2-methyl-2-(((((5-isocyanato-1,3,3- trimethylcyclohexyl) methyl)amino)carbonyl)oxy)ethyl ester

III. Rulemaking Record

EPA has established a public record for this rulemaking (docket control number OPPTS–84030). This record includes basic information considered by the Agency in developing this rule. EPA will supplement the rulemaking record with additional information as it is received. The record now includes the following:

1. Section 8(d) model Health and Safety Rule Data Reporting Rule (51 FR 32720).

2. EPA memoranda to program offices requesting comments on substances listed in 40 CFR 716.120.

3. Comments from program offices.

This rulemaking record is available to the public in the TSCA Nonconfidential Information Center (NCIC), also known as, TSCA Public Docket Office from 8 a.m. to noon and 1 p.m. to 4 p.m., Monday through Friday, except legal holidays. NCIC is located in Rm. E-G102, 401 M St., SW., Washington, DC.

IV. 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 is not major because it will not have an effect of $100 million or more on the economy. It is not anticipated to have a significant effect on competition, costs, or prices.

This rule was submitted to the Office of Management and Budget (OMB) as required under Executive Order 12291.

B. Regulatory Flexibility Act

Under the Regulatory Flexibility Act (5 U.S.C. 605(b)), EPA has determined that this rule will not have a significant economic impact on a substantial number of small businesses. This determination is based upon this rule's elimination of some prospective reporting burdens.

C. Paperwork Reduction Act

This rule contains no information collection requirements as defined by the Paperwork Reduction Act, 44 U.S.C. 3501 et seq., and Controlling Paperwork Burdens on the Public, 5 CFR part 1320. This rule terminates some existing reporting requirements previously approved by OMB under OMB control number 2070-0004.

List of Subjects in 40 CFR Part 716

Chemicals, Environmental protection, Hazardous substances, Health and safety, Reporting and recordkeeping requirements.

Dated: July 30, 1993.

Susan H. Wayland,

Acting Assistant Administrator for Prevention, Pesticides and Toxic Substances.

Therefore, 40 CFR part 716 is amended to read as follows:

PART 716—[AMENDED]

1. The authority citation for part 716 continues to read as follows:

Authority: 15 U.S.C. 2607(d).

2. Section 716.120 is amended by revising 54 entries in paragraph (a) and revising entries under the alkyl phosphates, brominated flame retardants, and isocyanates categories in paragraph (d) to read as folllows:

§ 716.120 Substances and listed mixtures to which this subpart applies.

* * * * *

(a) * * *

CAS No.	Substance	Special exemptions	Effective date	Sunset date
*	* * * * *			
75-68-7	Ethane, 2-chloro- 1,1,1-trifluoro		10/15/90	11/9/93
*	* * * * *			
84-65-1	Anthraquinone--9,10-Anthracenedione		12/28/84	11/9/93
*	* * * * *			
90-42-6	[1,1'-Bicyclohexyl]-2-one		6/1/87	11/9/93
*	* * * * *			
96-37-7	Methylcyclopentane--Cyclopentane, methyl-		6/20/85	11/9/93
*	* * * * *			
98-83-9	Benzene, (1-methylethenyl)-		6/1/87	11/9/93
*	* * * * *			
100-40-3	4-Vinylcyclohexene		1/11/90	11/9/93
*	* * * * *			
100-70-9	2-Pyridinecarbonitrile		6/1/87	11/9/93
*	* * * * *			
104-49-4	Benzene, 1,4-diisocyanato-		6/1/87	11/9/93
*	* * * * *			
115-96-8	Ethanol, 2-chloro-, phosphate (3:1)		12/16/88	11/9/93
*	* * * * *			
123-61-5	Benzene, 1,3-diisocyanato-		6/1/87	11/9/93
*	* * * * *			
128-39-2	Phenol, 2,6-bis(1,1-dimethylethyl)-		12/19/85	11/9/93
*	* * * * *			
128-86-9	2,6-Anthracenedisulfonic acid, 4,8-diamino-9, 10-dihydro-1,5-dihydroxy-9,10-dioxo-		12/21/87	11/9/93
*	* * * * *			
139-25-3	Benzene, 1,1 1-methylenebis[4-isocyanato-3-methyl-		6/1/87	11/9/93
306-83-2	Ethane, 2,2-dichloro-1,1,1-trifluoro		10/15/90	11/9/93
*	* * * * *			
328-84-7	3,4-Dichlorobenzotrifluoride--Benzene, 1,2-dichloro- 4-(trifluoromethyl)-		5/8/85	11/9/93
*	* * * * *			
354-33-6	Ethane, pentafluoro		10/15/90	11/9/93
*	* * * * *			
526-73-8	1,2,3-Trimethylbenzene--Benzene, 1,2,3-trimethyl-		2/13/84	11/9/93
*	* * * * *			
580-51-8	[1,1'-Biphenyl]-3-ol		6/1/87	11/9/93
*	* * * * *			
685-91-6	Acetamide, N,N-diethyl-		6/1/87	11/9/93
*	* * * * *			
811-97-2	Ethane, 1,1,2-tetrafluoro-		10/15/90	11/9/93
*	* * * * *			
939-97-9	*p-tert*-Butylbenzaldehyde--Benzaldehyde, 4-(1,1-dimethylethyl)-		6/25/86	11/9/93

CAS No.	Substance	Special exemptions	Effective date	Sunset date
*	* * * * *	*	*	*
1208-52-2	Benzenamine, 2-[(4-aminophenyl)methyl]-		6/1/87	11/9/93
*	* * * * *	*	*	*
1321-38-6	Benzene, diisocyanatomethyl-(unspecified isomer)		6/1/87	11/9/93
*	* * * * *	*	*	*
1331-47-1	[1,1'-Biphenyl]-4,4'-diamino, dichloro		6/1/87	11/9/93
*	* * * * *	*	*	*
1717-00-6	Ethane, 1,1-dichloro-1-fluoro-		10/15/90	11/9/93
*	* * * * *	*	*	*
2536-05-2	Benzene, 1,1'-methylenebis[2-isocyanato-		6/1/87	11/9/93
*	* * * * *	*	*	*
2556-36-7	Cyclohexane, 1,4-diisocyanato		6/1/87	11/9/93
*	* * * * *	*	*	*
2778-42-9	Benzene, 1,3-bis(1-isocyanato-1-methylethyl-		6/1/87	11/9/93
*	* * * * *	*	*	*
2873-89-0	Ethane, 2-chloro-1,1,1,2-tetrafluoro-		10/15/90	11/9/93
*	* * * * *	*	*	*
3618-72-2	Acetamide, *N*-[5-[bis[2-(acetyloxy)ethyl]amino]-2-[(2-bromo-4,6-dinitrophenyl)azo]-4- methoxyphenyl]-		6/19/87	11/9/93
3618-73-3	Acetamide, *N*-[5-[bis[2-(acetyloxy)ethyl]amino]-2-[(2-chloro-4,6-dinitrophenyl)azo]-4-methoxyphenyl]-		6/19/87	11/9/93
*	* * * * *	*	*	*
3956-55-6	Acetamide, *N*-[5-[bis[2-(acetyloxy)ethyl]-amino]-2-[(2-bromo-4,6-dinitrophenyl)azo]-4-ethoxyphenyl		12/15/86	11/9/93
*	* * * * *	*	*	*
5873-54-1	Benzene, 1-isocyanato-2-[4-isocyanatophenyl)methyl]-		6/1/87	11/9/93
*	* * * * *	*	*	*
6145-73-9	1-Propanol, 2-chloro-, phosphate (3:1)		12/16/88	11/9/93
*	* * * * *	*	*	*
6247-34-3	2-Anthracenesulfonic acid, 4-[[4-(acetylamino) phenyl]amino]-1-amino-9,10-dihydro-9,10-dioxo-		12/21/87	11/9/93
*	* * * * *	*	*	*
12217-79-7	9,10-Anthracenedione, 1,5-diamino-chloro-4,8-dihydroxy-		12/21/87	11/9/93
*	* * * * *	*	*	*
13414-54-5	Methallyl 2-nitrophenyl ether--Benzene, 1-[(2-methyl-2-propenyl)oxy]-2-nitro-		2/13/84	11/9/93
*	* * * * *	*	*	*
13674-84-5	2-Propanol, 1-chloro-, phosphate (3:1)		12/16/88	11/9/93
*	* * * * *	*	*	*
15646-96-5	Hexane, 1,6-diisocyanato-2,4,4-trimethyl-		6/1/87	11/9/93
*	* * * * *	*	*	*
16938-22-0	Hexane, 1,6-diisocyanato-2,2,4-trimethyl-		6/1/87	11/9/93
*	* * * * *	*	*	*
21429-43-6	Acetamide, *N*-[5-[bis[2-(acetyloxy)ethyl] amino]-2-[(2-chloro-4,6-dinitrophenyl)azo]-4-methoxyphenyl]-		6/19/87	11/9/93
*	* * * * *	*	*	*
25168-06-3	Isopropyl phenol--Phenol, (1-methylethyl)-		4/13/89	11/9/93
*	* * * * *	*	*	*
25640-78-2	Isopropyl biphenyl--1,1'-Biphenyl, (1-methylethyl)-		6/28/84	11/9/93
*	* * * * *	*	*	*
32052-51-0	Isocyanic acid, trimethylcyclohexyl ester		6/1/87	11/9/93

CAS No.	Substance	Special exemptions	Effective date	Sunset date
*	* * * * *	*		*
33125-86-9	Phosphoric acid, 1,2-ethanediyl tetrakis (2-chloroethyl) ester		12/16/88	11/9/93
*	* * * * *	*		*
38661-72-2	Cyclohexane, 1,3-bis(isocyanatomethyl)-		6/1/87	11/9/93
*	* * * * *	*		*
68153-35-5	Ethanaminium, 2-amino-*N*-(2-aminoethyl-*N*-(2-hydroxyethyl)- *N*-methyl-, *N,N*-ditallow acyl derivatives, methyl sulfates (salts)		6/20/88	11/9/93
*	* * * * *	*		*
68389-88-8	Poly(oxy-1,2-ethanediyl), α-[2-[bis(2-aminoethyl) methylammonio]ethyl]-ω-hydroxy-, *N,N*-dicoco acyl derivatives, methyl sulfates (salts)		6/20/88	11/9/93
68389-89-9	Poly(oxy-1,2-ethanediyl), α-[2-[bis(2-aminoethyl) methylammonio]ethyl]-ω-hydroxy-,*N,N*-bis(hydrogenated tallow acyl) derivatives, methyl sulfates (salts)		6/20/88	11/9/93
*	* * * * *	*		*
68413-04-7	Poly[oxy(methyl-1,2-ethanediyl)], α-[2-[bis (2-aminoethyl)methylammonio] methylethyl]-ω-hydroxy-, *N,N*-ditallow acyl derivatives, methyl sulfates (salts)		6/20/88	11/9/93
*	* * * * *	*		*
68554-06-3	Poly(oxy-1,2-ethanediyl), α-[3-[bis(2-aminoethyl) methylammonio]-2-hydroxypropyl]-ω-hydroxy-, *N*-coco acyl derivatives, methyl sulfates (salts)		6/20/88	11/9/93
*	* * * * *	*		*
68611-64-3	Urea, reaction products with formaldehyde		6/3/85	11/9/93
*	* * * * *	*		*
75790-84-0	Benzene, 2-isocyanato-4-[(4-isocyanato-phenyl)methyl]-1-methyl-		6/1/87	11/9/93
75790-87-3	Benzene, 1-isocyanato-2-[(4-isocyanato-phenyl)thio]-		6/1/87	11/9/93

* * * * *

(d) * * *

Category	CAS No.	Special exemptions	Effective date	Sunset date
* * * *	*	*		*
Alkyl Phosphates:				
* * * *	*	*		*
Ethanol, 2-(2-butoxyethoxy)-, phosphate (3:1)	7332-46-9		10/29/90	11/9/93
* * * *	*	*		*
Phosphoric acid, didodecyl ester	7057-92-3		10/29/90	11/9/93
Phosphoric acid, diisoocytl ester	27215-10-7		10/29/90	11/9/93
Phosphoric acid, dodecyl ester	12751-23-4		10/29/90	11/9/93
Phosphoric acid, 2-ethylhexyl ester	12645-31-7		10/29/90	11/9/93
Phosphoric acid, monobutyl ester	1623-15-0		10/29/90	11/9/93
Phosphoric acid, mono(2-ethylhexyl)ester	1070-03-7		10/29/90	11/9/93
Phosphoric acid, monohexyl ester	3900-04-7		10/29/90	11/9/93
Phosphoric acid, monomethyl ester	812-00-0		10/29/90	11/9/93
Phosphoric acid, mono(1-methylethyl)ester	1623-24-1		10/29/90	11/9/93
Phosphoric acid, monooctyl ester	3991-73-9		10/29/90	11/9/93
Phosphoric acid, monooctadecyl ester	2958-09-0		10/29/90	11/9/93
* * * *	*	*		*
Phosphoric acid, tris(2-methylpropyl) ester	126-71-6		10/29/90	11/9/93
Phosphorodichloridic acid, ethyl ester	1498-51-7		10/29/90	11/9/93
Brominated flame retardants:				

Category	CAS No.	Special exemptions	Effective date	Sunset date
* * * *	*	*		*
Benzene, ethenyl-, homopolymer, brominated	88497-56-7		10/29/90	11/9/93
Benzene, 1,1'-(1-methylethylidene)bis (3,5-dibromo- 4-(2-propenyloxy)-	25327-89-3		10/29/90	11/9/93
* * * *	*	*		*
Isocyanates:			10/29/90	11/9/93
Acetic acid, isocyanato-, ethyl ester	2949-22-6		10/29/90	11/9/93
Benzene, bis(isocyanatomethyl)-	25854-16-4		10/29/90	11/9/93
Benzene, 1-bromo-4-isocyanato-	2493-02-9		10/29/90	11/9/93
Benzene, 1-chloro-3-isocyanato-	2909-38-8		10/29/90	11/9/93
* * * *	*	*		*
Benzene, 1,3-dichloro-5-isocyanato-	34893-92-0		10/29/90	11/9/93
Benzene, 1,1'-(diisocyanatomethylene)bis-	10031-75-1		10/29/90	11/9/93
* * * *	*	*		*
Benzene, 2-isocyanato- 1,3-bis(1-methylethyl)-	28178-42-9		10/29/90	11/9/93
Benzene, 2-isocyanato- 1,3-dimethyl-, ester	28556-81-2		10/29/90	11/9/93
Benzene, 1-isocyanato-2-methyl-	614-68-6		10/29/90	11/9/93
Benzene, 1-isocyanato-4-methyl-	622-58-2		10/29/90	11/9/93
Benzene, 1-isocyanato-4-nitro-	100-28-7		10/29/90	11/9/93
Benzene, 1,1',1"-methylidynetris(4-isocyanato-	2422-91-5		10/29/90	11/9/93
* * * *	*	*		*
Cyclohexane, 2-heptyl-3,4-bis (9-isocyanatononyl)-1-pentyl-	68239-06-5		10/29/90	11/9/93
Cyclohexane, isocyanato-	3173-53-3		10/29/90	11/9/93
1,3-Diazetidine-2,4-dione, 1,3-bis(3-isocyanato methylphenyl)-	26747-90-0		10/29/90	11/9/93
* * * *	*	*		*
Imidodicarbonic diamide, N,N'-2-tris(6-isocyanato-hexyl)-	4035-89-6		10/29/90	11/9/93
* * * *	*	*		*
Octadecane, 1-isocyanato-	112-96-9		10/29/90	11/9/93
Phenyl, 4-isocyanato-, phosphorothioate (3:1) (ester)	4151-51-3		10/29/90	11/9/93
Propane, 1-isocyanato-	110-78-1		10/29/90	11/9/93
1-Propene, 3-isocyanato-	1476-23-9		10/29/90	11/9/93
* * * *	*	*		*
2-Propenoic acid, 2-methyl-2-(((((5-isocyanato-1,3,3-trimethylcyclohexyl) methyl)amino)carbonyl)oxy)ethyl ester.	73597-26-9		10/29/90	11/9/93
1,3,5,-Triazine-2,4,6(1H.3H.5H.trione, 1,3,5-tris(3-ioscyanatomethyl phenyl)-.	26603-40-7		10/29/90	11/9/93
* * * *	*	*		*

[FR Doc. 93–19253 Filed 8–10–93; 8:45 am]

BILLING CODE 6560–50–F

FEDERAL COMMUNICATIONS COMMISSION

47 CFR Parts 2 and 99

[GEN Docket No. 90–314 and ET Docket No. 92–100; FCC 93–329]

Narrowband Personal Communications Services

AGENCY: Federal Communications Commission.

ACTION: Final rule.

SUMMARY: This First Report and Order (R&O) allocates spectrum and adopts rules authorizing new, narrowband personal communications services (PCS) that include advanced voice paging, two-way acknowledgement paging, data messaging, electronic mail, and facsimile transmissions. The Commission finds that authorizing these services would permit provision to consumers of new mobile and portable communications services, which are expected to increase the productivity of businesses, enhance the public's communications, and assist American industry to maintain its leadership position in the global telecommunications marketplace. Issues regarding licensee selection procedures and the regulatory status of the service are the subject of legislation actively being considered by the Congress and will be addressed by the Commission in a further action. The Commission also grants a pioneer's preference to Mobile Telecommunication Technologies Corporation (Mtel) and denies 18 other pioneer's preference requests.

EFFECTIVE DATE: September 10, 1993.

FOR FURTHER INFORMATION CONTACT: Tom Mooring, Office of Engineering and Technology, (202) 653–8114.

SUPPLEMENTARY INFORMATION: This is a synopsis of the Commission's R&O in GEN Docket No. 90–314 and ET Docket No. 92–100, adopted June 24, 1993, and released July 23, 1993.

The complete text of this R&O is available for inspection and copying during normal business hours in the FCC Reference Center (Room 239), 1919 M Street, NW., Washington, DC., and also may be purchased from the Commission's duplication contractor, International Transcription Service, (202) 857–3800, 2100 M Street, NW., suite 140, Washington, DC 20037.

Synopsis of R&O

1. By this action, the Commission allocates the 901–902, 930–931, and 940–941 MHz bands to narrowband PCS, adopts a regulatory structure that includes technical and operational rules, makes a final decision on 19 related pioneer's preference requests, and defers action on the method of selecting licensees and the regulatory status of licensees. A summary of the Notice of Proposed Rule Making initiating this proceeding may be found at 57 FR 40672 (September 4, 1992).

2. *Service definition.* PCS is broadly defined as radio services that encompass a wide array of mobile and ancillary fixed communications services that could provide services to individuals and businesses, and be integrated with a variety of competing networks. The spectrum allocated to PCS will not be used for broadcasting, and the only fixed services permitted are ancillary ones used in support of mobile PCS. Narrowband PCS is defined as PCS operating in the 901–902, 930–931, and 940–941 MHz bands.

3. We decline to limit narrowband PCS to advanced paging and messaging in order not to foreclose other potential narrowband services. Further, we decline to allocate spectrum specifically for an advanced cordless telephone service, inasmuch as we already have permitted cordless telephones to operate in a number of frequency bands, including 902–928 MHz, and have under consideration a petition for additional frequencies in a different band (RM–8094, filed by Telecommunications Industry Association on August 20, 1992). Additionally, no set-aside for non-commercial use by traditional private land mobile radio eligibles is made because spectrum currently allocated for such services is adequate and the applications suggested by potential providers appear to be within the definition of narrowband PCS and permissible in this spectrum under the adopted rules. As there is no petition for rule making before us requesting that spectrum sharing in the 930–960 MHz band be permitted, we decline to adopt the proposal that spectrum be reserved for control channels in the narrowband PCS spectrum.

4. *Spectrum allocation/channelization plan.* We are allocating the 901–902, 930–931, and 940–941 MHz bands to narrowband PCS. The 901–902 MHz band is limited to low power transmissions. At this time we will channelize and license only two of the three megahertz of spectrum. The channelization plan provides nine 50 kHz channels paired with nine 50 kHz channels, twelve 50 kHz channels paired with twelve 12.5 kHz channels, five 50 kHz unpaired channels, and eight 12.5 kHz unpaired channels.

5. The channelization plan for narrowband PCS provides a flexible framework that will foster our goals of universality, speed of deployment, diversity of services and competitive delivery. Potential PCS providers propose a diverse range of services with varying channel bandwidth requirements. A mix of paired and unpaired 12.5 and 50 kHz bandwidths will meet most of their stated needs. Most commenters propose low-power return path response capability, and the 901–902 MHz band is particularly desirable for use by low-power operations because the 930–931 and 940–941 MHz bands are adjacent to high power operations that would make low power operation difficult. Asymmetrical channel bandwidth pairings will promote spectrum efficiency because the communications requirements of response operations are substantially less than those of base-to-mobile operations. Also, providing response channels for use by existing licensees will permit existing paging operations to be upgraded to provide some acknowledgement and messaging capability.

6. *Service areas.* Narrowband PCS will be licensed on a nationwide, regional, and local basis. Regional service areas are based on 47 major trading areas (MTAs). Local service areas are based on 487 basic trading areas (BTAs). MTAs and BTAs are defined in the Rand McNally 1992 Commercial Atlas & Marketing Guide.

7. Large regional and nationwide licensed service areas provide economies of scale, alleviate some of the problems licensees have experienced when they tried to aggregate smaller licensed service areas, provide for flexibility in the design and implementation of narrowband PCS, and further our goals of fostering the swift implementation and deployment of narrowband PCS systems. Accordingly, we are setting aside the majority of spectrum and channels for nationwide and large regional licensed service area use. MTAs provide reasonable and homogeneous markets for the provision of PCS. If larger areas are required for certain applications, aggregation of MTA licensed service areas is permitted and nationwide PCS channels also are available.

8. While the majority of channels will be designated for nationwide and MTA use, there are a variety of narrowband services that could be offered at the local level. By providing channels at this level, we will foster broader participation in narrowband PCS, allow entry by smaller firms and businesses, increase competition, and promote diversity in the provision of narrowband PCS services. Therefore, we designate two channels for narrowband PCS use in the BTAs. In addition, we are using BTAs as the basis for licensing eight unpaired acknowledgement channels being provided for use by existing licensees. This approach is appropriate, given the limited number of channels and the fact that most existing paging is now licensed on a local basis.

9. *Eligibility.* Cellular systems and local exchange carriers (LECs) are permitted to be licensed without restriction. The channeling and licensed service area plans ensure substantial competition among providers of narrowband PCS services. In addition, narrowband PCS will be sufficiently different from the services provided by cellular systems and LECs so any ability that cellular systems and LECs might have to exert undue market power or restrain trade will be negligible.

10. *Limits on holding multiple licenses.* A single licensee is permitted to hold licenses for up to three 50 kHz channels, paired or unpaired (*i.e.*, no more than 150 kHz paired with 150 kHz). This limit is appropriate to ensure that narrowband PCS is offered on a competitive basis, while providing opportunities for licensees to aggregate or combine channels to provide multiple offerings or wider bandwidth services.

11. *License term.* A ten-year license term for narrowband PCS is specified. Renewal issues will be addressed later when the method of selecting licensees is addressed.

12. *Construction requirements.* Licensees of nationwide service areas must construct at least 250 base stations within five years and 500 base stations within ten years. MTA licensees must provide coverage to approximately 25% of the geographic area of their MTA within five years and 50% of the area within ten years; or, alternatively, must construct at least 25 base stations within five years and 50 base stations within ten years. Licensees of BTA service areas must construct at least one base station and begin providing service in their area within one year of being licensed. These minimum requirements for operation and service will ensure that spectrum is being effectively utilized. Failure by any licensee to meet the requirements will result in forfeiture of the license and the licensee will be ineligible to regain it.

13. *Small business.* Our actions will result in significant opportunities for small business participation through licensing at a local level and potential market opportunities with national and regional licensees. We expect to address small business concerns further when we take up the details of the licensee selection process.

14. *Technical standards.* The power for narrowband PCS base stations is limited to 3.5 kilowatts effective radiated power per authorized bandwidth and all base stations will be unlimited in antenna height except for those MTA and BTA base stations located close to an MTA or BTA border. These rules will allow all carriers to more quickly and economically cover their licensed service areas and generally will provide service comparable to existing paging operations.

15. The antenna height and transmitter power of regional and local base stations that are located between 200 and 80 kilometers from their service area borders are limited in accordance with the table in § 99.407(d). Regional and local base stations located less than 80 kilometers from their service area borders must limit their effective radiated power in accordance with the formula in § 99.407(e). The formula extends the table in order to allow operators to provide service in areas close to their licensed service area borders.

16. Waivers to the power and antenna height limit rules will be considered on a case-by-case basis for licensees claiming special circumstances. Further, in order to provide the flexibility needed to address particular operating circumstances, all PCS licensees are permitted to negotiate alternative operating limits and agreements with co-channel licensees in adjoining service areas.

17. Mobile and portable stations are limited to seven watts effective radiated power and are not required to use automatic power control because it would be extremely costly to implement and would have limited ability to decrease interference.

18. The maximum authorized bandwidth will be 10 kHz for 12.5 kHz channels and 45 kHz for 50 kHz channels. In addition, if a licensee aggregates adjacent channels, a maximum authorized bandwidth of 5 kHz less than the total aggregated channel width will be permitted. On any frequency outside the authorized bandwidth, the signal level must be attenuated in accordance with the provisions of § 99.411. By adopting this out-of-band protection scheme, the same adjacent channel interference protection will be provided to all narrowband PCS operations, independent of bandwidth.

19. Interoperability and inter-system roaming capability are not required. Nationwide and regional licensing will permit wide area services.

20. *RF radiation limits.* PCS equipment manufacturers and licensees are required to comply with the IEEE C95.1–1991 guidelines pending completion of ET Docket No. 93–62. For the purpose of type acceptance of narrowband PCS equipment, all handheld PCS devices must comply with the IEEE specifications for "uncontrolled" environments. This action is taken in consideration of possible health issues raised by narrowband PCS, the fact that no general manufacture of equipment has begun, and to provide for the expeditious initiation of service.

21. *Pioneer's preferences.* We are awarding Mtel a pioneer's preference for a nationwide license of a 50 kHz unpaired channel. Mtel developed and tested "multicarrier modulation" technology capable of transmitting a 24 kilobit per second simulcast signal in a single 50 kHz channel and designed a system capable of providing a variety of new two-way services in a single 50 kHz channel. We are denying 18 other pioneer's preference requests that addressed services in the 900 MHz range because the requesters failed to demonstrate that they had met our criteria for receiving a perference, see 47 CFR 1.402.

Final Regulatory Flexibility Analysis

22. Pursuant to 5 U.S.C. section 603, an initial Regulatory Flexibility Analysis was incorporated in the Notice of Proposed Rule Making and Tentative Decision in combined ET Docket No. 92–100 and GEN Docket No. 90–314. Written comments on the proposals in the Notice, including the Regulatory Flexibility Analysis, were requested.

A. *Need for and objective of rules:* Our objective is to provide spectrum in the 900 MHz range suitable for PCS services that utilize relatively narrow channels for advanced paging and related data PCS services. The flexibility of the Rules adopted enable a diversity of services, including enhanced paging and messaging services.

B. *Issues raised by the public in response to the initial analysis:* No party suggested modifications specifically in response to the initial regulatory flexibility analysis.

C. *Any significant alternative minimizing impact on small entities and consistent with stated objectives:* We have reduced burdens wherever possible. The regulatory burdens we have retained are necessary to ensure that the public receives the benefits of innovative new services in a prompt and efficient manner. We will continue to examine alternatives in the future with the objectives of eliminating unnecessary regulations and minimizing any significant impact on small entities. The Secretary will send a copy of this *Report and Order* to the Chief Counsel for Advocacy of the Small Business Administration.

23. Accordingly, it is ordered, that part 2 of the Commission's rules is amended and that a new part 99 is added to the Commission's rules as specified below, effective September 10, 1993. This action is taken pursuant to sections 4(i), 7(a), 302, 303(c), 303(f), 303(g), and 303(r) of the Communications Act of 1934, as amended, 47 U.S.C. sections 154(i), 157(a), 302, 303(c), 303(f), 303(g), and 303(r).

24. It is further ordered that the request for pioneer's preference filed by Mobile Telecommunication Technologies Corporation is granted. It is further ordered that the requests for pioneer's preference filed by Advanced Cordless Technologies, Inc.; Advanced Wireless Communications, Inc.; Dial Page, L.P. (PP–11 and PP–35); Echo Group L.P.; Ericsson Business Communications, Inc.; Freeman Engineering Associates, Inc.; Global Enhanced Messaging Venture; Metriplex, Inc.; Mobile Communications Corporation of America; Montauk Telecommunications Company; NAC, Inc.; PacTel Paging (PP–38 and PP–39); PageMart, Inc.; Paging Network, Inc.; Skycell Corporation; and Radio Telecom and Technology, Inc. are denied.

List of Subjects

47 CFR Part 2

Radio.

47 CFR Part 99

Personal communications service, Radio.

William F. Caton,

Acting Secretary.

Amendatory Text

Parts 2 and 99 of chapter I of title 47 of the Code of Federal Regulations are amended as follows:

PART 2—FREQUENCY ALLOCATIONS AND RADIO TREATY MATTERS; GENERAL RULES AND REGULATIONS

1. The authority citation in Part 2 continues to read:

Authority: Sec. 4, 302, 303, and 307 of the Communications Act of 1934, as amended,

47 U.S.C. sections 154, 154(i), 302, 303, 303(r), and 307, unless otherwise noted.

2. Section 2.106, the Table of Frequency Allocations is amended as follows:

Column (1) in the 790–942 MHz bands; column (2) in the 806–942 MHz bands; column (3) in the 890–942 MHz band; column (4) in the 806–902 and 935–941 MHz bands; and columns (5) and (6) in the 901–902, 929–932, and 940–941 MHz bands are revised to read as follows:

§ 2.106 Table of frequency allocations.

* * * * *

International table			United States table		FCC use designators	
Region 1-allocation	Region 2-allocation	Region 3-allocation	Government	Non-Government	Rule part(s)	Special-use frequencies
MHz (1)	MHz (2)	MHz (3)	Allocation MHz (4)	Allocation MHz (5)	(6)	(7)
*	*	*	*	*	*	*
790–862 FIXED. BROADCASTING.						
	806–890 FIXED. MOBILE. BROADCASTING.		806–902			
694 695 695A 696 697 700B 702						
862–890 FIXED. MOBILE except aeronautical mobile. BROADCASTING 703.						
700B 704	692A 700 700A					
890–942 FIXED. MOBILE except aeronautical mobile. BROADCASTING 703. Radiolocation.	890–902 FIXED. MOBILE except aeronautical mobile. Radiolocation.	890–942 FIXED. MOBILE. BROADCASTING. Radiolocation.				
				901–902 FIXED. MOBILE.	PERSONAL COMMUNICATIONS SERVICES (99).	
	700A 704A 705		US116 US268 G2	US116 US268 US330		
	902–928 FIXED. Amateur. Mobile except aeronautical mobile. Radiolocation. 705 707 707A		*	*	*	
	928–942 FIXED. MOBILE except aeronautical mobile. Radiolocation.		928–932			
				929–930 LAND MOBILE.	DOMESTIC PUBLIC LAND MOBILE (22). PRIVATE LAND MOBILE (90).	
				US116 US215 US268		
				930–931 FIXED. MOBILE. US116 US215 US268 US330	PERSONAL COMMUNICATIONS SERVICES (99).	

International table			United States table		FCC use designators	
Region 1-allocation	Region 2-allocation	Region 3-allocation	Government	Non-Government	Rule part(s)	Special-use frequencies
MHz (1)	MHz (2)	MHz (3)	*COM001 *Allocation MHz (4)	Allocation MHz (5)	(6)	(7)
				931–932 LAND MOBILE.	DOMESTIC PUBLIC LAND MOBILE (22). PRIVATE LAND MOBILE (90).	
			US116 US215 US268 G2	US116 US215 US268		
			*	*	*	
			935–941			
				940–941 FIXED. MOBILE.	PERSONAL COMMUNICATIONS SERVICES (99).	
			US116 US215 US268 G2	US116 US268 US330		
704	705	706				
*	*	*	*	*	*	*

Add new 700A and 700B to the international footnotes and new US330 to the United States footnotes to read as follows:

* * * * *

International Footnotes

* * * * *

700A *Additional allocation:* in Canada, the United States and Mexico, the bands 849–851 MHz and 894–896 MHz are also allocated to the aeronautical mobile service on a primary basis, for public correspondence with aircraft. The use of the band 849–851 MHz is limited to transmissions from aeronautical stations and the use of the band 894–896 MHz is limited to transmissions from aircraft stations.

700B *Additional allocation:* in Belarus, the Russian Federation and Ukraine, the bands 806–840 MHz (Earth-to-space) and 856–890 MHz (space-to-Earth) are also allocated to the mobile-satellite, except aeronautical mobile-satellite (R) service. The use of these bands by this service shall not cause harmful interference to, or claim protection from, services in other countries operating in accordance with the Table of Frequency Allocations and is subject to special agreements between the administrations concerned.

* * * * *

United States (US) Footnotes

* * * * *

US330 In the frequency bands 901–902 MHz, 930–931 MHz, and 940–941 MHz, the only fixed services permitted are ancillary services used in support of mobile personal communications services.

* * * * *

3. A new part 99 is added to read as follows:

PART 99—PERSONAL COMMUNICATIONS SERVICES

Subpart A—General Information

Sec.
99.1 Basis and purpose.
99.3 Permissible communications.
99.5 Terms and definitions.

Subpart B—Applications and Licenses

99.11 Scope.
99.12 Licensed service areas.
99.13 Eligibility.
99.14 [Reserved]
99.15 License term.
99.17 Construction requirements.

Subpart C—Technical and Operating Requirements

99.401 Scope.
99.403 Equipment authorization.
99.405 Frequencies.
99.406 Authorized bandwidth.
99.407 Power/antenna height limits.
99.409 RF hazards.
99.411 Emission limits for the 901–902 MHz, 930–931 MHz, and 940–941 MHz bands.
99.417 Co-channel separation criteria in the 901–902, 930–931, and 940–941 MHz bands.
99.419 Frequency stability requirements for the 901–902, 930–931, and 940–941 MHz bands.

Authority: Secs. 4, 302, 303, 48 Stat. 1066, 1082, as amended; 47 U.S.C. 154, 302, 303, and 332, unless otherwise noted.

Subpart A—General Information

§ 99.1 Basis and purpose.

This section contains the statutory basis for this part of the rules and provides the purpose for which this part is issued.

(a) *Basis.* The rules for the personal communications services (PCS) in this part are promulgated under the provisions of the Communications Act of 1934, as amended, which vest authority in the Federal Communications Commission to regulate radio transmission and to issue licenses for radio stations. The rules in this part are in accordance with applicable statutes, international treaties and agreements to which the United States is a party.

(b) *Purpose.* This part states the conditions under which stations may be licensed and used to provide PCS in the frequency bands specified in subpart C of this part.

§ 99.3 Permissible communications.

PCS licensees may provide any mobile communications service on their assigned spectrum. Fixed services may be provided only on an ancillary basis to mobile operations. Broadcasting as defined in the Communications Act is prohibited.

§ 99.5 Terms and definitions.

Assigned frequency. The center of the frequency band assigned to a station.

Authorized bandwidth. The maximum width of the band of frequencies permitted to be used by a station. This is normally considered to be the necessary or occupied bandwidth, whichever is greater.

Average terrain. The average elevation of terrain between 3.2 and 16 kilometers from the antenna site.

Base station. A land station in the land mobile service.

Basic Trading Area (BTA). One of the geographic areas by which narrowband PCS is licensed. The 487 BTAs are defined in the Rand McNally 1992 Commercial Atlas & Marketing Guide, 123rd Edition, pp. 36–39. Additionally,

American Samoa, Guam, Northern Mariana Islands, Puerto Rico, and United States Virgin Islands are licensed separately and are treated as if BTAs for licensing purposes.

Effective radiated power (e.r.p.) (in a given direction). The product of the power supplied to the antenna and its gain relative to a half-wave dipole in a given direction.

Fixed service. A radiocommunication service between specified fixed points.

Fixed station. A station in the fixed service.

Height Above Average Terrain (HAAT). Height of the center of the radiating element of the antenna above the average terrain. See § 90.309(a)(4) for calculation method.

Land mobile service. A mobile service between base stations and land mobile stations, or between land mobile stations.

Land mobile station. A mobile station in the land mobile service capable of surface movement within the geographic limits of a country or continent.

Land station. A station in the mobile service not intended to be used while in motion.

Major Trading Area (MTA). One of the geographic areas by which narrowband PCS is licensed. MTAs are defined in the Rand McNally 1992 Commercial Atlas and Marketing Guide, 123rd Edition, pages 36–39. For licensing purposes Alaska is a separate area from the Seattle MTA. Guam and the Northern Mariana Islands are treated as a single MTA. Puerto Rico and United States Virgin Islands are treated as a single MTA. American Samoa is treated as a single MTA.

Mobile service. A radiocommunication service between mobile and land stations, or between mobile stations.

Mobile station. A station in the mobile service intended to be used while in motion or during halts at unspecified points.

Narrowband PCS. PCS services operating in the 901–902 MHz, 930–931 MHz, and 940–941 MHz bands.

Personal Communications Services (PCS). Very broadly defined and flexible radio services that encompass a wide array of mobile and ancillary fixed communication services, which could provide services to individuals and business, and be integrated with a variety of competing networks.

Subpart B—Applications and Licenses

§ 99.11 Scope.

This subpart contains procedures and requirements for filing applications for licenses to operate radio facilities in the Personal Communications Services. Part 1 of the Commission's rules contain additional applicable rules governing forms (§ 1.922 of this chapter), fees (§ 1.1102 of this chapter), processing procedures (§ 1.953 of this chapter), special temporary authority (§ 1.925 of this chapter), assignment or transfer of control (§ 1.924 of this chapter), and environmental impact (§ 1.1301 of this chapter). Part 17 contains applicable rules regarding tower lighting (§§ 17.7 through 17.17 of this chapter).

§ 99.12 Licensed service areas.

(a) Narrowband PCS nationwide licensed service area: 50 states, District of Columbia, American Samoa, Guam, Northern Mariana Islands, Puerto Rico, and United States Virgin Islands.

(b) Narrowband PCS regional licensed service areas: 47 Major Trading Areas as defined in the Rand McNally 1992 Commercial Atlas & Marketing Guide, except that Alaska is separated from the Seattle MTA and is licensed separately. Guam and the Northern Mariana Islands are treated as a single MTA. Puerto Rico and United States Virgin Islands are treated as a single MTA. American Samoa is treated as a single MTA.

(c) Narrowband PCS local licensed service areas: 487 Basic Trading Areas as defined in the Rand McNally 1992 Commercial Atlas & Marketing Guide. American Samoa, Guam, Northern Mariana Islands, Puerto Rico, and United States Virgin Islands each are licensed separately.

§ 99.13 Eligibility.

Any person or entity not excluded by 47 U.S.C. 310 is eligible to hold a license under this part.

§ 99.14 [Reserved]

§ 99.15 License term.

Licenses for service areas will be issued for a term of ten years from the date of original issuance or renewal.

§ 99.17 Construction requirements.

For narrowband PCS systems:

(a) Licensees of nationwide service area channels must construct at least 250 base stations within five years of being licensed and at least 500 base stations within ten years of being licensed and notify the Commission when each benchmark is met.

(b) MTA licensees must construct base stations to provide coverage to approximately 25% of the geographic area of their licensed service area within five years of being licensed and 50% of the geographic area of their licensed service area within ten years of being licensed. Alternatively, licensees of MTA service area channels must construct at least 25 base stations within five years of being licensed and 50 base stations within ten years of being licensed. In either case, the MTA licensee must notify the Commission when each benchmark is met.

(c) Licensees of BTA service area channels must construct at least one base station and begin providing service in their licensed service area within one year of being licensed and notify the Commission when the benchmark is met.

(d) In evaluating compliance with the above construction requirements, each base station will be considered to serve a geographic area of 3000 square kilometers. In the case where a licensee constructs low power base stations, compliance with the construction requirements will be determined by aggregating the actual service areas of the low power stations divided by 3000 square kilometers to determine an equivalent number of base stations.

(e) Failure by any licensee to meet the above construction requirements will result in forfeiture of the license and the licensee will be ineligible to regain it.

Subpart C—Technical and Operating Requirements

§ 99.104 Scope.

This subpart sets forth the technical requirements for use of the spectrum and equipment in the radio services governed by this part. Such requirements include frequency channelizations and standards for equipment authorization, transmitter power, antenna height, and signal strength. Included in this subpart are interference criteria for co-channel operations.

§ 99.403 Equipment authorization.

(a) Each transmitter utilized for operation under this part and each transmitter marketed, as set forth in § 2.803 of part 2 of this chapter, must be of a type that has been authorized by the Commission under its type acceptance procedure for use under this part.

(b) The Commission periodically publishes a list of type accepted equipment, entitled "Radio Equipment List, Equipment Accepted for Licensing." Copies of this list are available for public reference at the Commission's offices in Washington, DC., and at each of its field offices.

(c) Any manufacturer of radio transmitting equipment to be used in these services may request equipment authorization following the procedures set forth in subpart J of part 2 of this chapter. Equipment authorization for an

individual transmitter may be requested by an applicant for a station authorization by following the procedure set forth in part 2 of this chapter. Such equipment if approved or accepted will not normally be included in the Commission's Radio Equipment List but will be individually enumerated on the station authorization.

(d) Applicants for type acceptance of transmitters that operate in these services must submit a statement confirming that the equipment complies with IEEE C95.1–1991 (also designated as ANSI/IEEE C95.1–1992), "IEEE Standard for Safety Levels with Respect to Human Exposure to Radio Frequency Electromagnetic Fields, 3 kHz to 300 GHz." Measurement methods are specified in IEEE C95.3–1991 (also designated ANSI/IEEE C95.3–1992). "IEEE Recommended Practice for the Measurement of Potentially Hazardous Electromagnetic Field—RF and Microwave." Copies of these standards can be ordered from the Institute of Electrical and Electronic Engineers, Inc. (IEEE), Attn: Publications Sales, 445 Hoes Lane, PO Box 1331, Piscataway, NJ 08855–1331, 1–800–678–IEEE; or can be ordered from the American National Standards Institute (ANSI), 1–212–642–4900. The applicant for type acceptance is required to maintain a record showing the basis for the statement of compliance with IEEE C95.1–1991 (ANSI/IEEE C95.1–1992).

§ 99.405 Frequencies.

(a) Licensed personal communications radio services will be authorized in the 901–902 MHz, 930–931 MHz, and 940–941 MHz bands. Licenses under this part will be issued based on the following frequency blocks, which are listed by center frequency. Unless otherwise specified, the frequencies are paired.

Nationwide Blocks (MHz)

Base	Mobile
50 kHz	*50 kHz*
940.025	901.025
940.075	901.075
940.125	901.125
940.175	901.175
940.225	901.225
50 kHz	*12.5 kHz*
930.425	901.75625
930.475	901.76875
930.525	901.78125

50 kHz Unpaired

940.775
940.825
940.875

MTA Blocks (MHz)

Base	Mobile
50 kHz	*50 kHz*
940.275	901.275
940.325	901.325
940.375	901.375
940.425	901.425
50 kHz	*12.5 kHz*
930.575	901.79375
930.625	901.80625
930.675	901.81875
930.725	901.83125
930.775	901.84375
930.825	901.85625
930.875	901.86875

50 kHz Unpaired

940.925
940.975

BTA Blocks (MHz)

Base	Mobile
50 kHz	*12.5 kHz*
930.925	901.88125
930.975	901.89375

12.5 kHz Unpaired[1]

901.90625
901.91875
901.93125
901.94375
901.95625
901.96875
901.98125
901.99375

(b) A single licensee is permitted to hold licenses for up to three 50 kHz channels, paired or unpaired. This limit is based on the total spectrum in the licensee's nationwide, regional, and local licenses at any geographic point.

§ 99.406 Authorized bandwidth.

The maximum authorized bandwidth of narrowband PCS channels will be 10 kHz for 12.5 kHz channels and 45 kHz for 50 kHz channels. For aggregated adjacent channels, a maximum authorized bandwidth of 5 kHz less than the total aggregated channel width is permitted.

§ 99.407 Power/antenna height limits.

(a) Stations transmitting in the 901–902 MHz band are limited to 7 watts e.r.p.

(b) Mobile stations transmitting in the 930–931 MHz and 940–941 MHz bands are limited to 7 watts e.r.p.

(c) Base stations transmitting in the 930–931 MHz and 940–941 MHz bands are limited to 3500 watts e.r.p. per authorized channel and are unlimited in antenna height except as provided for in paragraph (d) of this section.

[1] These mobile station frequencies are restricted to entities licensed under parts 22 and 90 of this chapter.

(d) MTA and BTA base stations located between 200 kilometers (124 miles) and 80 kilometers (50 miles) from their licensed service area border are limited to the power levels in following table:

Antenna height above average terrain in meters (feet)	Effective radiated power (e.r.p.) (watts)
183 (600) and below	3500
183 (600) to 208 (682)	3500–2584
208 (682) to 236 (775)	2584–1883
236 (775) to 268 (880)	1883–1372
268 (880) to 305 (1000)	1372–1000
305 (1000) to 346 (1137)	1000–729
346 (1137) to 394 (1292)	729–531
394 (1292) to 447 (1468)	531–387
447 (1468) to 508 (1668)	387–282
508 (1668) to 578 (1895)	282–206
578 (1895) to 656 (2154)	206–150
656 (2154) to 746 (2447)	150–109
746 (2447) to 848 (2781)	109–80
848 (2781) to 963 (3160)	80–58
963 (3160) to 1094 (3590)	58–42
1094 (3590) to 1244 (4080)	42–31
1244 (4080) to 1413 (4636)	31–22
Above 1413 (4636)	16

For heights between the values listed above, linear interpolation shall be used to determine maximum e.r.p.

(e) Regional and local base stations located less than 80 kilometers (50 miles) from the licensed service area border must limit their effective radiated power in accordance with the following formula:

$P_w = 0.0175 \times d_{km}^{6.6666} \times h_m^{-3.1997}$

P_w is effective radiated power in watts
d_{km} is distance in kilometers
h_m is antenna height above average terrain in meters.

(f) All power levels specified above are expressed in terms of the maximum power, averaged over 100 millisecond interval, when measured with instrumentation calibrated in terms of an rms-equivalent voltage with a resolution bandwidth equal to or greater than the authorized bandwidth.

(g) Additionally, PCS stations will be subject to any power limits imposed by international agreements.

§ 99.409 RF hazards.

Manufacturers are required to comply with IEEE C95.1–1991. For the purposes of determining compliance with this standard, all equipment shall be considered to operate in an "uncontrolled" environment.

§ 99.411 Emission limits for the 901–902 MHz, 930–931 MHz, and 940–941 MHz bands.

(a) The power of any emission shall be attenuated below the transmitter power (P) in accordance with the following schedule:

(1) For transmitters authorized a bandwidth (B) greater than 10 kHz:

(i) On any frequency outside the authorized bandwidth and removed from the edge of the authorized bandwidth by a displacement frequency (f_d in kHz) of up to and including 40 kHz: at least 116 Log_{10} ((f_d + 10)/6.1) decibels or 50 plus 10 Log_{10} (P) decibels or 70 decibels, whichever is the lesser attenuation;

(ii) On any frequency outside the authorized bandwidth and removed from the edge of the authorized bandwidth by a displacement frequency (f_d in kHz) of more than 40 kHz: at least 43 Log_{10} (P) decibels or 80 decibels, whichever is the lesser attenuation.

(2) For transmitters authorized a bandwidth (B) of 10 kHz:

(i) On any frequency outside the authorized bandwidth and removed from the edge of the authorized bandwidth by a displacement frequency (f_d in kHz) of up to and including 20 kHz: at least 116 Log_{10} ((f_d + 5)/3.05) decibels or 50 plus 10 Log_{10} (P) decibels or 70 decibels, whichever is the lesser attenuation;

(ii) On any frequency outside the authorized bandwidth and removed from the edge of the authorized bandwidth by a displacement frequency (f_d in kHz) of more than 20 kHz: at least 43 plus 10 Log_{10} (P) decibels or 80 decibels, whichever is the lesser attenuation.

(b) The measurements of emission power can be expressed in peak or average values provided they are expressed in the same parameters as the transmitter power.

(c) When an emission outside of the authorized bandwidth causes harmful interference, the Commission may, at its discretion, require greater attenuation than specified in this section.

(d) The following minimum spectrum analyzer resolution bandwidth settings will be used: 300 Hz when showing compliance with paragraphs (a)(1)(i) and (a)(2)(i) of this section; and 30 kHz when showing compliance with paragraphs (a)(1)(ii) and (a)(2)(ii) of this section.

§ 99.417 Co-channel separation criteria in the 901–902, 930–931, and 940–941 MHz bands.

The minimum co-channel separation distance between base stations in different service areas is 113 kilometers (70 miles). A co-channel separation distance is not required for the base stations of the same licensee or when the affected parties have agreed to other co-channel separation distances.

§ 99.419 Frequency stability requirements for the 901–902, 930–931, and 940–941 MHz bands.

(a) The frequency stability of the transmitter shall be maintained within ±0.0001% (± 1 ppm) of the center frequency over a temperature variation of −30 degrees to +50 degrees C at normal supply voltage, and over a variation in the primary supply voltage of 85% to 115% of the rated supply voltage at a temperature of 20 degrees C.

(b) For battery operated equipment, the equipment tests shall be performed using a new battery without any further requirement to vary supply voltage.

(c) It is acceptable for a transmitter to exceed this frequency stability requirement over a narrower temperature range provided the transmitter ceases to function before it exceeds these frequency stability limits.

[FR Doc. 93–19178 Filed 8–10–93; 8:45 am]

BILLING CODE 6712–01–M

47 CFR Part 73

[MM Docket No. 93–49; RM–8193; RM–8344]

Radio Broadcasting Services; Los Lunas, Espanola and Pojoaque, NM

AGENCY: Federal Communications Commission.

ACTION: Final rule.

SUMMARY: The Commission, at the request of Elliott McDowell, substitutes Channel 273C for Channel 273C2 at Los Lunas, New Mexico, modifies Station KOYT's license to specify the higher class channel, substitutes Channel 225C3 for Channel 272C3 at Espanola, New Mexico, and modifies Station KIOT's license to specify the alternate Class C3 channel. See 58 FR 16518, March 29, 1993. At the request of Cheryl S. Potter, her counterproposal to allot Channel 225C3 to Pojoaque, New Mexico, is dismissed. Channel 273C can be allotted to Los Lunas with a site restriction of 51.8 kilometers (32.2 miles) northeast, at coordinates North Latitude 35–12–42 and West Longitude 106–26–57, to accommodate petitioner's desired transmitter site. Channel 225C3 can be allotted to Espanola with a site restriction of 16.2 kilometers (10.1 miles) northeast, at coordinates 36–04–41; 105–56–16, to avoid short-spacings to Stations KRWN, Channel 225C1, Farmington, and KRST, Channel 222C, and KKOB–FM, Channel 227C, Albuquerque, New Mexico, and to accommodate petitioners's desired transmitter site. With this action, this proceeding is terminated.

EFFECTIVE DATE: September 20, 1993.

FOR FURTHER INFORMATION CONTACT: Leslie K. Shapiro, Mass Media Bureau, (202) 634–6530

SUPPLEMENTARY INFORMATION: This is a synopsis of the Commission's Report and Order, MM Docket No. 93–49, adopted July 21, 1993, and released August 5, 1993. The full text of this Commission decision is available for inspection and copying during normal business hours in the FCC Reference Center (Room 239), 1919 M Street, NW., Washington, DC. The complete text of this decision may also be purchased from the Commission's copy contractor, International Transcription Service, Inc., (202) 857–3800, 2100 M Street NW., suite 140, Washington, DC 20037.

List of Subjects in 47 CFR Part 73

Radio broadcasting.

PART 73—[AMENDED]

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

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

§ 73.202 [Amended]

2. Section 73.202(b), the Table of FM Allotments under New Mexico, is amended by removing Channel 272C3 and adding Channel 225C3 at Espanola, and by removing Channel 273C2 and adding Channel 273C at Los Lunas.

Federal Communications Commission.

Michael C. Ruger,

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

[FR Doc. 93–19174 Filed 8–10–93; 8:45 am]

BILLING CODE 6712–01–M

DEPARTMENT OF ENERGY

48 CFR Parts 925 and 952

Acquisition Regulation; Acquisition of Nuclear Hot Cell Services

AGENCY: Department of Energy.

ACTION: Interim final rule; discussion of comments.

SUMMARY: The Department of Energy (DOE) today publishes a notice to provide its disposition of public comments received in response to an invitation to comment on an interim final rule which amends the Department of Energy Acquisition Regulation (DEAR) to implement section 2305 of the Energy Policy Act of 1992. The Act requires selection for contract award of nuclear hot cell services in a way that affords United States companies and foreign companies an equal competition for contracts. The interim final rule provided that it would automatically

become final on June 18, 1993, unless DOE took additional action in response to public comments. On the basis of the public comments received, DOE has determined not to amend the interim final rule and it became final on June 18, 1993.

FOR FURTHER INFORMATION CONTACT: P. Devers Weaver, Procurement Policy Division (PR–121), U.S. Department of Energy, 1000 Independence Avenue, SW. Washington, DC 20585; telephone 202–586–8250.

SUPPLEMENTARY INFORMATION:

I. General

DOE published an interim final rule in the **Federal Register** (58 FR 8909) on February 18, 1993, that amended the DEAR to implement section 2305 of the Energy Policy Act of 1992 (Pub. L. 102–486). The Act requires selection for contract award of nuclear hot cell services in a way that affords United States companies and foreign companies an equal competition for contracts.

The interim final rule amended the DEAR by adding new subpart 925.70 and providing a contract clause at new section 952.225–70. The latter requires prime contractors to select first tier subcontracts for nuclear hot cell services in a similar manner. The interim final rule was an interpretative rule and provided that the rule would automatically become final on June 18, 1993, unless further action in response to any public comment was deemed appropriate.

In the interim final rule, DOE provided a 30-day period for public comment. Interested persons were invited to participate in the rulemaking process through the submission of views or arguments pertaining to the interim final rule. One business firm submitted 2 comments. These were carefully assessed to determine their effect on the interim final rule, and on DOE's decision to allow the interim final rule to become final on June 18, 1993, without change.

II. DOE Response to Public Comments

One comment states that the interim final rule should specify how decommissioning and waste management costs are to be shown in offers for nuclear hot cell services.

DOE Response: DOE agrees that in order to make adjustments to offers to make evaluations for selection for award of contracts for nuclear hot cell services in a way which affords United States and foreign companies an equal competition, it will be necessary to obtain cost data of some sort. However, in many cases (e.g. United States companies are not competing with foreign companies or an unsubsidized foreign firm is subject to regulations comparable to those applicable to United States companies), it will not be necessary to make evaluations on an adjusted basis and the cost data are not needed. Further, the nature of the data needed will vary from case to case. In some cases, cost data may be obtained from a United States company to make a deduction adjustment for costs related to the decommissioning of nuclear facilities and storage and disposal of nuclear waste. In other cases, cost data may be obtained from a foreign firm to make an additive adjustment to the offer of a foreign company. The preparation of cost data can be burdensome and costly for the offeror. Therefore, solicitations should not require the submission of certain cost data which may well never be used or needed.

DEAR 925.7003 requires the selection official in evaluating competitive offers for selection to make the specified adjustment under the stated circumstances. In most cases, the amount of the adjustment will be determined based on cost data that is requested after proposals are received. This will avoid placing unnecessary burden on many of the offerors.

We know of no instance in which the DOE has acquired nuclear hot cell services using the sealed bid method. However, in the unlikely event that this should occur, the invitation for bids would reserve for the Government the right to require the submission of cost data after the bid opening. This data would be used for determining the reasonableness of costs related to the decommissioning of nuclear facilities or the storage and disposal of nuclear waste.

The comment offered does not persuade us that it is desirable to universally require offers to include a detailed cost breakdown of the specified cost elements. Rather, the interim final rule provides flexibility in determining the timing for obtaining the cost data and selectivity in obtaining the data only from those from whom it is needed.

One comment states that the interim rule is inconsistent with the statute, at section 2305(a)(2), in that the requirements of the rule do not flow down beyond first-tier subcontracts.

DOE Response: Paragraph (a)(1) of section 2305 provides that the cost requirements described below are to be applied by the Secretary in the award of prime contracts for nuclear hot cell services. In particular, costs related to the decommissioning of nuclear facilities or the storage and disposal of nuclear waste are to be excluded from consideration, if (1) one or more of the parties bidding to perform such services is a United States company subject to such costs and (2) one or more of the parties is a foreign company that is not subject to comparable costs. In addition, paragraph (a)(2) of section 2305 provides that firms to whom prime contracts are awarded are subject to the same cost requirements when evaluating the bids of potential subcontractors. Thus, when addressing the issue of the applicability of these requirements to subcontractors, the Congress, rather than employing more inclusive language, specifically provided that the cost requirements were to extend to the evaluation of first tier subcontractors. In addition, nothing in the legislative history of this provision indicates that broader applicability was intended. Therefore, while it is clear that Department of Energy (DOE) prime contractors are subject to the cost requirements described above, it does not appear that the Congress intended that these requirements also apply to lower tier subcontractors.

However, even if one were to assume that the DOE has the discretion to extend these requirements to lower tier subcontractors, there are sound policy reasons not to pursue this course of action. Section 2305 imposes a significant and unique burden on the cost evaluations that DOE and prime contractors must conduct when undertaking procurement of nuclear hot cell services. In addition to normal cost evaluation considerations, evaluators would be required to determine whether costs related to complying with applicable laws governing the decommissioning of nuclear facilities or the storage and disposal of nuclear waste are comparable for competing United States and foreign companies. In the event that it appears that they are not comparable, evaluators would be required either to subtract such costs from the offer of the United States firm or add additional costs to the offer submitted by the foreign firm.

The analysis required to assess whether, or the degree to which, the requirements of United States law and regulation related to decommissioning and storage and disposal of nuclear waste are similar to those of foreign countries, and thus might result in comparable costs, will be a complex and time-consuming undertaking. In addition, it is unlikely that the private companies that would be required to perform this analysis would, in the normal course of business, have established the expertise necessary to evaluate the nature and potential effect

of the relevant foreign laws and regulations and to determine the costs associated with complying with such laws. Requiring contractors at lower tiers to undertake such an analysis is likely to increase further both the cost of, and time required to conduct, these procurements. The costs associated with complying with these requirements also may limit the number of firms that would compete in these procurements and particularly may discourage smaller firms with more limited resources. We believe the potential costs, delay, and effect on competition associated with complying with these cost requirements militate against extending these requirements to lower tier subcontractors.

III. Effect of Public Comments on the Final Rule

After careful assessment and full consideration of the comments received concerning the interim final rule, DOE determines that no changes to the interim final rule are needed, and that the interim final rule became final on June 18, 1993, as contemplated in the interim final rule, and that republication of the interim final rule in final form is unnecessary.

Issued in Washington, DC on August 4, 1993.

G.L. Allen,

Acting Deputy Assistant Secretary for Procurement and Assistance Management.

[FR Doc. 93–19156 Filed 8–10–93; 8:45 am]

BILLING CODE 6450–01–P

DEPARTMENT OF TRANSPORTATION

Federal Transit Administration

49 CFR Part 671

[Docket No. 93–A]

RIN 2132–AA49

Temporary Local Match Waiver for Sections 9 and 18

AGENCY: Federal Transit Administration, DOT.

ACTION: Interim final rule.

SUMMARY: The Dire Emergency Supplemental Appropriations Act, 1992, and the Department of Transportation and Related Agencies Appropriations Act, 1993 (the Acts), authorize the Federal Transit Administration (FTA) to increase temporarily the proportion of Federal funding available to a section 9 or 18 capital assistance project if a recipient cannot pay, in whole or in part, the local share required under the Federal Transit Act, as amended (FT Act). This interim final rule establishes the requirements and procedures for those recipients applying for such an increased Federal share.

DATES: *Effective date:* September 10, 1993.

Comment due date: October 12, 1993.

ADDRESSES: Comments should be sent, in duplicate, to Docket No. 93–A, Docket Clerk, room 9316, Office of the Chief Counsel, Federal Transit Administration, 400 7th Street, SW., Washington DC 20590. Those wishing the agency to acknowledge receipt of their comments should include a stamped, self-addressed postcard with their comments. All comments will be available for review by the public at this address from 9 a.m. to 5 p.m., Monday through Friday, except Federal holidays.

FOR FURTHER INFORMATION CONTACT: For program issues: Douglas Kerr, 400 7th Street SW., room 9315, Washington DC 20590, (202) 366–2440 (telephone), (202) 366–7951 (fax). For legal issues: Nancy M. Zaczek, Office of the Chief Counsel, Federal Transit Administration, same address, room 9316, (202) 366–4011 (telephone), (202) 366–3809 (fax).

SUPPLEMENTARY INFORMATION:

I. Background of Temporary Waiver

Under section 9 of the FT Act, funds are made available to urbanized areas on the basis of a statutory formula. Under section 18 of the FT Act, funds are made available to the States for rural mass transportation purposes. Both sections 9 and 18 fund capital and operating costs. Under the capital portion of the programs, the FTA and a recipient of its funds share the costs of financing local mass transit capital projects. Specifically, FTA pays eighty percent of a capital project's eligible costs (the Federal share), and a recipient pays the remaining twenty percent (the local match or local share). To ensure the sufficiency of local financing for a project, section 9 requires a recipient to certify that it can pay its share of the project's cost. A similar requirement applies to section 18 grants.

Recently, however, an alternative approach to these Federal and local share requirements has become available. The Dire Emergency Supplemental Appropriations Act, 1992, and the Department of Transportation Appropriations Act, 1993 (the Acts), permit FTA to waive, in fiscal years 1992 and 1993, part or all of the local share required for capital projects under sections 9 and 18 of the FT Act, thereby increasing the proportion of Federal money used to pay for a project. In short, in fiscal years 1992 and 1993 a recipient may pay for a project's cost using only Federal money. A July 10, 1992, Federal Register document described the section 9 waiver program.

The Acts do not specifically provide how the FTA should administer this new program. Rather, they require the agency to institute the program "* * * in the same manner as specified in section 1054 of Public Law 102–240," which is the Intermodal Surface Transportation Efficiency Act of 1991 (ISTEA). Section 1054 of the ISTEA was designed specifically for the programs of the Federal Highway Administration (FHWA), not those of the FTA.

FTA Deferred Local Share Policy

In addition to the procedures described in this interim final rule, the FTA also permits a recipient of its funds to defer its local share until later in a project, thereby "front loading" the Federal share. Unlike the temporary waiver of local share procedure described in this interim final rule, the deferred local share policy remains in effect after September 30, 1993. See the FTA's July 10, 1992, Federal Register document in this regard at 57 FR 30880.

II. Section 1054 of ISTEA

Under section 1054, FHWA is authorized to waive the local share required for a qualifying highway construction project for which funds were obligated after September 30, 1991, and before October 1, 1993, if the Governor certifies that the State cannot finance its local share of the project. Once FHWA waives the local share requirement, the State may use Federal funds to finance one hundred percent of the project's costs. The waiver, however, is temporary: The amount waived must be repaid before March 31, 1994. If a State fails to repay the funds by that date, FHWA will reduce the State's apportionment accordingly; fifty percent of the amount waived would be deducted in fiscal year 1995, and fifty percent in fiscal year 1996.

Section 1054 further requires that FHWA issue regulations establishing the requirements and procedures for those States seeking a waiver. In response, FHWA published a Final Rule in this regard in the Federal Register on February 2, 1993, at 58 FR 6713.

FHWA's Final Rule

FHWA's final rule applies to a qualifying highway project, which FHWA defines as a "* * * project approved after December 18, 1991 or a project for which the United States becomes obligated to pay after

December 18, 1991, under 23 U.S.C. 117 or 23 U.S.C. 133(e) for which the Governor has submitted a certification described in § 140.307."

FHWA provides financial assistance only to States, and thus only States may apply for a temporary waiver. To apply, a Governor must certify that the State cannot afford to finance its local share.

The rule describes how FHWA determines the amount of funds the agency will waive under the program for qualified highway projects. Under FHWA's programs, FHWA essentially obligates all of its funds each year to the States, which then make expenditures over time. Because of this, FHWA determined that the amount of costs incurred by the State and reimbursed by FHWA would be waived, not the total amount obligated each year. Thus, the FHWA waiver applies only to funds obligated and reimbursed by the FHWA before October 1, 1993.

Regarding repayment of the local share waived, the rule provides two options to a State: To repay the amount waived before March 31, 1994, or not to repay but have its apportionment reduced in fiscal years 1995 and 1996. If the State chooses the latter alternative, FHWA will deduct from the State's fiscal year 1995 apportionment fifty percent of the amount waived and deduct the remaining fifty percent in fiscal year 1996.

III. FTA's Implementation of Section 1054

FTA's interim final rule on this program differs somewhat from FHWA's because of the different way in which their grant programs are administered.

First, under FHWA's program States receive Federal funding and essentially administer the highway programs, while under the FTA's program both States and urbanized areas receive Federal funding. A State receives Federal funding under section 18, and sometimes under section 9, while recipients in urbanized areas receive section 9 funding directly from FTA. Thus, while section 1054 requires a Governor to certify that the State cannot finance its local share, under this interim final rule a Governor will so certify when the State seeks a waiver, but a recipient in an urbanized area will make the certification as necessary.

Second, FHWA generally funds highway construction costs. In contrast, the FTA not only funds construction costs but also funds the purchase of other capital items such as buses and rail cars. We therefore interpret the phrase "construction costs" consistent with its longstanding meaning under our section 9 and 18 programs, where it applies to all eligible capital costs, including planning projects. (On the other hand, operating assistance projects clearly are not subject to this interim final rule.) In this interim final rule we thus use "capital projects" or "capital assistance projects" instead of "construction projects," and these terms apply to any project eligible for assistance at the eighty percent Federal share level under the section 9 or 18 programs.

Third, under section 1054 FHWA may waive the local share only for "qualifying projects". We do not use that phrase because the Acts specify that FTA may waive the local share for section 9 and 18 capital projects. In short, any capital assistance project under section 9 or 18 is eligible for a waiver under this interim final rule.

Fourth, section 1054 requires a State to repay the amount of the Federal share waived or the FHWA will reduce that State's 1995 and 1996 apportionment accordingly. In contrast, the FTA funds both States and urbanized areas. Thus, if a State fails to repay the amount waived, we will reduce that State's apportionment; if a recipient in an urbanized area fails to repay the amount waived, we will reduce that urbanized area's apportionment accordingly in fiscal years 1995 and 1996.

Finally, we noted above how the FHWA will waive only costs obligated and reimbursed before October 1, 1993. We have adopted this approach except for a few previously approved waivers. Consistent with the FHWA rule, for those who apply for and receive FTA approval of a waiver after March 31, 1993, we will waive the local match only for those funds that are obligated and reimbursed before October 1, 1993. We follow FHWA's lead in this regard because the Acts provide that we should waive the local match for section 9 and 18 capital programs "* * * in the same manner as specified in section 1054 * * *", FHWA's specific statutory authority.

Nonetheless, because we had approved six waivers before or during the period the FHWA rule became final, we believe that we should provide an exception for those six entities because the FTA's **Federal Register** document on this procedure did not address the issue of when funds had to be expended. Accordingly, for those recipients who applied for and received FTA approval of a waiver before March 31, 1993, the end of the quarter in which FHWA published its final rule, we will waive the local match for funds obligated before October 1, 1993, and drawn down by the recipient before March 31, 1994.

Funds Transferred From Title 23 to the Transit Program

One of ISTEA's key provisions permits certain title 23 highway funds to be used for transit projects, or section 9 funds to be used for highway projects. In either case, the funds take on the characteristics of the program they are transferred to. If, after title 23 funds are transferred to the transit program, a recipient is granted a temporary waiver of local share requirements by the FTA, under section 1054 and this interim final rule the recipient must repay those waived funds before March 31, 1994. If a recipient fails to repay that amount by March 31, 1994, however, repayment will not come from the transit program. Rather, FTA and FHWA have agreed that, in this situation, FHWA will reduce the highway apportionment from which the funds originated. Similarly, if section 9 funds are transferred to the highway program, and the Federal share is advanced in accordance with section 1054, and the recipient fails to repay the funds, repayment would come from the original transit apportionment, not from the highway program to which the transit funds were transferred.

IV. Overview of the Interim Final Rule

This interim final rule applies to recipients of section 9 or 18 capital assistance funds, including funds transferred from the Surface Transportation Program (STP) or Congestion Mitigation and Air Quality (CMAQ) Program.

In general, this interim final rule allows a recipient to ask FTA temporarily to fund part or all of the local share of a project. FTA will grant such a request if the recipient certifies that it cannot finance its share of a project cost and if FTA obligates funds for the project after September 30, 1991, and before October 1, 1993, and such funds are drawn down before October 1, 1993 (except in certain cases). Since the recipient must certify that it cannot finance its share of a project's costs, we believe that in practice this interim final rule would not apply to grant applications already approved by the FTA because under FTA application procedures a recipient must certify that it has sufficient resources to finance the local share. Nonetheless, the FTA will consider any such requests if the recipient can demonstrate a change in conditions justifying a certification that it now cannot finance the local share amounts still to be paid.

A section 9 or 18 recipient applies for a waiver as part of its Federal grant application. In its request, the recipient must specify the amount of Federal

dollars it is requesting. It must then calculate the percent of Federal dollars it will use to pay for the project. Lastly, it must specify the amount of Federal dollars that the recipient could ask for under section 9 or 18 of the FT Act.

In addition, a section 9 recipient must show that the Transportation Improvement Program for its area includes the project, and submit a written endorsement from the Metropolitan Planning Organization approving the project and the request for a waiver.

A recipient must repay the amount waived before March 31, 1994. If a recipient fails to repay that amount, FTA will reduce the apportionment for the recipient's urbanized area for fiscal years 1995 and 1996. FTA will deduct fifty percent of the amount waived in 1995 and fifty percent in 1996.

A recipient of STP or CMAQ funds transferred from title 23 must also repay the amount waived before March 31, 1994. If, however, a recipient does not repay the funds, FHWA will reduce the originating highway apportionments for fiscal years 1995 and 1996. In 1995, FHWA will deduct fifty percent of the amount waived, and in 1996 FHWA will deduct the remaining fifty percent.

V. Section-by-Section Analysis

Subpart A—General Provisions

A. Purpose. (§ 671.1)

This interim final rule helps a section 9 or 18 recipient temporarily pay for transit projects when it cannot finance the local match required under the FT Act. Three statutes—the ISTEA, the Dire Emergency Supplemental Appropriations Act, 1992, and the Department of Transportation's (DOT) Fiscal Year 1993 Appropriations Act—authorize FTA to waive the local match required under certain transit programs. This interim final rule, therefore, establishes the requirements and procedures for seeking a waiver under those statutes.

B. Scope. (§ 671.3)

This interim final rule applies to a recipient of section 9 or 18 capital funds that is unable to finance all or part of the local share required under the FT Act. Operating assistance projects are not covered by this interim final rule.

The interim final rule applies to funds obligated by FTA after September 30, 1991, but before October 1, 1993. We use these dates because section 1054 of ISTEA so provides, notwithstanding that Congress only authorized the FTA in June 1992 to waive the section 9 local share, and in October 1992 to waive the section 18 local match, six months and a year, respectively, after section 1054 was enacted. An earlier Federal Register document published on July 10, 1992, at 57 FR 30880, described the section 9 waiver program.

Although the interim final rule applies retroactively to October 1, 1991, in practice it is unlikely that a recipient who has already applied to FTA for a grant and assured us of its local funding would now be able to certify that it has insufficient funds to finance its local share. Nonetheless, we will consider any such requests on a case-by-case basis. (Such a recipient may wish to defer its local share under a policy published by FTA in the Federal Register on July 10, 1992, at 57 FR 30880.) Under this interim final rule the recipient must certify that it cannot finance all or part of its local share.

Finally, the waiver of local share applies to funds obligated by the FTA before October 1, 1993, and drawn down before March 31, 1994, for those recipients who applied and received approval from the FTA before March 31, 1993. For all other applicants, the waiver would apply only to funds obligated and drawn down before October 1, 1993.

C. Definitions. (§ 671.5)

1. *Administrator.* Administrator means the Administrator of the Federal Transit Administration.

2. *Capital grant.* Capital grant means a grant authorized at the eighty percent Federal share level by section 9 or 18 of the FT Act. This interim final rule applies only to capital grants, including planning grants.

3. *Federal share.* Since this program lasts for only a short period of time, we ask that the recipient advise the FTA how much the recipient would receive under section 9 or 18 of the FT Act as if this part did not apply. The Federal share therefore means the usual Federal share under the grant.

4. *Federal participating ratio.* This means the percent of the eligible costs to be funded by FTA as requested by the recipient. A recipient asking for an increased Federal share would be asking for a grant to fund more than eighty percent of the eligible costs of a project.

5. *Fiscal year.* Fiscal year means the Federal fiscal year, which begins on October 1 and ends on September 30.

6. *Increased Federal share.* The amount of Federal dollars requested above the amount the recipient would receive under the FT Act. The increased Federal share equals the amount waived.

7. *Local match or local share.* The local match or local share refers to the requirement that the recipient finance a portion of the project.

8. *Obligation.* Obligation means a formal commitment of the Federal government to pay the Federal share, and the increased Federal share, of the project's eligible costs. The Federal government obligates funds when FTA approves the project.

9. *Project.* Project means a capital project or projects as defined in section 9 or 18 of the FT Act. A recipient may wish to apply for a waiver for more than one project. A recipient may apply for a waiver for multiple projects so long as the recipient meets the requirements of this part.

10. *Recipient.* Since this interim final rule applies to both section 9 or 18 recipients, a recipient means a State or an urbanized area recipient of such funds from the FTA.

Subpart B—Requirements and Procedures for Recipients

This subpart establishes the conditions under which recipients may participate in this program and describes the procedures that the recipients must follow to apply for a waiver.

A. Requirement for an Increased Federal Share. (§ 671.21)

This section specifies that a recipient, to qualify for a local share waiver, must certify that it cannot finance all or part of the local share required under section 9 or 18 of the FT Act.

B. Procedures for Applying for an Increased Federal Share. (§ 671.23)

This section specifies the procedures that a recipient must follow to apply for a waiver. The first subsection of this section applies to both recipients of sections 9 and 18 funding. A section 9 or 18 recipient must apply to the appropriate FTA Regional Office for an increased Federal share. In its application the recipient must specify the percentage of the Federal participation requested, the dollar amount of the normal Federal share (i.e., eighty percent) as calculated under sections 9 and 18, and the amount of Federal dollars over the usual Federal share that it seeks. Lastly, a section 9 or 18 recipient must certify that it cannot finance all or part of its share.

A section 9 recipient must also show that the Metropolitan Planning Organization endorses the project and the recipient's request for an increased Federal share. A section 9 recipient must further show that the Transportation Improvement Program contains the project

C. Time Limit on Expending the Increased Federal Share. (§ 671.25)

In this section, we have established two categories of recipients, those who applied for and received approval from the FTA before March 31, 1993, to waive the local match and those who apply and receive approval after that date. As we explained above, the FTA had approved six requests for a waiver before or during the quarter in which FHWA published its final rule. Because the Acts direct us to parallel FHWA's program, this interim final rule adopts FHWA's interpretation of section 1054 concerning the obligation and expenditure of the increased Federal share. Nonetheless, we are creating an exception for the six projects already approved, which may continue to use the increased Federal share until March 31, 1994, when repayment is to be made.

Subpart C—Repayment of the Increased Federal Share

A. Repaying the Increased Federal Share. (§ 671.31)

This section specifies that a recipient must repay the increased Federal share before March 31, 1994. If a recipient fails to repay the amount of the increased Federal share by that date, FTA will reduce the recipient's apportionment accordingly, half in fiscal year 1995, and half in fiscal year 1996. In the case of funds transferred from STP or CMAQ apportionments, FHWA will reduce the originating highway apportionments pursuant to its rule if a recipient fails to repay the amount waived before March 31, 1994.

VI. Regulatory Process Matters

A. Executive Order 12291

The FTA has evaluated the costs and benefits to sections 9 and 18 grantees and we have determined that this interim final rule is not a major rule under Executive order 12291 because neither the costs nor the benefits exceed $100 million in any one year.

B. Departmental Significance

This interim final rule is a significant rule under the Department's guidelines because it involves a change in an important Departmental policy. Specifically, the Department usually requires that grantees be able to fund their share of a capital project. Under this interim final rule, we are temporarily changing that policy and we will waive the local share requirement for a short period of time.

C. Regulatory Flexibility Act

In accordance with 5 U.S.C. 605(b), as added by the Regulatory Flexibility Act, Public Law 96–354, FTA certifies that this interim final rule will not have a significant impact on a substantial number of small entities within the meaning of the Act.

D. Paperwork Reduction Act

This interim final rule requires a recipient to do some minor additional calculations, which are submitted with its normal grant application. Furthermore, this interim final rule does require that a section 9 recipient receive the endorsement of its Metropolitan Planning Organization. This requirement is consistent with the FT Act. The MPO plays a crucial role not only in planning projects but also for the expenditure of Federal funding.

E. Executive Order 12612

The Department reviewed this interim final rule under Executive order 12612 and concluded that although this interim final rule does affect States, it does not warrant a Federalism assessment. In response to a statutory mandate, this interim final rule benefits certain States by allowing them to proceed with projects they would not, under normal conditions, be able to fund. This interim final rule does not involve any additional costs to the States and, in fact, benefits them.

F. National Environmental Policy Act

This interim final rule does not have environmental implications. It merely allows recipients to fund approved projects they otherwise would not be able to.

G. Energy Impact Implications

This interim final rule does not adversely affect the use of energy.

H. Interim Final Rule—Administrative Procedure Act

Consistent with section 553(b)(3)(B) of the Administrative Procedure Act, the Department is publishing an interim final rule in lieu of a Notice of Proposed Rulemaking. An NPRM is impractical, unnecessary, and contrary to the public interest for the following reasons. First, our authority to waive the local share for the section 9 and 18 capital grant programs lasts only until October 1, 1993. Hence, we have only a short period of time to implement this rulemaking. Second, this interim final rule does not regulate behavior; it merely announces the availability of a program and establishes the procedures for applying for that program. Finally, only six grantees have used the program to date and we thus do not anticipate receiving many comments concerning this rulemaking from our section 9 and 18 recipients.

List of Subjects in 49 CFR Part 671

Local match, Waiver, grant programs—transportation, Mass transportation.

For the reasons cited above, the agency amends title 49 by adding a new part 671, to read as follows:

PART 671—TEMPORARY LOCAL MATCH WAIVER FOR SECTION 9 AND 18

Subpart A—General Provisions

Sec.

671.1 Purpose.
671.3 Scope.
671.5 Definitions.

Subpart B—Requirements and Procedures for Recipients

671.21 Requirement for an increased Federal share.
671.23 Procedures for applying for an increased Federal share.
671.25 Time limit on expending the increased Federal share.

Subpart C—Repayment of the Increased Federal Share

671.31 Repaying the increased Federal share.

Authority: Pub. L. 102–302, 106 Stat. 252; Sec. 338, Pub. L. 102–388, 106 Stat. 1553; Sec. 1054, Pub. L. 102–240, 105 Stat. 2001–2002 23 U.S.C. 120 note.

Subpart A—General Provisions

§ 671.1 Purpose.

Under section 1054 of the Intermodal Surface Transportation Efficiency Act (ISTEA); the Dire Emergency Supplemental Appropriations Act, 1992; and the Department of Transportation and Related Agencies Appropriations Act, 1993, the Federal Transit Administration (FTA) may, for fiscal years 1992 and 1993, temporarily increase the proportion of Federal funding available for a capital project if a recipient certifies that it cannot finance all or a part of its share as required under section 9 or 18 of the Federal Transit Act, as amended (FT Act). This part establishes the requirements and procedures for those recipients who would like to apply for such an increased Federal share.

§ 671.3 Scope.

This part applies to a recipient that cannot finance part or all of its local share for capital grants under sections 9 and 18 of the FT Act obligated by FTA after September 30, 1991, and before October 1, 1993, and applies as well to

funds transferred from the highway program to section 9 or 18.

§ 671.5 Definitions.

As used in this part:

Administrator means the Administrator of the Federal Transit Administration.

Capital grant means a grant under section 9 or 18 of the FT Act other than a grant for operating assistance.

Federal Share means the dollar amount of Federal funding for a project as calculated under section 9 or 18 of the FT Act. For both section 9 and 18 capital grants, the Federal share is eighty percent of a project's eligible costs.

Federal participating ratio means the Federal percentage of the eligible costs of a project as requested by the recipient under this part.

Fiscal Year means the year beginning on October 1 and ending on September 30.

Increased Federal share means the dollar amount of Federal funds in excess of the Federal share. It equals the amount of the local share waived by the FTA.

Local Match or local share means the dollar amount of funding provided by a State or an urbanized area to finance its portion of the project's eligible costs as required by the FT Act.

Obligation means a formal commitment of the Federal Government to pay the Federal share, or an increased Federal share of a project's eligible costs. The Federal Government obligates funds when the FTA approves a project.

Project means a capital project or projects as defined in section 9 or 18 of the FT Act.

Recipient means a State or a transit system in an urbanized area that receives section 9 or 18 funds from the FT Act.

Subpart B—Requirements and Procedures for Recipients

§ 671.21 Requirement for an increased Federal share.

To request an increased Federal share under this part, a recipient must certify to the FTA that it cannot finance all or part of its portion of the project's eligible costs as required under section 9 or 18 of the FT Act.

§ 671.23 Procedures for applying for an increased Federal share.

(a) To receive an increased Federal share, a recipient of section 9 or 18 funds must submit its request with its grant application to the appropriate FTA Regional Office, and—

(1) specify the requested Federal participating ratio;

(2) specify the amount of the Federal share, and the increased Federal share; and

(3) certify that it cannot finance its portion of the project.

(b) In addition, a recipient of section 9 capital assistance must include in its application evidence that—

(1) a Transportation Improvement Program contains the project; and

(2) the Metropolitan Planning Organization (MPO) formally approves the project and the recipient's request for an increased Federal share.

§ 671.25 Time limit on drawing down the increased Federal share.

(a) Except as provided in paragraph (b) of this section, the waiver shall apply only to funds obligated by FTA and drawn down by the recipient before October 1, 1993.

(b) If FTA approved an application for such a waiver before March 31, 1993, the waiver applies to funds obligated before October 1, 1993, and drawn down by the recipient before March 31, 1994.

Subpart C—Repayment of the Increased Federal Share

§ 671.31 Repaying the increased Federal share.

(a) A recipient must repay the amount of the increased Federal share before March 31, 1994.

(b) If a recipient of section 9 capital assistance does not repay the increased Federal share before March 31, 1994, in fiscal year 1995 the Administrator will deduct fifty percent of the amount waived from the amount apportioned to the urbanized area in which the recipient operates under section 9 of the FT Act, and will deduct the remaining fifty percent in fiscal year 1996 from the same apportionment.

(c) If a recipient of section 18 capital assistance does not repay the increased Federal share before March 31, 1994, in fiscal year 1995 the Administrator will deduct fifty percent of the amount waived from the State's section 18 apportionment, and in fiscal year 1996 will deduct the remaining fifty percent from the State's apportionment.

(d) If funds are transferred from the Surface Transportation Program or CMAQ program to the section 9 or 18 program, and the recipient of those funds receives an increased Federal share, and does not repay those funds, the FHWA will deduct fifty percent of the amount waived from the originating apportionment under the appropriate highway program and in fiscal year 1996 will deduct the remaining amount.

Issued: August 2, 1993.

Grace Crunican,

Deputy Administrator.

[FR Doc. 93–19210 Filed 8–10–93; 8:45 am]

BILLING CODE 4910–57–P

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

50 CFR Part 672

[Docket No. 921107–3068; I.D. 080693A]

Groundfish of the Gulf of Alaska

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

ACTION: Closure.

SUMMARY: NMFS is closing the directed fishery for pollock in Statistical Area 62 in the Gulf of Alaska (GOA). This action is necessary to prevent exceeding the third quarterly allowance of the total allowable catch (TAC) for pollock in this area.

EFFECTIVE DATE: 12 noon, Alaska local time (A.l.t.), August 10, 1993, until 12 noon, A.l.t., October 1, 1993.

FOR FURTHER INFORMATION CONTACT: Andrew N. Smoker, Resource Management Specialist, Fisheries Management Division, NMFS, (907) 586–7228.

SUPPLEMENTARY INFORMATION: The groundfish fishery in the GOA exclusive economic zone is managed by the Secretary of Commerce according to the Fishery Management Plan for Groundfish of the Gulf of Alaska (FMP) prepared by the North Pacific Fishery Management Council under authority of the Magnuson Fishery Conservation and Management Act. Fishing by U.S. vessels is governed by regulations implementing the FMP at 50 CFR parts 620 and 672.

The third quarterly allowance of pollock TAC in Statistical Area 62 is 3,937 metric tons (mt), determined in accordance with § 672.20(c)(2)(iv).

The Director of the Alaska Region, NMFS (Regional Director), has determined, in accordance with § 672.20(c)(2)(ii), that the 1993 third quarterly allowance of pollock TAC in Statistical Area 62 will soon be reached. The Regional Director established a directed fishing allowance of 3,543 mt, and has set aside the remaining 394 mt as bycatch to support other anticipated groundfish fisheries. The Regional Director has determined that the directed fishing allowance has been reached. Consequently, directed fishing for pollock in Statistical Area 62 is

prohibited from 12 noon, A.l.t., August 10, 1993, until 12 noon, A.l.t., October 1, 1993.

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

Classification

This action is taken under 50 CFR 672.20, and is in compliance with E.O. 12291.

List of Subjects in 50 CFR Part 672

Fisheries, Reporting and recordkeeping requirements.

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

Dated: August 9, 1993.

David S. Crestin,

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

[FR Doc. 93–19400 Filed 8–9–93; 2:12 pm]

BILLING CODE 3510–22–M

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50 CFR Part 675

[Docket No. 921185–3021; I.D. 080993A]

Groundfish of the Bering Sea and Aleutian Islands Area

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

ACTION: Closure.

SUMMARY: NMFS is closing the directed fishery for aggregate species in the rock sole/"other flatfish" fishery category by operators of vessels using trawl gear in Bycatch Limitation Zone 2 (Zone 2) of the Bering Sea and Aleutian Islands Management Area (BSAI). This action is necessary because the 1993 prohibited species bycatch allowance of *Chionoecetes bairdi* Tanner crab to the trawl rock sole/"other flatfish" fishery category in Zone 2 of the BSAI has been reached.

EFFECTIVE DATE: 12 noon, Alaska local time (A.l.t.), August 9, 1993, through 12 midnight, A.l.t., December 31, 1993.

FOR FURTHER INFORMATION CONTACT: Andrew N. Smoker, Resource Management Specialist, Fisheries Management Division, NMFS, 907–586–7228.

SUPPLEMENTARY INFORMATION: The groundfish fishery in the BSAI exclusive economic zone is managed by the Secretary of Commerce according to the Fishery Management Plan for the Groundfish Fishery of the BSAI (FMP) prepared by the North Pacific Fishery Management Council under authority of the Magnuson Fishery Conservation and Management Act. Fishing by U.S. vessels is governed by regulations implementing the FMP at 50 CFR parts 620 and 675.

The 1993 prohibited species bycatch allowance of *C. bairdi* Tanner crab to the trawl rock sole/"other flatfish" fishery category in Zone 2 of the BSAI, which is defined at § 675.21(b)(1)(iii)(B)(*2*), was established as 199,333 crabs by the final 1993 initial specifications (58 FR 8703, February 17, 1993).

The Regional Director, Alaska Region, NMFS, has determined, in accordance with § 675.21(c)(1)(ii), that the prohibited species bycatch allowance of *C. bairdi* Tanner crab to the trawl rock sole/"other flatfish" fishery category in Zone 2 has been reached. Therefore, NMFS is prohibiting directed fishing for aggregate species in the rock sole/"other flatfish" fishery category by operators of vessels using trawl gear in Zone 2 of the BSAI from 12 noon, A.l.t., August 9, 1993, through 12 midnight, A.l.t., December 31, 1993.

Directed fishing standards for applicable gear types may be found in the regulations at § 675.20(h).

Classification

This action is taken under 50 CFR 675.21 and is in compliance with E.O. 12291.

List of Subjects in 50 CFR Part 675

Fisheries, Reporting and recordkeeping requirements.

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

Dated: August 9, 1993.

David S. Crestin,

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

[FR Doc. 93–19399 Filed 8–9–93; 2:12 pm]

BILLING CODE 3510–22–M

Proposed Rules

Federal Register
Vol. 58, No. 153
Wednesday, August 11, 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 AGRICULTURE

Agricultural Marketing Service

7 CFR Part 945

[Docket No. AO–150–A6; FV92–945–2]

Irish Potatoes Grown in Certain Designated Counties in Idaho, and Malheur County, Oregon; Hearing on Proposed Amendment of Marketing Agreement and Order No. 945, Both as Amended

AGENCY: Agricultural Marketing Service, USDA.

ACTION: Notice of public hearing on proposed rulemaking.

SUMMARY: Notice is hereby given of a public hearing to consider amending Marketing Agreement and Order No. 945, hereinafter referred to as the "order". The order regulates the handling of Irish potatoes grown in certain designated counties in Idaho and Malheur County, Oregon. The purpose of the hearing is to receive evidence on proposals to amend provisions of the order.

The proposed amendments would broaden the scope of the order to cover shipments of potatoes within the counties covered under the order as well as those outside those counties, change representation and quorum procedures of the Idaho-Eastern Oregon Potato Committee (committee), and provide the committee with authority to recommend container marking requirements and changes in committee size and composition. In addition, proposals are included regarding the committee's fiscal operations, and to add confidentiality and verification provisions. These proposals were submitted by the committee and the Fruit and Vegetable Division, Agricultural Marketing Service (AMS) to improve the administration, operation, and functioning of the order.

DATES: The hearing will begin at 9 a.m. in Idaho Falls, Idaho, on September 8, 1993, and if necessary, will continue the next day.

ADDRESSES: The hearing will be held at the Bonneville County Courthouse, 605 North Capital Avenue, room 101, Idaho Falls, Idaho 83401.

FOR FURTHER INFORMATION CONTACT: Dennis West, Northwest Marketing Field Office, 1220 SW. Third Avenue, room 369, Portland, Oregon 97204; telephone (503) 326–2724 or FAX (503) 326–7440; or Valerie L. Emmer or James B. Wendland, Marketing Order Administration Branch, Fruit and Vegetable Division, AMS, USDA, room 2523–S, Washington, DC 20090–6456; telephone (202) 205–2829 for the former or (202) 720–2170 for the latter, or FAX (202) 720–5698.

SUPPLEMENTARY INFORMATION: This administrative action is taken pursuant to the Agricultural Marketing Agreement Act of 1937, as amended [7 U.S.C. 601–674], hereinafter referred to as the "Act." This action is governed by the provisions of sections 556 and 557 of title 5 of the United States Code and, therefore, is excluded from the requirements of Executive Order 12291 and Departmental Regulation 1512–1.

The Regulatory Flexibility Act [5 U.S.C. 601 *et. seq.*] seeks to ensure that within the statutory authority of a program, the regulatory and informational requirements are tailored to the size and nature of small businesses. Interested persons are invited to present evidence at the hearing on the possible regulatory and informational impact of the proposals on small businesses.

The amendments proposed herein have been reviewed under Executive Order 12778, Civil Justice Reform. They are not intended to have retroactive effect. If adopted, the proposed amendments would not preempt any state or local laws, regulations, or policies, unless they present an irreconcilable conflict with this rule.

The Act provides that administrative proceedings must be exhausted before parties may file suit in court. Under section 608c(15)(A) of the Act, any handler subject to an order may file with the Secretary a petition stating that the order, any provision of the order, or any obligation imposed in connection with the order is not in accordance with law and requesting a modification of the order or to be exempted therefrom. A handler is afforded the opportunity for a hearing on the petition. After the hearing, the Secretary would rule on the petition. The Act provides that the district court of the United States in any district in which the handler is an inhabitant, or has his principal place of business, has jurisdiction in equity to review the Secretary's ruling on the petition, provided a bill in equity is filed not later than 20 days after date of the entry of the ruling.

The hearing is called pursuant to the provisions of the Act and the applicable rules of practice and procedure governing the formulation of marketing agreements and orders [7 CFR part 900].

The committee submitted proposals to broaden the scope of the order to regulate intrastate shipments of potatoes in the same manner as interstate shipments and to add authority for it to recommend container marking requirements. In addition, committee proposals are included to: (1) Provide seed producers with representation on the committee and to change committee quorum procedures; (2) add authority for the committee to recommend to the Secretary changes in committee size and composition; (3) remove an outdated assessment limitation of $1 per carload; (4) allow the committee to impose late payment or interest fees, or both, on late assessment payments, accept advance assessment payments from handlers, and borrow monies in emergencies for program administration; and (5) provide confidentiality requirements for reports submitted to the committee.

The committee works with the Department in administering the order. These proposals have not received the approval of the Secretary of Agriculture.

The committee believes that the proposed changes would improve the administration, operation, and functioning of the order.

The Fruit and Vegetable Division of the Agricultural Marketing Service (AMS) proposed adding verification provisions to the order and authority to make such changes as may be necessary to the order to conform with any amendment thereto that may result from the hearing.

The public hearing is held for the purpose of: (i) Receiving evidence about the economic and marketing conditions which relate to the proposed amendments of the order; (ii) determining whether there is a need for the proposed amendments to the order; and (iii) determining whether the proposed amendments or appropriate

modifications thereof will tend to effectuate the declared policy of the Act.

All persons wishing to submit written material as evidence at the hearing should be prepared to submit four copies of such material at the hearing and should have prepared testimony available for presentation at the hearing.

From the time the notice of hearing is issued and until the issuance of a final decision in this proceeding, Department employees involved in the decisional process are prohibited from discussing the merits of the hearing issues on an *ex parte* basis with any person having an interest in the proceeding. The prohibition applies to employees in the following organizational units: Office of the Secretary of Agriculture; Office of the Administrator, AMS; Office of the General Counsel, except designated employees of the General Counsel assigned to represent the committee in this rulemaking proceeding; and the Fruit and Vegetable Division, AMS.

Procedural matters are not subject to the above prohibition and may be discussed at any time.

List of Subjects in 7 CFR Part 945

Marketing agreements, Potatoes, Reporting and recordkeeping requirements.

1. The authority citation for 7 CFR part 945 continues to read as follows:

PART 945—IRISH POTATOES GROWN IN CERTAIN DESIGNATED COUNTIES IN IDAHO, AND MALHEUR COUNTY, OR

Authority: 7 U.S.C. 601–674.

2. Testimony is invited on the following proposals or appropriate alternatives or modifications to such proposals:

Proposals submitted by the Idaho-Eastern Oregon Potato Committee:

Proposal No. 1

Revise § 945.9 to read as follows:

§ 945.9 Ship or handle.

Ship is synonymous with *handle* and means to pack, sell, transport or in any way to place potatoes grown in the production area, or cause such potatoes to be placed in the current of commerce within the production area or between the production area and any point outside thereof, so as to directly burden, obstruct, or affect any such commerce: *Provided,* That the definition of *ship* or *handle* shall not include the transportation of ungraded potatoes within the production area for the purpose of having such potatoes stored or prepared for market, except that the committee may impose safeguards pursuant to § 945.53 with respect to such potatoes.

Proposal No. 2

Section 945.20 is amended by revising paragraph (a) and adding a new paragraph (d) to read as follows:

§ 945.20 Establishment and membership.

(a) The Idaho-Eastern Oregon Potato Committee is hereby established consisting of eight members, of whom four shall be producers of potatoes for the fresh market for at least three of the last five years, one shall be a producer predominately of potatoes for seed, and three shall be handlers. For each member of the committee, there shall be an alternate who shall have the same qualifications as the member. The number of producer and handler members and alternates on the committee may be increased and the composition of the committee between producers and handlers may be changed as provided in § 945.23.

* * * * *

(d) At least every six years, the number of producer and handler members and alternates on the committee or the composition of the committee between producers and handlers may be changed as provided in § 945.23.

Proposal No. 3

Revise § 945.22 to read as follows:

§ 945.22 Districts.

For the purpose of selecting committee members and alternate members, the following districts of the production area are hereby established: *Provided,* That these districts may be changed as provided in § 945.23.

(a) *District No. 1:* The counties of Bonneville, Butte, Clark, Fremont, Jefferson, Madison, and Teton;

(b) *District No. 2:* The counties of Bannock, Bear Lake, Bingham, Caribou, Franklin, Oneida, and Power; and

(c) *District No. 3:* Malheur County, Oregon, and the remaining designated counties in Idaho included in the production area, and not included in District No. 1 or District No. 2.

Proposal No. 4

Revise § 945.23 to read as follows:

§ 945.23 Redistricting and reapportionment.

(a) The Secretary, upon recommendation of the committee, may reestablish districts within the production area, may reapportion committee membership among the various districts, may increase the number of producer and handler members and alternates on the committee, and may change the composition of the committee by changing the ratio between grower and handler members, including their alternates. In recommending any such changes, the committee shall give consideration to:

(1) Shifts in potato acreage within districts and within the production area during recent years;

(2) The importance of new potato production in its relation to existing districts;

(3) The equitable relationship between committee membership and districts;

(4) Economies to result for producers in promoting efficient administration due to redistricting or reapportionment of members within districts; and

(5) Other relevant factors.

(b) Membership of the committee shall be apportioned among the districts of the production area so as to provide the following representation:

(1) Three producer members, including one who predominately produces seed potatoes, and one handler member, with their respective alternates, from District No. 1;

(2) one producer member and one handler member, with their respective alternates, from District No. 2; and

(3) one producer member and one handler member, with their respective alternates, from District No. 3; or such other representation as recommended by the committee and approved by the Secretary.

Proposal No. 5

In § 945.30, revise paragraph (a) to read as follows:

§ 945.30 Procedure.

(a) A simple majority of all members of the committee, including alternates acting for members, shall be necessary to constitute a quorum or to pass any motion or approve any committee action. At any assembled meeting, all votes shall be cast in person.

* * * * *

Proposal No. 6

In § 945.42, revise paragraphs (b), and add paragraphs (d), and (e) to read as follows:

§ 945.42 Assessments.

* * * * *

(b) Assessments shall be levied upon handlers at a rate per hundredweight or equivalent established by the Secretary. Such rate may be established upon the basis of the committee's budget recommendations, and other available information.

(c) * * *

(d) The committee may impose a late payment charge or an interest charge, or both, on any handler who fails to pay, on or before the due date established by the Secretary, the total assessment for which such handler is liable. Such due date and the late payment fee and interest rate shall be recommended by the committee and approved by the Secretary.

(e) In order to provide funds to carry out its function, after the effective date of this subpart the committee may accept advance assessments from handlers. Advance assessments received from a handler shall be credited toward assessments levied against the handler during that fiscal period. In the case of an extreme emergency, the committee may also borrow money on a short time basis to provide funds for the administration of this part. Any such borrowed money shall only be used to meet the committee's current financial obligations, and the committee shall repay all borrowed money by the end of the next fiscal period from assessment income.

Proposal No. 7

In § 945.52, revise paragraph (a)(3) to read as follows:

§ 945.52 Issuance of regulations.

(a) * * *

(1) * * *

(2) * * *

(3) Fix the size, capacity, weight, dimensions, pack or marking of the container, or containers, which may be used in the packaging or handling of potatoes, or both; or

* * * * *

The Fruit and Vegetable Division, Agricultural Marketing Service, submitted Proposal No. 9 and paragraphs (c) and (d) of Proposal No. 8, and the committee submitted paragraph (b) as follows:

Proposal No. 8

Amend § 945.80 by designating the existing paragraph as paragraph (a) and adding new paragraphs (b) through (d) to read as follows:

§ 945.80 Reports.

(a) * * *

(b) All data or other information constituting a trade secret, or disclosing a trade position or business condition of a particular handler shall be treated as confidential and shall at all times be received by and kept in the custody and under the control of one or more designated employees of the committee. Information which would reveal the circumstances of a single handler shall be disclosed to no person other than the Secretary.

(c) Each handler shall maintain for at least 2 succeeding fiscal periods such records of potatoes received and of potatoes disposed of by such handler as may be necessary to verify reports required pursuant to this section.

(d) For the purpose of assuring compliance and checking and verifying reports filed by handlers, the Secretary and the committee, through its duly authorized agents, shall have access to any premises where applicable records are maintained, where potatoes are held, and, at any time during reasonable business hours, shall be permitted to inspect such handlers' premises and any and all records of such handlers with respect to matters within the purview of this part.

Proposal No. 9

Make such changes as may be necessary to the order to conform with any amendment thereto that may result from the hearing.

Dated: August 3, 1993.

L.P. Massaro,

Acting Administrator.

[FR Doc. 93–19334 Filed 8–10–93; 8:45 am]

BILLING CODE 3410–02–P

NATIONAL CREDIT UNION ADMINISTRATION

12 CFR Part 701

Federal Credit Union Field of Membership and Chartering Policy

AGENCY: National Credit Union Administration (NCUA).

ACTION: Extension of comment period.

SUMMARY: On July 15, 1993, the NCUA issued a proposed interpretive ruling and policy statement (IRPS) updating NCUA's field of membership and chartering policy. The proposed IRPS was published in the **Federal Register** on July 28, 1993 (see 58 FR 40470). The NCUA Board requested that comments be received by October 26, 1993. Due to a request made, the Board has decided to extend the comment period for an additional 3 months, to January 26, 1994.

DATES: The comment period is being extended from October 26, 1993, to January 26, 1994. Comments must be postmarked by January 26, 1994.

ADDRESSES: Send comments to Becky Baker, Secretary of the 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, telephone (404) 396–4042, or Mike McKenna, Staff Attorney, Office of General Counsel, 1776 G Street, NW., Washington, DC 20456, telephone (202) 682–9630.

Authority: The authority for this action is the general rulemaking authority of the NCUA Board, 12 U.S.C. 1766(a).

By the National Credit Union Administration Board on August 4, 1993.

Becky Baker,

Secretary of the Board.

[FR Doc. 93–19240 Filed 8–10–93; 8:45 am]

BILLING CODE 7535–01–M

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Chapter I

[Summary Notice No. PR–93–13]

Petition for Rulemaking; Summary of Petitions Received and Dispositions of Petitions Issued

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Notice of petitions for rulemaking received and of dispositions of prior petitions.

SUMMARY: Pursuant to FAA's rulemaking provisions governing the application, processing, and disposition of petitions for rulemaking (14 CFR part 11), this notice contains a summary of certain petitions requesting the initiation of rulemaking procedures for the amendment of specified provisions of the Federal Aviation Regulations and of denials or withdrawals of certain petitions previously received. The purpose of this notice is to improve the public's awareness of, and participation in, this aspect of FAA's regulatory activities. Neither publication of this notice nor the inclusion or omission of information in the summary is intended to affect the legal status of any petition or its final disposition.

DATES: Comments on petitions received must identify the petition docket number involved and must be received October 12, 1993.

ADDRESSES: Send comments on any petition in triplicate to: Federal Aviation Administration, Office of the Chief Counsel, Attn: Rules Docket No. 27334, 800 Independence Avenue, SW.,

Washington, DC 20591. The petition, any comments received, and a copy of any final disposition are filed in the assigned regulatory docket and are available for examination in the Rules Docket (AGC–10), room 915G, FAA Headquarters Building (FOB 10A), 800 Independence Ave., SW., Washington, DC 20591; telephone (202) 267–3132.

FOR FURTHER INFORMATION CONTACT: Mr. Frederick M. Haynes, Office of Rulemaking (ARM–1), Federal Aviation Administration, 800 Independence Avenue, SW., Washington, DC 20591; telephone (202) 267–3939.

This notice is published pursuant to paragraphs (b) and (f) of § 11.27 of part 11 of the Federal Aviation Regulations (14 CFR part 11).

Issued in Washington, DC on August 3, 1993.

Donald P. Byrne,

Assistant Chief Counsel for Regulations.

Petitions for Rulemaking

Docket No.: 27334.

Petitioner: Mr. Paul H. Poberezny.

Regulations Affected: 14 CFR 91.409 (a) and (b).

Description of Rulechange Sought: To extend the annual inspection interval to two years or 200 hours, whichever comes first, for aircraft that are not operated for carrying passengers for hire or for giving flight instructions for hire.

Petitioner's Reason for the Request: The petitioner feels that the aviation industry has made great progress in the reliability of general aviation powerplants, aircraft design and reliability, and to tear an airplane apart every 365 days (most of which have flown less than 100 hours) seems to be a waste. The proposed rule change would help stimulate the general aviation's regrowth by relieving the undue burden of an annual inspection.

[FR Doc. 93–19235 Filed 8–10–93; 8:45 am]

BILLING CODE 4910–13–M

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14 CFR Part 39

[Docket No. 93–NM–65–AD]

Airworthiness Directives; British Aerospace (Commercial Aircraft), Limited, Model ATP Airplanes

AGENCY: Federal Aviation Administration, DOT.

ACTION: Notice of proposed rulemaking (NPRM).

SUMMARY: This document proposes the supersedure of an existing airworthiness directive (AD), applicable to certain British Aerospace Model ATP airplanes, that currently requires de-activation of the automatic alternative three-phase power supply to each transformer rectifier unit (TRU), an operational test to ensure that the auto-changeover system is inoperative, and inclusion of an associated temporary revision in the Airplane Flight Manual (AFM). This action would require installation of a terminating modification and revision of the AFM to include an associated temporary revision. This proposal is prompted by the availability of an improved contactor assembly for the TRU power supply changeover system. The actions specified by the proposed AD are intended to prevent the loss of all primary electric power sources during automatic switching to alternative three-phase power for the TRU's.

DATES: Comments must be received by October 5, 1993.

ADDRESSES: Submit comments in triplicate to the Federal Aviation Administration (FAA), Transport Airplane Directorate, ANM–103, Attention: Rules Docket No. 93–NM–65–AD, 1601 Lind Avenue, SW., Renton, Washington 98055–4056. Comments may be inspected at this location between 9 a.m. and 3 p.m., Monday through Friday, except Federal holidays.

The service information referenced in the proposed rule may be obtained from Jetstream Aircraft, Inc., Librarian for Service Bulletins, P.O. Box 16029, Dulles International Airport, Washington, DC 20041–6029. This information may be examined at the FAA, Transport Airplane Directorate, 1601 Lind Avenue, SW., Renton, Washington.

FOR FURTHER INFORMATION CONTACT: William Schroeder, Aerospace Engineer, Standardization Branch, ANM–113, FAA, Transport Airplane Directorate, 1601 Lind Avenue, SW., Renton, Washington 98055–4056; telephone (206) 227–2148; fax (206) 227–1320.

SUPPLEMENTARY INFORMATION:

Comments Invited

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

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

Commenters wishing the FAA to acknowledge receipt of their comments submitted in response to this notice must submit a self-addressed, stamped postcard on which the following statement is made: "Comments to Docket Number 93–NM–65–AD." The postcard will be date stamped and returned to the commenter.

Availability of NPRMs

Any person may obtain a copy of this NPRM by submitting a request to the FAA, Transport Airplane Directorate, ANM–103, Attention: Rules Docket No. 93–NM–65–AD, 1601 Lind Avenue, SW., Renton, Washington 98055–4056.

Discussion

On December 12, 1991, the FAA issued AD 92–01–01, Amendment 39–8124 (57 FR 784, January 9, 1992), to require de-activation of the automatic alternative three-phase power supply to each transformer rectifier unit (TRU), an operational test to ensure that the auto-changeover system is inoperative, and inclusion of an associated temporary revision in the Airplane Flight Manual (AFM). That action was prompted by an incident in which both AC generators failed at the same time. The requirements of that AD are intended to prevent loss of all primary electric power sources.

Since the issuance of that AD, the manufacturer has developed an improved contactor assembly for the TRU power supply changeover system. Replacing the currently installed contactor assembly with this improved assembly will prevent internal failures of the contactor assembly. Internal failures of the contactor assembly could result in the loss of all primary electric power sources during automatic switching to alternative three-phase power for the TRU's.

British Aerospace has issued Service Bulletin ATP–24–49–10247A, Revision 1, dated October 23, 1992, that describes procedures for accomplishing Modification 10247A. This modification entails replacing the currently installed Cutler Hammer contactor type SM15–CK–A6 or SM15–CK–A8 with Leach contactor type HA1F. The Civil Aviation

Authority classified this service bulletin as mandatory.

This airplane model is manufactured in the United Kingdom and is type certificated for operation in the United States under the provisions of § 21.29 of the Federal Aviation Regulations and the applicable bilateral airworthiness agreement. Pursuant to this bilateral airworthiness agreement, the CAA has kept the FAA informed of the situation described above. The FAA has examined the findings of the CAA, reviewed all available information, and determined that AD action is necessary for products of this type design that are certificated for operation in the United States.

Since an unsafe condition has been identified that is likely to exist or develop on other airplanes of the same type design registered in the United States, the proposed AD would supersede AD 92–01–01 to require replacing the currently installed contactor in the TRU power supply changeover system with an improved contactor. This action would also require revising the AFM to include an associated temporary revision. Once the improved contactor assembly has been installed and the AFM has been revised to include the associated temporary revision, the automatic alternative three-phase power supply system for each TRU is re-activated. The replacement would be required to be accomplished in accordance with the service bulletin described previously.

The FAA estimates that 9 British Aerospace Model ATP airplanes of U.S. registry would be affected by this proposed AD, that it would take approximately 67 work hours per airplane to accomplish the proposed actions, and that the average labor rate is $55 per work hour. Required parts would cost approximately $3,030 per airplane. Based on these figures, the total cost impact of the proposed AD on U.S. operators is estimated to be $60,435, or $6,715 per airplane. This total cost figure assumes that no operator has yet accomplished the proposed requirements of this AD action.

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

For the reasons discussed above, I certify that this proposed regulation (1) is not a "major rule" under Executive Order 12291; (2) is not a "significant rule" under the DOT Regulatory Policies and Procedures (44 FR 11034, February 26, 1979); and (3) if promulgated, will not have a significant economic impact, positive or negative, on a substantial number of small entities under the criteria of the Regulatory Flexibility Act. A copy of the draft regulatory evaluation prepared for this action is contained in the Rules Docket. A copy of it may be obtained by contacting the Rules Docket at the location provided under the caption **ADDRESSES.**

List of Subjects in 14 CFR Part 39

Air transportation, Aircraft, Aviation safety, Safety.

The Proposed Amendment

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

PART 39—AIRWORTHINESS DIRECTIVES

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

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

§ 39.13 [Amended]

2. Section 39.13 is amended by removing amendment 39–8124 (57 FR 784, January 9, 1992), and by adding a new airworthiness directive (AD), to read as follows:

British Aerospace: Docket 93–NM–65–AD. Supersedes AD 92–01–01, Amendment 39–8124.

Applicability: Model ATP airplanes; serial numbers 2001 through 2053 inclusive; certificated in any category.

Compliance: Required as indicated, unless accomplished previously.

To prevent the loss of all primary electric power sources, accomplish the following:

(a) Within 30 hours time-in-service after January 24, 1992, (the effective date of AD 92–01–01, Amendment 39–8124), accomplish paragraphs (a)(1), (a)(2), and (a)(3) of this AD:

(1) Trip and lock out the alternative three-phase circuit breaker to each transformer rectifier unit (TRU), and perform an operational test to ensure that the auto-changeover system is inoperative, in accordance with British Aerospace Service Bulletin ATP–24–42–10244A, Revision 1, dated November 7, 1991.

(2) Revise the Emergency Procedures and Abnormal Procedures Sections of the FAA-approved Airplane Flight Manual (AFM) to include AFM (Document No. ATP 004) Temporary Revision No. 22 (T/22), Issue 1, dated November 1, 1991.

(3) Amend the AFM, Section 0.25.0, in accordance with paragraph 2.(6) of British Aerospace Service Bulletin ATP–24–42–10244A, Revision 1, dated November 7, 1991

(b) Within 6 months after the effective date of this AD, accomplish paragraphs (b)(1) and (b)(2) of this AD.

(1) Replace the currently-installed Cutler Hammer contactor type SM15–CK-A6 or SM15–CK-A8 with Leach contactor type HA1F, in accordance with British Aerospace Service Bulletin ATP–24–49–10247A, Revision 1, dated October 23, 1992.

(2) Revise the Emergency Procedures and Abnormal Procedures Sections of the AFM (Document No. ATP–004) to include Temporary Revision No. 26 (T/26)., Issue 1, dated May 22, 1992.

(c) Accomplishment of the contactor replacement and the AFM revision required by paragraph (b) of this AD constitutes terminating action for the requirements of paragraph (a) of this AD. The AFM revisions required by paragraphs (a)(2) and (a)(3) of this AD are revised as necessary by incorporation of AFM Temporary Revision No. 26 (T/26)., Issue 1, dated May 22, 1992, and the automatic alternative three-phase power supply to each TRU is re-activated.

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

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

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

Issued in Renton, Washington, on August 5, 1993.

Darrell M. Pederson,

Acting Manager, Transport Airplane Directorate, Aircraft Certification Service.

[FR Doc. 93–19218 Filed 8–10–93; 8:45 am]

BILLING CODE 4910–13–P

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14 CFR Part 39

[Docket No. 92–NM–245–AD]

Airworthiness Directives; Corporate Jets Limited (Formerly British Aerospace) Model DH/BH/HS/BAe 125 Series Airplanes (Excluding Model BAe 125–1000A Series Airplanes), Equipped With Garrett Model TFE 731–3 Series Engines

AGENCY: Federal Aviation Administration, DOT.

ACTION: Supplemental notice of proposed rulemaking; reopening of comment period.

SUMMARY: This document revises an earlier proposed airworthiness directive (AD), applicable to certain Corporate Jets Limited Model DH/BH/HS/BAe 125 series airplanes, that would have required modification of the mounting arrangements of the battery contactors and emergency contactors in the rear equipment bay. That proposal was prompted by a report of an in-service electrical overheating incident caused by a battery short-to-ground through a battery contactor in the rear equipment bay. This action revises the proposed rule by revising the modification requirements and extending the compliance time for the modification. The actions specified by this proposed AD are intended to prevent overheating of the battery contactors and emergency contactors, and a potential fire in the rear equipment bay.

DATES: Comments must be received by September 20, 1993.

ADDRESSES: Submit comments in triplicate to the Federal Aviation Administration (FAA), Transport Airplane Directorate, ANM–103, Attention: Rules Docket No. 92–NM–245–AD, 1601 Lind Avenue, SW., Renton, Washington 98055–4056. Comments may be inspected at this location between 9 a.m. and 3 p.m., Monday through Friday, except Federal holidays.

The service information referenced in the proposed rule may be obtained from Corporate Jets, Inc., 22070 Broderick Drive, Sterling, Virginia 20166. This information may be examined at the FAA, Transport Airplane Directorate, 1601 Lind Avenue, SW., Renton, Washington.

FOR FURTHER INFORMATION CONTACT: William Schroeder, Aerospace Engineer, Standardization Branch, ANM–113, FAA, Transport Airplane Directorate, 1601 Lind Avenue, SW., Renton, Washington 98055–4056; telephone (206) 227–2148; fax (206) 227–1320.

SUPPLEMENTARY INFORMATION:

Comments Invited

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

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

Commenters wishing the FAA to acknowledge receipt of their comments submitted in response to this notice must submit a self-addressed, stamped postcard on which the following statement is made: "Comments to Docket Number 92–NM–245–AD." The postcard will be date stamped and returned to the commenter.

Availability of NPRMs

Any person may obtain a copy of this NPRM by submitting a request to the FAA, Transport Airplane Directorate, ANM–103, Attention: Rules Docket No. 92–NM–245–AD, 1601 Lind Avenue, SW., Renton, Washington 98055–4056.

Discussion

A proposal to amend part 39 of the Federal Aviation Regulations to add an airworthiness directive (AD), applicable to certain Corporate Jets Limited Model DH/BH/HS/BAe 125 series airplanes, was published as a notice of proposed rulemaking (NPRM) in the **Federal Register** on March 2, 1993 (58 FR 12002). That NPRM, which referenced Corporate Jets Limited Service Bulletin SB.24–293–3501A,B,C, & D, dated October 1, 1992, would have required modification of the mounting arrangements of the battery contactors and emergency contactors in the rear equipment bay. That NPRM was prompted by a report of an in-service electrical overheating incident caused by a battery short-to-ground through a battery contactor in the rear equipment bay. That condition, if not corrected, could result in overheating of the battery contactors and emergency contactors and a potential fire in the rear equipment bay.

Since issuance of that NPRM, Corporate Jets Limited has issued Revision 1 of Service Bulletin SB.24–293–3501A,B,C,D, & E, dated February 4, 1993, that describes detail changes in the parts and procedures for installation of new insulating components, hardware, and electrical component markings for Model HS 125–700A series airplanes, and all earlier Model 125 series airplanes retrofitted with TFE 731–3 engines. These detail changes will provide insulation of the battery and emergency contactors from the electrical panel on which they are mounted. (This revised version of the service bulletin totally supersedes the original version issued on October 1, 1992.)

Since issuance of that NRPM, Corporate Jets Limited has also issued Revision 2 of Service Bulletin SB.24–293–3501A,B,C,D,E,F & G, dated March 31, 1993, which is similar to Revision 1, described above, but also describes procedures for installation of new electrical panel flexible covers for Model BAe 125–800A series airplanes.

The Civil Aviation Authority classified these revised service bulletins as mandatory.

The FAA has determined that, in order to adequately address the unsafe condition identified as overheating of the battery contactors and emergency contactors, and a potential fire in the rear equipment bay, the proposed rule must be revised to require the modifications as described in the revised service bulletins. The FAA also finds that the compliance time for the modification should be extended from 4 months to 6 months. The extended compliance time will ensure that operators of certain Model 125 series airplanes that have incorporated the modification described in the original issue of the service bulletin will be able to obtain new modification kits and accomplish additional work described in the revised service bulletin. The proposed rule is also revised to cite Revisions 1 and 2 of the service bulletin, as the appropriate sources of service information.

Since this change expands the scope of the originally proposed rule, the FAA has determined that it is necessary to reopen the comment period to provide additional opportunity for public comment.

One commenter to the NPRM requests that the words, "or subsequent revision," be included wherever the service bulletin is referenced throughout the proposed AD. The FAA does not concur. Where a service bulletin is referenced in an AD (or incorporated by reference), the use of the term "or later FAA-approved revisions," violates Federal Register regulations and is not acceptable, since revisions often include new repairs or inspection requirements. This practice may add new requirements to the AD, or may be relaxatory in nature, and, thus, constitutes "rulemaking" action without prior notice and opportunity for public comment. However, affected operators

may request approval to use a later revision of the referenced service bulletin as an alternative method of compliance, under the provisions of paragraph (c) of the supplemental NPRM.

The applicability statement of the proposed rule is revised to specify those airplanes listed in Revision 2 of the service bulletin. (The effectivity listing of this revised service bulletin is identical to the original issue, which was cited in the applicability statement of the NPRM.)

The FAA estimates that 350 airplanes of U.S. registry would be affected by this proposed AD, that it would take approximately 6 work hours per airplane to accomplish the proposed actions, and that the average labor rate is $55 per work hour. Required parts would cost approximately $600 per airplane. Based on these figures, the total cost impact of the proposed AD on U.S. operators is estimated to be $325,500, or $930 per airplane. This total cost figure assumes that no operator has yet accomplished the proposed requirements of this AD action.

There would be no additional costs incurred as a result of the revisions to this proposed AD.

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

For the reasons discussed above, I certify that this proposed regulation (1) is not a "major rule" under Executive Order 12291; (2) is not a "significant rule" under the DOT Regulatory Policies and Procedures (44 FR 11034, February 26, 1979); and (3) if promulgated, will not have a significant economic impact, positive or negative, on a substantial number of small entities under the criteria of the Regulatory Flexibility Act. A copy of the draft regulatory evaluation prepared for this action is contained in the Rules Docket. A copy of it may be obtained by contacting the Rules Docket at the location provided under the caption **ADDRESSES.**

List of Subjects in 14 CFR Part 39

Air transportation, Aircraft, Aviation safety, Safety.

The Proposed Amendment

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

PART 39—AIRWORTHINESS DIRECTIVES

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

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

§ 39.13 [Amended]

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

Corporate Jets Limited (Formerly British Aerospace): Docket 92–NM–245–AD.

Applicability: Model DH/BH/HS/BAe 125 series airplanes, excluding Model BAe 125–1000A series airplanes; equipped with Garrett Model TFE 731–3 series engines; as listed in Corporate Jets Limited Service Bulletin SB.24–293–3501A,B,C,D,E,F, & G, Revision 2, dated March 31, 1993; certificated in any category.

Compliance: Required as indicated, unless accomplished previously.

To prevent overheating of the battery contactors and emergency contactors and a potential fire in the rear equipment bay, accomplish the following:

(a) For Model BAe 125–800A series airplanes: Within 6 months after the effective date of this AD, modify the mounting arrangements of the battery contactors and emergency contactors in the rear equipment bay, Modification Number 253501, Parts A, B, F, & G, as appropriate; and prior to further flight, perform a functional test; in accordance with Corporate Jets Limited Service Bulletin SB.24–293–3501A,B,C,D,E,F, & G, Revision 2, dated March 31, 1993.

(b) For all other airplanes: Within 6 months after the effective date of this AD, modify the mounting arrangements of the battery contactors and emergency contactors in the rear equipment bay, Modification Number 253501, Parts C, D, & E, as appropriate; and prior to further flight, perform a functional test; in accordance with Corporate Jets Limited Service Bulletin SB.24–293–3501A,B,C,D, & E, Revision 1, dated February 4, 1993; or SB.24–293–3501A,B,C,D,E,F, & G, Revision 2, dated March 31, 1993.

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

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

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

Issued in Renton, Washington, on August 5, 1993.

Darrell M. Pederson,

Acting Manager, Transport Airplane Directorate, Aircraft Certification Service.

[FR Doc. 93–19219 Filed 8–10–93; 8:45 am]

BILLING CODE 4910–13–P

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14 CFR Part 39

[Docket No. 93–CE–17–AD]

Airworthiness Directives: Piper Aircraft Corporation PA34 Series Airplanes

AGENCY: Federal Aviation Administration, DOT.

ACTION: Notice of proposed rulemaking (NPRM).

SUMMARY: This document proposes to adopt a new airworthiness directive (AD) that would apply to certain Piper Aircraft Corporation (Piper) PA34 series airplanes. The proposed action would require repetitively replacing the bolt that connects the upper drag link to the nose gear trunnion. Several incidents where the nose landing gear collapsed on the affected airplanes prompted the proposed action. The actions specified by the proposed AD are intended to prevent the nose landing gear from collapsing because of failure of this bolt, which could lead to airplane damage.

DATES: Comments must be received on or before October 15, 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–17–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 Piper Aircraft Corporation, Customer Services, 2926 Piper Drive, Vero Beach, Florida 32960. This information also may be examined at the Rules Docket at the address above.

FOR FURTHER INFORMATION CONTACT: Mr. Charles Perry, Aerospace Engineer, FAA, Atlanta Aircraft Certification Office, 1669 Phoenix Parkway, suite 210C, Atlanta, Georgia 30349; Telephone (404) 991–2910; 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–17–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–17–AD, room 1558, 601 E. 12th Street, Kansas City, Missouri 64106.

Discussion

Recently, the nose landing gear collapsed on a Piper Model PA34–200 airplane, causing substantial damage to the airplane. Investigation of this incident revealed that the bolt connecting the upper drag link to the nose gear trunnion failed because of fatigue.

FAA service difficulty and accident/incident databases show other references to this same condition, in particular 10 instances of sheared bolts and 4 instances of nose landing gear collapse because of bolt fatigue. The service manual for this airplane specifies inspecting this bolt every 100 hours time-in-service (TIS), but does not specify removing the bolt for inspection. Nonremoval of this bolt during inspection could result in not replacing sheared or fatigued bolts until they have failed. Fatigued or sheared bolts, if not replaced, could lead to nose landing gear collapse and subsequent airplane damage.

After examining the circumstances and reviewing all available information related to the incidents described above, the FAA has determined that (1) since these bolts will fatigue or shear regardless of whether they are inspected at 100-hour TIS intervals, these bolts should be periodically replaced; and (2) AD action should be taken to prevent the nose landing gear from collapsing because of failure of this bolt, which could lead to airplane damage.

Since an unsafe condition has been identified that is likely to exist or develop in other Piper PA34 series airplanes of the same type design, the proposed AD would require repetitively replacing the bolt that connects the upper drag link to the nose gear trunnion.

The FAA estimates that 1,893 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 action, and that the average labor rate is approximately $55 an hour. Parts cost approximately $3 per airplane. Based on these figures, the total cost impact of the proposed AD on U.S. operators is estimated to be $109,794.

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 adding the following new AD:

Piper Aircraft Corporation: Docket No. 93–CE–17–AD.

Applicability: PA34 Series airplanes (all models and serial numbers), certificated in any category.

Compliance: Required within the next 100 hours time-in-service (TIS) after the effective date of this AD, unless already accomplished within the last 400 hours TIS prior to the effective date of this AD, and thereafter at intervals not to exceed 500 hours TIS.

To prevent the nose landing gear from collapsing because of failure of the bolt that connects the upper drag link to the nose gear trunnion, which could lead to airplane damage, accomplish the following:

(a) Replace the bolt and stack up that connects the upper drag link to the nose gear trunnion with new parts of the following in accordance with Figure 1 of this AD:

(1) Piper part number (P/N) 400 274 (AN7–35) bolt.

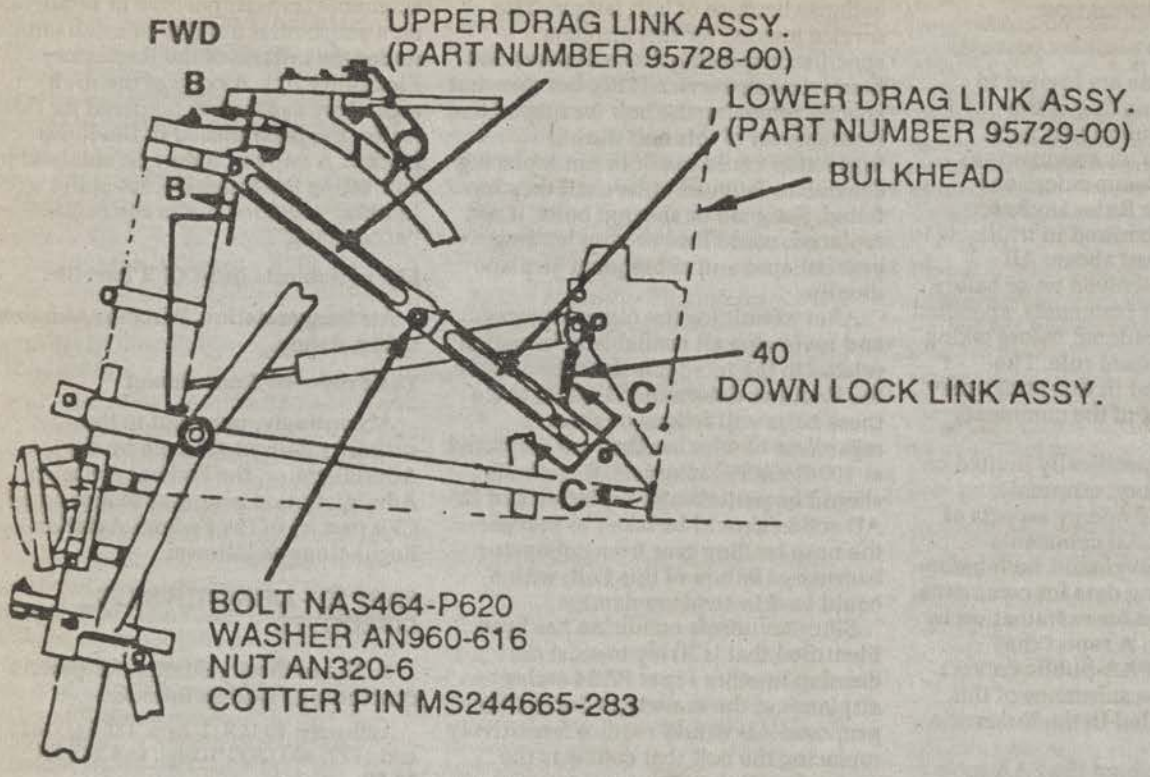
(2) Piper P/N 407 591 (AN960–716L) washer, as applicable.

(3) Piper P/N 407 568 (AN960–716) washer, as applicable.

(4) Piper P/N 404 396 (AN320–7) nut; and

(5) Piper P/N 424 085 cotter pin.

BILLING CODE 4910–13–U



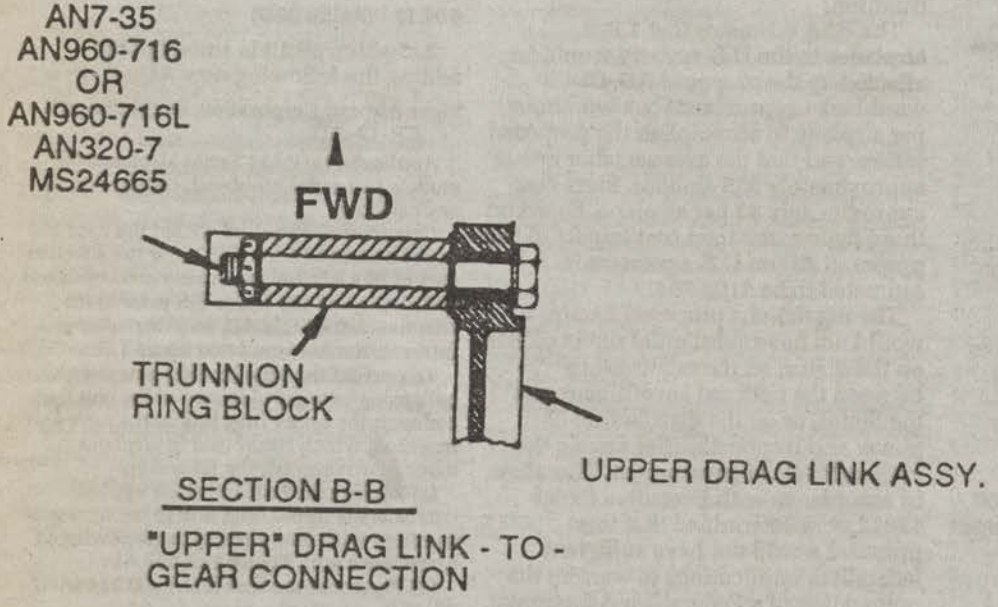


Figure 1

BILLING CODE 4910-13-C

(b) 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.

(c) An alternative method of compliance or adjustment of the compliance time 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: Information concerning the existence of approved alternative methods of compliance with this AD, if any, may be obtained from the Atlanta Aircraft Certification Office.

(d) All persons affected by this directive may obtain copies of the document referred to herein upon request to the Piper Aircraft Corporation, 2926 Piper Drive, Vero Beach, Florida 32960; or may examine this document at the FAA, Central Region, Office of the Assistant Chief Counsel, room 1558, 601 E. 12th Street, Kansas City, Missouri 64106.

Issued in Kansas City, Missouri, on August 5, 1993.

Barry D. Clements,

Manager, Small Airplane Directorate, Aircraft Certification Service.

[FR Doc. 93–19220 Filed 8–10–93; 8:45 am]

BILLING CODE 4910–13–U

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14 CFR Part 39

[Docket No. 92–CE–60–AD]

Airworthiness Directives: Rockwell International/Collins Air Transport Division DME–700 Distance Measuring Equipment

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 modifying Rockwell International/Collins Air Transport Division (Collins) DME–700 distance measuring equipment (DME) installed on certain aircraft. Several reports of the affected DME units failing to process and update distance outputs, and reports of these units establishing a continuous restart mode upon power application prompted the proposed action. 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 modification to these DME units. The proposed actions are intended to prevent improper operation of this equipment, which could result in navigational errors.

DATES: Comments must be received on or before October 15, 1993.

ADDRESSES: Submit comments in triplicate to the FAA, Central Region, Office of the Assistant Chief Counsel, Attention: Rules Docket No. 92–CE–60–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 appies to the proposed AD may be obtained from Rockwell International/Collins Air Transport Division, 400 Collins Road, NE.; Cedar Rapids, Iowa 52498. This information also may be examined at the Rules Docket at the address above.

FOR FURTHER INFORMATION CONTACT: Mr. Roger A. Souter, Aerospace Engineer, Wichita Aircraft Certification Office, 1801 Airport Road, room 100, Mid-Continent Airport, Wichita, Kansas 67209; Telephone (316) 946–4134; 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. 92–CE–60–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. 92–CE–60–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 Collins DME–700 distance measurement equipment installed on aircraft was published in the **Federal Register** on January 25, 1993 (58 FR 5949). The action proposed to require modifying these DME units to ensure that they are functioning properly. The proposed modifications would be accomplished in accordance with the following Collins service bulletins (SB) (1) SB 20, revision 1, DME–700–34–20, dated August 30, 1991, which when incorporated prevents a condition known as "sleeping DME's"; and (2) Collins SB 24, DME–700–34–24, dated May 15, 1992; Collins SB 25, DME–700–34–25, dated November 11, 1992; and Collins SB 26, DME–700–34–26, dated October 21, 1992, as applicable, which when incorporated prevent a condition known as "deaf DME's".

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 concurs with the conditions described and the actions specified by the proposed AD.

Four commenters request that the proposed AD specify in more detail the service bulletins for the applicable part numbers necessary for compliance. The FAA concurs that more detail could be provided and has included a table to more fully display this information.

Collins states that the estimated units affected should be updated to reflect 518 units sold to U.S. customers and 1,281 sold to international customers. The FAA concurs that the estimate of units affected should be updated. However, for purposes of the proposed AD, only those figures for those units sold to U.S. customers are utilized since the proposed AD is written against DME units installed in aircraft certificated for operation in the United States. The cost estimate paragraph in the preamble of the proposed AD has been changed to reflect this correction.

One commenter states that certain Airbus Industry airplane models should

be added to the applicability statement of the proposed AD, in particular Models A300, A310, A340, and A300–600. The FAA concurs and has included these airplane models in the Applicability section of the proposed AD. In addition, Collins has provided the FAA with an up-to-date listing of the airplane models the affected DME units may be installed on. The FAA has revised the Applicability section of the proposed AD accordingly.

Two commenters request an extension of the proposed compliance time from 18 months to 24 months in order to complete the proposed actions without inadvertently grounding airplanes. The FAA does not concur, and has determined that the initial estimate received from Collins of 12 calendar months is reasonable from the standpoint of parts availability while maintaining the desired level of aviation safety. The proposed AD remains unchanged as a result of this comment.

One commenter states that the reference to Collins SB 24 in the proposed AD is not needed because by referencing Collins SB 25, the intent is already covered. After re-examining all service information, the FAA concurs with the comment and has deleted all mandatory accomplishment reference of Collins SB 24 from the proposed AD.

Three commenters request that the proposed AD incorporate the modification to correct the condition known as "distance jumping" DME's, as well as the "deaf" and "sleeping" conditions already proposed. Collins SB 26 corrects this "distance jumping" condition and the "deaf" condition for the -12x units, and Collins SB 25 corrects these conditions for the -02x units. The FAA has recently become aware of several reports of this "distance jumping" condition. In this situation, the flight management computer may display a distance of 4.25 miles to 5.45 miles less than that tracked. This parameter may be displayed for up to 14 seconds. After 14 seconds, normal operation is restored; however, during the 14-second time navigational errors could occur. The FAA has determined that the proposed AD should also include the modification to prevent the "distance jumping" condition.

Since the addition of the "distance jumping" modification goes beyond the scope of that which was originally proposed, the FAA has (1) revised the document to add this modification and incorporate the other above-referenced comments; 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 Collins DME–700 distance measuring equipment of the same type design installed in aircraft, the proposed AD would require modifying these DME units to ensure that they are functioning properly. The proposed actions would be accomplished in accordance with the following, as applicable:

Collins SB/condition	Date	Part numbers applicable (622–4540–XXX)
SB 20/Sleeping	Aug. 30, 1991	All applicable DME–700 Units, –020, –120, with serial number 1 through 4247.
SB 25/Deaf and Distance Jumping.	Nov. 11, 1992	All applicable DME–700 Units, converts –020, –021, or –022 to –023. SB 20 must be installed prior to or in conjunction with SB 25. SB 24 is incorporated by SB 25.
SB 26/Deaf and Distance Jumping.	Oct. 21, 1992	All applicable DME–700 Units, converts –120 or –121 to –122. SB 20 must be installed prior to or in conjunction with SB 26. SB 26 eliminates the need for SB 21.

These DME units are installed on, but not limited to, the following airplanes:

Manufacturer	Models
Boeing	B737, B747–400, B757, and B767.
McDonnell Douglas.	MD 80, MD 11.
Airbus	A300, A310, A300–600, A320, A330, and A340.
Fokker	F–100.

The condition specified by this proposed AD concerning the Collins DME–700 distance measuring equipment is not caused by actual hours time-in-service (TIS) of the airplane that the equipment is installed in. There is no correlation between improper operation of the equipment and the age or number of times the equipment is utilized. Based on this, the compliance time of the proposed AD is presented in calendar time instead of hours TIS.

The FAA estimates that 518 DME–700 units installed on airplanes in the U.S. registry would be affected by the proposed AD, that it would take approximately 7 workhours per unit to accomplish the proposed action, and that the average labor rate is approximately $55 an hour. Parts would be provided by the manufacturer at no cost to the owner/operator. Based on these figures, the total cost impact of the proposed AD on U.S. operators is estimated to be $199,430.

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.

Section 39.13 [AMENDED]

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

Rockwell International/Collins Air Transport Division: Docket No. 92–CE–60–AD.

Applicability: DME–700 distance measuring equipment (all serial numbers) (part numbers 622–4540–020, 622–4540–021, 622–4540–22, 622–4540–120, and 622–4540–121), that are installed on, but not limited to, the following model airplanes (all serial numbers), certificated in any category:

Manufacturer	Models
Boeing	B737, B747–400, B757, and B767
McDonnell Douglas.	MD 80, MD 11
Airbus	A300, A310, A300–600, A320, A330, and A340
Fokker	F–100.

Compliance: Required within the next 12 calendar months after the effective date of this AD, unless already accomplished.

To prevent improper operation of these DME units, which could result in navigational errors, accomplish the following:

(a) Ensure that Aeronautical Radio, Inc. (ARINC) 429 distance outputs are processed and updated by modifying the distance measuring equipment in accordance with the applicable service information presented in the chart in paragraph (c) of this AD.

(b) Ensure proper initialization and correct DME distance indication by modifying the distance measuring equipment in accordance with the applicable service information presented in the chart in paragraph (c) of this AD.

(c) Paragraphs (a) and (b) shall be accomplished in accordance with the Accomplishment Instructions section of the applicable service bulletins (SB) presented in the following chart:

Collins SB/condition	Date	Part numbers applicable (622–4540–XXX)
SB 20/Sleeping	Aug. 30, 1991	All applicable DME–700 Units, –022, –120, with serial number 1 through 4247.
SB 25/Deaf and Distance Jumping.	Nov. 11, 1992	All applicable DME–700 Units, converts –022, –021, or –022 to –023. SB 20 must be installed prior to or in conjunction with SB 25. SB 24 is incorporated by SB 25.
SB 26/Deaf and Distance Jumping.	Oct. 21, 1992	All applicable DME–700 Units, converts –120 or –121 to –122. SB 20 must be installed prior to or in conjunction with SB 26. SB 26 eliminates the need for SB 21.

Note 1: The sleeping DME modification referenced in SB 20 was incorporated at manufacture beginning with serial number 4248.

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

(e) An alternative method of compliance or adjustment of the compliance time that provides an equivalent level of safety may be approved by the Manager, Wichita Aircraft Certification Office, 1801 Airport Road, room 100, 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 2: Information concerning the existence of approved alternative methods of compliance with this AD, if any, may be obtained from the Wichita Aircraft Certification Office.

(f) All persons affected by this directive may obtain copies of the documents referred to herein upon request to Rockwell International/Collins Air Transport Division, 400 Collins Road, NE., Cedar Rapids, Iowa 52498; or may examine these documents at the FAA, Central Region, Office of the Assistant Chief Counsel, room 1558, 601 E. 12th Street, Kansas City, Missouri 64106.

Issued in Kansas City, Missouri, on August 5, 1993.

Barry D. Clements,

Manager, Small Airplane Directorate, Aircraft Certification Service.

[FR Doc. 93–19213 Filed 8–10–93; 8:45 am]

BILLING CODE 4910–13–U

DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT

Office of the Assistant Secretary for Housing—Federal Housing Commissioner

24 CFR Part 291

[Docket No. R–93–1672; FR–3399–P–01]

RIN 2502–AF96

Single Family Property Disposition; Lease and Sale of HUD-Acquired Single Family Properties for the Homeless

AGENCY: Office of the Assistant Secretary for Housing—Federal Housing Commissioner, HUD.

ACTION: Proposed rule.

SUMMARY: This proposed rule would amend the Department's regulations governing the Single Family Property Disposition program for the lease and sale of HUD-acquired properties for the homeless. The amendment would implement section 1407 of the Housing and Community Development Act of 1992 (Pub. L. 102–550, approved October 28, 1992), with regard to notifying eligible applicants of available properties in their areas.

DATES: Comment due date: October 12, 1993.

ADDRESSES: Interested persons are invited to submit comments regarding this rule to the Rules Docket Clerk, Office of General Counsel, room 10276, Department of Housing and Urban Development, 451 Seventh Street SW., Washington, DC 20410. Communications should refer to the above docket number and title. Comments transmitted by facsimile (FAX) are not acceptable. A copy of each communication submitted will be available for public inspection and copying during regular business hours (7:30 a.m.–5:30 p.m. Eastern Time) at the above address.

FOR FURTHER INFORMATION CONTACT: Marion F. Connell, Single Family Property Disposition, room 9172, Department of Housing and Urban Development, 451 Seventh Street SW., Washington, DC 20410; telephone (202) 708–0740; [TDD number for the hearing- and speech-impaired (202) 708–4594). (These are not toll-free numbers.)

SUPPLEMENTARY INFORMATION:

I. Background

The Single Family Property Disposition program (24 CFR part 291), which disposes of one-to-four family properties acquired by HUD or otherwise held by HUD, includes an initiative by the Department for the lease and sale of properties to governmental entities, tribes, and private nonprofit organizations for use by homeless persons (subpart E of part 291).

Under the current regulations, applicants that have been preapproved by HUD are notified of the availability of properties for a 10-day consideration and inspection period before the properties are offered for sale to the general public. (See 24 CFR 291.410(d).) Properties are leased or sold to

applicants on a first come-first served basis. No more than 10 percent of the total inventory, as of October 1, may be leased under the program; there is no limitation on the sale of properties.

Applicants may purchase properties, at a discount, either through a direct sale or by submitting a competitive bid. Applicants that choose to lease properties may lease them with an option to purchase at any time during the leasehold. Leases are for a one-year term, renewable for up to four additional one-year terms, for $1 a year. Lessees are responsible for all utilities, taxes, and other costs associated with operating the property. Under 24 CFR 291.415(d), lessees are required to establish an escrow account, with HUD as a co-signer, and make monthly deposits to the account in amount sufficient to reimburse HUD for any taxes on the property.

II. Amendments by the Housing and Community Development Act of 1992

Section 1407 of the housing and Community Development Act of 1992 (Pub. L. 102–550, approved Oct. 28, 1992) (1992 Act) directs the Secretary to make several amendments to this discretionary program. Subsection 1407(a) provides that the Secretary, in carrying our the program for disposition of single family properties for use by homeless persons, may not make property available for lease under the program that has not first been listed and made generally available for sale for a period of at least 30 days.

Subsection 1407(b) provides an exception to subsection 1407(a) with respect to any area for which the Secretary determines that there will not be a sufficient quantity of decent, safe, and sanitary affordable housing available for use under the program if properties located in the area are first made generally available to the public. In such cases, the Secretary must reserve not more than 10 percent of the total number of properties located in the area and not market those properties first to the general public. The Secretary is also directed to consult with the unit of general local government for the area in determining which properties should be reserved.

The 1992 Act, in subsection 1407(c), also directs the Secretary to identify and describe, upon request by an applicant or lessee, any exemptions or reductions related to the payment of property taxes under State or local laws that may be applicable to lessees or to the leased properties. Subsection 1407(c) further provides that the Secretary may not require the lessee to make deposits for the payment of taxes into an escrow account, where such an exemption or reduction is provided.

III. Proposed Rule

30-day Marketing Period and Exception

As discussed in section I of this preamble, the existing rule provides that, upon request, HUD Field Offices will notify applicants, before properties are listed for sale to the general public, when eligible properties become available in the area designated by the applicant. In accordance with subsection 1407(a), the proposed rule would amend 24 CFR 291.400(c) to indicate that property that will be made available for lease under the program must have been listed for sale for at least 30 days. In addition, the property must be vacant, and not under contract or committed to another program. Conforming changes would be added to § 291.410(d) regarding notification to applicants of available properties. After the public sale period, the HUD Field Office would notify applicants of eligible properties available in the ZIP Code areas previously designated by them. Specific properties selected by an applicant would be held off the market for a 10-day consideration and inspection period, which would begin to run upon notification by the applicant to the Field Office. Only those properties in which an applicant has expressed an interest would be held off the market. If no further communication from the applicant is received by the end of the 10-day consideration and inspection period, the Field Office would resume offering the properties for sale to the public.

The proposed rule would provide an exception to the 30-day listing for the general sale in Field Offices having 200, or fewer, total properties in inventory as of October 1 of each year. These offices were selected on the basis of the number of properties existing in these offices as of October 1, 1992, the number of properties the Department anticipated acquiring over the ensuing 12-month period and the speed with which properties were selling. HUD has determined that these offices are less likely to have properties available for applicants after 30 days on the market. In those Field Offices, if applicants have requested to lease properties, properties would be offered to applicants for a 10-day consideration and inspection period before the properties are listed for sale to the general public. Field Offices subject to this exception would notify applicants of properties in designated ZIP Code areas prior to public listing until such time as 10 percent of their total inventory, as of October 1, has been leased.

The rule would also provide that, in those Field Offices subject to the exception, HUD would consult with units of general local government in the area to identify areas where there is a need for units for homeless persons and would make this information available to applicants. While the language in section 1407(b) provides for consultation on "which properties should be reserved," HUD believes that Congress intended that the Department seek input from local governments on the specific geographic areas in these communities where the homeless population could best be served rather than seeking input on a property-by-property basis. Such a process would be administratively burdensome for both HUD and the unit of local government. HUD intends to make every effort to work with local governments and applicants; however, the decision on which properties are available is ultimately determined by the location of properties coming into inventory. HUD will also continue, under § 291.400(f), to avoid excessive concentration in a single neighborhood of properties leased or sold under the program. Local governments will not be allowed to exercise veto-power over where properties for the homeless may be located.

Some changes are proposed to the rule in the way properties are made available to applicants who have expressed an intention to purchase properties by direct sale. Notification of available properties will be according to the applicant's designated ZIP Code areas in which properties may be purchased by direct sales under 24 CFR 291.110(a) to State and local governments, public agencies, and private nonprofit organizations for use in HUD and local housing programs. When notification of interest is received within 5 days of receiving a list of available properties, HUD will hold those specific properties off market for a 10-day consideration and inspection period. Other properties on the list will continue to be processed for public sale. Further, the rule would be amended to provide that the discount offered for sales would be in an amount determined by HUD as appropriate, but in no event lower than 10 percent of the list price. This reflects a change being proposed in another rule amending certain provisions in the main property disposition program.

Exemption From or Reduction of State and Local Property Taxes

The proposed rule would also amend 24 CFR 291.415(d) to describe HUD's duty under subsection 1407(c) of the 1992 Act to provide information to applicants or lessees regarding any exemption from or reduction of property taxes under State and local laws. The amendment would include a provision that, where State or local law grants such an exemption or reduction, the applicant would not be required to establish an escrow account for that portion of the payment of property taxes.

While the amendment necessitated by subsection 1407(c) is included in the proposed rule, the Department has determined that this provision is effective as of October 28, 1992, the date of enactment of the 1992 Act. HUD Field Offices have been instructed to provide this information upon the request of an applicant or lessee.

Miscellaneous Changes

The rule would also be amended to reflect changes to the Department's Supportive Housing program. The 1992 Act terminated the Supportive Housing Demonstration (formerly implemented in 24 CFR parts 577 and 578), and replaced it with a new Supportive Housing program. An interim rule for that program was published on March 15, 1993 (58 FR 13870), which will be codified at 24 CFR part 583.

IV. Other Matters

The amendments that would be made to 24 CFR part 291 by this proposed rule would not add any additional information collection burden than that already approved by the Office of Management and Burden under the Paperwork Reduction Act and assigned OMB approval numbers 2502–0412 and 2502–0306.

This rule would not constitute a "major rule" as that term is defined in section 1(d) of the Executive Order on Federal Regulations issued by the President on February 17, 1981. An analysis of the rule indicates that it would not (1) have an annual effect on the economy of $100 million or more; (2) cause a major increase in costs or prices for consumers, individual industries, Federal, State, or local government agencies, or geographic regions; or (3) have a significant adverse effect 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.

A Finding of No Significant Impact with respect to the environment was made in accordance with HUD regulations at 24 CFR part 50, which implement section 102(2)(C) of the National Environmental Policy Act of 1969, at the time the final rule for this program was published on September 10, 1991. The Department has determined that nothing in this proposed rule would affect that Finding. The Finding is available for public inspection between 7:30 a.m. and 5.30 p.m. weekdays in the Office of the Rules Docket Clerk, Office of the General Counsel, Department of Housing and Urban Development, room 10276, 451 Seventh Street SW., Washington, DC 20410.

The General Counsel, as the designated official under Executive Order 12606, The Family, has determined that the Single Family Property Disposition Homeless Initiative, generally, has a positive and beneficial impact on the formation, maintenance, and general well-being of homeless families, and the amendments made by this rule would not significantly change the overall impact of the rule on families. Therefore, the rule is not subject to review under that Order.

The General Counsel has also determined, as the Designated Official for HUD under section 6(a) of the Executive Order 12612, Federalism, that the policies contained in this rule would not have federalism implications and, thus, are not subject to review under that Order.

The Secretary, in accordance with the Regulatory Flexibility Act (5 U.S.C. 605(b)), has reviewed this rule before publication and by approving it certifies that this rule would not have a significant economic impact on a substantial number of small entities. Specifically, the rule would govern the procedures under which HUD would make properties available for lease to governmental entities and private nonprofit organizations for use by homeless persons.

This rule was listed as Sequence No. 1439 in the Department's Semiannual Agenda of Regulations published at 58 FR 24382, 24408 on April 26, 1993, under Executive Order 12291 and the Regulatory Flexibility Act.

List of Subjects in 24 CFR Part 291

Community facilities, Conflict of interests, Homeless, Lead poisoning, Low and moderate income housing, Mortgages, Reporting and recordkeeping requirements, Surplus government property.

Accordingly, for the reasons stated in the preamble, part 291, subpart E, of title 24 of the Code of Federal Regulations is amended as follows:

PART 291—DISPOSITION OF HUD-ACQUIRED SINGLE FAMILY PROPERTY

1. The authority citation for 24 CFR part 291 would be revised to read as follows:

Authority: 12 U.S.C. 1709 and 1715b; 42 U.S.C. 1441 and 1441a; 42 U.S.C. 3535(d).

2. In § 291.400, paragraph (b) would be amended by removing the word "Demonstration"; and paragraphs (c), (d), and (e) would be revised to read as follows:

§ 291.400 Purpose and scope.

* * * * *

(c) *Property available for lease with option to purchase.* (1) HUD will make available up to 10 percent of its total inventory of properties as of October 1, 1989. Thereafter, on October 1 of each year, the 10 percent figure will be adjusted upward or downward to reflect increases or decreases in the total inventory. Property will be available for lease under the terms and conditions described in § 291.415, in accordance with the following criteria:

(i) The property has been listed for sale for at least 30 days, except as provided in paragraph (c)(2) of this section;

(ii) The property is vacant; and

(iii) A sales contract has not been accepted for the property, and the property has not been committed to another program.

(2) Where a Field Office has 200, or fewer, total properties in inventory on October 1 of each year, and where applicants have requested to lease properties in certain designated areas, such properties will be offered first to applicants for lease before being listed for sale to the general public until 10 percent of the total inventory of the Field Office has been leased. HUD will consult, on an annual basis, with units of general local government in the area on areas where there is a need for housing for homeless persons.

(d) *Property available under a McKinney Act Supportive Housing program lease-option agreement.* Eligible properties will be available under a lease-option to purchase agreement, under the terms and conditions described in § 291.420, to Supportive Housing program applicants for acquisition grants under 24 CFR part 583.

(e) *Properties available for sale.* Eligible properties will be available for

competitive sale or direct sale for fair market value, less a discount determined appropriate by the Secretary but not less than 10 percent, under the terms and conditions described in § 291.425.

§ 291.405 [Amended]

3. In § 291.405, the definition of "Applicant" is amended by removing the word "Demonstration", and by removing the references "24 CFR 577.5 or 578.5" and replacing them with "24 CFR part 583" in the last sentence; the definition of "Eligible properties" is amended by adding the word "vacant" before "single family properties"; and the definition of "Supportive Housing Demonstration" is removed.

4. Section 291.410 would be amended by revising paragraph (d) and by adding paragraph (e), to read as follows:

§ 291.410 Applicant preapproval; notification of eligible properties.

* * * * *

(d) *Notification of eligible properties available for lease.* (1) Applicants, preapproved by HUD as described in paragraph (a) of this section, must designate geographical areas of interest by ZIP Code to appropriate HUD Field Offices, and must indicate their intention to lease properties.

(2)(i) Upon request, and after properties have been listed for sale to the general public for at least 30 days, except as provided in paragraph (d)(2)(ii) of this section, Field Offices will notify applicants, in writing, of available eligible properties in the ZIP Code areas previously designated by the applicant. Specific properties selected by the applicant will be held off the market for a 10-day consideration and inspection period beginning to run upon notification by the applicant to the Field Office. Only those properties in which the applicant has expressed an interest will be held off the market. If no further communication from the applicant is received by the end of the 10-day consideration and inspection period, the Field Office will resume offering the properties for sale.

(ii) Where properties are made available to applicants before being listed for sale to the public, as described in § 291.400(c)(2), upon request, Field Offices will notify applicants, in writing, when eligible properties become available in the ZIP Code areas previously designated by the applicant. Those properties will remain available for a 10-day consideration and inspection period before being listed for sale to the public. The 10-day period will begin to run upon notification of the applicant by the Field Office. Applicants must submit a written expression of interest to the Field Office by the end of the 10-day period. (Where notification is by mail, the consideration period will begin to run five days after mailing.) If no communication from the applicant is received by the end of the 10-day period, and no other applicant has expressed an interest in the property, the Field Office will offer the properties for sale to the general public. After the initial 10-day consideration and inspection period, a property will not be available to applicants for lease again until it has been offered to the public for 45 days. If an applicant expresses and interest in leasing a property during or after the 45-day public sale period, the Field Office will offer the property to the applicant for 10 days after the public sale period, provided the property is unsold, no offer from the public has been received, and the property is not in a public bid-offering period or committed to another purpose or program.

(iii) In providing applicants notification of available properties, Field Offices will coordinate the dissemination of the information to ensure that where more than one applicant designates a specific area, those applicants receive the list of properties at the same time, based on intervals agreed upon between HUD and the applicants. Properties will be leased or sold to applicants on a first come-first served basis.

(iv) HUD may limit the number of properties held off the market for an applicant at any one time, based upon the applicant's financial capacity and past performance as determined by HUD from information provided in the preapproval process and observations made during monitoring a program in progress.

(e) *Notification of eligible properties available for direct sale.* Upon request, and in accordance with procedures under § 291.110(a) for the direct sale of properties to State and local governments, public agencies, and private nonprofit organizations for use in HUD or local government housing programs, Field Offices will notify, in writing, applicants who have expressed an intention to purchase properties of the availability of eligible properties in the ZIP Code areas designated by the applicant before properties are listed for sale. Within 5 days of receipt of a property list, the prospective buyer must inform HUD which properties it may be interested in purchasing. Those properties will be held off market and all other properties on the list will continue to be processed for sale using standard procedures. The prospective buyer then has an additional 10 calendar days to initiate a purchase on properties that it initially designated as potential purchases. A prospective buyer will be deemed to have initiated a purchase if HUD receives a written notice, by the date specified, of good faith intent to purchase a property. If more than one applicant expresses an interest in the same property, HUD will accept the offer of the first applicant to offer a signed sales contract.

5. Section 291.415 is amended by redesignating paragraph (d)(1) as paragraph (d)(1)(i), and by adding paragraph (d)(1)(ii), to read as follows:

§ 291.415 Lease with option to purchase properties for use by the homeless.

* * * * *

(d) *Property operating costs and insurance.* (1)(i) * * *

(ii) Upon request by an applicant or lessee, HUD will identify and describe any exemptions or reductions relating to payment of property taxes under State or local laws, for the jurisdiction requested by the applicant or lessee, that may be applicable to lessees or to properties leased under this subpart. If a lessee of a property under this subpart is provided an exemption from any requirement to pay State or local property taxes, or a reduction in the amount of any such taxes, the lessee will be required to establish an escrow account to cover only the amount of taxes owed.

* * * * *

§ 291.420 [Amended]

6. In § 291.420, the section heading would be amended by removing the word "Demonstration"; paragraph (a) would be amended by removing the word "Demonstration" from the heading and from the first sentence, and the references "parts 577 or 578" would be removed and the reference "parts 583" would be added in their place; and paragraph (b) would be amended by removing the word "Demonstration" in the first sentence.

7. Section 291.425 would be amended by revising paragraphs (b) and (c) to read as follows:

§ 291.425 Sale of properties for use by the homeless.

* * * * *

(b) *Direct sales.* For direct sales, the purchase price for the property will be at the fair market value established for the property in the approved disposition program, less a discount determined appropriate by the Secretary but not less than 10 percent.

(c) *Competitive sales.* As an alternative to direct sales, an applicant,

whether or not preapproved, may submit a competitive bid on any property listed for sale to the general public, as described in § 291.105. If the HUD Field Office accepts the bid, the net amount due HUD will be reduced by discount determined appropriate by the Secretary but not less than 10 percent.

* * * * *

Dated: August 4, 1993.

Nicholas P. Retsinas,

Assistant Secretary for Housing-Federal Housing Commissioner.

[FR Doc. 93–19182 Filed 8–10–93; 8:45 am]

BILLING CODE 4210–27–M

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Chapter I

[FR–4690–5]

Open Meeting on the Definition of Solid Waste and Hazardous Waste Recycling

AGENCY: Environmental Protection Agency.

ACTION: Notice of public meeting.

SUMMARY: The Environmental Protection Agency (EPA) is conducting a public meeting on revising the regulatory definition of solid waste under the Resource Conservation and Recovery Act (RCRA). The revisions are intended to simplify the regulations and to eliminate disincentives to recycling while maintaining full protection of human health and the environment. They are also intended to reduce any possible current underregulation of hazardous waste recycling.

DATES: The meeting will take place on August 30, 1993 from 9:30 a.m. to 6 p.m., and on August 31, 1993 from 8:30 a.m. to 4 p.m.

ADDRESSES: The meeting will take place at the Embassy Suites Hotel (O'Hare) at 6501 North Mannheim, Rosemont, Illinois 60018 (1–800–548–4193).

FOR FURTHER INFORMATION CONTACT: For additional information on the meeting, please contact Sarah Davis at EPA's Office of Solid Waste at (202) 260–8104.

SUPPLEMENTARY INFORMATION: The Agency has selected sixteen individuals to provide technical and policy expertise at the meeting. These individuals will provide their opinions about the issues of hazardous waste recycling and how the federal solid waste rules affect such recycling. The individuals are:

Dorothy Kelly (Ciba-Geigy Corp.)
John Fognani (Gibson, Dunn, and Crutcher)
Harvey Alter (Chamber of Commerce)
Jeff Reamy (Phillips Petroleum Co.)
Jon Jewett (Solite Corp.)
Robert Wescott (Wesco Parts Cleaners)
Richard Fortuna (Hazardous Waste Treatment Council)
John Wittenborn (Collier, Rill, Shannon, and Scott)
William Collinson (General Motors Corp.)
Gerald Dumas (RSR Corp.)
Kevin Igli (Waste Management Inc.)
Karen Florini (Consultant)
David Lennett (Consultant)
Melinda Taylor (Consultant)
Pat Matuseski (State of Minnesota)

EPA participants in the discussions will be Jeffery Denit, Acting Director of the Office of Solid Waste, and Mike Sanderson from EPA Region VII. In addition, any interested member of the public may attend the meeting.

Dated: August 6, 1993.

Chris Kirtz,

Director, Consensus and Dispute Resolution Program.

[FR Doc. 93–19250 Filed 8–10–93; 8:45 am]

BILLING CODE 6560–50–M

40 CFR Part 152

[OPP–250091; FRL–4629–1]

Pesticides; Exemption From Federal Insecticide, Fungicide and Rodenticide Act Requirements for Natural Cedar Pesticides

AGENCY: Environmental Protection Agency (EPA).

ACTION: Proposed Rule.

SUMMARY: This proposed rule would exempt from regulation under the Federal Insecticide, Fungicide and Rodenticide Act (FIFRA), natural cedar pesticides labelled, or for which claims are made, only to repel arthropods other than ticks, or to retard mildew growth. The risks posed by these naturally occurring pesticides in these uses are negligible. Exemption would reduce the regulatory burden for producers of natural cedar pesticides.

DATES: Comments must be received on or before September 10, 1993.

ADDRESSES: Comments, in triplicate, should bear the document control number OPP–250091 and be submitted 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: Room 1128, CM#2, 1921 Jefferson Davis Highway, Crystal City, VA 22202.

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" (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 to the submitter. Written comments will be available for public inspection in Room 1128 at the Virginia address given above from 8:00 a.m. to 4:30 p.m., Monday through Friday, except legal holidays.

FOR FURTHER INFORMATION CONTACT: By mail: Richard F. Mountfort, Registration Division, Office of Pesticide Programs, Environmental Protection Agency, 401 M St., SW., Washington, DC 20460. Office location and telephone number: Rm. 713, CM#2, 1921 Jefferson Davis Highway, Arlington, VA 22202, 703–305–5446.

SUPPLEMENTARY INFORMATION:

I. Statutory and Regulatory Background

This rule is being proposed pursuant to the authority of the Federal Insecticide, Fungicide and Rodenticide Act (FIFRA), 7 U.S.C. 136 et seq. EPA regulates pesticides under FIFRA through a registration system. Under FIFRA section 3, all pesticides must be registered by EPA prior to distribution or sale. As defined by FIFRA section 2(u), a pesticide is any substance or mixture of substances intended for preventing, destroying, repelling, or mitigating any pest. Natural cedar products are considered to be pesticides if they are intended to repel a pest, such as moths or fleas, or to prevent or mitigate a pest, such as mildew. EPA registers pesticides on the basis of data adequate to show that the pesticide, when used in accordance with widespread and commonly recognized practice, will not pose unreasonable adverse effects on the environment. The term "unreasonable adverse effects on the environment" means any unreasonable effect to man or the environment, taking into account the economic, social, and environmental costs and benefits of the use of the pesticide.

FIFRA section 25(b) authorizes the Administrator to exempt, by regulation, from the requirements of FIFRA, any pesticide which he/she determines to be of a character which is unnecessary to be subject to the Act in order to carry out the purposes of FIFRA. EPA has exempted certain pesticides from

regulation, under section 25(b), based on a finding that these pesticides pose negligible risks to human health or the environment, and thus, are not necessary to be subject to FIFRA. Similarly, this proposal would exempt from regulation under section 25(b) cedar pesticides, labelled to repel arthropods (except ticks) or to retard mildew growth, based on a finding that these pesticide uses pose negligible risks to human health or the environment. EPA believes that the regulatory burden imposed by registration of these cedar pesticides for these uses is not justified by the negligible risk posed by them. Thus, EPA believes that these pesticides are not of a character necessary to be subject to FIFRA to carry out the purposes of FIFRA. This action is being taken at EPA's initiative.

II. Agency Determination

Cedar products, both pesticidal and nonpesticidal, have been used widely for many years. These products include blocks, chests, drawer liners, chips, needles or other forms of the natural wood or plant. Natural cedar is an aromatic wood, popular for making furniture and other common wood products, including children's toys. The cedarwood oil in the wood or other plant parts is considered to have moth or flea repellency potential in enclosed areas. Moreover, cedar may absorb moisture, retarding mildew growth under some circumstances. Pesticidal activity results from volatile oils being released from the wood or other plant parts and acting as an arthropod repellent. These natural oils are present in the wood or plant at low levels and the amount that volatilizes into the air is even lower.

EPA believes that natural cedar pesticides(cedarwood, cedar needles or other natural cedar plant parts excluding extracted cedarwood oil) not treated, combined or impregnated with any additional substance(s), and labelled for use only as arthropod repellents or mildew control agents, are unnecessary to be subject to FIFRA because they pose little or no risk to human health or the environment. EPA is unaware of any evidence of injury to human health or the environment due to the use of any of these cedar products. Human or environmental exposure to pesticidal cedar products is no greater than to nonpesticidal cedar products. In fact, exposure to nonpesticidal products, such as children's toys, may actually be greater than to pesticidal products, which are typically left in drawers or closets.

Human or environmental exposure to the cedarwood oil (i.e., the substance in the wood or plant that repels arthropods) that naturally exists in cedar products is likely to be low. Cedarwood oil is naturally contained in the wood or other cedar parts; it cannot easily be separated from the wood or plant products. Consumers using cedar pesticide products are unlikely to be exposed to significant amounts of dust or oil either by inhalation or through the dermal route.

Moreover, EPA believes that cedarwood oil, when used as it naturally occurs in blocks, chips or other plant parts, is not expected to result in any significant environmental exposure. Environmental exposure from natural sources (e.g., cedarwood trees) and nonpesticidal uses (e.g., boats and house shingles) would far exceed any pesticide related exposure. Cedarwood oil is not known to persist or bioaccumulate in the environment. Moreover, because these pesticide products involve principally indoor use in confined areas, the opportunity for any environmental exposure is further reduced.

EPA does not foresee any increase in risk from the potential misuse or disposal of these products, given the benign nature of natural cedar and the existing widespread use of nonpesticidal cedar products in the environment. EPA is not aware of any incidents or reports of adverse environmental effects associated with cedar, or any cedar products, pesticidal or otherwise.

Finally, the cost and effort expended both by the registration applicant and by EPA in regulating cedar pesticides is not justified by the low risk concerns associated with these products. This exemption will allow EPA to apply resources to other efforts, including other risk reduction measures, and will relieve the industry, which is composed primarily of small businesses, of the costs and resources expended in obtaining a FIFRA registration.

This proposal would not, however, exempt from regulation cedarwood oil that is extracted from the wood or other cedar plant parts and sold for use as a pesticide. At this time, EPA has not assessed information sufficient to support a finding that cedar oil or cedar oil mixed with other substances and used for pesticidal purposes will not cause unreasonable effects on the environment. As discussed above, the cedarwood oil in natural cedar is present in the wood and other plant parts at low levels and the amount that volatilizes out is even lower. In contrast, cedarwood oil that is extracted from wood or other plant parts is much more concentrated and its use may result in significantly higher human and environmental exposures. EPA has not determined whether oil extracted from cedarwood or other cedar plant parts, meets the statutory standard for exemption at this time.

The Agency is proposing to exclude from the exemption cedar products claimed to repel (or otherwise mitigate) ticks . Ticks are carriers of disease organisms of public health significance. If such products do not work as claimed, risks to human health may actually inrease. Natural cedar products claimed to repel ticks, therefore, would continue to be subject to regulation (registration) under FIFRA. Comments are invited on other uses of natural cedar that might be of public health significance.

EPA recognizes that there may be other low-risk pesticides that would also be appropriate for exemption under section 25(b). EPA is currently in the process of evaluating existing pesticide registrations and applications to identify other potential candidates for exemption or reduced regulation. EPA will consider publication of a proposed exemption for other pesticides that are determined to pose negligible risks in the future.

III. Request for Comments

EPA seeks comments on the proposed exemption from regulation of cedar pesticides labelled for use to repel arthropods or to retard mildew. Interested persons are invited to submit written comments on the proposed exemption at the address listed in the **ADDRESSES** section. As discussed above, EPA also is inviting comment on other uses of cedar that might be of public health significance, and thus, should not be excluded from regulation. In addition to seeking comments on this proposed exemption, EPA is also inviting suggestions on other low-risk pesticides that may be appropriate for exemption in a future rulemaking.

EPA has issued several registrations for natural cedar pesticides and believes a significant number of similar products are in commerce. The Agency invites requests for voluntary cancellation of affected product registrations after publication of a final rule. The Agency does not intend to process further applications to register cedar products subject to exemption after publishing a final rule.

IV. Other Regulatory Requirements

A. Executive Order 12291

This rule has been reviewed under the requirements of Section 3 of Executive Order 12291 (46 FR 13193, February 19, 1981). EPA has determined that this rule is not a "major rule" within the meaning of that term as defined in Section 1 of Executive Order 12291. Cedar products as pesticides are primarily utilized for the protection of clothing from moths. EPA has determined that this rule will have little or no impact on the U.S. economy.

Furthermore, this rule will reduce the economic burden on manufacturers of cedar products in connection with Agency registration under FIFRA. Manufacturers of such products will no longer be required to register (or reregister) their products and undertake the costs associated with Agency regulation. Costs that would be eliminated or reduced would be paperwork preparation costs, testing costs, associated legal costs and fees imposed by EPA with respect to registrations. As a result, this rule will provide economic relief to manufacturers of cedar products.

B. Regulatory Flexibility Act

This rule has been reviewed under the Regulatory Flexibility Act of 1980 (Pub. L. 96–354; 94 Stat. 1164, 5 U.S.C. 601 et seq.). EPA has determined that this rule will not have an economic impact on small businesses, small governments or small organizations given the impacts forecasted pursuant to the analysis conducted under Section 3 of Executive Order 12291 as set forth above.

Accordingly, I certify that this rule does not require a separate regulatory flexibility analysis under the Regulatory Flexibility Act.

C. Paperwork Reduction Act

This rule contains no information collection requests. Therefore, the Paperwork Reduction Act of 1980 is not applicable.

D. Submission to Secretary of Agriculture

In accordance with FIFRA section 25, a draft of this proposal was submitted to the FIFRA Science Advisory Panel (SAP) and to the U.S. Department of Agriculture (USDA). The SAP and USDA have waived review of the proposed rule. The USDA has requested that they be furnished a copy of the final rule before publication. Copies of the proposed rule were also forwarded to the Committee on Agriculture of the House of Representatives and the Committee on Agriculture, Nutrition and Forestry of the Senate.

List of Subjects in 40 CFR Part 152

Administrative practice and procedure, Pesticides and pest, Reporting and recordkeeping requirements.

Dated: August 2, 1993.

Carol M. Browner,

Administrator.

Therefore, it is proposed that 40 CFR chapter I, part 152 be amended as follows:

PART 152—[AMENDED]

1. The authority citation continues to read as follows:

Authority 7 U.S.C. 136–136y.

2. By adding a new paragraph (f) to read as follows:

§ 152.25 Exemptions for pesticides of a character not requiring FIFRA regulation.

* * * * *

(f) *Natural cedar.* Products of natural cedar (e.g., blocks, chips, balls, chests, drawer liners, needles); (1) consisting totally of cedar wood or cedar products; (2) not treated, combined or impregnated with any additional substance(s); (3) labelled or for which claims are made only to repel arthropods other than ticks and/or to retard mildew. This exemption does not apply to cedar oil, formulated products which contain cedar oil, other cedar extracts, or ground cedar chips as part of a mixture. The exemption does not apply to natural cedar products claimed to repel ticks.

[FR Doc. 93–19124 Filed 8–10–93; 8:45 am]

BILLING CODE 6560–50–F

FEDERAL COMMUNICATIONS COMMISSION

47 CFR Part 73

[MM Docket No. 93–223, RM–8249]

Radio Broadcasting Services; Indian River Shores, FL

AGENCY: Federal Communications Commission.

ACTION: Proposed rule.

SUMMARY: This document requests comments on a petition by deHaro Communications, Inc., seeking the allotment of Channel 246A to Indian River Shores, Florida, as that community's first local aural transmission service. Channel 246A can be allotted to Indian River Shores in compliance with the Commission's minimum distance separation requirements without a site restriction. The coordinates for Channel 246A at Indian River Shores are North Latitude 27–41–10 and West Longitude 8–22–10.

DATES: Comments must be filed on or before September 27, 1993, and reply comments on or before October 12, 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: Cary S. Tepper, Meyer, Faller, Weisman and Rosenberg, P.C., 4400 Jenifer Street, NW., suite 380, Washington, DC 20015 (Attorney for petitioner).

FOR FURTHER INFORMATION CONTACT:

Nancy J. Walls, Mass Media Bureau, (202) 634–6530.

SUPPLEMENTARY INFORMATION: This is a synopsis of the Commission's Notice of Proposed Rule Making, MM Docket No. 93–223, adopted July 22, 1993, and released August 5, 1993. The full text of this Commission decision is available for inspection and copying during normal business hours in the FCC Reference Center (Room 239), 1919 M Street, NW., Washington, DC. The complete text of this decision may also be purchased from the Commission's copy contractors, International Transcription Service, Inc., (202) 857–3800, 1919 M Street, NW., room 246, or 2100 M Street, NW., suite 140, Washington, DC 20037.

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

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

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

List of Subjects in 47 CFR Part 73

Radio broadcasting.

Federal Communications Commission.

Michael C. Ruger,

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

[FR Doc. 93–19172 Filed 8–10–93; 8:45 am]

BILLING CODE 6712–01–M

47 CFR Part 73

[MM Docket No. 93-228, RM-8295]

Radio Broadcasting Services; Tawas City, MI

AGENCY: Federal Communications Commission.

ACTION: Proposed rule.

SUMMARY: This document requests comments on a petition filed by Ives Broadcasting, Inc., proposing the substitution of Channel 291A for Channel 297A at Tawas City, Michigan, and modification of the license of Station WDBI-FM to indicate operation on Channel 291A. Canadian concurrence will be requested for this allotment at coordinates 44-16-27 and 83-39-42.

DATES: Comments must be filed on or before September 27, 1993, and reply comments on or before October 12, 1993.

ADDRESSES: Federal Communications Commission, Washington, DC 20554. In addition to filing comments with the FCC, interested parties should serve the petitioner's counsel, as follows: John F. Garziglia, Pepper & Corazzini, 1776 K Street, NW., suite 200, Washington, DC 20006.

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. 93-228 adopted July 22, 1993, and released August 5, 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. 93-19176 Filed 8-10-93; 8:45 am]

BILLING CODE 6712-01-M

47 CFR Part 73

[MM Docket No. 93-222, RM-8297]

Radio Broadcasting Services; Moberly, MO

AGENCY: Federal Communications Commission.

ACTION: Proposed rule.

SUMMARY: This document requests comments on a petition filed by KWIX Inc. proposing the allotment of Channel 247C3 to Moberly, Missouri, as that community's third FM broadcast service. The coordinates for Channel 247C3 are 39-26-22 and 92-15-28. There is a site restriction 15.2 kilometers (9.5 miles) east of the community.

DATES: Comments must be filed on or before September 27, 1993, and reply comments on or before October 12, 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: John E. Fiorini III, James K. Edmundson, Gardner, Carton & Douglas, 1301 K Street, NW., suite 900, East Tower, Washington, DC 20005.

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. 93-222, adopted July 21, 1993, and released August 5, 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. 93-19173 Filed 8-10-93; 8:45 am]

BILLING CODE 6712-01-M

47 CFR Part 73

[MM Docket No. 93-230, RM-8292]

Radio Broadcasting Services; Madison, South Dakota and Slayton, MN

AGENCY: Federal Communications Commission.

ACTION: Proposed rule.

SUMMARY: This document requests comments on a petition filed by Wallace Christensen requesting the substitution of Channel 276C2 for channel 276A at Slayton, Minnesota, and modification of the construction permit for Channel 276A to specify operation on the higher class channel. The coordinates for Channel 276C2 are 43-55-16 and 95-57-57. To accommodate the upgrade at Slayton, we shall propose to modify the license for Station KJAM-FM, Madison, South Dakota, to specify operation on Channel 288A in lieu of Channel 276A. The coordinates for Channel 288A at Madison are 43-59-08 and 97-07-42. We shall propose to modify the construction permit for Channel 276A, in accordance with § 1.420(g) of the Commission's Rules and will not accept competing expressions of interest for the use of the channel or require 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 27, 1993, and reply comments on or before October 12, 1993.

ADDRESSES: Federal Communications Commission, Washington, DC 20554. In addition to filing comments with the FCC, interested parties should serve the petitioner's counsel, as follows: Dennis F. Begley, Reddy, Begley & Martin, 1001

22nd Street, NW., suite 350, Washington, DC 20037.

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. 93–230 adopted July 23, 1993, and released August 5, 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* 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* 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. 93–19175 Filed 8–10–93; 8:45 am]

BILLING CODE 6712–01–M

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47 CFR Part 73

[MM Docket No. 93–227, RM–8292]

Radio Broadcasting Services; Marathon and Stevens Point, WI

AGENCY: Federal Communications Commission.

ACTION: Proposed rule.

SUMMARY: This document requests comments on a petition filed by Eagle of Wisconsin, Inc., proposing the substitution of Channel 285A for Channel 285C3 at Marathon, Wisconsin, and reallotment of Channel 285A to Stevens Point, Wisconsin. Petitioner also requests modification of its authorization for Station WMGU (FM) to specify operation on Channel 285A at Stevens Point, Wisconsin. The coordinates for Channel 285A are 44–35–25 and 89–37–31. We shall propose to modify the authorization for Station WMGU (FM) in accordance with § 1.420(i) of the Commission's Rules and will not accept competing expressions of interest for the use of the channel or require 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 27, 1993, and reply comments on or before October 12, 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: Allan G. Moskowitz, Kaye, Scholer, Fierman, Hays & Handler, 901 15th Street, NW., suite 1100, Washington, DC 20005.

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. 93–227, adopted July 22, 1993, and released August 5, 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. 93–19177 Filed 8–10–93; 8:45 am]

BILLING CODE 6712–01–M

GENERAL SERVICES ADMINISTRATION

48 CFR Parts 503, 515 and 552

[GSAR Notice 5–379]

General Services Administration Acquisition Regulation; Disclosure and Use of Proprietary Information

AGENCY: Office of Acquisition Policy, GSA.

ACTION: Proposed rule.

SUMMARY: This notice invites written comments on a proposed change to the General Services Administration Acquisition Regulation (GSAR) that would authorize the release of proprietary information to non-government employees in certain circumstances; prescribe a new contract clause entitled "Restrictions on Disclosure of Information" for use in service contracts when the contractor will be authorized access to or use of proprietary information in the performance of a contract; establish agency procedures for releasing proposals outside the Government for evaluation, and provide the text of the Restriction on Disclosure of Information clause.

DATES: Comments are due in writing on or before September 10, 1993.

ADDRESSES: Comments should be submitted to Marjorie Ashby, Office of GSA Acquisition Policy (VP), 18th and F Streets, NW., room 4006, Washington, DC 20405.

FOR FURTHER INFORMATION CONTACT: Edward McAndrew, Office of GSA Acquisition Policy, (202) 501–1224.

SUPPLEMENTARY INFORMATION:

A. Executive Order 12291

The Director, Office of Management and Budget (OMB), by memorandum dated December 14, 1984, exempted certain agency procurement regulations from Executive Order 12291. The exemption applies to this proposed rule.

B. Regulatory Flexibility Act

The proposed rule will not have a significant economic impact on a substantial number of small entities under the Regulatory Flexibility (5 U.S.C. 601 *et seq.*.) because it establishes Federal Acquisition Regulation (FAR) 15.413–2 agency procedures for releasing proposals outside the Government for evaluation. The proposed rule also provides procedures for the release of information outside the Government when necessary for the performance of a contract for studies or reports

prepared on behalf of the Government. Therefore, an initial regulatory flexibility analysis has not been performed. Comments from small entities concerning the affected GSAR sections will be considered in accordance with 5 U.S.C. 610, however.

C. Paperwork Reduction Act

This proposed rule does not contain any recordkeeping or information collection requirements that require the approval of OMB under 44 U.S.C. 3501 *et seq.*

List of Subjects in 48 CFR Parts 503, 515 and 552

Government procurement.

It is proposed that 48 CFR Parts 503, 515, and 552 be amended to read as follows:

1. The authority citation for 48 CFR parts 503, 515 and 552 continues to read as follows:

Authority: 40 U.S.C. 486(c)

PART 503—[AMENDED]

2. Section 503.104–5 is amended by revising paragraph (c)(3) to read as follows:

503.104–5 Disclosure, protection, and marking of proprietary and source selection information

* * * * *

(c) * * *

(3) The contracting officer may authorize Government employees access to proprietary or source selection information when such access is necessary to the conduct of the procurement or to the performance of the employee's official duties and to the extent that the person has a "bona fide need to know." Access must be limited to only that information needed by the person to perform his/her responsibilities. Proprietary information may also be released to non-Government personnel for evaluation purposes in accordance with FAR 15.413–2 and 515.413–2 or when necessary for the performance of a contract (e.g., contracts for preparation of studies or reports). (See 503.104–10(d)).

* * * * *

3. Section 503.104–10 is amended by adding paragraph (d) to read as follows:

503.104–10 Solicitation provisions and contract clauses.

* * * * *

(d) The contracting officer shall insert a clause substantially the same as the clause at 552.203–74, Restrictions on Disclosure of Information, in all solicitations and contracts for service contracts (including architect-engineer contracts) when the contractor will be authorized access to or will use proprietary information or other information which requires restrictions on access or release of the information in the performance of the contract.

PART 515—[AMENDED]

4. Sections 515.413 and 515.413–2 are added to read as follows:

515.413 Disclosure and use of information before award.

515.413–2 Alternate II.

(a) The contracting officer may release proposals to evaluators outside the Government for evaluation purposes with the approval of the HCA or designee. The contracting officer must prepare, and submit for approval, a justification for release. The justification must describe the special needs or circumstances requiring the use of outside evaluators. Any proposals to release information outside the Government must take into consideration the requirement for avoiding organizational or other conflicts of interest under FAR subpart 9.5 and the competitive relationship, if any, between the prospective contractor or subcontractor and the prospective evaluator.

(b) When proposals received in response to a solicitation are to be released to non-Government evaluators, the solicitation shall contain a notice which reads substantially as follows:

Notice Regarding Release of Proposals

Offerors are advised that the Government intends to disclose proposals received in response to this solicitation to non-Government evaluators for evaluation purposes. Before any information in a proposal is released, however, the outside evaluator will be required to sign a written agreement requiring that (1) the information be used by the evaluator for evaluation purposes only and not be further disclosed, (2) any authorized restrictive legends placed on the proposal by the prospective contractor or subcontractor or by the Government also be reflected in any reproduction or abstracted information made by the evaluator; and (3) upon completion of the evaluation, all copies of the proposal, as well as any abstracts thereof, be returned by the evaluator to the Government office which initially furnished them for evaluation.

(c) The Contracting Officer shall obtain the following written certification and agreement from the non-Government evaluator before releasing any proposal to the evaluator. The evaluator entity shall obtain identical commitments from its employees and subcontractors who will perform the evaluation in order to effect the purposes of these conditions.

Certification and Agreement for the Use and Disclosure of Proposals

With respect to proposals submitted in response to GSA solicitation number _____, The undersigned hereby certifies and/or agrees that:

1. To the best of the undersigned's knowledge and belief, no conflict of interest exists that may diminish his/her/its capacity to perform an impartial and objective review of the proposals submitted, or may otherwise result in a biased opinion or an unfair advantage. In making this certification, the undersigned has considered all of his/her/its stocks, bonds, other outstanding financial interests or commitments, employment arrangements (past, present, or under consideration), and to the extent known by the undersigned, all financial interests and employment arrangements of his/her spouse, minor children, and other members of his/her immediate household, but might place the undersigned in a position of conflict, real or apparent, with the evaluation proceedings.

2. The undersigned has a continuing obligation to disclose any circumstances that may create an actual or apparent conflict of interest. In the event that the undersigned becomes aware of any such conflict of interest, he/she/it agree(s) to immediately report this fact to the GSA Contracting Officer and to take no further action to perform any duties related to the evaluation of proposals pending receipt of instruction on the matter.

3. The undersigned will use proposal information only for evaluation purposes, and understands that any authorized restriction on disclosure placed upon the proposal by the prospective contractor or subcontractor or by the Government shall be applied to any reproduction or abstracted information of the proposal. The undersigned agrees to use his/her/its best efforts to safeguard such information physically, and not to disclose the contents of, nor release any information relating to the proposal(s) to anyone outside of the Source Selection Evaluation Board or other panel assembled for the evaluation of proposals submitted in response to the solicitation identified above, or to other individuals designated by the Contracting Officer.

4. The undersigned agrees to return to the Government all copies, as well as any abstracts, upon completion of the evaluation.

_____

(Name of evaluator and organization, if applicable)

_____

(Date of execution)

(d) The requirement for the above certification and agreement is in addition to the requirement in FAR 15.413–2(f)(6) that the Contracting Officer obtain the Optional Form 333, Procurement Integrity Certification for Procurement Officials, from the outside evaluator(s).

(e) The release of a proposal outside the Government for evaluation does not

constitute the release of information for purposes of the Freedom of Information Act (5 U.S.C. 552).

(f) The contracting officer shall attach a cover page bearing the GOVERNMENT NOTICE FOR HANDLING PROPOSALS, as stated in FAR 15.413–2(e), to each proposal upon receipt. The last sentence of the notice shall cite 48 CFR 515.413–2 as the implementing regulation.

PART 552—[AMENDED]

5. Section 552.203–74 is added to read as follows:

552.203–74 Restriction on Disclosure of Information.

As prescribed in 503.104–10(d), insert the following clause:

Restriction on Disclosure of Information (XXX 1993)

(a) The Contractor agrees, in the performance of this contract, to keep all information contained in source documents or other media furnished by the Government in the strictest confidence. The Contractor also agrees not to publish or otherwise divulge such information in whole or in part, in any manner or form, nor to authorize or permit others to do so, taking such reasonable measures as are necessary to restrict access to such information while in the contractor's possession, to those employees needing such information to perform the work provided herein, i.e., on a "need to know" basis. The Contractor agrees to immediately notify, in writing, the Contracting Officer named herein in the event that the Contractor determines or has reason to suspect a breach of this requirement.

(b) The Contractor agrees not to disclose any information concerning the work under this contract to any persons or individual unless prior written approval is obtained from the Contracting Officer. The Contractor agrees to insert the substance of this clause in any consultant agreement or subcontract hereunder.

(c) Any unauthorized disclosure of information may result in termination of this contract for default

(End of Clause)

Dated: March 19, 1993.

Richard H. Hopf, III,

Associate Administrator for Acquisition Policy.

[FR Doc. 93–19192 Filed 8–10–93; 8:45 am]

BILLING CODE 6820–61–M

DEPARTMENT OF THE INTERIOR

Fish and Wildlife Service

50 CFR Part 17

Endangered and Threatened Wildlife and Plants; Notice of 1-Year Petition Finding on the Western Pond Turtle

AGENCY: Fish and Wildlife Service, Interior.

ACTION: Notice of petition finding.

SUMMARY: The U.S. Fish and Wildlife Service (Service) announces a finding on a petition to list the western pond turtle *(Clemmys marmorata)* under the Endangered Species Act of 1973, as amended (Act). Historically, the western pond turtle occurred in a wide variety of wetland habitats west of the crest of the Sierra Nevada or Cascades mountain ranges from northern Baja California, Mexico, to the Puget Sound in Washington. The western pond turtle remains in the vast majority of its historical range, although populations may be adversely affected by a number of anthropogenic factors (e.g., various water projects, grazing, vehicle related mortality, indiscriminate vandalism). The Service finds that the western pond turtle does not meet either the definition of an endangered or a threatened species at the present time.

DATES: The finding announced in this document was made on August 4, 1993. Comments from all interested parties will be accepted until further notice.

ADDRESSES: Comments and materials concerning this finding should be sent the U.S. Fish and Wildlife Service, Field Supervisor, Sacramento Field Office, 2800 Cottage Way Room E–1803, Sacramento, California 95825; or Field Supervisor, Portland Field Office, 2600 SE. 98th Avenue, suite 100, Portland, Oregon 97266; or Field Supervisor, Olympia Field Office, 3704 Griffin Lane SE., suite 102, Olympia, Washington 98501–2192.

FOR FURTHER INFORMATION CONTACT: Jim Bartel, Chief, Division of Listing, U.S. Fish and Wildlife Service, 911 NE. 11th Avenue, Portland, Oregon 97232–4181 (503/231–6131).

SUPPLEMENTARY INFORMATION:

Background

Section 4(b)(3)(B) of the Endangered Species Act of 1973, as amended (16 U.S.C. 1531 *et seq.*), requires that for any petition to revise the Lists of Endangered and Threatened Wildlife and Plants that contains substantial scientific and commercial information a finding be made within 12 months of the date of receipt of the petition on whether the petitioned action is: (a) Not warranted, (b) warranted, or (c) warranted but precluded from immediate proposal by other pending proposals. Such 12-month findings are to be published promptly in the **Federal Register.**

In a petition dated January 15, 1992, and received by the Service on January 29, 1992, the Service was requested by Mr. Dan Holland and Drs. Mark Jennings and Marc Hayes to list the western pond turtle *(Clemmys marmorata)* as an endangered or threatened species. The petition specified endangered or threatened status in portions of its range. The petition cited numerous threats to this taxa, including: (1) Loss and degradation of wetland and terrestrial habitat, (2) predation by introduced species, (3) overexploitation, (4) habitat fragmentation, (5) drought, and (6) various other factors. The Service made an administrative 90-day finding on August 12, 1992, that concluded that the petition contained substantial information indicating that the requested action may be warranted. An announcement of this finding was published in the **Federal Register** on October 5, 1992 (57 FR 45761).

The western pond turtle inhabits fresh or brackish, permanent and intermittent water bodies from sea level to about 6,000 feet (Bury 1970, Holland 1991b, Holland 1992, Stebbins 1966); the majority of individuals occur below 3,500 feet, with the upper elevational limits lowering as the species progresses northward in its range. The pond turtle uses adjacent uplands for nesting. Hatchlings and juveniles require more specialized habitats (i.e., shallow water with abundant emergent vegetation). The western pond turtle feeds primarily on small aquatic invertebrates, but is omnivorous in its overall food habits (Holland 1991b).

The western pond turtle includes two described subspecies (Seeliger 1945): The northwestern pond turtle *(Clemmys marmorata marmorata),* which occurs from the Sacramento Valley and coastal drainages of California northward from the San Francisco Bay area to the Puget Sound area of Washington; and the southwestern pond turtle *(Clemmys m. pallida),* which is found from the Monterey Bay area south in the coastal region to northwestern Baja California Norte, Mexico, including the Mojave River. The south San Francisco Bay area and the San Joaquin Valley is described by Seeliger (1945) as a zone of intergradation between the two subspecies.

Holland (1992), however, asserted in his dissertation that *Clemmys*

marmorata (sensu lato) is in actuality a three species complex consisting of *C. marmorata* (sensu stricto), which has a range that approximates that of *C. marmorata marmorata* as delimited by Seeliger (1945); *Clemmys pallida*, which has a range that approximates that of *C. marmorata pallida* as delimited by Seeliger (1945); and *Clemmys* sp. nov., a new species restricted to the Columbia River. Though Holland (1992) noted that his taxonomic conclusions correspond well to that developed by Seeliger 48 years ago "using largely subjective evaluations," some ambiguity seems to remain regarding the appropriate assignment of a few populations in central California. Moreover, Bury and Holland (in press) referred to Holland's "species" as "evolution groups" or "forms." Regardless, the Service continues to recognize two subspecies because Holland's dissertation is unpublished.

The western pond turtle occurs throughout roughly 90 percent of its historical geographic range (Holland 1991b, 1993), west of the crest of the Sierra Nevada or Cascade mountain ranges from Baja California, Mexico to the Puget Sound in Washington. It has been extirpated from a number of areas, or reduced to low numbers in some localities, including the type locality in Puget Sound, many sites in southern California, and the southern San Joaquin Valley in central California.

Several factors may negatively impact western pond turtle populations in various degrees in certain portions of their range. Most of the information available to the Service on these threats is anecdotal, and generally the Service lacks consistent information on the long-term effects of these activities to pond turtles on a rangewide basis. For example, wetland habitats have been and continue to be altered; however, western pond turtles occur in altered habitats such as sewage treatment ponds, irrigation canals, reservoirs, and stockponds. Disease substantially reduced one population in Washington, but has not been reported in other populations. Predation affects most populations to some degree; however, the Service lacks information on whether predation is a threat sufficient to warrant listing as an endangered or threatened species. Other factors such as contaminant spills, grazing, off-road vehicle use are also highly localized and do not threaten the species throughout a significant portion of its range. The recent drought has reduced some turtle populations; however, on a long-term basis this reduction likely is not significant. The petitioner seemed especially concerned about a lack of recruitment into many populations; however, that conclusion has been challenged by other experts in the field (e.g., Bury 1993).

The species remains throughout 90 percent of its historical range; only low to moderate threats can be identified for about 60 percent of the species' range, and moderate to high threats have been identified for the remaining 40 percent of the species' range (Holland 1991b). Holland identified moderate threats for about 50 percent of the range of the southwestern pond turtle. As such, the overall extent of impacts on the western pond turtle has not been adequately demonstrated to represent significant threats to the continued existence of the species.

In addition, at least a few "viable" populations containing 30 or more individuals have been found throughout most of the range of the turtle (Holland 1991b, *in litt.* 1993). For example, south of the Santa Clara River, over 50 sites remain, and 8 contain viable populations with 30 to 500 individuals. In Ventura and Santa Barbara Counties, 25 or 30 viable populations remain (Sweet *in litt.* as cited by Holland *in litt.* 1993). Approximately 13 viable populations remain along the central coast of California. In the Central Valley of California, at least 2 sites with more than 30 individuals remain. In the north coast region of California, little information is available; however, turtles remain widespread. In the Klamath drainage, 3,000 turtles remain at 1 site. Another site along the Trinity River contains 1,000 turtles.

Wolfer (as cited by Holland 1992) reported a population that contained at least 52 turtles along the Rogue River drainage of Oregon. At least 2 sites in the Umpqua drainage contained more than 30 turtles (Holland 1993). In Oregon, Holland (Holland 1992) generally found low numbers of turtles. For example, turtles were seen at 5 of 54 sites along the Rogue River drainage, and the maximum number of turtles at any site was 7 (Holland 1992). However, the survey effort did not seem to have been as extensive for this effort as was completed for other portions of the turtle's range. In addition, Holland (1992) does not indicate if a site represents a discreet population, or a point along a drainage (that is contiguous with other populations) for the Rogue, Umpqua, or Willamette drainages. In Washington, the pond turtle occurs along the Columbia Gorge and in low numbers in the Puget Sound. These numbers suggest that viable populations remain throughout most of the range of the pond turtle, and that, absent evidence of threats to these populations, the pond turtle is not in danger of extinction or likely to become so in the near future.

On the basis of the best available scientific and commercial information, the Service finds that listing the western pond turtle is not warranted at the present time because the taxon presently is not in danger of extinction or likely to become so in the foreseeable future. The Service will reclassify or maintain the two recognized subspecies of the western pond turtle as category 2 candidates for listing, and will continue to seek information on the status of the pond turtle. Category 2 candidates are those for which information now in the possession of the Service indicates that proposing to list as endangered or threatened is possibly appropriate, but for which conclusive data on biological vulnerability and threat are not currently available to support proposed rules. If information becomes available indicating that listing as endangered or threatened is appropriate, the Service would propose to list the western pond turtle. Furthermore, the Service retains the option of proposing a subspecies or vertebrate population segment should information become available indicating that such an action is appropriate and warranted.

References

A complete list of references used in the preparation of this finding is available upon request from the Sacramento Field Office (see **ADDRESSES** section).

List of Subjects in 50 CFR Part 17

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

Dated: August 4, 1993.

Richard N. Smith,

Acting Director, U.S. Fish and Wildlife Service.

[FR Doc. 93–19279 Filed 8–10–93; 8:45 am]

BILLING CODE 4310–55–P

Notices

Federal Register
Vol. 58, No. 153
Wednesday, August 11, 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.

ARCTIC RESEARCH COMMISSION

Meeting

August 6, 1993.

Notice is hereby given that the Arctic Research Commission will hold its 32nd Meeting in Kotzebue, AK, on September 8–9, 1993. On Wednesday, September 8, an Executive Session will convene at 10:30 a.m., followed by Business Session open to the public 1 p.m. in the NANA Board Room. Agenda items include: (1) Chairman's Report and (2) a public session with residents and organizations participating. On Thursday, September 9, the Business Session will reconvene at 8:30 a.m. Agenda items for this session include (1) Comments from agencies and organizations; (3) Arctic logistics status; (4) Russian training and trade; (5) Arctic contaminants assessment; (6) Status of Commission Tasks; and (7) Other Business.

Any person planning to attend this meeting who requires special accessibility features and/or auxiliary aids, such as sign language interpreters, must inform the Commission in advance of those needs.

Contact Person for More Information: Philip L. Johnson, Executive Director, U.S. Arctic Research Commission, 703–525–0111 or TDD 202–357–9867.

Philip L. Johnson,

Executive Director, U.S. Arctic Research Commission.

[FR Doc. 93–19241 Filed 8–10–93; 8:45 am]

BILLING CODE 7555–01–M

DEPARTMENT OF COMMERCE

Bureau of Export Administration

Action Affecting Export Privileges; Keisuke Katsuta

Order Denying Permission To Apply for or Use Export Licenses

On March 3, 1993, Keisuke Katsuta (hereinafter referred to as Katsuta) was convicted in the U.S. District Court for the Western District of North Carolina of, among other crimes, two counts of violating the Export Administration Act of 1979, as amended (50 U.S.C.A. app. §§ 2401–2420 (1991, Supp. 1993, and Public Law No. 103–10, March 27, 1993)) (EAA). The conviction followed Katsuta's plea of guilty to six counts of a 14-count indictment charging him with, among other things, knowingly exporting a laser trimmer to Hungary without obtaining a validated license from the U.S. Department of Commerce. Section 11(h) of the EAA provides that, at the discretion of the Secretary of Commerce,[1] no person convicted of a violation of the EAA, or certain other provisions of the United States Code, shall be eligible to apply for or use any export license issued pursuant to, or provided by, the EAA or the Export Administration Regulations (currently codified at 15 CFR parts 768–799 (1993)) (the Regulations), for a period of up to 10 years from the date of the conviction. In addition, any export license issued pursuant to the EAA in which such a person had any interest at the time of his conviction may be revoked.

Pursuant to Sections 770.15 and 772.1(g) of the Regulations, upon notification that a person has been convicted of violating the EAA, the Director, Office of Export Licensing, in consultation with the Director, Office of Export Enforcement, shall determine whether to deny that person permission to apply for or use any export license issued pursuant to, or provided by, the EAA and the Regulations and shall also determine whether to revoke any export license previously issued to such a person. Having received notice of Katsuta's conviction for violating the EAA, and following consultations with the Director, Office of Export Enforcement, I have decided to deny Katsuta permission to apply for or use any export license, including any general license, issued pursuant to, or provided by, the EAA and the Regulations, for a period of 10 years from the date of his conviction. The 10-year period ends on March 3, 2003. I have also decided to revoke all export licenses issued pursuant to the EAA in which Katsuta had an interest at the time of his conviction.

Accordingly, it is hereby

Ordered

I. All outstanding individual validated licenses in which Katsuta appears or participates, in any manner or capacity, are hereby revoked and shall be returned forthwith to the Office of Export Licensing for cancellation. Further, all of Katsuta's privileges of participating, in any manner or capacity, in any special licensing procedure, including, but not limited to, distribution licenses, are hereby revoked.

II. Until March 3, 2003, Keisuke Katsuta, 1–25–4 Minami-Azabu, Minatoku, Japan, hereby is denied all privileges of participating, directly or indirectly, in any manner or capacity, in any transaction in the United States or abroad involving any commodity or technical data exported or to be exported from the United States, in whole or in part, and subject to the Regulations. Without limiting the generality of the foregoing, participation, either in the United States or abroad, shall include participation, directly or indirectly, in any manner or capacity: (i) As a party or as a representative of a party to any export license application submitted to the Department; (ii) in preparing or filing with the Department any export license application or request for reexport authorization, or any document to be submitted therewith; (iii) in obtaining from the Department or using any validated or general export license, reexport authorization or other export control document; (iv) in carrying on negotiations with respect to, or in receiving, ordering, buying, selling, delivering, storing, using, or disposing of, in whole or in part, any commodities or technical data exported or to be exported from the United States, and

[1] Pursuant to appropriate delegations of authority that are reflected in the Regulations, the Director, Office of Export Licensing, in consultation with the Director, Office of Export Enforcement, exercises the authority granted to the Secretary by Section 11(h) of the EAA.

subject to the Regulations; and (v) in financing, forwarding, transporting, or other servicing of such commodities or technical data.

III. After notice and opportunity for comment as provided in § 770.15(h) of the Regulations, any person, firm, corporation, or business organization related to Katsuta by affiliation, ownership, control, or position of responsibility in the conduct of trade or related services may also be subject to the provisions of this Order.

IV. As provided in § 787.12(a) of the Regulations, without prior disclosure of the facts to and specific authorization of the Office of Export Licensing, in consultation with the Office of Export Enforcement, no person may directly or indirectly, in any manner or capacity: (i) Apply for, obtain, or use any license, Shipper's Export Declaration, bill of lading, or other export control document relating to an export or reexport of commodities or technical data by, to, or for another person then subject to an order revoking or denying his export privileges or then excluded from practice before the Bureau of Export Administration; or (ii) order, buy, receive, use, sell, deliver, store, dispose of, forward, transport, finance, or otherwise service or participate: (a) In any transaction which may involve any commodity or technical data exported or to be exported from the United States; (b) in any reexport thereof; or (c) in any other transaction which is subject to the Export Administration Regulations, if the person denied export privileges may obtain any benefit or have any interest in, directly or indirectly, any of these transactions.

V. This Order is effective immediately and shall remain in effect until March 3, 2003.

VI. A copy of this Order shall be delivered to Katsuta. This Order shall be published in the **Federal Register.**

Dated: August 2, 1993.

Eileen M. Albanese,

Acting Director, Office of Export Licensing.

[FR Doc. 93–19194 Filed 8–10–93; 8:45 am]

BILLING CODE 3510–DT–M

Minority Business Development Agency

Business Development Center Applications: Little Rock MBDC Project I.D. No. 06–10–94004–01

AGENCY: Minority Business Development Agency, Commerce.

ACTION: Notice.

SUMMARY: In accordance with Executive Order 11625, the Minority Business Development Agency (MBDA) is soliciting competitive applications under its Minority Business Development Center (MBDC) program to operate an MBDC for approximately a 3-year period, subject to Agency priorities, recipient performance and the availability of funds. The cost of performance for the first budget period (12 months) is estimated as *$165,000* in Federal funds. An audit fee of *$4,125* has been added to the Federal amount (applicable only for non-CPA firms. CPA firms are audited by the Office of Inspector General). The total funding breakdown is as follows: *$169,125* Federal and *$29,846* non-Federal for a total of *$198,971*. The period of performance will be from *December 1, 1993* to *November 30, 1994*. The MBDC will operate in the *Little Rock, Arkansas* MSA geographic service area.

The funding instrument for the MBDC will be a cooperative agreement. Competition is open to individuals, non-profit and for-profit organizations, state and local governments, American Indian tribes and educational institutions.

The MBDC program is designed to provide business development services to the minority business community for the establishment and operation of viable minority businesses. To this end, MBDA funds organizations that can identify and coordinate public and private sector resources on behalf of minority individuals and firms; offer a full range of management and technical assistance; and serve as a conduit of information and assistance regarding minority business.

Applications will be evaluated initially by regional staff on the following criteria: the experience and capabilities of the firm and its staff in addressing the needs of the business community in general and, specifically, the special needs of minority businesses, individuals and organizations (50 points); the resources available to the firm in providing business development services (10 points); the firm's approach (techniques and methodologies) to performing the work requirements included in the application (20 points); and the firm's estimated cost for providing such assistance (20 points). An application must receive at least 70% of the points assigned to any one evaluation criteria category to be considered programmatically acceptable and responsive. The selection of an application for further processing by MBDA will be made by the Director based on determination of the application most likely to further the purpose of the MBDC program. The application will then be forwarded to the Department for final processing and approval, if appropriate. Unsatisfactory performance under prior Federal awards may result in an application not being considered for funding.

If the MBDC performs satisfactorily, it may continue to operate after the initial competitive year for up to 2 additional budget periods. An MBDC with year-to-date "commendable" and "excellent" performance ratings (28 consecutive months) may continue to be funded for up to 3 or 4 additional budget periods, respectively. Under no circumstances shall an MBDC be funded for more than 5 consecutive budget periods without competition. Periodic reviews culminating in year-to-date quantitative and qualitative evaluations will be conducted to determine if funding for the project should continue. Continued funding will be at the discretion of MBDA based on such factors as the MBDC's performance, the availability of funds and Agency priorities.

Awards under this program shall be subject to all Federal Laws and Department of Commerce policies, regulations, and procedures applicable to Federal assistance financial awards.

Consistent with OMB Circular A-129, "Policies for Federal Credit Programs and Non-tax Receivables," no award of Federal funds shall be made to an applicant who has an outstanding delinquent Federal debt until either the delinquent account is paid in full, a negotiated repayment schedule is established and at least one payment is received, or other arrangements satisfactory to DoC are made.

Notification that a false statement on an application is grounds for denial or termination of funds and grounds for possible punishment by a fine or imprisonment as provided in 18 U.S.C. 1001.

Applicants are subject to Governmentwide Debarment and Suspension (Nonprocurement) requirements as stated in 15 CFR part 26. The Departmental Grants Officer may terminate any grant/cooperative agreement in whole or in part at any time before the date of completion whenever it is determined that the MBDC has failed to comply with the conditions of the grant/cooperative agreement. Examples of some of the conditions which can cause termination are unsatisfactory performance of MBDC work requirements; and reporting inaccurate or inflated claims of client assistance or client certification. Such inaccurate or inflated claims may be deemed illegal and punishable by law Name checks are intended to reveal if any key individuals associated with the

applicant have been convicted of or are currently facing criminal charges such as fraud, theft, perjury, or other matters which significantly reflect on the applicant's management's honesty or financial integrity. Notification that if applicants incur any costs prior to an award being made they do so solely at their own risk of not being reimbursed by the Government. Notwithstanding any verbal assurance that they may have received, there is no obligation on the part of DOC to cover pre-award costs.

On November 18, 1988, Congress enacted the Drug-Free Workplace Act of 1988 (Pub. L. 100–690, title V, subtitle D). The statute requires contractors and grantees of Federal agencies to certify that they will provide a drug-free workplace. Pursuant to these requirements, the applicable certification form must be completed by each applicant as a precondition for receiving Federal grant or cooperative agreement awards.

"Certification for Contracts, Grants, Loans, and Cooperative Agreement" and CD–511, the "Certification Regarding Debarment, Suspension and Other Responsibility Matters; Drug-Free Workplace Requirements and Lobbying" is required in accordance with section 319 of Public Law 101–121, which generally prohibits recipients of Federal contracts, grants, and loans from using Legislative Branches of the Federal Government in connection with a specific contract, grant or loan. Recipients shall require applicants/bidders for subgrants, contracts, subcontracts, or other lower tier covered transactions at any tier under the award to submit, if applicable, a completed Form CD–512, "Certifications Regarding Debarment, Suspension, Ineligibility and Voluntary Exclusion-Lower Tier Covered by Transactions and Lobbying".

CLOSING DATE: The closing date for applications is *September 13, 1993.* Applications must be postmarked on or before *September 13, 1993.*

Note: Please mail completed application to the following address: Dallas Regional Office, 1100 Commerce St., room 7B23, Dallas, Texas 75242.

FOR ADDITIONAL INFORMATION REGARDING THIS SOLICITATION: Dallas Regional Office, 1100 Commerce Street, Room 7B23, Dallas, Texas 75242, Attn: Demetrice Jenkins, (214) 767–8001.

Requests for application kit must be in writing.

A pre-bid conference will be held on August 26, 1993 in the Earl Cabell Federal Building, room 7B23, on 1100 Commerce Street, Dallas, Texas at 10 a.m.

SUPPLEMENTARY INFORMATION: Anticipated processing time of this award is 120 days. Executive order 12372, "Intergovernmental Review of Federal Programs," is not applicable to this program. Questions concerning the preceding information, copies of application kits and applicable regulations can be obtained at the above address.

11.800 Minority Business Development (Catalog of Federal Domestic Assistance)

Dated: August 4, 1993.

Melda Cabrera,

Regional Director, Dallas Regional Office.

[FR Doc. 93–19201 Filed 8–10–93; 8:45 am]

BILLING CODE 3510–21–M

National Oceanic and Atmospheric Administration

[I. D. 080293F]

Mid-Atlantic Fishery Management Council; Meeting

AGENCY: National Marine Fisheries Service, NOAA, Commerce.

ACTION: Notice of public meeting.

SUMMARY: The Mid-Atlantic Fishery Management Council (Council) and its Committees will meet August 17–19, 1993, at the Guest Quarters, Baltimore-Washington International Airport, 1300 Concourse Drive, Linthicum, MD; telephone: 410–850–0747.

On August 17 at 10 a.m., the Squid, Mackerel and Butterfish Committee will meet, followed by meetings of the Coastal Migratory Committee and the Comprehensive Management Committee. The Surf Clam and Ocean Quahog Committee and the Executive Committee may meet on either August 17 or August 18.

On August 18, the Council will begin its regular session at 8 a.m. and will adjourn at approximately 2 p.m. on August 19. In addition to hearing Committee reports, the Council will consider the selection of an Executive Director, may consider the 1994 commercial bluefish quota, may discuss Amendment 9 to the Surf Clam and Ocean Quahog Fishery Management Plan, and take up other fishery management matters as deemed necessary. The meeting may be lengthened or shortened based on the progress of the agenda. The Council may also have closed sessions (not open to the public) to discuss personnel and/or national security matters.

FOR FURTHER INFORMATION CONTACT: John C. Bryson, Executive Director, Mid-Atlantic Fishery Management Council, Room 2115, Federal Building, 300 South New Street, Dover, DE 19901; telephone: (302) 674–2331.

Dated: August 5, 1993.

David S. Crestin

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

[FR Doc. 93–19207 Filed 8–10–93; 8:45 am]

BILLING CODE 3510–10–P

Marine Mammals; Permits

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

ACTION: Issuance of modification to permit No. 705 (P77#38).

SUMMARY: Notice is hereby given that pursuant to the provisions of § 216.33(d) and (e) of the regulations Governing the Taking and Importing or Marine Mammals (50 CFR part 216), Scientific Research Permit No. 705 (P77#38) issued to NMFS, Southwest Fisheries Center, P.O. Box 271, La Jolla, CA 92038, on May 10, 1990 (55 FR 20292), has been modified to extend the effective date through December 31, 1995. This modification becomes effective upon publication in the **Federal Register.**

ADDRESSES: Documents pertaining to this modification and permit are available for review by appointment in the following offices:

Office of Protected Resources, NMFS, NOAA, 1335 East-West Highway, room 7324, Silver Spring, MD 20910 (301/713–2289); and

Southwest Region, NMFS, NOAA, 501 West Ocean Boulevard, Suite 4200, Long Beach, CA 90802 (301/980–4016).

Dated: August 4, 1993.

William W. Fox, Jr.,

Director, Office of Protected Resources.

[FR Doc. 93–19211 Filed 8–10–93; 8:45 am]

BILLING CODE 3510–22–M

DEPARTMENT OF DEFENSE

Public Information Collection Requirement Submitted to OMB for Review

ACTION: Notice.

The Department of Defense has submitted to OMB for clearance, the following proposal for collection of information under the provisions of the Paperwork Reduction Act (44 U.S.C. Chapter 35).

Title, Applicable Form, and OMB Control Number: Civilian Marksmanship Program Enrollment; DA FORMS 1271–R, 1721–1–R, 1272–2–R,

1271–3–R, 1272–R, 1272–R, OMB No. 0702–0043

Type of Request: Reinstatment.

Number of Respondents: 100.

Responses per Respondent: 1.

Average Burden Per Response: 65 minutes.

Annual Burden Hours: 108

Needs and Uses: Based upon membership and Club activities, affiliated marksmanship clubs are issued government-owned material in support of the Army program. Statistics are collected in order to supply information to the Director of Civilian Marksmanship for Congressional and Budgeting actions.

Affected Public: Non-profit institutions.

Frequency: Annually.

Respondent's Obligation: Required to obtain or retain a benefit.

OMB Desk Officer: Mr. Edward C. Springer. Written comments and recommendations on the proposed information collection should be sent to Mr. Springer at the Office of Management and Budget, Desk Officer for DoD, room 3235, New Executive Office Building, Washington, DC 20503.

DOD Clearance Officer: Mr. William P. Pearce. Written requests for copies of the information collection proposal should be sent to Mr. Pearce, WHS/DIOR, 1215 Jefferson Davis Highway, Suite 1204, Arlington, Virginia 22202–4302.

Dated: August 6, 1993.

L. M. Bynum,

Alternate OSD Federal Register Liaison Officer, Department of Defense.

[FR Doc. 93–19225 Filed 8–10–93; 8:45 am]

BILLING CODE 5000–04–M

Public Information Collection Requirement Submitted to OMB for Review

AGENCY: DoD.

ACTION: Notice.

The Department of Defense has submitted to OMB for clearance, the following proposal for collection of information under the provisions of the Paperwork Reduction Act (44 U.S.C., chapter 35).

Title and Applicable Form: Department of Defense Job Fair Questionnaire, DD Form X–237

Type of Request: Expedited Submission—Approval date requested: Not later than 30 days following publication in the **Federal Register**

Number of Respondents: 700

Responses per Respondent: 1

Annual Responses: 700

Average Burden Per Response: 10 minutes

Annual Burden Hours: 112

Needs and Uses: The information collected will be used to evaluate a job fair recruitment activity that is conducted in accordance with Equal Employment Opportunity Management Directive 7–13, and in support of DoD affirmative action goals and objectives with regard to the employment of people with targeted disabilities. This information will be collected only from job fair attendees.

Affected Public: Individuals or households

Frequency: On occasion

Respondent's Obligation: Voluntary

OMB Desk Officer: Mr. Edward C. Springer. Written comments and recommendations on the proposed information collection should be sent to Mr. Springer at the Office of Management and Budget, Desk Officer for DoD, room 3235, New Executive Officer Building, Washington, DC 20503

DOD Clearance Officer: Mr. William P. Pearce. Written requests for copies of the information collection proposal should be sent to Mr. Pearce, WHS/DIOR, 1215 Jefferson Davis Highway, suite 1204, Arlington, VA 22202–4302.

Dated August 6, 1993.

L.M. Bynum,

Alternate OSD Federal Register Liaison Officer, Department of Defense.

BILLING CODE 5000–4–C

DEPARTMENT OF DEFENSE
DISABILITY JOB FAIR QUESTIONNAIRE

Form Approved
OMB No. xxxx-xxxx
Expires

Public reporting burden for this collection of information is estimated to average xx minutes per response, including the time for reviewing instructions, searching existing data sources, gathering and maintaining the data needed, and completing and reviewing the collection of information. Send comments regarding this burden estimate or any other aspect of this collection of information, including suggestions for reducing this burden, to Department of Defense, Washington Headquarters Services, Directorate for Information Operations and Reports, 1215 Jefferson Davis Highway, Suite 1204, Arlington, VA 22202-4302, and to the Office of Management and Budget, Paperwork Reduction Project (xxxx-xxxx), Washington, DC 20503.

PLEASE DO NOT RETURN YOUR COMPLETED FORM TO EITHER OF THESE ADDRESSES ABOVE.
RETURN COMPLETED FORM TO:

IN COOPERATION WITH THE UNIVERSITY OF THE DISTRICT OF COLUMBIA
(Please provide the following information for statistical purposes only)

SECTION I - PERSONAL INFORMATION

1. AGE						2. EDUCATION					
	a. 17 - 30		b. 31 - 45		c. 45 or older		a. HIGH SCHOOL		b. COLLEGE		c. OTHER

SECTION II - GENERAL INFORMATION

3. REASON FOR ATTENDING		4. HOW DID YOU LEARN OF THE JOB FAIR?		5. INDICATE YOUR JOB INTEREST		
	a. JOB HUNTER		a. NEWSPAPER	a. CLERICAL		(1) GRADES 2 -4
			b. SCHOOL			(2) GRADES 5 AND UP
	b. EMPLOYER		c. DIRECT MAIL	b. TECHNICAL/ ADMINISTRATION		(1) GRADES 5 -8
			d. OTHER			(2) GRADES 9 - 11
				c. PROFESSIONAL		(1) GRADES 9 - 11
						(2) GRADES 12 - 15

6. DID YOU ATTEND THE 1991 DISABILITY JOB FAIR?							
					a. YES		b. NO
c. SERVICE EVALUATION		(1) EXCELLENT		(2) FAIR		(3) POOR	

d. SUGGESTIONS *(Optional)*

SECTION III - OPTIONAL INFORMATION *(The following are targeted disabilities that have special noncompetitive appointment authorities. Please check if any are appropriate for you).*

7. HEARING IMPAIRMENTS		8. VISION IMPAIRMENTS	
	a. TOTAL DEAFNESS IN BOTH EARS, WITH UNDERSTANDABLE SPEECH		a. INABILITY TO READ ORDINARY SIZE PRINT, NOT CORRECTABLE BY GLASSES *(Can read oversized print or use assisting devices such as glass or projector modifier*
	b. TOTAL DEAFNESS IN BOTH EARS, AND UNABLE TO SPEAK CLEARLY		b. BLIND IN ONE EYE
			c. BLIND IN BOTH EYES *(No usable vision, but may have some light perception)*

DD Form X237, 930805 Draft

9. MISSING EXTREMITIES	10. PARTIAL PARALYSIS	11. COMPLETE PARALYSIS
a. ONE ARM	a. BOTH HANDS	a. BOTH HANDS
b. ONE FOOT		b. ONE ARM
c. ONE LEG	b. BOTH LEGS, ANY PART	c. BOTH ARMS
d. BOTH HANDS AND ARMS		d. ONE LEG
e. BOTH FEET OR LEGS	c. BOTH ARMS, ANY PART	e. BOTH LEGS
f. ONE HAND OR ARM AND ONE FOOT OR LEG	d. ONE SIDE OF BODY, INCLUDING ONE ARM AND ONE LEG	f. LOWER HALF OF BODY, INCLUDING LEGS
g. ONE HAND OR ARM AND BOTH FEET OR LEGS		g. ONE SIDE OF BODY, INCLUDING ONE ARM AND ONE LEG
h. BOTH HANDS OR ARMS AND ONE FOOT OR LEG	e. THREE OR MORE MAJOR PARTS OF THE BODY (ARMS AND LEGS)	h. THREE OR MORE MAJOR PARTS OF THEBODY (ARMS AND LEGS)
i. BOTH HANDS OR ARMS AND BOTH FEET OR LEGS		

12. OTHER IMPAIRMENTS

a. CONVULSIVE DISORDER; *e.g., epilepsy*

b. MENTAL RETARDATION *(Chronic and lifelong condition involving a limited ability to learn, to be educated, and to be trained for useful productive employment as certified by a State Vocational Rehab agency under section 213.3102 (t) of Schedule A)*

c. MENTAL OR EMOTIONAL ILLNESS *(A history of treatment for mental or emotional problems)*

d. SEVERE DISTORTION OF LIMBS AND/OR SPINE; *e.g., dwarfism, kyphosis (severe distortion of back)*

13. COMMENTS

DD Form X237, 930805 Draft

[FR Doc. 93–19305 Filed 8–10–93; 8:45 am]
BILLING CODE 5000–04–C

Department of the Navy

Government-Owned Invention; Availability for Licensing

AGENCY: Department of the Navy, Defense.

ACTION: Notice of availability of invention for licensing.

SUMMARY: The invention listed below is assigned to the United States Government as represented by the Secretary of the Navy and is available for licensing by the Department of the Navy.

Copies of patents cited are available from the Commissioner of Patents and Trademarks, Washington, DC 20231, for $3.00 each. Request for copies of patents must include the patent number.

FOR FURTHER INFORMATION CONTACT: Mr. R.J. Erickson, Staff Patent Attorney, Office of Naval Research (Code 1230), 800 North Quincy Street, Arlington, Virginia 22217–5660, telephone (703) 696–4001.

Patent 5,215,464: Aggressor Shoot-Back Simulation; filed 5 November 1991; patented 1 June 1993.

Dated: July 27, 1993.

Michael P. Rummel,

LCDR, JAGC, USN, Federal Register Liaison Officer.

[FR Doc. 93–19008 Filed 8–10–93; 8:45 am]

BILLING CODE 3810–AE–M

Intent To Grant Exclusive Patent License; MarketPath Corporation

AGENCY: Department of the Navy.

SUMMARY: The Department of the Navy hereby gives notice of its intent to grant to MarketPath Corporation a revocable, nonassignable, exclusive license in the United States to practice the Government-owned invention described in U.S. Patent Application Serial No. 07/988,605 entitled Method and Apparatus for Enhancing Computer-User Selection of Computer-Displayed Objects Through Dynamic Selection Area and Constant Visual Feedback, invented by Glenn A. Osga.

Anyone wishing to object to the grant of this license has 60 days from the date of this notice to file written objections along with supporting evidence, if any. Written objections are to be filed with the Chief of Naval Research (Code 1230), Ballston Tower One, Arlington, Virginia 22217–5660.

FOR FURTHER INFORMATION CONTACT: Mr. R.J. Erickson, Staff Patent Attorney, Chief of Naval Research (Code 1230), Ballston Tower One, 800 North Quincy Street, Arlington, Virginia 22217–5660, telephone (703) 696–4001.

Dated: July 27, 1993.

Michael P. Rummel,

LCDR, JAGC, USN, Federal Register Liaison Officer.

[FR Doc. 93–19007 Filed 8–10–93; 8:45 am]

BILLING CODE 3810–AE–M

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[PL93–3–000]

Policy Statement Regarding Good Faith Requests for Transmission Services and Responses by Transmitting Utilities; of Extension of Time for Comments

August 5, 1993.

AGENCY: Federal Energy Regulatory Commission.

ACTION: Policy statement regarding good faith requests for transmission services and responses by transmitting utilities under sections 211(a) and 213(a) of the Federal Power Act, as Amended and Added by the Energy Policy Act of 1992; extension of time for comments.

SUMMARY: On July 14, 1993, the Commission issued a policy statement regarding good faith requests for transmission services and responses by transmitting utilities under sections 211(a) and 213(a) of the Federal Power Act, as amended and added by the Energy Policy Act of 1992. The date for filing comments on this policy statement is being extended at the request of various interested parties.

DATES: The date for filing comments is extended to and including September 20, 1993.

ADDRESSES: Office of the Secretary, 825 North Capitol Street, NE., Washington, DC 20426.

FOR FURTHER INFORMATION CONTACT: Lois D. Cashell, Secretary, (202) 208–0400.

[Docket No. PL93–3–000]

Notice of Extension of Time

August 5, 1993.

On July 23, 1993 and July 27, 1993, the Utility Working Group (UWG)[1] and the Pennsylvania-New Jersey-Maryland Interconnection Association (PJM)[2] filed respective motions for an extension of time to file comments in response to the Commission's Policy Statement Regarding Good Faith Requests for Transmission Services and Responses by Transmission Utilities under sections 211(a) and 213(a) of the Federal Power Act, As Amended and Added by the Energy Policy Act of 1992, issued July 14, 1993 in the above-docketed proceeding. On July 30, 1993, Houston Lighting and Power Company filed an answer supporting UWG's motions for additional time. The deadline for filing comments is being extended at the request of these various parties.

Upon consideration, notice is hereby given that an extension of time for filing comments is granted to and including September 20, 1993.

Linwood A. Watson, Jr.,

Acting Secretary.

[FR Doc. 93–19197 Filed 8–10–93; 8:45 am]

BILLING CODE 6717–01–M

[Docket No. EG93–62–000]

Lakewood Cogeneration, L.P.; Application for Commission Determination of Exempt Wholesale Generator Status

August 4, 1993.

Lakewood Cogeneration, L.P. ("Lakewood") (c/o Michael J. Zimmer, Esq., Reid & Priest, 701 Pennsylvania Avenue, NW., Washington, DC 20004) filed with the Federal Energy Regulatory Commission an application on July 30, 1993 for determination of exempt wholesale generator status pursuant to part 365 of the Commission's regulations.

Lakewood is a New Jersey limited partnership formed to own an electric and steam generating facility to be located in Lakewood Township, New Jersey. Lakewood states in its application that the facility will be a natural gas-fired topping cycle cogeneration facility with a net power production capacity of 238 MW. Lakewood states that the facility will also consist of various interconnection components that are necessary to deliver electric energy from the facility's generator terminals, step-up transformer

[1] UWG consists of the following utilities: Arizona Public Service Company, Baltimore Gas and Electric Company, Dominion Resources, Inc., Duke Power Company, Duquesne Light Company, Entergy Corporation, General Public Utilities Corporation, Louisville Gas and Electric Company, New England Electric System, Niagara Mohawk Power Corporation, Northern States Power Company, Orange and Rockland Utilities, Inc., Pacific Gas & Electric Company, Portland General Electric Company, PSI Energy, Inc., Public Service Company of New Mexico, Public Service Electric and Gas Company and Wisconsin Electric Power Company.

[2] The member companies of PJM are: Public Service Electric and Gas Company, Philadelphia Electric Company, Baltimore Gas and Electric Company, Pennsylvania Power & Light Company, Metropolitan Edison, Potomac Electric Power Company, Atlantic City Electric Company and Delmarva Power & Light Company.

and metering station to Jersey Central Power & Light Company's substation.

Any person desiring to be heard or to protest said filing should file a motion to intervene or protest with the Federal Energy Regulatory Commission, 825 North Capitol Street, NE., Washington, DC 20426, in accordance with Rules 211 and 214 of the Commission's Rules of Practice and Procedure (18 CFR 385.211 and 18 CFR 385.214). All such motions or protests should be filed on or before August 25, 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.

Linwood A. Watson, Jr.,

Acting Secretary.

[FR Doc. 93–19243 Filed 8–10–93; 8:45 am]

BILLING CODE 6717–01–M

[RM93–19–000]

Inquiry Concerning the Commission's Pricing Policy for Transmission Services Provided by Public Utilities Under the Federal Power Act; Extension of Time for Comments

August 5, 1993.

AGENCY: Federal Energy Regulatory Commission, DOE.

ACTION: Inquiry concerning the Commission's pricing policy for transmission services provided by public utilities under the Federal Power Act; extension of time for comments.

SUMMARY: On June 30, 1993, the Commission issued an inquiry concerning its pricing policy for transmission services provided public utilities under the federal power act (58 FR 36400, July 7, 1993). The date for filing initial comments and reply comments is being extended at the request of various interested parties.

DATES: The date for filing initial comments is extended to and including November 8, 1993. Reply comments shall be filed on or before December 8, 1993.

ADDRESSES: Office of the Secretary, 825 North Capitol Street, NE., Washington, DC 20426.

FOR FURTHER INFORMATION CONTACT: Lois D. Cashell, Secretary, (202) 208–040.

SUPPLEMENTARY INFORMATION: On July 23, 1993 and July 27, 1993 the Utility Working Group (UMG),[1] and Edison Electric Institute (EEI) filed motions for an extension of time to file comments in response to the Commission's Inquiry Concerning the Commission's Pricing Policy for Transmission Services Provided by Public Utilities Under the Federal Power Act issued June 30, 1903, in the above-docketed proceeding. On July 28, 1993, the Pennsylvania-New Jersey-Maryland Interconnection Association (PJM),[2] and the American Forest and Paper Institute, the American Iron and Steel Institute, American Public Power Association, Chemical Manufacturer's Association, the Council of Industrial Boiler Owners, Electricity Consumers Resource Council, Electric Generation Association, Environmental Action, National Association of Regulatory Utility Commissioners, National Independent Energy Producers and the National Rural Electric Cooperative Association filed similar motions for an extension of time to file comments in this docket. On July 30, 1993, Houston Lighting and Power Company filed an answer supporting UWG's motion for an extension of time. The date for filing comments is being extended at the request of these parties.

Upon consideration, notice is hereby given that an extension of time for filing initial comments is granted to and including November 8, 1993. Reply comments shall be filed on or before December 8, 1993.

Linwood A. Watson, Jr.,

Acting Secretary.

[FR Doc. 93–19198 Filed 8–10–93; 8:45 am]

BILLING CODE 6717–01–M

[1] UWG consists of the following utilities: Arizona Public Service Company, Baltimore Gas and Electric Company, Dominion Resources, Inc., Duke Power Company, Duquesne Light Company, Energy Corporation, General Public Utilities Corporation, Louisville Gas and Electric Company, New England Electric System, Niagara Mohawk Power Corporation, Northern States Power Company, Orange and Rockland Utilities, Inc. Pacific Gas & Electric Company, Portland General Electric Company, PSI Energy, Inc., Public Service Company of New Mexico, Public Service Electric and Gas Company and Wisconsin Electric Power Company.

[2] The member companies of PJM are: Public Service Electric and Gas Company, Philadelphia Electric Company, Baltimore Gas and Electric Company, Pennsylvania Power & Light Company, Metropolitan Edison, Potomac Electric Power Company, Atlantic City Electric Company and Delmarva Power & Light Company.

ENVIRONMENTAL PROTECTION AGENCY

[FRL–4689–5]

Agency Information Collection Activities Under OMB Review

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice.

SUMMARY: In compliance with the Paperwork Reduction Act (44 U.S.C. 3501 *et seq.*), this notice announces that the Information Collection Request (ICR) abstracted below has been forwarded to the Office of Management and Budget (OMB) for review and comment. The ICR describes the nature of the information collection and its expected cost and burden.

DATES: Comments must be submitted on or before September 10, 1993.

FOR FURTHER INFORMATION, OR TO OBTAIN A COPY OF THIS ICR, CONTACT: Sandy Farmer at EPA, (202) 260–2740.

SUPPLEMENTARY INFORMATION:

Office of Prevention, Pesticides and Toxic Substances

Title: Premanufacture Review Reporting and Exemption Requirements for New Chemical Substances and Significant New Use Reporting Requirements for Chemical Substances. (EPA ICR No: 0574.06; OMB No: 2070–0012) This is a request for an extension of the expiration date of a currently approved collection.

Abstract: Under section 5(a) of the Toxic Substances Control Act (TSCA), manufacturers and importers of chemical substances must submit to EPA, and keep a record of, a notice of intent to manufacture, process or import a new chemical substance. This notice must be submitted to the Agency at least ninety days in advance of the planned activity. The same respondents are required to submit to EPA, and keep a record of, a notice of intent when seeking to manufacture, process or import a chemical for a use which the Agency considers a "significant new use". This notice must also be submitted at least ninety days in advance of the planned activity.

Respondents must submit the following information by completing form EPA No.7710.25:

1. The trade name, chemical identity, and molecular structure of the chemical substance;

2. Its categories of use or proposed use;

3. The total amount manufactured or processed in general and for each category of use, or reasonable estimates of these amounts;

4. A description of the byproducts resulting from the manufacture, process, use, or disposal;

5. The number of individuals exposed in their places of employment, or a reasonable estimate of this number, and the duration of exposure;

6. The manner of disposal; and

7. Any test data available to the submitter that are related to health or environmental effects and a description of any other relevant data.

The Agency uses the information to evaluate whether more data is required to ascertain the safety of the substance; whether no action should be taken, in which case the respondents may proceed with their planned activities; or whether to take regulatory actions in compliance with the Act.

Burden Statement: The burden for this collection of information is estimated to average 127.12 hours per response per respondent and 17.50 hours per recordkeeper annually. This estimate includes the time needed to review instructions, complete the form and review the collection of information.

Respondents: Manufacturers, processors and importers of chemical substances.

Estimated No. of Respondents: 432.

Estimated No. of Responses per Respondent: 5.3.

Estimated Total Annual Burden on Respondents: 298,550 hours.

Frequency of Collection: On occasion.

Send comments regarding the burden estimate, or any other aspect of the information collection, including suggestions for reducing the burden to:

Sandy Farmer, U.S. Environmental Protection Agency, Information Policy Branch (PM 223Y), 401 M Street, SW., Washington, DC 20460.

and

Matthew Mitchell, Office of Management and Budget, Office of Information and Regulatory Affairs, 725 17th Street, NW., Washington, DC 20503.

Dated: August 4, 1993.

Paul Lapsley,

Director, Regulatory Management Division.

[FR Doc. 93–19252 Filed 8–10–93; 8:45 am]

BILLING CODE 6560–50–F

[OPP–180898; FRL–4634–6]

Emergency Exemptions

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice.

SUMMARY: EPA has granted specific exemptions for the control of various pests to the 10 States as listed below, and one crisis exemption was initiated by the California Environmental Protection Agency. These exemptions, issued during the months of February, March, and April 1993, except for the one in August 1992, are subject to application and timing restrictions and reporting requirements designed to protect the environment to the maximum extent possible. EPA has denied specific exemption requests from the Alabama Department of Agriculture and Industries and the South Carolina Department of Fertilizer and Pesticide Control, Clemson University. Information on these restrictions is available from the contact persons in EPA listed below.

DATES: See each specific and crisis exemption for its effective date.

FOR FURTHER INFORMATION CONTACT: See each emergency exemption for the name of the contact person. The following information applies to all contact persons: By mail: Registration Division (H7505W), Office of Pesticide Programs, Environmental Protection Agency, 401 M St., SW., Washington, DC 20460. Office location and telephone number: 6th Floor, CS #1, 2800 Jefferson Davis Highway, Arlington, VA, (703–308–8417).

SUPPLEMENTARY INFORMATION: EPA has granted specific exemptions to the:

1. Arizona Department of Agriculture for the use of bifenthrin on melons to control the sweet potato whitefly; February 19, 1993, to May 14, 1993. Arizona had initiated a crisis exemption for this use. (Andrea Beard)

2. California Environmental Protection Agency for the use of bifenthrin on cucurbits to control the sweet potato whitefly, blackbean aphid, and the cotton aphid; March 26, 1993, to March 26, 1994. (Andrea Beard)

3. California Environmental Protection Agency for the use of cyfluthrin on navel oranges to control citrus thrips; April 12, 1993, to June 30, 1993. (Libby Pemberton)

4. California Environmental Protection Agency, Department of Pesticide Regulation, for the use of triadimefon on artichokes to control powdery mildew; April 8, 1993, to December 31, 1993. (Susan Stanton)

5. Florida Department of Consumer Services for the use of fenpropathrin on tomatoes to control the sweet potato whitefly; April 5, 1993, to April 5, 1994. A notice published in the **Federal Register** of March 3, 1993 (58 FR 12237). The Applicant proposed the first food use. The situation was determined to be an emergency. This was for a new strain of whiteflies upon which the currently registered pesticides are not effective. If left uncontrolled, Florida tomato growers are likely to suffer significant economic losses. (Andrea Beard)

6. Georgia Department of Agriculture for the use of chlorothalonil on collards, mustard greens, and turnip greens to control the fungal leafspot complex of diseases; April 15, 1993, to June 30, 1993. Georgia had initiated a crisis exemption for this use. (Susan Stanton)

7. Idaho Department of Agriculture for the use of sethoxydim on rapeseed/canola to control volunteer grains and grasses; April 5, 1993, to November 30, 1993. (Susan Stanton)

8. New Hampshire Department of Agriculture for the use of clomazone on winter squash to control broadleaf weeds; April 7, 1993, to July 31, 1993. (Libby Pemberton)

9. New Jersey Environmental Protection and Energy for the use of chlorothalonil on blueberries to control anthracnose; April 7, 1993, to December 31, 1993. (Susan Stanton)

10. South Carolina Department of Fertilizer and Pesticide Control for the use of iprodione on tobacco transplants to control target spot; April 5, 1993, to May 15, 1993. (Susan Stanton)

11. Texas Department of Agriculture for the use of propazine on sorghum to control broadleaf weeds; April 19, 1993, to August 1, 1993. (Andrea Beard)

12. Texas Department of Agriculture for the use of bifenthrin on curcurbits to control the sweet potato whitefly; February 19, 1993, to February 19, 1994. (Andrea Beard)

13. Texas Department of Agriculture for the use of esfenvalerate on kale, kohlrabi, and mustard greens to control cabbage loopers; April 1, 1993, to November 30, 1993. (Libby Pemberton)

14. Washington Department of Agriculture for the use of chlorpyrifos on grapes to control the grape mealybug and cutworms; April 7, 1993, to August 15, 1993. (Andrea Beard)

A crisis exemption was initiated by the California Environmental Protection Agency on August 28, 1992, for the use of hexakis on watermelons to control spider mites. This program has ended. The Agency was not able to act on the specific exemption application in time for the use season, and the request was subsequently withdrawn. (Andrea Beard)

EPA has administratively withdrawn specific requests from the Alabama Department of Agriculture and Industries and the Texas Department of Agriculture for the use of hydrogen cyanamide on peaches to promote uniform bud-break under conditions of inadequate winter chilling, effective

April 20, 1993. The applications proposed the use of a new unregistered chemical and were withdrawn because the season had passed. A notice published in the **Federal Register** of December 30, 1992 (57 FR 62339) for Texas only. (Andrea Beard)

EPA has denied specific exemption requests from the Alabama Department of Agriculture and Industries and the South Carolina Department of Fertilizer and Pesticide Control, Clemson University, for the use of tebuconazole on peanuts to control Southern stem rot and *Rhizoctonia* limb rot. A notice of Solicitation of public comment published in the **Federal Register** of April 7, 1993 (58 FR 18095) and April 28, 1993 (58 FR 25833) respectively. These exemptions were denied because an emergency condition does not exist, since Southern stem rot and *Rhizoctonia* limb rot are routine pests of peanuts in Alabama and South Carolina. Yield losses due to these diseases this year are not expected to differ substantially from historical losses if the currently available pesticides and alternative practices are used. (Susan Stanton)

Authority: 7 U.S.C. 136.

Dated: July 30, 1993.

Douglas D. Campt,

Director, Office of Pesticide Programs.

[FR Doc. 93–18965 Filed 8–10–93; 8:45 am]

BILLING CODE 6560–50–F

[PF–580; FRL–4637–8]

NOR-AM Chemical Co.; Request for Extension of Tolerances

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice.

SUMMARY: EPA has received from NOR-AM Chemical Co. a request to extend for 1-year temporary tolerances in 40 CFR 180.446 for the insecticide clofentezine in or on peaches, nectarines, almonds, walnuts, apricots, and cherries.

ADDRESSES: By mail, submit written comments, identified by the document control number [PF-580], 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. 1128, 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: Dennis Edwards Jr., Product Manager (PM 19), Registration Division (H-7505C), Office of Pesticide Programs, Environmental Protection Agency, 401 M St., SW., Washington, DC 20460. Office location and telephone number: Rm. 201, CM #2, 1921 Jefferson Davis Hwy., Arlington, VA 22202, (703)-305-6386.

SUPPLEMENTARY INFORMATION: EPA has received from NOR-AM Chemical Co., Little Falls Centre One, 2711 Centerville Rd., Wilmington, DE 19808, a request to extend for 1-year temporary tolerances under 40 CFR 180.446 that expire on September 30, 1994, for residues of clofentezine (3,6-*bis*(2-chlorophenyl)-1,2,4,5-tetrazine in or on peaches, nectarines, walnuts, almonds, apricots, and cherries. NOR-AM Chemical Co. originally submitted petitions for the commodities in pesticide petition (PP) 9F3793 appearing in the **Federal Register** of November 1, 1989 (54 FR 46119) and PP 9F3799 appearing in the **Federal Register** of May 9, 1990 (55 FR 19320).

Authority: 21 U.S.C. 346a and 371.

Dated: July 29, 1993.

Lawrence E. Culleen,

Acting Director, Registration Division, Office of Pesticide Programs.

[FR Doc. 93–18967; Filed 8–10–93; 8:45 am]

BILLING CODE 6560–50–F

FEDERAL DEPOSIT INSURANCE CORPORATION

Information Collection Submitted to OMB for Review

AGENCY: Federal Deposit Insurance Corporation.

ACTION: Notice of information collection submitted to OMB for review and approval under the Paperwork Reduction Act of 1980.

SUMMARY: In accordance with requirements of the Paperwork Reduction Act of 1980 (44 U.S.C. chapter 35), the FDIC hereby gives notice that it has submitted to the Office of Management and Budget a request for OMB review of the information collection system described below.

Type of Review: Extension of the expiration date of a currently approved collection without any change in the substance or method of collection.

Title: Agriculture Loan Loss Deferral Program.

Form Number: None.

OMB Number: 3064–0091.

Expiration Date of OMB Clearance: October 31, 1993.

Frequency of Response: Recordkeeping, on occasion.

Respondents: Insured State nonmember banks in the agricultural loan loss deferral program.

Number of Recordkeepers: 13.

Annual Hours per Recordkeeper: 2.

Total Annual Burden Hours: 26.

OMB Reviewer: Gary Waxman, (202) 395–7340, Office of Management and Budget, Paperwork Reduction Project (3064–0091), Washington, DC 20503.

FDIC Contact: Steven F. Hanft, (202) 898–3907, Office of the Executive Secretary, room F–400, Federal Deposit Insurance Corporation, 550 17th Street NW., Washington, DC 20429.

Comments: Comments on this collection of information are welcome and should be submitted before October 12, 1993.

ADDRESSES: A copy of the submission may be obtained by calling or writing the FDIC contact listed above. Comments regarding the submission should be addressed to both the OMB reviewer and the FDIC contact listed above.

SUPPLEMENTARY INFORMATION: Institutions in the agricultural loan loss deferral program must maintain appropriate records, as required by 12 CFR Part 324.

Dated: August 5, 1993.

Federal Deposit Insurance Corporation.

Hoyle L. Robinson,

Executive Secretary.

[FR Doc. 93–19200 Filed 8–10–93; 8:45 am]

BILLING CODE 6714–01–M

Notice Concerning Issuance of Powers of Attorney

AGENCY: Federal Deposit Insurance Corporation.

ACTION: Public notice.

SUMMARY: In order to facilitate the discharge of its responsibilities as a conservator and liquidator of insured

depository institutions, the Federal Deposit Insurance Corporation (FDIC) publishes the following notice. The publication of this notice is intended to comply with title 16, section 20 of the Oklahoma Statutes (16 O.S. 20) which, in part, declares Federal agencies that publish notices in the **Federal Register** concerning their promulgation of powers of attorney, to be exempt from the statutory requirement of having to record such powers of attorney in every county in which the agencies wish to effect the conveyance or release of interests in land.

Notice

Pursuant to section 11 of the Federal Deposit Insurance (FDI) Act (12 U.S.C. 1821), as amended by Section 212 of the Financial Institutions Reform, Recovery, and Enforcement Act of 1989 (FIRREA), the FDIC is empowered to act as conservator or receiver of any state or federally chartered depository institution which it insures. Furthermore, under section 11A of the FDI Act (12 U.S.C. 1821a), as enacted under section 215 of FIRREA, the FDIC is also appointed to manage the FSLIC Resolution Fund.

Upon appointment as a conservator or receiver, the FDIC by operation of law becomes successor in title to the assets of the depository institutions on behalf of which it is appointed. As Manager of the FSLIC Resolution Fund, the FDIC became successor in title to both the corporate assets formerly owned by the now defunct Federal Savings and Loan Insurance Corporation (FSLIC), as well as to the assets of the depository institutions for which the FSLIC was appointed receiver prior to January 1, 1989. In addition, pursuant to section 13(c) of the FDI Act (12 U.S.C. 1823(c)), the FDIC also acquires legal title in its corporate capacity to assets acquired in furtherance of providing monetary assistance to prevent the closing of insured depository institutions or to expedite the acquisition by assuming depository institutions of assets and liabilities from closed depository institutions of which the FDIC is receiver.

In order to facilitate the conservation and liquidation of assets held by the FDIC in its aforementioned capacities, the FDIC has provided powers of attorney to selected employees of its Oklahoma City Consolidated Office. These employees include: Kenneth N. Blincow, John H. Fisher, Deborah J. Hall and Wade Massey.

Each employee to whom a power of attorney has been issued is authorized and empowered to: Sign, seal and deliver as the act and deed of the FDIC any instrument in writing, and to do every other thing necessary and proper for the collection and recovery of any and all monies and properties of every kind and nature whatsoever for and on behalf of the FDIC and to give proper receipts and acquittances therefor in the name and on behalf of the FDIC; release, discharge or assign any and all judgments, mortgages on real estate or personal property (including the release and discharge of the same of record in the office of any Prothonotary or Register of Deeds wherever located where payments on account of the same in redemption or otherwise may have been made by the debtor(s)), and to endorse receipt of such payment upon the records in any appropriate public office; receipt, collect and give all proper acquittances for any other sums of money owing to the FDIC for any acquired asset which the attorney-in-fact may sell or dispose of, execute any and all transfers and assignments as may be necessary to assign any securities or other choses in action; sign, seal, acknowledge and deliver any and all agreements as shall be deemed necessary or proper by the attorney-in-fact in the care and management of acquired assets; sign, seal, acknowledge and deliver indemnity agreements and surety bonds in the name of and on behalf of the FDIC, sign receipts for the payment of all rents and profits due or to become due on acquired assets; execute, acknowledge and deliver deeds of real property in the name of the FDIC; extend, postpone, release and satisfy or take such other action regarding any mortgage lien held in the name of the FDIC; execute, acknowledge and deliver in the name of the FDIC a power of attorney wherever necessary or required by law to any attorney employed by the FDIC; foreclose any mortgage or other lien on either real or personal property, wherever located; do and perform every act necessary for the use, liquidation or collection of acquired assets held in the name of the FDIC; and sign, seal, acknowledge and deliver any and all documents as may be necessary to settle any action(s) or claim(s) asserted against the FDIC, either in its Receivership or Corporate capacity, or as Manager of the FSLIC Resolution Fund.

Dated: August 5, 1993.

Federal Deposit Insurance Corporation.

Hoyle L. Robinson,

Executive Secretary.

[FR Doc. 93–19199 Filed 8–10–93; 8:45 am]

BILLING CODE 6714–01–M

FEDERAL MARITIME COMMISSION

Agreement(s) Filed

The Federal Maritime Commission hereby gives notice of the filing of the following agreement(s) pursuant to section 5 of the Shipping Act of 1984.

Interested parties may inspect and obtain a copy of each agreement at the Washington, DC Office of the Federal Maritime Commission, 800 North Capitol Street, NW., 9th Floor. Interested parties may submit comments on each agreement to the Secretary, Federal Maritime Commission, Washington, DC 20573, within 10 days after the date of the **Federal Register** in which this notice appears. The requirements for comments are found in § 572.603 of title 46 of the Code of Federal Regulations. Interested persons should consult this section before communicating with the Commission regarding a pending agreement.

Agreement No.: 212–010027–037.

Title: Brazil/U.S. Atlantic Coast Agreement.

Parties: Companhia de Navegacao Lloyd Brasileiro, Companhia Maritima Nacional, Crowley American Transport, Inc., Empresa Lineas Maritimas Argentinas S.A., A. Bottacchi S.A. de Navegacion C.F.I.I., Companhia de Navegacao Maritima Netumar.

Synopsis: The proposed amendment creates a special 100 percent carrying rate, thus suspending indefinitely the pooling of revenue under the Agreement.

Agreement No.: 207–010168–007.

Title: Carol Lines Joint Service Agreement.

Parties: Charente Steamship Col. Ltd., CGM Sud, Hapag-Lloyd Aktiengesellschaft, Nedlloyd Lijnen B.V.

Synopsis: The proposed amendment would restructure the Agreement from a joint service to a conference agreement. It also changes the name of the Agreement to New Caribbean Service Rate Agreement. In addition, Flota Mercante Grancolombiana S.A. and Laser Lines Ltd. AB will become members of the new conference.

Agreement No.: 212–010320–028.

Title: Brazil/U.S. Gulf Ports Agreement.

Parties: Companhia de Navegacao Lloyd Brasileiro, Companhia Maritima Nacional, Crowley American Transport, Inc., Empresa Lineas Maritimas Argentinas S.A., A. Bottacchi S.A. de Navegacion C.F.I.I.

Synopsis: The proposed amendment creates a special 100 percent carrying deduction, thus suspending indefinitely

the pooling of revenue under the Agreement.

Dated: August 5, 1993.

By Order of the Federal Maritime Commission.

Joseph C. Polking,

Secretary.

[FR Doc. 93–19206 Filed 8–10–93; 8:45 am]

BILLING CODE 6730–01–M

[Petition No. P49–93, et al.]

Petitions for Temporary Exemption From Electronic Tariff Filing Requirements; Filing

In the matter of Petition No. P49–93, Petition of Distribution-Publications, Inc.; Petition No. P50–93, Tradeair Ocean Express; Petition No. P51–93, Great White Fleet, Ltd.

Notice is hereby given of the filing of petitions by the above-named petitioners, pursuant to 46 CFR 514.8(a), for temporary exemption from the electronic tariff filing requirements of the Commission's ATFI System. Petitioners request exemption from the June 4, 1993, electronic filing deadline.

To facilitate thorough consideration of the petitions, interested persons are requested to reply to the petitions no later than August 16, 1993. Replies shall be directed to the Secretary, Federal Maritime Commission, Washington, DC 20573–0001, shall consist of an original and 15 copies, and shall be served on the following:

P49–93—Mr. John W. Sullivan, President, Distribution-Publications, Inc., 7996 Capwell Drive, Oakland, CA 94621

P50–93—Mr. Tim O'Sullvian, President, Tradeair Ocean Express, 155 Armstrong Road, Des Plaines, IL 60018

P51–93—Wade S. Hooker, Jr., Esq., Burlingham, Underwood & Lord, One Battery Park Plaza, New York, NY 10004–1484

Copies of the petitions are available for examination at the Washington, DC office of the Secretary of the Commission, 800 North Capitol Street NW., room 1046.

Joseph C. Polking,

Secretary.

[FR Doc. 93–19237 Filed 8–10–93; 8:45 am]

BILLING CODE 6730–01–M

[Fact Finding Investigation No. 16]

Possible Malpractices in the Trans-Atlantic Trades; Order Extending Investigation

By Order issued April 9, 1987 (52 FR 12064, April 14, 1987), the Federal Maritime Commission instituted this non-adjudicatory investigation into the practices of rebates, concessions, absorptions and allowances in excess of those set forth in applicable tariffs, and any other devices or means of obtaining, providing or allowing other persons to obtain transportation of property at less, or different compensation than the rates and charges shown in applicable tariffs or service contracts, in the United States foreign commerce, between ports and points, in the Trans-Atlantic Trades. By Order issued June 10, 1988 (53 FR 22385, June 15, 1988), the term of this investigation was extended to April 14, 1989. By Order issued May 1, 1989 (54 FR 19436, May 5, 1989), the term of this investigation was extended to April 14, 1990. The term of this investigation was further extended to April 14, 1991 by Order issued April 5, 1990 (55 FR 13664, April 11, 1990), to April 14, 1992 by Order issued June 5, 1991 (56 FR 26820, June 11, 1991) and to July 1, 1993 by Order issued July 1, 1992 (57 FR 30493). The Investigative Officer has now advised that in order to continue fact finding activities it is necessary to extend this investigation for an additional period of time.

Therefore, *it is ordered,* That the Investigative Officer shall issue a report of activities, findings and recommendations to the Commission on or before July 1, 1994, and at least yearly thereafter; such reports to remain confidential unless and until the Commission rules otherwise. This investigation is to remain open until such time as a final report is prepared by the Investigative Officer and accepted by the Commission.

By the Commission.

Joseph C. Polking,

Secretary.

[FR Doc. 93–19244 Filed 8–10–93; 8:45 am]

BILLING CODE 6730–01–M

FEDERAL RESERVE SYSTEM

Fidelity Southern Corporation; Application to Engage de novo in Underwriting and Dealing in Certain Bank-Ineligible Securities on a Limited Basis, and Other Securities-Related Activities

Fidelity Southern Corporation, Decatur, Georgia (Applicant), has applied pursuant to section 4(c)(8) of the Bank Holding Company Act (12 U.S.C. 1843(c)(8) (BHC Act) and § 225.23(a)(3) of the Board's Regulation Y (12 CFR 225.23(a)(3)), to engage *de novo* through its subsidiary, Fidelity National Capital Investors, Inc., Decatur, Georgia (Company), in various securities and securities-related activities described below.

Applicant proposes to engage *de novo* in the following activities previously authorized by the Board:

(1) Providing management consulting services to depository institutions pursuant to § 225.25(b)(11) of Regulation Y;

(2) arranging commercial real estate equity financing pursuant to § 225.25(b)(14) of Regulation Y.

Applicant proposes to buy and sell in secondary market trading all types of securities on the order of investors as a "riskless principal." Applicant also proposes to engage *de novo* in activities which previously have been determined by the Board by Order to be closely related to banking. Applicant proposes to underwrite and deal in municipal revenue bonds, residential mortgage related securities, consumer receivable-related securities, and commercial paper. In addition, Applicant also proposes to underwrite and deal, on a limited basis, in municipal revenue bonds that have not been rated by a nationally recognized rating agency.

Section 4(c)(8) of the BHC Act provides that a bank holding company may, with Board approval, engage in any activity "which the Board, after due notice and opportunity for hearing, has determined (by order or regulation) to be so closely related to banking or managing or controlling banks as to be proper incident thereto." This statutory test requires that two separate tests be met for an activity to be permissible for a bank holding company. First, the Board must determine that the activity is, as a general matter, "closely related to banking." Second, the Board must find in a particular case that the performance of the activity by the applicant bank holding company may be reasonably be expected to produce public benefits that outweigh possible adverse effects.

Applicant believes that these proposed activities are "so closely related to banking or managing or controlling banks as to be proper incident thereto." The Board has previously authorized riskless principal activities, subject to certain prudential limitations which address the potential for conflicts of interest, unsound banking practices, and other adverse effects. *See, e.g., J.P. Morgan & Company Inc.*, 76 Federal Reserve Bulletin 26 (1990); *Bankers Trust New York Corporation*, 75 Federal Reserve Bulletin 829 (1989). The Board also has previously authorized bank holding companies to underwrite and deal in municipal revenue bonds, residential

mortgage related securities, consumer receivable-related securities, and commercial paper provided that the underwriting subsidiary derives no more than 10 percent of its total gross revenue from underwriting and dealing in the approved securities over any two-year period. *See Citicorp*, 73 Federal Reserve Bulletin 473 (1987) *aff'd sub nom. Securities Industry Association v. Board of Governors of the Federal Reserve System*, 839 F.2d 47 (2d Cir. 1988), *cert. denied*, 108 S.Ct. 2830 (1988), *modified by Order Approving Modifications to Section 20 Orders*, 75 Federal Reserve Bulletin 751 (1989).

In conducting these activities, Applicant will comply with the commitments and prudential limitations established by the Board in previous Orders, except that Applicant proposes to underwrite and deal in municipal revenue bonds that have not been rated by a nationally recognized rating agency if the total amount of the bond issue is under $5,000,000, and, therefore, not of sufficient size to be considered by a national rating agency. Applicant has committed to underwrite and deal in only those small issue, unrated municipal revenue bonds which exhibit a credit quality that would otherwise qualify as investment grade-debt if submitted for rating by a rating agency. Accordingly, Applicant contends that the proposed activities are functionally similar to those currently being conducted by banks and bank holding companies and are therefore closely related to banking.

Applicant takes the position that the proposed activities will benefit the public. Applicant states that the expected benefits to the public include increased efficiency and greater customer convenience resulting from an internal reorganization of Applicant's existing services, as well as increased competition because of a stronger and more unified system for marketing and delivering services.

Any views or requests for hearing should be submitted in writing and received by William W. Wiles, Secretary, Board of Governors of the Federal Reserve System, Washington, DC 20551, not later than August 31, 1993. Any request for hearing on this application must, as required by § 262.3(e) of the Board's Rules of Procedure (12 CFR 262.3(e)), be accompanied by a statement of the reasons why a written presentation would not suffice in lieu of a hearing, identifying specifically any questions of fact that are in dispute, summarizing the evidence that would be presented at a hearing, and indicating how the party commenting would be aggrieved by approval of the proposal.

This application may be inspected at the offices of the Board of Governors or the Federal Reserve Bank of Atlanta.

Board of Governors of the Federal Reserve System, August 5, 1993.

Jennifer J. Johnson,

Associate Secretary of the Board.

[FR Doc. 93–19228 Filed 8–10–93; 8:45 am]

BILLING CODE 6210–01–F

First State Bancorp, Inc., et al.; Notice of Applications to Engage de novo in Permissible Nonbanking Activities

The companies listed in this notice have filed an application under § 225.23(a)(1) of the Board's Regulation Y (12 CFR 225.23(a)(1)) for the Board's approval under section 4(c)(8) of the Bank Holding Company Act (12 U.S.C. 1843(c)(8)) and § 225.21(a) of Regulation Y (12 CFR 225.21(a)) to commence or to engage *de novo*, either directly or through a subsidiary, in a nonbanking activity that is listed in § 225.25 of Regulation Y as closely related to banking and permissible for bank holding companies. Unless otherwise noted, such activities will be conducted throughout the United States.

Each application is available for immediate inspection at the Federal Reserve Bank indicated. Once the application has been accepted for processing, it will also be available for inspection at the offices of the Board of Governors. Interested persons may express their views in writing on the question whether consummation of the proposal can "reasonably be expected to produce benefits to the public, such as greater convenience, increased competition, or gains in efficiency, that outweigh possible adverse effects, such as undue concentration of resources, decreased or unfair competition, conflicts of interests, or unsound banking practices." Any request for a hearing on this question must be accompanied by a statement of the reasons a written presentation would not suffice in lieu of a hearing, identifying specifically any questions of fact that are in dispute, summarizing the evidence that would be presented at a hearing, and indicating how the party commenting would be aggrieved by approval of the proposal.

Unless otherwise noted, comments regarding the applications must be received at the Reserve Bank indicated or the offices of the Board of Governors not later than August 31, 1993.

A. Federal Reserve Bank of St. Louis (Randall C. Sumner, Vice President) 411 Locust Street, St. Louis, Missouri 63166:

1. First State Bancorp, Inc., Caruthersville, Missouri; to engage *de novo* through its subsidiary, First State Bancorp Community Development Corporation, Caruthersville, Missouri, in purchasing, rehabilitating and selling affordable owner-occupied housing for low- and moderate-income persons pursuant to § 225.25(b)(6) of the Board's Regulation Y. These activities will be conducted in Pemiscot County, Missouri.

B. Federal Reserve Bank of Kansas City (John E. Yorke, Senior Vice President) 925 Grand Avenue, Kansas City, Missouri 64198:

1. Union Bancshares, Inc., Wichita, Kansas; to engage *de novo* through its subsidiary, UBI Financial Services, Inc., Wichita, Kansas, in making community development investments pursuant to § 225.25(b)(6) of the Board's Regulation Y.

Board of Governors of the Federal Reserve System, August 5, 1993.

Jennifer J. Johnson,

Associate Secretary of the Board.

[FR Doc. 93–19229 Filed 8–10–93; 8:45 am]

BILLING CODE 6210–01–F

Mellon Bank Corporation, et al.; Acquisitions of Companies Engaged in Permissible Nonbanking Activities

The organizations listed in this notice have applied under § 225.23(a)(2) or (f) of the Board's Regulation Y (12 CFR 225.23(a)(2) or (f)) for the Board's approval under section 4(c)(8) of the Bank Holding Company Act (12 U.S.C. 1843(c)(8)) and § 225.21(a) of Regulation Y (12 CFR 225.21(a)) to acquire or control voting securities or assets of a company engaged in a nonbanking activity that is listed in § 225.25 of Regulation Y as closely related to banking and permissible for bank holding companies. Unless otherwise noted, such activities will be conducted throughout the United States.

Each application is available for immediate inspection at the Federal Reserve Bank indicated. Once the application has been accepted for processing, it will also be available for inspection at the offices of the Board of Governors. Interested persons may express their views in writing on the question whether consummation of the proposal can "reasonably be expected to produce benefits to the public, such as greater convenience, increased competition, or gains in efficiency, that outweigh possible adverse effects, such as undue concentration of resources, decreased or unfair competition, conflicts of interests, or unsound banking practices." Any request for a hearing on this question must be

accompanied by a statement of the reasons a written presentation would not suffice in lieu of a hearing, identifying specifically any questions of fact that are in dispute, summarizing the evidence that would be presented at a hearing, and indicating how the party commenting would be aggrieved by approval of the proposal.

Unless otherwise noted, comments regarding each of these applications must be received at the Reserve Bank indicated for the application or the offices of the Board of Governors not later than September 3, 1993.

A. Federal Reserve Bank of Cleveland (John J. Wixted, Jr., Vice President) 1455 East Sixth Street, Cleveland, Ohio 44101:

1. Mellon Bank Corporation, Pittsburgh, Pennsylvania; to acquire AFCO Credit Corporation, New York, New York, and thereby indirectly acquire AFCO Acceptance Corporation, and AFCO Service, Inc., and thereby engage in making and servicing loans pursuant to § 225.25(b)(1) of the Board's Regulation Y.

B. Federal Reserve Bank of St. Louis (Randall C. Sumner, Vice President) 411 Locust Street, St. Louis, Missouri 63166:

1. Magna Group, Inc., St. Louis, Missouri; to acquire Carboro, Ltd., Murphysboro, Illinois, through the acquisition of City Bancorp, Inc., Murphysboro, Illinois, and thereby engage in carrying on the business of insurance and reinsurance companies; acting as agent and broker for insurance companies and syndicates; and accepting risks, settling claims, soliciting business and all other matters incident thereto; all of which shall be directly related to extensions of credit by Applicant or its subsidiaries and shall be limited to assuring the repayment of the outstanding balance due on such extensions of credit in the event of death, disability, or involuntary unemployment of the respective debtor pursuant to § 225.25(b)(8) of the Board's Regulation Y.

Board of Governors of the Federal Reserve System, August 5, 1993.

Jennifer J. Johnson,

Associate Secretary of the Board.

[FR Doc. 93–19230 Filed 8–10–93; 8:45 am]

BILLING CODE 6210–01–F

Queens County Bancorp, Inc., et al.; Formations of; Acquisitions by; and Mergers of Bank Holding Companies

The companies listed in this notice have applied for the Board's approval under section 3 of the Bank Holding Company Act (12 U.S.C. 1842) and § 225.14 of the Board's Regulation Y (12 CFR 225.14) to become a bank holding company or to acquire a bank or bank holding company. The factors that are considered in acting on the applications are set forth in section 3(c) of the Act (12 U.S.C. 1842(c)).

Each application is available for immediate inspection at the Federal Reserve Bank indicated. Once the application has been accepted for processing, it will also be available for inspection at the offices of the Board of Governors. Interested persons may express their views in writing to the Reserve Bank or to the offices of the Board of Governors. Any comment on an application that requests a hearing must include a statement of why a written presentation would not suffice in lieu of a hearing, identifying specifically any questions of fact that are in dispute and summarizing the evidence that would be presented at a hearing.

Unless otherwise noted, comments regarding each of these applications must be received not later than September 3, 1993.

A. Federal Reserve Bank of New York (William L. Rutledge, Vice President) 33 Liberty Street, New York, New York 10045:

1. Queens County Bancorp, Inc., Flushing, New York; to become a bank holding company by acquiring 100 percent of the voting shares of Queens County Savings Bank, Flushing, New York.

B. Federal Reserve Bank of Kansas City (John E. Yorke, Senior Vice President) 925 Grand Avenue, Kansas City, Missouri 64198:

1. Bancook Corporation, Cook, Nebraska; to acquire 100 percent of the voting shares of DeWitt State Bank, DeWitt, Nebraska.

Board of Governors of the Federal Reserve System, August 5, 1993.

Jennifer J. Johnson,

Associate Secretary of the Board.

[FR Doc. 93–19231 Filed 8–10–93; 8:45 am]

BILLING CODE 6210–01–F

GENERAL SERVICES ADMINISTRATION

[G–93–3]

Delegation of Authority to the Secretary of Transportation

Pursuant to the authority vested in the Administrator of General Services by section 3726 of title 31, United States Code, and redelegated to the Director, Office of Transportation Audits, Federal Supply Service, I have determined that it is both cost-effective and in the public interest to delegate authority to the Secretary of Transportation; specifically, to the U.S. Customs Service, to conduct prepayment audits of domestic and foreign household goods, motor, air and rail freight, air passenger, and water freight, subject to the provisions of the Federal Property Management Regulations, title 41, Code of Federal Regulations, subpart 101–41, and amendments thereto. These prepayment audits will be conducted by a General Services Administration's (GSA's) contractor, at the contractor's site for the U.S. Coast Guard Supply Center, Brooklyn, New York.

The Secretary of Transportation may redelegate this authority to any officer, official, or employee of the Department of Transportation.

The Secretary of Transportation shall notify GSA in writing of these additional delegations. This delegation is effective upon publication in the **Federal Register.**

Dated: August 3, 1993.

R. W. Piasecki,

Director, Office of Transportation Audits.

[FR Doc. 93–19191 Filed 8–10–93; 8:45 am]

BILLING CODE 6820–24–M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Agency for Toxic Substances and Disease Registry

[ATSDR–73]

Public Health Advisory Procedures

AGENCY: Agency for Toxic Substances and Disease Registry (ATSDR), Public Health Service (PHS), Department of Health and Human Services (HHS).

ACTION: Notice.

SUMMARY: This notice announces the availability of the revised procedures ATSDR will use in preparing a public health advisory. The public health advisory is a statement by ATSDR containing a finding that a release of a hazardous substance or a physical condition poses a significant risk to human health and recommending measures to be taken to reduce exposure and eliminate or substantially mitigate the significant risk to human health. The proposed procedures were published in the **Federal Register** on December 10, 1992 [57 FR 58504], and the public was invited to comment on the procedures. The public comments received were considered and the procedures were revised based on the comments accepted.

EFFECTIVE DATE: The revised procedures are effective immediately.

ADDRESSES: Requests for the revised procedures ATSDR will use in preparing a public health advisory, as well as the public comments and ATSDR responses, should bear the docket control number ATSDR–73, and should be submitted to: C. Harold Emmett, P.E., Chief, Emergency Response and Consultation Branch, Division of Health Assessment and Consultation, Agency for Toxic Substances and Disease Registry, 1600 Clifton Road, NE., Mail Stop E–57, Atlanta, Georgia 30333.

FOR FURTHER INFORMATION CONTACT: C. Harold Emmett, ATSDR, telephone (404) 639–6360.

Dated: August 5, 1993.

Walter R. Dowdle,

Deputy Administrator Agency for Toxic Substances and Disease Registry.

[FR Doc. 93–19214 Filed 8–10–93; 8:45 am]

BILLING CODE 4160–70–P

Centers for Disease Control and Prevention

[CDC–351]

Announcement of Cooperative Agreement to the Association of Maternal and Child Health Programs

Summary

The Centers for Disease Control and Prevention (CDC) announces the availability of fiscal year (FY) 1993 funds for a sole source cooperative agreement with the Association of Maternal and Child Health Programs (AMCHP), an affiliate of the Association of State and Territorial Health Officials (ASTHO). Approximately $250,000 is available in FY 1993 to fund this program. It is expected that the award will begin on or about September 30, 1993, for a 12-month budget period within a project period of up to 3 years. This funding estimate may vary and is subject to change. Continuation awards within the project period will be made on the basis of satisfactory progress and availability of funds.

The purpose of this program is to assist AMCHP in disseminating information and resources in prenatal smoking cessation to maternal and child health providers, to promote the integration of prenatal smoking cessation counseling as a routine part of prenatal care, and to facilitate the exchange of ideas and information related to prenatal smoking cessation among state Maternal and Child Health (MCH) programs and State Primary Care Associations.

The CDC will: collaborate in the development of a dissemination plan to assist state MCH programs in sharing and applying knowledge and expertise of tobacco prevention and cessation to needs assessment; planning, policy and program development; and population-based and personal health services delivery; collaborate in the development of a forum that focuses on prenatal smoking cessation ideas and other public health information that relates to smoking and pregnancy among MCH populations; and participate in defining the scope of prenatal smoking cessation and other prevention needs relevant to MCH populations.

The Public Health Service (PHS) is committed to achieving the health promotion and disease prevention objectives of Healthy People 2000, a PHS-led national activity to reduce morbidity and mortality and improve the quality of life. This announcement is related to the priority area of tobacco. (For ordering a copy of Healthy People 2000, see the Section Where To Obtain Additional Information.)

Authority

This program is authorized under section 301(a), (42 U.S.C. 241(a)) and section 317, (42 U.S.C. 247b) of the Public Health Service Act, as amended.

Eligible Applicant

Assistance will be provided only to AMCHP. No other applications are solicited. The Program Announcement and application kit have been sent to AMCHP.

Eligibility is limited to AMCHP because of its unique role to state maternal and child health (MCH) programs. AMCHP is a national nonprofit organization that brings together state public health programs that address the needs of women in their reproductive years, children, youths and families. It is the national association that represents and serves state health department programs in maternal and child health. Its members consist entirely of state MCH program directors and their staff. All states are members. As such, it is uniquely capable and charged to serve as a convener of state MCH programs. The mission of AMCHP is to provide state and national leadership to assure the health of all mothers, children, and families. It has served as a policy development and capacity-building organization in public health matters since 1944 and has as one of its major objectives the sharing of information within and between state health departments.

In collaboration with other national organizations, AMCHP works to accomplish its mission by disseminating information on MCH needs and services, and recommending and advocating improved policies and programs. AMCHP also fosters the exchange of ideas and assists state programs in assuring statewide systems of coordinated, community-based care for families, especially for children in low-income families with special health care needs because of chronic or disabling conditions, and for families with limited access to care. All of these activities are accomplished through cooperation and collaboration with national, state, and local partners in the public and private sectors.

Executive Order 12372 Review

The application is not subject to review under Executive Order 12372, Intergovernmental Review of Federal Programs.

Public Health System Reporting Requirement

This program is not subject to the Public Health System Reporting Requirement as cited in PHS Circular 93.01.

Catalog of Federal Domestic Assistance Number

The Catalog of Federal Domestic Assistance number is 93.283.

Other Requirements

Paperwork Reduction Act

Projects that involve the collection of information from 10 or more individuals and funded by the cooperative agreement will be subject to review by the Office of Management and Budget (OMB) under the Paperwork Reduction Act.

Where to Obtain Additional Information

If you are interested in obtaining additional information regarding this program, please refer to Announcement number 351 and contact Leah D. Simpson, Grants Management Specialist, Grants Management Branch, Procurement and Grants Office, Centers for Disease Control and Prevention (CDC), 255 East Paces Ferry Road, NE., room 314, Mailstop E–18, Atlanta, Georgia 30305, (404) 842–6803.

A copy of Healthy People 2000 (Full Report, Stock No. 017–001–00474–0) or Healthy People 2000 (Summary Report, Stock No. 017–001–00473–1) referenced in the Summary may be obtained through the Superintendent of

Documents, Government Printing Office, Washington, DC 20402–9325, telephone (202) 783–3238.

Dated: August 5, 1993.

Robert L. Foster,

Acting Associate Director for Management and Operations, Centers for Disease Control and Prevention (CDC).

[FR Doc. 93–19216 Filed 8–10–93; 8:45 am]

BILLING CODE 4160–18–P–M

Administration for Children and Families

Agency Information Collection Under OMB Review

Under the provisions of the Paperwork Reduction Act (44 U.S.C. chapter 35), we have submitted to the Office of Management and Budget (OMB) a request for authority to continue use of a previously approved information collection for the Office of Financial Management of the Administration for Children and Families (ACF). This information collection was formerly approved under OMB Control Number 0970–0095.

ADDRESSES: Copies of the information collection request may be obtained from Steve R. Smith, (ACF) by calling (202) 401–6964.

Written comments and questions regarding the requested approval for information collection should be sent directly to: Laura Oliven, OMB Desk Officer for ACF, OMB Reports Management Branch, New Executive Office Building, room 3002, 725 17th Street, NW., Washington, DC 20503; (202) 395–7316.

Information on Document

Title: Title IV–F, Job Opportunities and Basic Skills Training Program Financial Report (Form ACF–331)

OMB No.: 0970–0095

Description: Section 403 of the Social Security Act, as amended by section 201(c) of Public Law 100–485, provides funding for States in order to implement the Job Opportunities and Basic Skills Training Program (JOBS). Section 403 requires Federal reimbursement to States in support of activities authorized by Title IV–F and establishes varying matching rates which are unique to the program. Collection of data is necessary to properly monitor and evaluate the allowability of claims for reimbursement, to formulate budget submissions to Congress and apportionment requests to OMB, and process grant awards for JOBS on a quarterly basis. State agencies with approved state plans for implementation of the JOBS program report the data on a quarterly basis and semi-annual basis (Part 2). The form provides specific data on matching rates at which reimbursement is claimed and provides a mechanism for States to request grant awards and certify the availability of State matching funds as required under Section 403(b) of the Social Security Act. Part 2 data will be used to update projections of JOBS expenditures and estimate outlays. This information will also be used to prepare the ACF budget submissions to Congress.

Annual Number of Respondents: 55

Annual Frequency: 6

Average Burden Hours Per Response: 1.5

Total Burden Hours: 495

Dated: August 3, 1993.

Larry Guerrero,

Deputy Director, Office of Information Systems Management.

[FR Doc. 93–19188 Filed 8–10–93; 8:45 am]

BILLING CODE 4184–01–M

Department of Health and Human Services; Appeal

AGENCY: Administration for Children and Families (ACF), HHS.

ACTION: Notice of appeal.

SUMMARY: By designation of the Administration for Children and Families, a member of the Departmental Appeals Board will be presiding officer for an appeal pursuant to 45 CFR part 213 concerning the Administration for Children and Families' disapproval of two State plan amendments submitted by the State of Ohio.

The State of Ohio and the Administration for Children and Families have agreed that there are no disputed issues of fact, and that an in-person evidentiary hearing is unnecessary. The presiding officer therefore proposes to consider the appeal based on written briefs without convening an in-person evidentiary hearing.

REQUESTS TO PARTICIPATE: Requests to participate as a party or as an *amicus curiae* must be submitted to the Departmental Appeals Board in the form specified at 45 CFR 213.15 within fifteen days after this publication.

FOR FURTHER INFORMATION CONTACT: Jeffrey S. Sacks, Staff Attorney, Departmental Appeals Board, Department of Health and Human Services, room 635–F, Hubert H. Humphrey Building, 200 Independence Avenue, SW., Washington, DC 20201. Telephone Number: (202) 690–8011.

SUPPLEMENTARY INFORMATION: Notice of appeal is hereby given as set forth in the following letter, which has been sent to the State of Ohio.

Washington, DC, July 27, 1993.

Alan F. Schwepe, Assistant Attorney General, Health, Education and Human Services Section, 30 E. Broad Street, 15th Floor, Columbus, Ohio 43266–0410, and

Ted Yasuda, Assistant Regional Counsel, DHHS—Region V, 105 W. Adams, 19th Floor, Chicago, Illinois 60603.

Counsel

This letter is in response to the State of Ohio Department of Human Services' (State) requests for reconsideration, dated September 14, 1990 and June 18, 1991, of the Administration for Children and Families' (ACF, formerly the Family Support Administration or FSA) disapproval of the State's proposed amendments to its plan for implementing title IV–A of the Social Security Act (Aid to Families with Dependent Children, or AFDC) submitted as Transmittal Nos. 90–9 and 91–01, respectively (the plan amendments). With its request for reconsideration of plan amendment 90–9 the State filed a motion for stay of proceedings. When the State subsequently filed its request for reconsideration of plan amendment 91–01, it moved for consolidation of the proceedings for both proposed plan amendments.

Section 407 of the Social Security Act (42 U.S.C. 607) provides for payment of AFDC for dependent children of unemployed parents (AFDC–UP), when the parent who is the principal wage earner has 6 or more quarters of work in any 13-quarter-calendar period ending within one year prior to the application of aid. Prior to amendment by the Family Support Act of 1988, Public Law 101–485, section 407(d)(1) of the Social Security Act defined "quarter of work" as a calendar quarter in which the parent participated in a community work experience program (CWEP) under section 409 of the Social Security Act, or the work incentive program (WIN) established under part C of title IV of the Social Security Act.

In plan amendment 90–9, the State proposed to allow participation in the same activities as a Community Work Experience Participation (CWEP) program by recipients of state-funded General Assistance (GA), who are not recipients of AFDC to satisfy the work history requirement of the AFDC–UP program.

Section 407(d) of the Social Security Act was amended effective October 1, 1990 by the Family Support Act to permit participation in a job

opportunities and basic skills training (JOBS) program to meet the AFDC–UP quarter-of-work requirement. Section 407(d) of the Social Security Act was also amended to provide that the quarter-of-work requirement could also be met be participation in a CWEP program under section 409, as in effect prior to amendments made by the Family Support Act.

The State subsequently proposed, in plan amendment 91–9, to allow participation by GA and Food Stamp recipients in the same activities as JOBS (or in a CWEP or WIN program prior to October, 1990) to satisfy the AFDC–UP work history requirement. As the two proposed amendments would effect substantially similar changes to the state plan and involve common issues, ACF assented to the notion for consolidation and the reconsideration of both proposed plan amendments shall be heard as one proceeding.

The principal issue to be considered in the appeal is whether participation by GA or Food Stamp recipients, who are not recipients of AFDC, in the same activities as in JOBS (or in CWEP or WIN program prior to October, 1990) may be counted as quarters of work for the purpose of meeting the AFDC–UP work history requirements.

I have designated Donald F. Garrett, a Departmental Appeals Board Member, as the presiding officer pursuant to 45 CFR 213.21. ACF and the State are now parties in this matter. 45 CFR 213.15(a). ACF and the State have agreed that there are no disputed issues of fact, and that an in-person evidentiary hearing is not necessary to resolve Ohio's requests for reconsideration. Accordingly, the parties have requested that the appeal be decided based on their written submissions.

A copy of this letter will appear as a Notice in the **Federal Register** and any person wishing to request recognition as a party will be entitled to file a petition pursuant to 45 CFR 213.15(b) with the Departmental Appeals Board within 15 days after that notice has been published. A copy of the petition should be served on each party of record at that time. The petition must explain how the issues to be considered have caused them injury and how their interest is within the zone of interests to be protected by the governing Federal statute. 45 CFR 213.15(b)(1). In addition, the petition must concisely state petitioner's interest in the proceeding, who will represent the petitioner, and the issues on which petitioner wishes to participate. 45 CFR 213.15(b)(2). Additionally, if the petitioner believes that there are disputed issues of fact which require an in-person evidentiary hearing, the petitioner should concisely specify the disputed issues of fact in the petition, and also state whether petitioner intends to present witnesses. Any party may, within 5 days of receipt of such petition, file comments thereon; the presiding officer will subsequently issue a ruling on whether and on what basis participation will be permitted.

Any interested person or organization wishing to participate as *amicus curiae* may also file a petition with the Board, which shall conform to the requirements at 45 CFR 213.15(c)(2). The petition should be filed within 15 days after this notice, in time to permit the presiding officer an adequate opportunity to consider and rule upon it.

Any further inquiries, submissions, or correspondence regarding this matter should be filed in an original and two copies with Mr. Garrett at the Departmental Appeals Board, room 637–D, Hubert H. Humphrey Building, 200 Independence Avenue, SW., Washington, DC 20201, where the record in this matter will be kept. Each submission must include a statement that a copy of the material has been sent to the other party, identifying when and to whom the copy was sent. For convenience please refer to the Board Docket Nos. 91–114 (reconsideration of the disapproval) of proposed plan amendment 91–1) and 91–125 (reconsideration of the disapproval of proposed plan amendment 90–9).

Dated: August 4, 1993.

Laurence J. Love,

Acting Assistant Secretary for Children and Families.

[FR Doc. 93–19239 Filed 8–10–93; 8:45 am]

BILLING CODE 4184–01–M

Food and Drug Administration

Studies of Adverse Effects of Marketed Drugs; Availability of Grants (Cooperative Agreements); Request for Applications

AGENCY: Food and Drug Administration, HHS.

ACTION: Notice.

SUMMARY: The Food and Drug Administration (FDA), Center for Drug Evaluation and Research, is announcing the anticipated availability of $1.7 million in Fiscal Year 1994 funds for cooperative agreements to study reported adverse effects of marketed drugs. This amount is consistent with the level of funding in the President's budget. FDA expects to make five to six awards in the $300,000 to $400,000 range. Funds are not currently available. The Government's obligation is contingent upon the availability of appropriated funds from which the cooperative agreements will be funded.

The purpose of these cooperative agreements is to support pharmacoepidemiological research and to provide a mechanism for collaborative research to test hypotheses, particularly those arising from adverse events reported to FDA, and to enable FDA to have rapid access to and response from multiple data sources when necessary. FDA seeks to fund a variety of data bases which represent diverse patient populations and/or types of patient care settings. The data bases maintained through these agreements must be able to support the completion of one to two major studies per year of multiple drugs/multiple outcomes which are designed in collaboration with FDA to identify drug induced disease that occurs infrequently. FDA seeks to fund nonduplicative existing data bases that are not already available to FDA.

The adverse events of most concern to FDA are those that are serious and are not currently found in a drug's official labeling. FDA is also interested in those adverse events that occur in patient populations not generally included in premarketing clinical trials. Populations of particular interest are: Children, pregnant women, the elderly, and acquired immunodeficiency syndrome (AIDS) patients.

DATES: Applications must be received by 5 p.m. (eastern daylight time) on September 27, 1993. The earliest possible date for award is February 1, 1994.

ADDRESSES: Application kits are available from, and completed applications should be submitted to: Stephanie Seligman, Grants and Assistance Agreements Section (HFA–522), Food and Drug Administration, Park Bldg., rm. 3–40, 5600 Fishers Lane, Rockville, MD 20857, 301–443–6170.

Note: Applications hand-carried or commercially delivered should be addressed to the Park Bldg., rm. 3–40, 12420 Parklawn Dr., Rockville, MD 20857. Do not send applications to the Division of Research Grants, National Institutes of Health (NIH).

FOR FURTHER INFORMATION CONTACT: *Regarding the programmatic aspects of this notice:* Laurie B. Burke, Center for Drug Evaluation and Research (HFD–733), Food and Drug Administration, 5600 Fishers Lane, rm. 15B–18, Rockville, MD 20857, 301–443–2306.

Regarding the business or financial aspects of this notice: Stephanie Seligman (address above).

SUPPLEMENTARY INFORMATION: FDA's authority to fund research projects is set

out in section 301 of the Public Health Service Act (42 U.S.C. 241). FDA's research program is described in the Catalog of Federal Domestic Assistance, No. 93.103. Applications submitted under this program are not subject to the requirements of Executive Order 12372 and are exempted from regulation 45 CFR part 46—Protection of Human Subjects. This program is not subject to the Public Health System Reporting Requirements.

I. Background

New drugs are required to undergo extensive testing before marketing. With the submission of adequate data on a drug's safety and effectiveness, FDA approves a new drug application which permits a manufacturer to market its drug product in the United States. Although the information provided before marketing is sufficient for approval, it is not adequate to anticipate all effects of a drug once it comes into general use.

This request for applications (RFA) is intended to encourage research projects in the area of drug-induced illness and to provide a mechanism for collaborative research designed to test hypotheses based on indications of possible problems, particularly those originating from reports of adverse drug events (ADE's) received by FDA.

II. Research Goals and Objectives

The goal for these cooperative agreements is to assess suspected associations between specific drug exposures and specific diagnoses and to investigate and quantitate such risk. The specific objectives are to provide immediate access to existing data sources with the capability of providing feasibility assessments for the study of particular drug safety questions within 2 to 4 weeks and the additional capability of providing a substantive response to those questions deemed feasible within 6 to 8 months.

Data base capabilities should include:

1. Estimation of adverse event rates or relative risks for specific drugs;
2. Estimations of the contribution of various risk factors to adverse event rates (e.g., age, sex, dose, coexisting disease, concomitant medication, etc.); and
3. Determination of adverse event rates for generic entities as well as for classes of drugs.

In addition, FDA is interested in data bases capable of innovatively applying the objectives stated above to specifically defined populations including but not limited to children, pregnant women, the elderly, and AIDS patients.

The ideal data source would capture all drug exposure linked longitudinally to each patient regardless of health care delivery setting. Because the outcomes of interest could be either acute or chronic effects, all health provider encounters, i.e., medical records, would be captured whether in the ambulatory, emergency, chronic care or acute care setting. The ideal data source would have the power to identify rare ADE's in the population of interest, and it would have the capability to determine person-time at risk of the outcome in question. The ideal data base would also be completely automated with an inherent system available for the linkage by patient of all relevant medical care data with all drug exposure data and linkage to data bases of vital records, cancer registries, and birth defect registries.

Submitted applications must include an indepth description of the data base and provide descriptive and quantitative information on diagnoses and drug exposures in the population. The quality and validity of the data should be described in detail.

III. Reporting Requirements

Program Progress Reports will be required quarterly. These reports must be submitted within 30 days after the last day of each quarter based on the budget period of the cooperative agreement. Financial Status Reports (FSR's) will be required annually. These reports must be submitted within 90 days of the budget expiration date. A Final Program Progress Report and an FSR must be submitted within 90 days after the expiration of the project period of the cooperative agreement.

Up to two representatives from each cooperative agreement may be required, if requested by the project officer, to travel to FDA up to twice a year for no more than 2 days at a time. These meetings will include, but not be limited to, presentations on study findings and discussions with the FDA staff involved in the collaborative research. At least one FDA employee may visit the cooperative agreement site at least once a year for collaboration and information exchange.

IV. Mechanism of Support

A. Award Instrument

Support for this program will be in the form of cooperative agreements. All awards will be subject to all policies and requirements that govern the research grant programs of the Public Health Service (PHS), including the provisions of: 42 CFR part 52, 45 CFR parts 74 and 92, and PHS grants policy statement.

B. Eligibility

These cooperative agreements are available to any public or private nonprofit organization (including State, local, and foreign units of government) and any for-profit organization. For-profit organizations must exclude fees or profit from their request for support

C. Length of Support

The length of support will depend upon the nature of the study and may extend beyond 1 year but may not exceed 3 years. For those studies with an expected duration of more than 1 year, a second year of noncompetitive continuation of support will depend on: (1) Performance during the preceding year and (2) the availability of Federal fiscal year appropriations.

D. Funding Plan

The number of cooperative agreements funded will depend on the quality of the applications received and the availability of Federal funds to support the projects.

Federal funds for this program are limited. Therefore, should FDA approve two or more applications which propose duplicative or very similar data resources, FDA will support only the source with the best score. Furthermore, should FDA approve two or more applications which propose smaller data resources capturing the aforementioned special populations of interest, FDA will support only the source with the best score.

V. Delineation of Substantive Involvement

Substantive involvement by the awarding agency is inherent in cooperative agreement awards. Accordingly, FDA will have a substantive involvement in the programmatic activities of all the projects funded under this RFA. Involvement may be modified to fit the unique characteristics of each application. Substantive involvement includes, but is not limited to, the following:

1. The FDA appointed project officer will select and approve the drug exposures and medical events to be studied. The project officer represents the grantee before the extramural program review group, the group that monitors the progress and performance of the cooperative agreements.
2. FDA scientists will collaborate with awardees in study design and data analysis. Collaboration will also include interpretation of findings, review of manuscripts, and, where appropriate, coauthorship of publications.

3. When the same study is instituted with two or more of the grantees within this cooperative agreement program simultaneously, for purposes of study power enhancement, data pooling will be authorized and coordinated by FDA.

VI. Publication Requirements

Those publications arising from such collaborative projects shall have the FDA referenced as a source of support; whereas, those publications arising from projects not developed and/or completed in such collaboration with FDA shall not reference FDA as a source of support for that study.

The grantee shall secure written prior approval from the Grants Management Office before any attribution is referenced in a publication.

VII. Review Procedure and Criteria

A. Review Procedure

All applications submitted must be responsive to the RFA. Those applications found to be nonresponsive will not be considered for funding under this RFA and will be returned to the applicant.

Responsive applications will undergo dual peer review. An external review panel of experts in the fields of epidemiology, statistics, and data base management will review and evaluate each application based on its scientific merit. Responsive applications will also be subject to a second level review by the National Advisory Environmental Health Science Council.

B. Review Criteria

Applications should describe the type of pharmacoepidemiologic study that the data base is capable of producing; it should state the estimated number of such comparable studies to be completed in 1 year under the cooperative agreement. In order to avoid duplication of support, FDA requires that before the beginning of any such study under this cooperative agreement, the grantee will inform FDA of any studies on the same drug that the grantee is performing. Unless approved in writing by FDA, studies chosen for collaboration with FDA will be funded solely by FDA. Applications will be reviewed according to the following criteria:

1. Size and Characteristics of the Data Base.

a. A large population size of individuals for whom both drug exposure and medical outcome data are available. Full points will be awarded to data bases with a population of at least 2,000,000 individuals. No points will be awarded for data bases with a population size of less than 250,000. Data bases comprised of only one of the special populations for which data are desired, i.e., children, pregnant women, AIDS patients, and the elderly, may be awarded full points for smaller population sizes (up to 15 points);

b. Ability to assemble and follow (retrospectively or prospectively) well defined cohorts based on drug exposure with the intent to perform case-control and cohort studies (up to 8 points);

c. Ability to access and to link to the patient all health provider encounter and drug exposure information regardless of patient care setting. Full points will be awarded to data bases that capture linked drug exposure and patient outcome data from hospital, ambulatory care and long-term care settings (up to 12 points);

d. Ability to detect rare ADE's in one or more specific target populations of interest (i.e., children, pregnant women, the elderly and/or AIDS patients) (up to 5 points);

e. Ability to ascertain patient enrollment and disenrollment dates as demonstrated by descriptions of the entry and drop-out rates and the average length of enrollment (up to 5 points);

f. Ability to study all drug products. A description of the formulary restrictions as well as the pharmacy reimbursement plan should be included. A tabulation of the number of exposures to those new molecular entities (NME's) approved by FDA in 1991 (with "important" or "modest" therapeutic gain) is requested. These NME's are as follows: alglucerase (Ceredase®), azithromycin (Zithromax®), clarithromycin (Biaxin®), didanosine (Videx®), etodolac (Lodine®), fludarabine (Fludara®), flumazenil (Mazicon®), foscarnet (Foscavir®), gallium nitrate (Ganite®), histrelin (Supprelin®), ondansetron (Zofran®), pamidronate (Aredia®), pentostatin (Nipent®), succimer (Chemet®), and ticlopidine (Ticlid®) (up to 5 points);

g. An acceptable set of drug and disease classification systems. A tabulation is requested of the top 50 diagnoses and drug exposures (by molecular entity) in the study population with definitions of the classification systems used (up to 3 points);

h. A long calendar time period for which data are available and longitudinally linkable. No points will be awarded to data bases with less than 2 years of history (up to 3 points);

i. A short lag time between patient events and data availability (up to 3 points); and

j. Ability to successfully retrieve a high proportion of medical records in a timely fashion. Documentation of proportion of medical records retrieved in a specified time period should be included (up to 6 points).

2. Information Systems and Software Capabilities.

a. A well defined and acceptable description of computer resources, extent of automation and software capabilities (up to 3 points);

b. Availability of computerized data elements (e.g., inpatient drugs and diagnoses, outpatient drugs and diagnoses, procedures, medical record notes) or progress toward automation of those data elements not yet available (up to 3 points);

c. Existing software to calculate person-time at risk (up to 3 points);

d. Ability to complete routine searches of the data base within a short time period (2 to 4 weeks) (up to 3 points); and

e. Ability to generate customized SAS or ASCII data sets to facilitate data transfer and research collaboration (up to 3 points).

3. Personnel.

a. Extensive research experience, training, and competence with a demonstrated ability to draw on consultative expertise in the areas of post-marketing surveillance and epidemiology (up to 5 points);

b. Information systems expertise with previous experience in the organization and manipulation of large data sets (up to 5 points); and

c. Investigators who demonstrate a willingness to collaborate with FDA scientists as well as with other investigators funded by this cooperative agreement program. Such demonstration may include suggestions for mechanisms of data pooling and for transfer of data sets between investigators within and outside of Government (up to 5 points).

4. Budget.

Reasonableness and cost effectiveness of the proposed budget (up to 5 points).

VIII. Submission Requirements

The original and five copies of the completed Grant Application Form PHS 398 (Rev. 9/91) or the original and two copies of Form PHS 5161 (Rev. 7/92) for State and local governments, with sufficient copies of the appendix for each application, should be delivered to Stephanie Seligman (address above). No supplemental material will be accepted after the closing date. The outside of the mailing package and item 2 of the application face page should be labeled "Response to RFA–FDA–CDER–94–1."

IX. Method of Application

A. Submission Instructions

Applications will be accepted during normal working hours, 8 a.m. to 4:30 p.m., Monday through Friday, on or before September 27, 1993. Applications will be considered received on time if sent on or before the closing date as evidenced by a legible U.S. Postal Service dated postmark or a legible dated receipt from a commercial carrier, unless they arrive too late for orderly processing. Private, metered postmarks shall not be acceptable as proof of timely mailing. Applications not received on time will not be considered for review and will be returned to the applicant.

Note: Applicants should note that the U.S. Postal Service does not uniformly provide dated postmarks. Before relying on this method, applicants should check with their local post office.

B. Format for Application

Applications must be submitted on Grant Application Form PHS 398 (Rev. 9/91). All "General Instructions" and "Specific Instructions" in the application kit should be followed with the exception of the receipt dates and the mailing label address. Do not send applications to the Division of Research Grants, NIH. This information collection is approved under OMB No. 0925–0001. Applications from State and local governments should be submitted on Form PHS 5161 (Rev. 7/92). The face page of the application must reflect the request for applications number RFA–FDA–CDER–94–1. This information collection is approved under OMB No. 0937–0189.

C. Legend

Unless disclosure is required by the Freedom of Information Act as amended (5 U.S.C. 552) as determined by the freedom of information officials of the Department of Health and Human Services or by a court, data contained in the portions of an application that have been specifically identified by page number, paragraph, etc., by the applicant as containing confidential commercial information or other information that is exempt from public disclosure will not be used or disclosed except for evaluation purposes.

Dated: June 25, 1993.

Michael R. Taylor,

Deputy Commissioner for Policy.

[FR Doc. 93–19270 Filed 8–10–93; 8:45 am]

BILLING CODE 4160–01–F

Indian Health Service

Tribal Management Grant Program for American Indians/Alaska Natives: Technical Assistance Workshop Announcement

AGENCY: Indian Health Service, HHS.

ACTION: Notice of technical assistance workshops for prospective IHS grantees.

SUMMARY: The Indian Health Service (IHS) announces that technical assistance workshops for the Tribal Management Grant Program to include grant proposal writing will be conducted for American Indian/Alaska Native Tribal organizations as defined by Public Law 93–638, as amended.

DATES: Technical assistance workshops are scheduled for October 13–15, 1993, in Anchorage, Alaska; October 26–28, 1993, in Minneapolis, Minnesota; November 16–18, 1993, in Oklahoma City, Oklahoma; and November 30–December 02, 1993, in Phoenix, Arizona.

FOR FURTHER INFORMATION CONTACT: Beulah Bowman, Director, Division of Community Services, Office of Tribal Activities, room 6A–05, 5600 Fishers Lane, Rockville, Maryland 20857, (301) 443–6840; M. Kay Carpentier, Grants Management Officer, Division of Acquisition and Grants Operations, Suite 300, 12300 Twinbrook Parkway, Twinbrook Building, Rockville, Maryland 20852, (301) 443–5204. (These are not toll-free numbers.)

SUPPLEMENTARY INFORMATION: The Office of Tribal Activities, Division of Community Services; and Division of Acquisition and Grants Operations, Grants Management Branch will provide potential applicants an opportunity to receive technical assistance for Tribal Management including participation in grant writing workshops to assist applicants in developing and submitting competitive proposals. The purpose is to: (a) Establish communication between the IHS and the applicants, (b) determine the applicants eligibility, and (c) to provide technical assistance to increase the ability of an applicant to successfully compete. Applicants will prepare preapplications for constructive review and feedback during the workshop.

Dated: August 4, 1993.

Michel E. Lincoln,

Acting Director.

[FR Doc. 93–19202 Filed 8–10–93; 8:45 am]

BILLING CODE 4160–16–M

Public Health Service

National Vaccine Advisory Committee, Public Meeting

AGENCY: Office of the Assistant Secretary for Health.

SUMMARY: The Department of Health and Human Services (DHHS), Office of the Assistant Secretary for Health is announcing the forthcoming meeting of the National Vaccine Advisory Committee.

DATES: Date, Time and Place: September 9, 9 a.m.; and September 10, at 8:30 a.m.; Hubert H. Humphrey Building, room 703A, 200 Independence Avenue, SW., Washington, DC 20201. The entire meeting is open to the public.

FOR FURTHER INFORMATION CONTACT: Written requests to participate should be sent to Chester Robinson, D.P.A., Acting Executive Secretary, National Vaccine Advisory Committee, National Vaccine Program, 5600 Fishers Lane, Parklawn Building, room 13A–56, Rockville, Maryland 20857, (301) 443–6264.

Agenda: Open Public Hearing: Interested persons may formally present data, information, or views orally or in writing on issues pending before the Advisory Committee or on any of the duties and responsibilities of the Advisory Committee as described below. Those desiring to make such presentations should notify the contact person before September 1, 1993, and submit a brief statement of the information they wish to present to the Advisory Committee. Those requests should include the names, addresses, and telephone numbers of the proposed participants and an indication of the approximate time required to make their comments. A maximum of 10 minutes will be allowed for a given presentation. Any person attending the meeting who does not request an opportunity to speak in advance of the meeting will be allowed to make oral presentation at the conclusion of the meeting, if time permits, at the chairperson's discretion.

Open Advisory Committee Discussion There will be updates on the National Vaccine Program, the National Vaccine Compensation Program, and President Clinton's Childhood Immunization Initiative. There will be reports and discussions on the two working subcommittees: Adult Immunization, and State and local Impediments to Immunization Services. Meetings of the Advisory Committee shall be conducted, insofar as is practical, in accordance with the agenda published in the **Federal Register** notice. Changes in the agenda will be announced at the beginning of the meeting.

Persons interested in specific agenda items may ascertain from the contact person the approximate time of discussion. A list of Advisory Committee members and the charter of the Advisory Committee will be available at the meeting. Those unable to attend the meeting may request this information from the contact person. Summary minutes of the meeting will be made available upon request from the contact person.

Dated: July 30, 1993.

Chester Robinson,

Acting Executive Secretary, NVAC.

[FR Doc. 93–19186 Filed 8–10–93; 8:45 am]

BILLING CODE 4160–17–M

DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT

Office of the Secretary—Office of Lead-Based Paint Abatement and Poisoning Prevention

[Docket No. N–93–3617; FR–3444–N–03]

NOFA for Lead-Based Paint Hazard Reduction in Priority Housing: Category I and Category II Grants; Extension of Deadline

AGENCY: Office of the Secretary—Office of Lead-Based Paint Abatement and Poisoning Prevention, HUD.

ACTION: Notice of funding availability; extension of deadline.

SUMMARY: This notice extends the deadline to September 15, 1993, for applications for Category I grants in the NOFA document that was published in the **Federal Register** on June 4, 1993 (58 FR 31848).

FOR FURTHER INFORMATION CONTACT: Ellis G. Goldman, Director, Program Management Division, Office of Lead-Based Paint Abatement and Poisoning Prevention, room B–133, 451 Seventh Street SW., Washington, DC 20410, telephone 1–800–RID–LEAD (1–800–743–5323). TDD numbers for the hearing-impaired are: (202) 708–9300 (not a toll-free number), or 1–800–877–8339.

SUPPLEMENTARY INFORMATION: On June 4, 1993, the Department published a Notice of Funding Availability for this program (58 FR 31848). A notice correcting a date applicable to Category II grants was published on June 14, 1993 (58 FR 32958).

This notice is for the purpose of extending the deadline for applications for Category I grants until September 15, 1993. The Department has decided to extend the deadline for all Category I applicants because certain States and local governments in the Midwest affected by recent flooding may have difficulty in meeting the original deadline. These jurisdictions have had to concentrate their personnel resources on relief efforts and, therefore, may not have been able to complete timely applications for the assistance available under this program. In order to recognize the difficulties faced by these jurisdictions, the Department has decided to extend the application period for Category I grants to September 15, 1993. The new deadline will apply to all potential applicants. In addition to this notice in the **Federal Register**, the Department is sending direct notification of the deadline change to all parties that have requested an application.

Accordingly, FR Doc. 93–13101, NOFA for Lead-Based Paint Hazard Reduction in Priority Housing: Category I and Category II Grants, published in the **Federal Register** on June 4, 1993 (58 FR 31848), is amended by revising the Category I deadline dates, as follows:

(1) On page 31848, in column 1, under the section "DATES", the Category I text is revised to read as follows:

DATES: * * *

Category I: No later than 3 p.m. (Eastern Time) on Wednesday, September 15, 1993.

* * * * *

(2) On page 31854, in column 2, under "*4.1 Submitting Applications for Category I Grants*", the first paragraph is revised to read as follows:

4.1 Submitting Applications for Category I Grants

To be considered for funding under a Category I Grant, an original and two copies of the application must be physically received in the Office of Lead-Based Paint Abatement and Poisoning Prevention (OLBPAPP), Department of Housing and Urban Development, room B–133, 451 Seventh Street, SW., Washington, DC 20410, no later than 3 p.m. (Eastern Time) on Wednesday, September 15, 1993. Electronic (FAX or equivalent transmittal) application is not an acceptable transmittal mode.

* * * * *

Authority: 42 U.S.C. 3535(d) and 4821–4846.

Dated: August 5, 1993.

Arthur S. Newburg,

Director, Office of Lead-Based Paint Abatement and Poisoning Prevention.

[FR Doc. 93–19248 Filed 8–10–93; 8:45 am]

BILLING CODE 4210–32–M

[Docket No. N–93–3622; FR 3416–N–02]

Deadline Extension for FY 1993 Notice of Funding Availability for the Public and Indian Housing Resident Management Program Technical Assistance Grant

AGENCY: Office of the Secretary, HUD.

ACTION: Notice of deadline extension.

SUMMARY: HUD is extending the application deadline for Technical Assistance Grants under the Public and Indian Housing Resident Management Program for those applicants who were adversely affected in their application preparation as a result of flood conditions in the Mid-West.

DATES: For qualified applicants, the application deadline is being extended from August 9, 1993 to August 16, 1993.

FOR FURTHER INFORMATION CONTACT: Christine Jenkins, Office of Resident Initiatives, Department of Housing and Urban Development, room 4112, 451 Seventh Street, SW., Washington, DC 20410, telephone (202) 708–3611.

To provide service for persons who are hearing- or speech-impaired, this number may be reached via TDD by dialing the Federal Information Relay Service on 1–800–877–TDDY, 1–800–877–8339, or 202–708–9300. (Telephone numbers, other than "800" TDD numbers, are not toll free.)

SUPPLEMENTARY INFORMATION: On June 8, 1993, HUD published a Notice of Funding Availability (NOFA) announcing the availability of FY 1993 funds for Public Housing Resident Management Program Technical Assistance (see 58 FR 32254).

In this Notice, HUD is extending the application deadline for technical assistance grants under the Public Housing Resident Management Program for those applicants who were adversely affected in their preparation of applications as a result of flood conditions in the Mid-West. For those applicants who qualify, the application deadline is being extended from August 9, 1993 to close of business at the appropriate HUD Field Office on August 16, 1993.

An applicant may qualify for an extension of the application deadline for Technical Assistance Grants under the Public Housing Resident Management Program if:

(A) The applicant submits documentation with its application describing the reasons which justify a delayed submission pursuant to this Notice; and

(B) HUD determines that the documentation adequately demonstrates that the applicant's ability to prepare or

submit the Technical Assistance Grant application was substantially impaired as a result of the flood. If HUD makes this determination, the application will be accepted for review.

A qualified application may submit an application, or may revise and resubmit a previously submitted application, as long as the application is received by the appropriate HUD Field Office by close of business on August 16, 1993. A list of Field Offices was included as the Appendix to the June 8, 1993 NOFA. All submission requirements other than the date by which such applications must be received remain unaffected by this Notice.

Dated: August 6, 1993.

Michael B. Janis,

General Deputy Assistant Secretary for Public and Indian Housing.

[FR Doc. 93–19341 Filed 8–10–93; 8:45 am]

BILLING CODE 4210–32–M

Office of the Assistant Secretary for Housing-Federal Housing Commissioner

[Docket No. N–93–3654; FR 3551–N–01]

Mortgage and Loan Insurance Programs Under the National Housing Act—Debenture Interest Rates

AGENCY: Office of the Assistant Secretary for Housing-Federal Housing Commissioner, (HUD).

ACTION: Notice of change in debenture interest rates.

SUMMARY: This notice announces changes in the interest rates to be paid on debentures issued with respect to a loan or mortgage insured by the Federal Housing Commissioner under the provisions of the National Housing Act (the "Act"). The interest rate for debentures issued under section 221(g)(4) of the Act during the six-month period beginning July 1, 1993, is 6 percent. The interest rate for debentures issued under any other provision of the Act is the rate in effect on the date that the commitment to insure the loan or mortgage was issued, or the date that the loan or mortgage was endorsed (or initially endorsed if there are two or more endorsements) for insurance, whichever rate is higher. The interest rate for debentures issued under these other provisions with respect to a loan or mortgage committed or endorsed during the six-month period beginning July 1, 1993, is 7 percent.

FOR FURTHER INFORMATION CONTACT: Fred E. McLaughlin, Financial Services Division, Department of Housing and Urban Development, 470 L'Enfant Plaza East, suite 3120, Washington, DC 20024. Telephone (202) 755–7450 or TDD number (202) 708–4594 for hearing or speech-impaired callers. These are not toll-free numbers.

SUPPLEMENTARY INFORMATION: Section 224 of the National Housing Act (24 U.S.C. 1715o) provides that debentures issued under the Act with respect to an insured loan or mortgage (except for debentures issued pursuant to section 221(g)(4) of the Act) will bear interest at the rate in effect on the date the commitment to insure the loan or mortgage was issued, or the date the loan or mortgage was endorsed (or initially endorsed if there are two or more endorsements) for insurance, whichever rate is higher. This provision is implemented in HUD's regulations at 24 CFR 203.405, 203.479, 207.259(e)(6), and 220.830. Each of these regulatory provisions states that the applicable rates of interest will be published twice each year as a notice in the **Federal Register.**

Section 224 further provides that the interest rate on these debentures will be set from time to time by the Secretary of HUD, with the approval of the Secretary of the Treasury, in an amount not in excess of the interest rate determined by the Secretary of the Treasury pursuant to a formula set out in the statute.

The Secretary of the Treasury (1) has determined, in accordance with the provisions of section 224, that the statutory maximum interest rate for the period beginning July 1, 1993, is 7 percent and (2) has approved the establishment of the debenture interest rate by the Secretary of HUD at 7 percent for the six-month period beginning July 1, 1993. This interest rate will be the rate borne by debentures issued with respect to any insured loan or mortgage (except for debentures issued pursuant to section 221(g)(4)) with an insurance commitment or endorsement date (as applicable) within the last six months of 1993.

For convenience of reference, HUD is publishing the following chart of debenture interest rates applicable to mortgages committed or endorsed since January 1, 1980:

Effective interest rate	On or after	Prior to
9½	Jan. 1, 1980	July 1, 1980.
9⅞	July 1, 1980	Jan. 1, 1981.
11¾	Jan. 1, 1981	July 1, 1981.
12⅞	July 1, 1981	Jan. 1, 1982.
12¾	Jan. 1, 1982	Jan. 1, 1983.
10¼	Jan. 1, 1983	July 1, 1983.
10⅜	July 1, 1983	Jan. 1, 1984.
11½	Jan. 1, 1984	July 1, 1984.
13⅜	July 1, 1984	Jan. 1, 1985.
11⅝	Jan. 1, 1985	July 1, 1985.
11⅛	July 1, 1985	Jan. 1, 1986.
10¼	Jan. 1, 1986	July 1, 1986.
8¼	July 1, 1986	Jan. 1, 1987.
8	Jan. 1, 1987	July 1, 1987.
9	July 1, 1987	Jan. 1, 1988.
9⅛	Jan. 1, 1988	July 1, 1988.
9⅜	July 1, 1988	Jan. 1, 1989.
9¼	Jan. 1, 1989	July 1, 1989.
9	July 1, 1989	Jan. 1, 1990.
8⅛	Jan. 1, 1990	July 1, 1990.
9	July 1, 1990	Jan. 1, 1991.
8¾	Jan. 1, 1991	July 1, 1991.
8½	July 1, 1991	Jan. 1, 1992.
8	Jan. 1, 1992	July 1, 1992.
8	July 1, 1992	Jan. 1, 1993.
7¾	Jan. 1, 1993	July 1, 1993.
7	July 1, 1993.	

Section 221(g)(4) of the Act provides that debentures issued pursuant to that paragraph (with respect to the assignment of an insured mortgage to the Secretary) will bear interest at the "going Federal rate" in effect at the time the debentures are issued. The term "going Federal rate", as used in that paragraph, is defined to mean the interest rate that the Secretary of the Treasury determines, pursuant to a formula set out in the statute, for the six-month periods of January through June and July through December of each year. Section 221(g)(4) is implemented in the HUD regulations at 24 CFR 221.790.

The Secretary of the Treasury has determined that the interest rate to be borne by debentures issued pursuant to section 221(g)(4) during the six-month period beginning July 1, 1993, is 6 percent.

HUD expects to publish its next notice of change in debenture interest rates in January 1994.

The subject matter of this notice falls within the categorical exclusion from HUD's environmental clearance procedures set forth in 24 CFR 50.20(l). For that reason, no environmental finding has been prepared for this notice.

(Secs. 211, 221, 224, National Housing Act, 12 U.S.C. 1715b, 1715l, 1715o; sec. 7(d), Department of HUD Act, 42 U.S.C. 3535(d))

Dated: July 27, 1993.

Nicolas P. Retsinas,

Assistant Secretary for Housing—Federal Housing Commissioner.

[FR Doc. 93–19179 Filed 8–10–93; 8:45 am]

BILLING CODE 4210–27–M

DEPARTMENT OF THE INTERIOR

Fish and Wildlife Service

Availability of the Agency Draft Recovery Plan for Cooley's Meadowrue for Review and Comment

AGENCY: Fish and Wildlife Service, Interior.

ACTION: Notice of document availability and public comment period.

SUMMARY: The U.S. Fish and Wildlife Service (Service) announces the availability for public review of an agency draft recovery plan for Cooley's meadowrue (*Thalictrum cooleyi*). This perennial herb historically occurred from North Carolina to Florida. Presently, Cooley's meadowrue is known from 11 locations in the coastal plain of North Carolina and 1 location in the Florida panhandle. The Service solicits review and comments from the public on this draft plan.

DATES: Comments on the agency draft recovery plan must be received on or before (October 12, 1993.) to receive consideration by the Service.

ADDRESSES: Persons wishing to review the agency draft recovery plan may obtain a copy of contacting the Asheville Field Office, U.S. Fish and Wildlife Service, 330 Ridgefield Court, Asheville, North Carolina 28806 (Telephone 704/665–1195). Written comments and materials regarding the plan should be addressed to the Field Supervisor at the above address. Comments and materials received are available on request for public inspection, by appointment, during normal business hours at the above address.

FOR FURTHER INFORMATION CONTACT: Ms. Nora Murdock at the address and telephone number shown above (Ext. 231).

SUPPLEMENTARY INFORMATION:

Background

Restoring endangered or threatened animals and plants to the point where they are again secure, self-sustaining members of their ecosystems is a primary goal of the Service's endangered species program. To help guide the recovery effort, the Service is working to prepare recovery plans for most of the listed species native to the United States. Recovery plans described actions considered necessary for conservation of the species, establish criteria for recognizing the recovery levels for downlisting or delisting them, and estimate time and cost for implementing the recovery measures needed.

The Endangered Species Act of 1973, as amended (16 U.S.C. 1531 *et seq.*) (Act), requires the development of recovery plans for listed species unless such a plan would not promote the conservation of a particular species. Section 4(f) of the Act, as amended in 1988, requires that a public notice and an opportunity for public review and comment be provided during recovery plan development. The Service will consider all information presented during a public comment period prior to approval of each new or revised recovery plan. The Service and other Federal agencies will also take these comments into account in the course of implementing approved recovery plans.

The primary species considered in this draft recovery plan is Cooley's meadowrue (*Thalictrum cooleyi*). The areas of emphasis for recovery actions are the coastal plain of North Carolina and the panhandle of Florida. Habitat protection, reintroduction, and preservation of genetic material are major objectives of this recovery plan.

Public Comments Solicited

The Service solicits written comments on the recovery plan described. All comments received by the date specified above will be considered prior to approval of the plan.

Authority

The authority for this action is Section 4(f) of the Endangered Species Act, 16 U.S.C. 1533(f).

Dated: July 29, 1993.

Brian P. Cole,

Field Supervisor.

[FR Doc. 93–19193 Filed 8–10–93; 8:45 am]

BILLING CODE 4310–55–M

Endangered and Threatened Wildlife and Plants: Environmental Impact Statement for the Reintroduction of Gray Wolves in Yellowstone National Park and Central Idaho

AGENCY: Fish and Wildlife Service, Interior.

ACTION: Notice of public hearings.

SUMMARY: The U.S. Fish and Wildlife Service announces its intention to conduct public hearings in the States of Idaho, Montana, and Wyoming and in several major cities nationwide (Seattle, Denver, Salt Lake City, and Washington, DC) to solicit comments on the draft Environmental Impact Statement for the reintroduction of gray wolves in Yellowstone National Park and central Idaho.

DATES: Public hearings will be held in the following cities and States: Bozeman, Missoula, and Dillon, Montana, on August 25; Coeur d'Alene, Lewiston, and Idaho Falls, Idaho, on August 31, 1993; Jackson Hole, Riverton, and Cody, Wyoming, on September 1.

Additional public hearings will be held nationwide: Cheyenne, Wyoming; Boise, Idaho; and Helena, Montana, on September 27; Salt Lake City, Utah; Seattle, Washington; and Denver, Colorado, on September 28; and Washington, DC, on September 30. The times and locations of the hearings will be announced in the local media and in mailings to the interested public.

ADDRESSES: Questions and comments concerning these public meetings should be sent to Ed Bangs, Project Leader, Yellowstone National Park and Central Idaho Gray Wolf Environmental Impact Statement, U.S. Fish and Wildlife Service, P.O. Box 8017, Helena, Montana 59601.

FOR FURTHER INFORMATION CONTACT: Ed Bangs, Project Leader (see addresses above), at telephone (406) 449–5202.

SUPPLEMENTARY INFORMATION: Under the provisions of the National Environmental Policy Act, the U.S. Fish and Wildlife Service (Service) is preparing an Environmental Impact Statement (Statement) for the reintroduction of wolves into Yellowstone National Park and central Idaho.

On March 9, 1978, the gray wolf was listed as an endangered species throughout the 48 conterminous States, except for Minnesota where the species was listed as threatened. The Northern Rocky Mountain Wolf Recovery Plan (originally approved on May 28, 1980, and revised on August 3, 1987) identified the need for reintroduction of the gray wolf into Yellowstone National Park and central Idaho.

In November 1991, Congress directed the Service, in consultation with the National Park Service and the Forest Service, to prepare a Statement concerning recovery of wolves in Yellowstone National Park and central Idaho and to have a draft completed by May 13, 1993.

In 1992, a series of public open houses and hearings were held to identify issues and alternatives to be considered in the Statement. Eighteen issues were addressed as part of one or more wolf management alternatives. Six issues were analyzed in detail in the draft Statement because they are potentially impacted by wolves or wolf recovery strategies: Big game, hunting harvest, domestic animal depredation, land-use restrictions, visitor use, and local economies. The final five

alternatives in the draft Statement are: (1) Reintroduction of experimental populations, (2) natural recovery, (3) no wolf, (4) wolf management committee alternative (congressionally designated experimental population with State management), and (5) reintroduction of nonexperimental wolves.

People who previously requested wolf recovery information will receive copies of the summary draft Statement. Other interested people can obtain copies by writing to Ed Bangs, Project Leader (see **ADDRESSES** above).

Dated: August 5, 1993.

John L. Spinks, Jr.,

Deputy Regional Director.

[FR Doc. 93–19212 Filed 8–10–93; 8:45 am]

BILLING CODE 4310–55–M

Bureau of Land Management

[NV–030–92–4333–04]

Temporary Closures of Public Lands: Nevada

AGENCY: Bureau of Land Management, Interior Department.

ACTION: Temporary closure of certain public lands in Carson City, Lyon and Douglas Counties on and adjacent to two Off Highway Vehicle race courses: September 5, 1993, Valley Off-Road Racing Association, Yerington 250—Permit Number NV–03516–93–10 and October 2, 1993—High Sierra Motorcycle Club, Carson Valley Qualifier—Permit Number NV–03516–93–05.

SUMMARY: The Carson City District Manager announces the temporary closure of selected public lands under his administration. This action is being taken to provide for public safety and to protect adjacent resources during the official running of the Yerington 250 Off Road Race and the Carson Valley Qualifier Motorcycle Race.

EFFECTIVE DATES: September 4 and 5, 1993; October 1 and 2, 1993.

FOR FURTHER INFORMATION CONTACT: Fran Hull, Walker Area Recreation Planner, Carson City District, Bureau of Land Management, 1535 Hot Springs Road, suite 300, Carson City, Nevada 89706, Telephone: (702) 885–6000.

SUPPLEMENTARY INFORMATION: A map of each closure may be obtained from Fran Hull at the contact address. Each permittee is required to clearly mark and monitor the event route during the closure period. Specific information on each event follows:

Spectators shall remain in safe locations as directed by event officials and BLM personnel during the conduct of both events.

1. Valley Off-Road Racing Association Yerington 250 Off-Road Race, Permit Number NV–03516–93–10. This event is located on roads and washes near Yerington, Nevada in Douglas and Lyon Counties, within T12N R24E; T13N R24E; T14N R24E T13N R25E.

Bureau Lands to be closed include existing roads and washes identified on the ground as the 1983 Yerington 250 Off-Road Race and Bureau Lands within 100 yards of either side except at designated pit, check point and spectator areas. The closure will be in effect from 6 p.m. September 4 until midnight on September 5, 1993.

Spectator locations will be at the Start/Finish area and near route crossings on Delphi Road, Mason Pass Road and Gallagher Pass Road.

2. High Sierra Motorcycle club Carson Valley Qualifier, Permit Number NV–03516–93–05. This event is located on roads and trails in the Pine Nut Mountains near Gardnerville, Carson City and Dayton, Nevada in Douglas, Carson City and Lyon Counties within T13N R20E; T13N R21E; T14N R20E; T14N R21E; T14N R22E; T15N R20E; T15N R21E; T15N R22E; T16N R21E; T16N R22E. The Bureau Lands to be closed to the public include existing roads and trails identified on the ground as the 1993 Carson Valley Qualifier and Bureau Lands within 100 yards of either side except at designated pit and spectator areas. Brunswick Canyon Road will be closed to through traffic, Sunrise Pass Road will have traffic regulated. This closure will be effective from 6 p.m. October 1 to 6 p.m. October 2, 1993. Spectators are welcome at the Start/Finish area at Minden, Nevada. The above restrictions do not apply to race officials, law enforcement and agency personnel, or BLM personnel monitoring the event.

Authority: 43 CFR 8341; 43 CFR 8364 and 43 CFR 8372. Any person failing to comply with the closure order may be subject to the penalties provided in 43 CFR 8360.7.

Dated: July 28, 1993.

James W. Elliott,

District Manager.

[FR Doc. 93–19187 Filed 8–10–93; 8:45 am]

BILLING CODE 4310–HC–M

[NV–060–4191–03–7122–8661]

Availability of the Cortez Gold Mines Expansion Final Environmental Impact Statement and Record of Decision

AGENCY: Bureau of Land Management, Interior.

ACTION: Availability of Final EIS, ROD and comment period.

SUMMARY: Pursuant to section 102(2)(c) of the National Environmental Policy Act of 1969, notice is hereby given that the Bureau of Land Management, U.S. Department of Interior, has prepared, by a third party contractor, a final environmental impact statement (FEIS) on the Cortez Gold Mines Expansion in Northern Nevada, and has made copies of the document available for public review. Also available is the FEIS's associated Record of Decision (ROD) approving the findings of the EIS and Cortez's Plan of Operations.

DATES: The thirty day comment period begins Friday, August 13, 1993. Comments on the FEIS and its ROD must be postmarked by September 13, 1993.

ADDRESSES: Please address written comments to: District Manager, P.O. Box 1420, Battle Mountain, NV 89820; ATTN: Cortez Project Team Leader.

FOR FURTHER INFORMATION CONTACT: Dave Davis, Cortez Team Leader at the above address, or telephone (702) 635–4000.

SUPPLEMENTARY INFORMATION: Copies of the Cortez Gold Mines Expansion FEIS and its associated ROD approving the findings of the EIS and Cortez's Plan of Operations are available for public review and comment.

Any interested public may obtain a copy of these documents by writing the above address or calling the telephone number above and requesting a copy.

Copies of the FEIS and ROD are available for review at the following locations: Nevada State Office BLM, 850 Harvard Way, Reno, Nevada 89520; the Eureka County Library, Monroe Street, Eureka, Nevada 89316; the Elko County Library, 720 Court Street, Elko, Nevada 89801; and the Lander County Library, Highway 8 A, Battle Mountain, Nevada 89820.

As provided in CEQ regulation 40 CFR 1506.10(b)(2), the BLM has requested from the Secretary of Interior's Office of Environmental Affairs (SOI–OEA) an exception to the required thirty day delay between the release of the FEIS and its associated ROD. The SOI–OEA has approved this exception. The ROD is part of the FEIS. The ROD approves the findings of the EIS and approves Cortez's Plan of Operations.

Dated: July 28, 1993.

Michael C. Mitchell,

Associate District Manager.

[FR Doc. 93–19280 Filed 8–10–93; 8:45 am]

BILLING CODE 4310–HC–M

[NM-940-4110-03; TXNM 60097]

Proposed Reinstatement of Terminated Oil and Gas Lease; New Mexico

AGENCY: Bureau of Land Management; Interior.

ACTION: Notice.

SUMMARY: Under the provisions of Public Law 97-451, a petition for reinstatement of Oil and Gas Lease TXNM 60097, Shelby County, Texas, was timely filed and was accompanied by all required rentals and royalties accruing from February 1, 1993, the date of termination. No valid lease has been issued affecting the land. The lessee has agreed to new lease terms for rentals and royalties at rates of $5 per acre or fraction thereof and 16⅔ percent, respectively. Payment of a $500 administrative fee has been made. Having met all the requirements for reinstatement of the lease as set in section 31 (d) and (e) of the Mineral Leasing Act of 1920, as amended (30 U.S.C. 188 (d) and (e)), the Bureau of Land Management is proposing to reinstate the lease effective February 1, 1993, subject to the original terms and conditions of the lease and the increased rental and royalty rates cited above, and the reimbursement for cost of publication of this notice.

FOR FURTHER INFORMATION CONTACT: Martha A. Rivera, BLM, New Mexico State Office, (505) 438-7584.

Martha A. Rivera,

Chief, Oil and Gas Leasing Unit.

[FR Doc. 93-19203 Filed 8-10-93; 8:45 am]

BILLING CODE 4310-FB-M

Minerals Management Service

Information Collection Submitted to the Office of Management and Budget for Review Under the Paperwork Reduction Act

The proposal for the collection of information listed below has been submitted to the Office of Management and Budget (OMB) for approval under the provisions of the Paperwork Reduction Act (44 U.S.C. chapter 35). Copies of the proposed collections of information and related forms may be obtained by contacting the Bureau's Clearance Officer at the telephone number listed below. Comments and suggestions on the proposal should be made directly to the Office of Management and Budget; Paperwork Reduction Project (1010-0039); Washington, DC 20503, telephone (202) 395-7340, with copies to Chief, Engineering and Standards Branch; Mail Stop 4700; Minerals Management Service; 381 Elden Street; Herndon, Virginia 22070-4817.

Title: Well Potential Test Report and Request for Maximum Production Rate (MPR), Form MMS-126

OMB approval number: 1010-0039

Abstract: Respondents submit Form MMS-126 to the Minerals Management Service's (MMS) Regional Supervisors for the purposes of establishing well maximum production rates (MPR). This information is used to establish the maximum daily rate at which oil and gas may be produced from a specific well completion.

Bureau form number: Form MMS-126

Frequency: On occasion

Description of respondents: Outer Continental Shelf oil and gas lessees

Estimated completion time: 1 hour

Annual responses: 3,727

Anual burden hours: 3,727

Bureau Clearance Officer: Arthur Quintana, (703) 787-1239

Dated: June 14, 1993.

Henry G. Bartholomew,

Deputy Associate Director for Operations and Safety Management.

[FR Doc. 93-19189 Filed 8-10-93; 8:45 am]

BILLING CODE 4310-MR-M

INTERNATIONAL TRADE COMMISSION

Agency Form Submitted for OMB Review

AGENCY: United States International Trade Commission.

ACTION: In accordance with the provisions of the Paperwork Reduction Act of 1980 (44 U.S.C. chapter 35), the Commission has submitted a request for approval of questionnaires to the Office of Management and Budget for review.

PURPOSE OF INFORMATION COLLECTION: The forms are for use by the Commission in connection with investigation No. 332-342, Metallurgical Coke: Baseline Analysis of the U.S. Industry and Imports, instituted under the authority of section 332(g) of the Tariff Act of 1930 (19 U.S.C. 1332(g)).

SUMMARY OF PROPOSAL:

(1) Number of forms submitted: Two

(2) Title of form: Metallurgical Coke: Baseline Analysis of the U.S. Industry and Imports-Questionnaires for U.S. Producers and Purchasers

(3) Type of request: New

(4) Frequency of use: Producer and Purchaser questionnaire, single data gathering, scheduled for 1993.

(5) Description of respondents: U.S. firms which produce metallurgical coke products or purchase blast furnace coke.

(6) Estimated number of respondents: 36 (Producer questionnaire) 24 (Purchaser questionnaire)

(7) Estimated total number of hours to complete the forms: 2,280

(8) Information obtained from the form that qualifies as confidential business information will be so treated by the Commission and not disclosed in a manner that would reveal the individual operations of a firm.

ADDITIONAL INFORMATION OR COMMENT: Copies of the forms and supporting documents may be obtained from Mark Paulson (USITC, telephone no. (202) 205-3429). Comments about the proposals should be directed to the Office of Information and Regulatory Affairs, Office of Management and Budget (OMB), Washington, DC 20503, Attention: Desk Officer for the U.S. International Trade Commission (telephone no. 202-395-7340). All comments should be specific, indicating which part of the questionnaire is objectionable, describing the concern in detail, and including specific suggested revisions or language changes. Copies of any comments should be provided to Robert Rogowsky, Director, Office of Operations, U.S. International Trade Commission, 500 E Street SW., Washington, DC 20436.

Hearing impaired individuals are advised that information on this matter can be obtained by contacting our TTD terminal (telephone no. 202-205-1810).

Issued: August 6, 1993.

By order of the Commission.

Donna R. Koehnke,

Secretary.

[FR Doc. 93-19277 Filed 8-10-93; 8:45 am]

BILLING CODE 7020-02-P

[Investigation 337-TA-345]

Initial Determination Terminating Respondent on the Basis of Settlement Agreement

In the matter of certain anisotropically etched one megabit and greater drams, components thereof, and products containing such drams.

AGENCY: U.S. International Trade Commission.

ACTION: Notice is hereby given that the Commission has received an initial determination from the presiding officer in the above captioned investigation terminating the following respondents on the basis of a settlement agreement: GoldStar Electron Co., Ltd. and GoldStar Electron America, Inc.

SUPPLEMENTARY INFORMATION: This investigation is being conducted pursuant to section 337 of the Tariff Act of 1930 (19 U.S.C. 1337). Under the Commission's rules, the presiding officer's initial determination will become the determination of the Commission thirty (30) days after the date of its service upon the parties, unless the Commission orders review of the initial determination. The initial determination in this matter was served upon parties on August 4, 1993.

Copies of the initial determination, the settlement agreement, and all other nonconfidential documents filed in connection with this investigation are available for inspection during official business hours (8:45 a.m. to 5:15 p.m.) in the Office of the Secretary, U.S. International Trade Commission, 500 E Street SW., Washington, DC 20436, telephone (202) 205–2000. Hearing impaired individuals are advised that information on this matter can be obtained by contacting the Commission's TDD terminal on (202) 205–1810.

WRITTEN COMMENTS: Interested persons may file written comments with the Commission concerning termination of the aforementioned respondents. The original and 14 copies of all such documents must be filed with the Secretary to the Commission, 500 E Street SW., Washington, DC 20436, no later than 10 days after publication of this notice in the **Federal Register**. Any person desiring to submit a document (or portions thereof) to the Commission in confidence must request confidential treatment. Such requests should be directed to the Secretary to the Commission and must include a full statement of the reasons why confidential treatment should be granted. The Commission will either accept the submission in confidence or return it.

FOR FURTHER INFORMATION CONTACT: Ruby J. Dionne, Office of the Secretary, U.S. International Trade Commission, Telephone (202) 205–1802.

Issued: August 4, 1993.

By order of the Commission.

Donna R. Koehnke,

Secretary.

[FR Doc. 93–19274 Filed 8–10–93; 8:45 am]

BILLING CODE 7020–02–P

[Investigation No. 337–TA–344]

Change of Commission Investigative Attorney

In the matter of certain cutting tools for flexible plastic conduit and components thereof.

Notice is hereby given that, as of this date, Jeffrey R. Whieldon, Esq. of the Office of Unfair Import Investigations is designated as the Commission investigative attorney in the above-cited investigation instead of Alesia M. Woodworth, Esq. and Gabrielle Siman, Esq.

The Secretary is requested to publish this Notice in the **Federal Register**.

Dated: August 2, 1993.

Lynn I. Levine,

Director, Office of Unfair Import Investigations.

[FR Doc. 93–19272 Filed 8–10–93; 8:45 am]

BILLING CODE 7020–02–P

[Investigation No. 337–TA–348]

Change of Commission Investigative Attorney

In the matter of certain in-line roller skates with ventilated boots and in-line roller skates with axle aperture plugs and component parts thereof.

Notice is hereby given that, as of this date, Jeffrey R. Whieldon, Esq. of the Office of Unfair Import Investigations is designated as the Commission investigative attorney in the above-cited investigation instead of Alesia M. Woodworth, Esq.

The Secretary is requested to publish this Notice in the **Federal Register**.

Lynn I. Levine,

Director, Office of Unfair Import Investigations.

Dated: August 2, 1993.

[FR Doc. 93–19273 Filed 8–10–93; 8:45 am]

BILLING CODE 7020–02–P

[Investigation No. 731–TA–651 (Preliminary)]

Silicon Carbide From the People's Republic of China

Determination

On the basis of the record[1] developed in the subject investigation, the Commission determines, pursuant to section 733(a) of the Tariff Act of 1930 (19 U.S.C. 1673b(a)), that there is a reasonable indication that an industry in the United States is materially injured or threatened with material injury by reason of imports from the People's Republic of China of silicon carbide,[2] provided for in subheadings 2849.20.10 and 2849.20.20 of the Harmonized Tariff Schedule of the United States, that are alleged to be sold in the United States at less than fair value (LTFV). Four Commissioners determined there is a reasonable indication of threat of material injury by reason of alleged LTFV imports[3] and two Commissioners determined there is a reasonable indication of material injury by reason of alleged LTFV imports.[4]

Background

On June 21, 1993, a petition was filed with the Commission and the Department of Commerce by the Ad Hoc Silicon Carbide Coalition, Washington, DC, alleging that an industry in the United States is materially injured and threatened with continued material injury by reason of LTFV imports of silicon carbide from the People's Republic of China. Accordingly, effective June 21, 1993, the Commission instituted antidumping investigation No. 731–TA–651 (Preliminary).

Notice of the institution of the Commission's investigation and of a public conference to be held in connection therewith was given by posting copies of the notice in the Office of the Secretary, U.S. International Trade Commission, Washington, DC, and by publishing the notice in the **Federal Register** of June 30, 1993 (58 FR 35044). The conference was held in Washington, DC, on July 12, 1993, and all persons who requested the opportunity were permitted to appear in person or by counsel.

The Commission transmitted its determination in this investigation to the Secretary of Commerce on August 5, 1993. The views of the Commission are contained in USITC Publication 2668 (August 1993), entitled "Silicon Carbide from the People's Republic of China: Investigation No. 731–TA–651 (Preliminary."

Issued: August 5, 1993.

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[1] The record is defined in section 207.2(f) of the Commission's Rules of Practice and Procedure (19 CFR 207.2(f)).

[2] The imported merchandise covered by this investigation is silicon carbide, regardless of grade or form, containing by weight from 20 to 98 percent, inclusive, silicon carbide and with a grain size coarser than 325 F (as set by the American National Standards Institute), and inclusive of split sizes.

[3] Chairman Newquist, Vice Chairman Watson, Commissioner Rohr, and Commissioner Nuzum determine that there is a reasonable indication that an industry in the United States is threatened with material injury by reason of imports from the People's Republic of China of silicon carbide that are alleged to be sold at LTFV.

[4] Commissioners Brunsdale and Crawford determine that there is a reasonable indication that an industry in the United States is materially injured by reason of imports from the People's Republic of China of crude silicon carbide and that there is no reasonable indication that an industry in the United States is materially injured or threatened with material injury, or that the establishment of an industry in the United States is materially retarded, by reason of imports from the People's Republic of China of refined silicon carbide that are alleged to be sold at LTFV.

By order of the Commission.

Donna R. Koehnke,

Secretary.

[FR Doc. 93–19275 Filed 8–10–93; 8:45 am]

BILLING CODE 7020–02–P

[Investigation No. 332–341]

Proposed Reorganization of U.S. International Trade Relief Laws

AGENCY: International Trade Commission.

ACTION: Request for comments from other Federal agencies and interested members of the public.

SUMMARY: The Commission has prepared a draft of reorganized trade laws for possible inclusion in the United States Code. The draft consists of existing trade relief laws, reorganized and consolidated into a single title, prepared pursuant to a request from the U.S. House of Representatives, Committee on Ways and Means.

DATES: Comments on the draft trade relief laws title will be considered if received on or before October 12, 1993.

ADDRESSES: Copies of the draft trade relief laws title may be obtained by contacting the Office of the Secretary, Docket Section, U.S. International Trade Commission, 500 E Street SW., room 112, Washington, DC 20436, telephone 202–205–2000. A signed original and 14 copies of each set of comments on the draft trade relief laws title should be submitted to Donna R. Koehnke, Secretary, U.S. International Trade Commission, 500 E Street SW., room 112, Washington, DC 20436.

FOR FURTHER INFORMATION CONTACT: The draft trade relief laws title is divided into ten subtitles, as indicated below. Questions concerning subtitles I-VI should be directed to William Gearhart at 202–205–3091. Questions concerning subtitles VII and VIII should be directed to Anjali Singh at 202–205–3117. Questions concerning subtitles IX and X should be directed to P.N. Smithey at 202–205–3061. Hearing-impaired individuals can obtain information by contacting the Commission's TDD terminal at 202–205–1810.

SUPPLEMENTARY INFORMATION: The subject investigation is being conducted under section 332(g) of the Tariff Act of 1930 (19 U.S.C. 1332(g)) to develop legislative proposals for consolidating and simplifying the organization of U.S. international trade relief laws under which tariffs or quantitative or other import restrictions may be imposed (other than the Harmonized Tariff Schedule of the United States). The investigation was instituted at the request of the U.S. House of Representatives, Committee on Ways and Means (the Committee). See 58 FR 12253 (Mar. 3, 1993).

The report that the Commission will forward to the Committee at the conclusion of this investigation will contain (1) a Commission proposal for reorganizing trade relief laws into a proposed trade relief laws title for possible inclusion in the United States Code, (2) the text of the proposed trade relief laws title, and (3) a section-by-section analysis of the text.

The Commission has prepared a draft of the proposed trade relief laws title for comment by interested members of the public and by other Federal agencies and departments. The Committee gave the Commission discretion to determine which statutes to cover in the report and the proposed trade relief laws title. Set forth below is a list of the statutes that are incorporated, in whole or part, into each subtitle of the draft trade relief laws title.

Subtitle I—*Positive Adjustment By Industries Injured By Imports*
- Chapter I of Title II (sections 201–204) of the Trade Act of 1974, as amended (19 U.S.C. 2251–2254)
- Section 330(d) of the Tariff Act of 1930, as amended (19 U.S.C. 1330(d))
- Section 302(b) of the U.S.-Canada Free Trade Agreement Implementation Act (19 U.S.C. 2112 note)
- Sections 403 and 404 of the Trade and Tariff Act of 1984 (19 U.S.C. 2112 note)
- Section 213 of the Caribbean Basin Economic Recovery Act (19 U.S.C. 2703)
- Section 204 of the Andean Trade Preference Act (19 U.S.C. 3203)

Subtitle II—*Bilateral Actions*
- Section 302(a) of the U.S.-Canada Free Trade Agreement Implementation Act (19 U.S.C. 2112 note)

Subtitle III—*Relief From Imports From Communist Countries*
- Section 406 of the Trade Act of 1974, as amended (19 U.S.C. 2436)

Subtitle IV—*National Security Import Restrictions*
- Section 232 of the Trade Expansion Act of 1962, as amended (19 U.S.C. 1862, 1864)

Subtitle V—*Provisions Concerning Agricultural and Textile Products*
- Section 204 of the Agricultural Act of 1956 (7 U.S.C. 1854)
- Section 22 of the Agricultural Adjustment Act of 1933, as amended (7 U.S.C. 624)

Subtitle VI—*Trade Preferences for Developing Countries*
- Title V (sections 501–506) of the Trade Act of 1974, as amended (19 U.S.C. 2461–2466)
- Sections 211–216 of the Caribbean Basin Economic Recovery Act (19 U.S.C. 2701–2706)
- Sections 202–208 of the Andean Trade Preference Act (19 U.S.C. 3201–3206)

Subtitle VII—*Antidumping and Countervailing Duties*
- Section 303 of the Tariff Act of 1930, as amended (19 U.S.C. 1303)
- Subtitle A of Title VII (sections 701–709) of the Tariff Act of 1930, as amended (19 U.S.C. 1671 et seq.)
- Subtitle B of Title VII (sections 731–739) of the Tariff Act of 1930, as amended (19 U.S.C. 1673 et seq.)
- Subtitle C of Title VII (sections 751, 761 and 762) of the Tariff Act of 1930, as amended (19 U.S.C. 1675 et seq.)
- Subtitle D of Title VII (sections 771–781) of the Tariff Act of 1930, as amended (19 U.S.C. 1677 et seq.)
- Section 1317 of the Omnibus Trade and Competitiveness Act of 1988 (19 U.S.C. 1677k)
- Section 516A of the Tariff Act of 1930 (19 U.S.C. 1516a)

Subtitle VIII—*Antidumping Act of 1916*
- Antidumping Act of 1916 (15 U.S.C. 71 et seq.)

Subtitle IX—*Relief From Unfair Practices in Import Trade*
- Section 337 of the Tariff Act of 1930, as amended (19 U.S.C. 1337)
- Section 603 of the Trade Act of 1974 (19 U.S.C. 2482)

Subtitle X—*Enforcement of United States Rights Under Trade Agreements, Response to Certain Foreign Trade Practices, and Other Matters*
- Section 181 of the Trade Act of 1974, as amended (19 U.S.C. 2241)
- Title III, Chapter 1 (sections 301–310) of the Trade Act of 1974, as amended (19 U.S.C. 2411–2420)
- Section 307(b) of the Trade and Tariff Act of 1984 (19 U.S.C. 2114d)
- Section 182 of the Trade Act of 1974 (19 U.S.C. 2242)
- Sections 1373–1382 of the Omnibus Trade and Competitiveness Act of 1988 (provisions of the Telecommunications Trade Act of 1988) (19 U.S.C. 3102–3111)
- Section 305(d)-(k) of the Trade Agreements Act of 1979, as amended (19 U.S.C. 2515(d)-(k))
- 41 U.S.C.A. 10b—Historical and Statutory Notes, Public Law 101–514, title V, 511, Nov. 5, 1990, 104 Stat. 2098 and Public Law 101–516, Title III, 340 Nov. 5, 1990, 104 stat. 2187

The Committee instructed the Commission to seek to achieve the

following objectives in the proposed reorganization of the subject trade relief laws: (1) logical and accessible arrangement of the law; (2) the elimination of duplicative provisions; and (3) the elimination or simplification of anomalous or illogical provisions, but only to the extent that this is possible without substantive or procedural changes to the existing provisions of law.

Each subtitle of the draft trade relief laws title accordingly reflects some or or all of the following: (1) rearrangement of existing statutory provisions by subject matter; (2) the deletion of references to obsolete laws; (3) the addition of short descriptive headings or subheadings to various sections or subsections; (4) the insertion of brief parenthetical descriptions behind cross-references to various provisions; (5) the renumbering of each section; (6) the deletion of excess verbiage and duplicative provisions; (7) the updating of terminology to conform to current laws; and (8) the revision of cross-references to particular statutes to correspond to the reorganization and renumbering of those statutes in the draft trade relief laws title. The Commission endeavored to make no substantive or procedural changes in existing statutory provisions that were reorganized in that manner.

Issued: August 5, 1993.

By Order of the Commission.

Donna R. Koehnke,

Secretary.

[FR Doc. 93–19276 Filed 8–10–93; 8:45 am]

BILLING CODE 7020–02–P

INTERSTATE COMMERCE COMMISSION

Availability of Environmental Assessments

Pursuant to 42 U.S.C. 4332, the Commission has prepared and made available environmental assessments for the proceedings listed below. Dates environmental assessments are available are listed below for each individual proceeding.

To obtain copies of these environmental assessments contact Ms. Johnnie Davis or Ms. Tawanna Glover-Sanders, Interstate Commerce Commission, Section of Energy and Environment, room 3219, Washington, DC 20423, (202) 927–5750 or (202) 927–6212.

Comments on the following assessment are due 15 days after the date of availability.

AB–55 (Sub-No. 468X), CSX Transportation, Inc. Abandonment in Fannin County, Georgia. EA available 8/6/93.

Comments on the following assessment are due 30 days after the date of availability.

AB–55 (Sub-No. 469), CSX Transportation, Inc.—Abandonment Between South Hardeeville and North Savannah in Jasper County, SC and Chatham County, GA. EA available 8/3/93.

Sidney L. Strickland, Jr.,

Secretary.

[FR Doc. 93–19254 Filed 8–10–93; 8:45 am]

BILLING CODE 7035–01–M

[Docket No. AB–55 (Sub-No. 471X)]

CSX Transportation, Inc.—Abandonment Exemption—Lucas County, OH

CSX Transportation, Inc. (CSXT) has filed a notice of exemption under 49 CFR 1152 Subpart F—Exempt Abandonments to abandon its approximately 1.58-mile line of railroad between milepost CO–12.73 and CO–14.31 near Gould, in Lucas County, OH.[1]

CSXT has certified that: (1) No local traffic has moved over the line for at least 2 years; (2) there is no overhead traffic on the line; (3) no formal complaint filed by a user of rail service on the line (or a State or local government entity acting on behalf of such user) regarding cessation of service over the line either is pending with the Commission or with any U.S. District Court or has been decided in favor of the complainant within the 2-year period; and (4) the requirements at 49 CFR 1105.7(b) (service of environmental report on agencies), 49 CFR 1105.8 (service of historic report on State Historic Preservation Officer), 49 CFR 1105.12 (newspaper publication), and 49 CFR 1152.50(d)(1) (service of verified notice on governmental agencies) have been met.

As a condition to use of this exemption, any employee affected by the abandonment shall be protected under Oregon Short Line R. Co.—Abandonment—Goshen, 360 I.C.C. 91 (1979). To address whether this condition adequately protects affected employees, a petition for partial revocation under 49 U.S.C. 10505(d) must be filed.

Provided no formal expression of intent to file an offer of financial assistance (OFA) has been received, this exemption will be effective on September 10, 1993, unless stayed pending reconsideration. Petitions to stay that do not involve environmental issues,[2] formal expressions of intent to file an OFA under 49 CFR 1152.27(c)(2),[3] and trail use/rail banking statements under 49 CFR 1152.29 must be filed by August 23, 1993.[4] Petitions to reopen or requests for public use conditions under 49 CFR 1152.28 must be filed by August 31, 1993, with: Office of the Secretary, Case Control Branch, Interstate Commerce Commission, Washington, DC 20423.

A copy of any petition filed with the Commission should be sent to applicant's representative: Charles M. Rosenberger, CSX Transportation, Inc., 500 Water Street, J150, Jacksonville, FL 32202.

If the notice of exemption contains false or misleading information, use of the exemption is void *ab initio.*

Applicant has filed an environmental report which addresses the abandonment's effects, if any, on the environmental or historic resources. The Section of Energy and Environment (SEE) will prepare an environmental assessment (EA) by August 16, 1993. Interested persons may obtain a copy of the EA by writing to SEE (room 3219, Interstate Commerce Commission, Washington, DC 20423) or by calling Elaine Kaiser, Chief, SEE at (202) 927–6248. Comments on environmental and historic preservation matters must be filed within 15 days after the EA becomes available to the public.

Environmental, historic preservation, public use, or trail use/rail banking conditions will be imposed, where appropriate, in a subsequent decision.

Decided: August 3, 1993.

[1] Pursuant to 49 CFR 1152.50(d)(2), the railroad must file a verified notice with the Commission at least 50 days before the abandonment or discontinuance is to be consummated. The applicant, in its verified notice, indicated a proposed consummation date of September 7, 1993. Because the verified notice was not filed until July 22, 1993, consummation should not have been proposed to take place prior to September 10, 1993. Applicant's representative has confirmed that the correct consummation date is on or after September 10, 1993.

[2] A stay will be issued routinely by the Commission in those proceedings where an informed decision on environmental issues (whether raised by a party or by the Section of Energy and Environment in its independent investigation) cannot be made prior to the effective date of the notice of exemption. See Exemption of Out-of-Service Rail Lines, 5 I.C.C.2d 377 (1989). Any entity seeking a stay on environmental concerns is encouraged to file its request as soon as possible in order to permit this Commission to review and act on the request before the effective date of this exemption.

[3] See Exempt. of Rail Abandonment—Offers of Finan. Assist., 4 I.C.C.2d 164 (1987).

[4] The Commission will accept a late-filed trail use request as long as it retains jurisdiction to do so.

By the Commission, David M. Konschnik, Director, Office of Proceedings.

Sidney L. Strickland, Jr.,

Secretary.

[FR Doc. 93–19255 Filed 8–10–93; 8:45 am]

BILLING CODE 7035–01–M

INTERNATIONAL JOINT COMMISSION

Public Hearing

In the matter of a request from the governments of the United States and Canada that the International Joint Commission examine into and report upon appropriate methods of alleviating the adverse consequences of fluctuating water levels in the Great Lakes-St. Lawrence River Basin.

Notice is hereby given that the International Joint Commission will conduct a public hearing on the report of the Levels Reference Study Board on methods to alleviate the adverse consequences of fluctuating water levels in the Great Lakes-St. Lawrence River Basin. In 1986 the Commission was requested to update earlier studies of Great Lakes levels, propose emergency measures that could be taken during periods of extreme water levels, examine a wide variety of structural and nonstructural approaches to alleviating the adverse consequences of fluctuating water levels and propose appropriate methods to achieve this goal. The report of the Levels Reference Study Board is a major source of information available to the Commission in carrying out this assignment.

The hearing will be held on September 11, 1993 at the Ramada Inn, 480 Riverside Drive, Windsor, Ontario, beginning at 10 a.m.

This hearing will allow all interested parties to make presentations to the Commission, although the time allowed for presentations may be limited in order to allow parties an opportunity to speak. Written submissions are encouraged. They may submitted at the hearing or sent, by September 15, 1993 to:

Secretary, United States Section, International Joint Commission, 1250 23rd Street, NW, Washington, DC 20440. (202) 736–9000

Secretary, Canadian Section, International Joint Commission, 100 Metcalf Street, Ottawa, Ontario K1P 5M1. (613) 995–2984

Dated: August 5, 1993.

David A. LaRoche,

Secretary, United States Section.

[FR Doc. 93–19281 Filed 8–10–93; 8:45 am]

BILLING CODE 4710–14–M

DEPARTMENT OF JUSTICE

Lodging of Consent Decree Pursuant to the Clean Water Act; United States v. Florida Tile Industries, Inc.

In accordance with Department of Justice Policy, 28 CFR 50.7, notice is hereby given that a proposed Consent Decree in *United States* v. *Florida Tile Industries, Inc.*, Civ No. 92–346–CIV–T–99–A, was lodged with the United States District Court for the Middle District of Florida on July 26, 1993. This Consent Decree resolves a judicial enforcement action brought by the United States against Florida Tile Industries, Inc., ("Florida Tile") pursuant to sections 309 (b) and (d) of the Federal Water Pollution Control Act, ("Clean Water Act") 33 U.S.C. 1319 (b) and (d), for injunctive relief and civil penalties for alleged violations of the conditions and limitations of its National Pollutant Discharge Elimination System ("NPDES") permits issued by EPA pursuant to section 402 of the Clean Water Act, 33 U.S.C. 1342. The alleged violations relate to the discharge of storm water from Florida Tile's facility into Lake Wire.

The Consent Decree requires Florida Tile to pay a civil penalty of $493,070. Florida Tile is also required to perform remedial measures which will eliminate further stormwater discharge into Lake Wire. The Consent Decree also requires the completion of two supplemental environmental projects (SEPs).

The Department of Justice will receive for a period of 30 days from the date of this publication, comments relating to the proposed Consent Decree. Comments should be addressed to the Assistant Attorney General of the Environment and Natural Resources Division, Department of Justice, Washington, DC 20530, and should refer to *United States* v. *Florida Tile Industries, Inc.*, D.O.J. Ref. No. 90–5–1–1–3688.

This proposed Consent Decree may be examined at the offices of the United States Attorney, Middle District of Florida, Robert Timberlake Building, suite 400, 500 Zack Street Tampa, Florida 33602; at the Office of Regional Counsel, Environmental Protection Agency, 345 Courtland Street, NE., Atlanta, Georgia 30365; and at the Consent Decree Library, 1120 G Street NW., 4th Floor, Washington, DC (20005), 202–624–0892. A copy of the proposed Consent Decree may be obtained in person or by mail from the Consent Decree Library, 1120 G Street, NW., 4th Floor, Washington, DC (20005). In requesting a copy, please refer to the referenced case and enclose a check in the amount of $6.50 (25 cents per page reproduction costs), payable to the Consent Decree Library.

Myles E. Flint,

Acting Assistant Attorney General, Environment and Natural Resources Division.

[FR Doc. 93–19242 Filed 8–10–93; 8:45 am]

BILLING CODE 4410–01–M

NATIONAL SCIENCE FOUNDATION

Permit Application Received Under the Antarctic Conservation Act of 1978

AGENCY: National Science Foundation.

ACTION: Notice of permit application received under the Antarctic Conservation Act of 1978, Public Law 95–541.

SUMMARY: The National Science Foundation (NSF) is required to publish notice of permit applications received to conduct activities regulated under the Antarctic Conservation Act of 1978. NSF has published regulations under the Antarctic Conservation Act of 1978. NSF has published regulations under the Antarctic Conservation Act of 1978 at title 45 part 670 of the Code of Federal Regulations. This is the required notice of permit application received.

DATES: Interested parties are invited to submit written data, comments, or views with respect to this permit application by September 2, 1993. Permit applications may be inspected by interested parties at the Permit Office, address below.

ADDRESSES: Comments should be addressed to Permit Office, room 627, Office of Polar Programs, National Science Foundation, Washington, DC 20550.

FOR FURTHER INFORMATION CONTACT: Thomas F. Forhan at the above address or (202) 357–7817.

SUPPLEMENTARY INFORMATION: The National Science Foundation, as directed by the Antarctic Conservation Act of 1978 (Pub. L. 95–541), has developed regulations that implement the "Agreed Measures for the Conservation of Antarctic Fauna and Flora" for all United States citizens. The Agreed Measures, developed by the Antarctic Treaty Consultative Parties, recommended establishment of a permit system for various activities in Antarctica and designation of certain animals and certain geographic areas as requiring special protection. The regulations establish such a permit system to designate Specially Protected Areas and Sites of Special Scientific Interest.

The application received is as follows:

1. Applicant

Antarctic Support Associates, 61 Inverness Drive East, Suite 300, Englewood, CO 80112.

Activity for Which Permit Requested

Taking. Museum displays to aid scientific research and education. Antarctic Support Associates needs an ACA permit to display salvaged skua specimens found dead in the McMurdo region during the 1992 and 1993 summer seasons. The skuas will be displayed the library/conference area in the Crary Science and Engineering Center (CSEC) where they will contribute to the scientific resources of the CSEC.

Location

McMurdo Station, Antarctica.

Dates

11/01/93–5/1/95.

Thomas F. Forhan,

Permit Office, Office of Polar Programs.

[FR Doc. 93–19278 Filed 8–10–93; 8:45 am]

BILLING CODE 7555–01–M

NUCLEAR REGULATORY COMMISSION

Second Meeting of the CONTAIN Peer Review Committee

AGENCY: Nuclear Regulatory Commission.

ACTION: Notice of meeting.

SUMMARY: The CONTAIN Peer Review Committee will meet to review the technical adequacy of the CONTAIN code.

DATES: August 23–26, 1993.

TIME: 8:30 am each day.

ADDRESSES: Sandia National Laboratories, Albuquerque, New Mexico.

FOR FURTHER INFORMATION CONTACT: A. Notafrancesco, Office of Nuclear Regulatory Research, U.S. Nuclear Regulatory Commission, Washington, DC 20555 Telephone (301) 492–3537.

SUPPLEMENTARY INFORMATION: The objective of this effort is to organize and conduct a peer review of the CONTAIN code, light water reactor version. The peer review is to provide an independent assessment of the modeling capabilities and limitations, and adequacy of the CONTAIN code. The results of the peer review are to be documented in a summary report that describes the results of the independent assessment by the peer review participants and the technical acceptability of the code.

A peer review committee has been organized using recognized experts from the national laboratories, universities, CONTAIN user community and independent contractors. Meetings are held to discuss and evaluate the applicability and state of validation of the various CONTAIN phenomenological models. The meeting scheduled for August 23–26, 1993, is the second meeting of the CONTAIN Peer Review Committee. The Committee will (1) present preliminary review findings, (2) review the code design objectives and targeted applications, (3) select a process for conducting the review, (4) identify and select a standard for determining technical adequacy, and (5) receive briefings from the code development staff about the integrated code and the detailed models in the code.

Dated at Rockville, Maryland, this 4th day of August, 1993.

For the U.S. Nuclear Regulatory Commission.

Farouk Eltawila, Chief,

Accident Evaluation Branch, Division of Systems Research, Office of Nuclear Regulatory Research.

[FR Doc. 93–19226 Filed 8–10–93; 8:45 am]

BILLING CODE 7590–01–M

Westinghouse Owners Group Plans To Re-Evaluate Fluence Values for Surveillance Capsules

AGENCY: Nuclear Regulatory Commission.

ACTION: Notice of meeting.

SUMMARY: The staff of the Nuclear Regulatory Commission will meet with the staff of the Nuclear Management and Resources Council (NUMARC) and members of the Westinghouse Owners Group (WOG) to discuss WOG plans for updating fluence values for WOG-member surveillance capsules.

DATES: Thursday, August 12, 1993.

TIME: 1 p.m.–5 p.m.

ADDRESSES: 11555 Rockville Pike, Room: 16B11, Rockville, Maryland.

FOR FURTHER INFORMATION CONTACT: Mr. Allen L. Hiser, Jr., Materials Engineering Branch, Office of Nuclear Regulatory Research, Nuclear Regulatory Commission, Washington, DC 20555. Telephone: (301) 492–3988.

SUPPLEMENTARY INFORMATION: The Westinghouse Owners Group (WOG) is proposing to re-evaluate fluence values for WOG-member surveillance capsules to reflect current methods for calculating fluence values and uncertainties. This proposal follows a public meeting held in February by the NRC to discuss the impact of fluence evaluation methodology improvements on reactor pressure vessel (RPV) embrittlement estimates. These re-evaluated fluence values would be incorporated into an NRC program addressing the development of improved correlations for estimating irradiation embrittlement.

At this meeting, the WOG will discuss their plan for performing this reevaluation. Additionally, the topic of incorporating the re-evaluated values into irradiation embrittlement correlations will be discussed.

Dated at Rockville, Maryland, this 6th day of August, 1993, for the Nuclear Regulatory Commission.

Lawrence C. Shao,

Director, Division of Engineering, Office of Nuclear Regulatory Research.

[FR Doc. 93–19223 Filed 8–10–93; 8:45 am]

BILLING CODE 7590–01–M

Regulatory Guides; Issuance, Availability

The Nuclear Regulatory Commission has issued revisions to three guides in its Regulatory Guide Series. This series has been developed to describe and make available to the public such information as methods acceptable to the NRC staff for implementing specific parts of the Commission's regulations, techniques used by the staff in evaluating specific problems or postulated accidents, and data needed by the staff in its review of applications for permits and licenses.

Revision 29 of Regulatory Guide 1.84, "Design and Fabrication Code Case Acceptability, ASME Section III, Division 1," and Revision 29 of Regulatory Guide 1.85, "Materials Code Case Acceptability, ASME Section III, Division 1," list those code cases that are generally acceptable to the NRC staff for implementation in the licensing of light-water-cooled nuclear power plants. Revision 10 to Regulatory Guide 1.147, "Inservice Inspection Code Case Acceptability, ASME Section XI, Division 1", lists those code cases that are generally acceptable to the NRC staff for implementation in the inservice inspection of light-water-cooled nuclear power plants. These three guides are periodically revised to update the listings of acceptable code cases and to include the results of public comment and additional staff review.

Comments and suggestions in connection with items for inclusion in guides currently being developed or improvements in all published guides are encouraged at any time. Written comments may be submitted to the

Regulatory Publications Branch, Division of Freedom of Information and Publications Services, Office of Administration, U.S. Nuclear Regulatory Commission, Washington, DC 20555.

Regulatory guides are available for inspection at the Commission's Public Document Room, 2120 L Street NW., Washington, DC. Copies of issued guides may be purchased from the Government Printing Office at the current GPO price. Information on current GPO prices may be obtained by contacting the Superintendent of Documents, U.S. Government Printing Office, Post Office Box 37082, Washington, DC 20013–7082, telephone (202) 512–2249 or (202) 512–2171. Issued guides may also be purchased from the National Technical Information Service on a standing order basis. Details on this service may be obtained by writing NTIS, 5285 Port Royal Road, Springfield, VA 22161.

Authority: 5 U.S.C. 552(a).

Dated at Rockville, Maryland, this 21st day of July 1993.

For the Nuclear Regulatory Commission.

Eric S. Beckjord,

Director, Office of Nuclear Regulatory Research.

[FR Doc. 93–19224 Filed 8–10–93; 8:45 am]

BILLING CODE 7590–01–M

OFFICE OF MANAGEMENT AND BUDGET

List of Designated Federal Entities and Federal Entities

AGENCY: Office of Management and Budget.

ACTION: Notice.

SUMMARY: This notice provides a list of Designated Federal Entities and Federal Entities, as required by the Inspector General Act Amendments of 1988.

FOR FURTHER INFORMATION CONTACT: Kathleen Turco (telephone: 202/395–6911), Office of Federal Financial Management.

SUPPLEMENTARY INFORMATION: This notice provides a copy of the 1993 List of Designated Federal Entities and Federal Entities, which the Office of Management and Budget is required to publish annually under the Inspector General Act Amendments of 1988 (Pub. L. 100–504).

The List is divided into two groups: Designated Federal Entities and Federal Entities. The Designated Federal Entities are required to establish and maintain Offices of Inspector General. The 33 Designated Federal Entities are as listed in the Inspector General Act Amendments of 1988. Hence, the 1993 list of them is unchanged from the 1992 list.

Federal Entities are required to report annually to each House of the Congress and the Office of Management and Budget on audit and investigative activities in their organizations. Federal Entities are defined as "any Government controlled corporation (within the meaning of section 103(1) of title 5, United States Code), any Government controlled corporation (within the meaning of section 103(2) of such title), or any other entity in the Executive branch of the Government, or any independent regulatory agency" other than the Executive Office of the President and agencies with statutory Inspectors General. There are eleven additions and eleven deletions in the 1993 list from the 1992 list.

The List was prepared in consultation with the U.S. General Accounting Office.

John B. Arthur,

Assistant Director for Administration.

Herein follows the text of the 1993 List of Designated Federal Entities and Federal Entities.

1993 List of Designated Federal Entities and Federal Entities

Public Law 100–504. The Inspector General Act Amendments of 1988 require the Office of Management and Budget to publish a list of "Designated Federal Entities" and "Federal Entities" and the heads of such entities. Designated Federal Entities were required to establish Offices of Inspector General before April 17, 1989. Federal Entities are required to report annually, by October 31st, to each House of the Congress and the Office of Management and Budget on audit and investigative activities in their organizations.

Designated Federal Entities and Entity Heads

1. ACTION—Director
2. Amtrak—Chairperson
3. Appalachian Regional Commission—Federal Co-Chairperson
4. The Board of Governors, Federal Reserve System—Chairperson
5. Board for International Broadcasting—Chairperson
6. Commodity Futures Trading Commission—Chairperson
7. Consumer Product Safety Commission—Chairperson
8. Corporation for Public Broadcasting—Board of Directors
9. Equal Employment Opportunity Commission—Chairperson
10. Farm Credit Administration—Chairperson
11. Federal Communications Commission—Chairperson
12. Federal Deposit Insurance Corporation—Chairperson
13. Federal Election Commission—Chairperson
14. Federal Housing Finance Board—Chairperson
15. Federal Labor Relations Authority—Chairperson
16. Federal Maritime Commission—Chairperson
17. Federal Trade Commission—Chairperson
18. Interstate Commerce Commission—Chairperson
19. Legal Services Corporation—Board of Directors
20. National Archives and Records Administration—Archivist of the United States
21. National Credit Union Administration—Board of Directors
22. National Endowment for the Arts—Chairperson
23. National Endowment for the Humanities—Chairperson
24. National Labor Relations Board—Chairperson
25. National Science Foundation—National Science Board
26. Panama Canal Commission—Chairperson
27. Peace Corps—Director
28. Pension Benefit Guaranty Corporation—Chairperson
29. Securities and Exchange Commission—Chairperson
30. Smithsonian Institution—Secretary
31. Tennessee Valley Authority—Board of Directors
32. United States International Trade Commission—Chairperson
33. United States Postal Service—Postmaster General

FEDERAL ENTITIES AND ENTITY HEADS

1. Administrative Conference of the United States—Chairperson
2. Advisory Commission on Intergovernmental Relations—Chairperson
3. Advisory Council on Historic Preservation—Chairperson
4. African Development Foundation—Chairperson
5. American Battle Monuments Commission—Chairperson
6. Architectural and Transportation Barriers Compliance Board—Chairperson
7. Armed Forces Retirement Home—Board of Directors
8. Barry Goldwater Scholarship and Excellence in Education Foundation—Chairperson
9. Chemical Safety and Hazard Investigation Board—Chairperson
10. Christopher Columbus Quincentenary Jubilee Commission—Chairperson
11. Christopher Columbus Fellowship Foundation—Chairperson
12. Citizens Commission on Public Services and Compensation—Chairperson
13. Commission for the Preservation of America's Heritage Abroad—Chairperson
14. Commission of Fine Arts—Chairperson
15. Commission on Civil Rights—Chairperson
16. Commission on National and Community Service—Chairperson

17. Committee for Purchase from the Blind and other Severely Handicapped—Chairperson
18. Competitiveness Policy Council—Chairperson
19. Defense Nuclear Facilities Safety Board—Chairperson
20. Delaware River Basin Commission—U. S. Commissioner
21. Export-Import Bank—President and Chairperson
22. Farm Credit System Financial Assistance Corporation—Chairperson
23. Farm Credit System Insurance Corporation—Board of Directors
24. Federal Financial Institutions Examination Council Appraisal Subcommittee—Chairperson
25. Federal Mediation and Conciliation Service—Director
26. Federal Mine Safety and Health Review Commission—Chairperson
27. Federal Retirement Thrift Investment Board—Chairperson
28. Franklin Delano Roosevelt Memorial Commission—Chairperson
29. Harry S. Truman Scholarship Foundation—Chairperson
30. Illinois and Michigan Canal National Heritage Corridor Commission—Chairperson
31. Institute of American Indian and Alaska Native Culture and Arts Development—Chairperson
32. Institute of Museum Services—Board of Directors
33. Inter-American Foundation—Chairperson
34. Interagency Council on the Homeless—Chairperson
35. Interstate Commission on the Potomac River Basin—Chairperson
36. James Madison Memorial Fellowship Foundation—Chairperson
37. Japan-U.S. Friendship Commission—Chairperson
38. Joint Federal State Commission on Policies and Programs Affecting Alaska Natives—Co-Chairs
39. Marine Mammal Commission—Chairperson
40. Martin Luther King, Jr. Federal Holiday Commission—Chairperson
41. Merit Systems Protection Board—Chairperson
42. National Capital Planning Commission—Chairperson
43. National Commission on American Indian, Alaska Native, and Native Hawaiian Housing—Chairperson
44. National Commission on Cost of Higher Education—Chairperson
45. National Commission on Financial Institutions Reform, Recovery and Enforcement—Chairperson
46. National Commission on Independent Higher Education—Chairperson
47. National Commission on Libraries and Information Science—Chairperson
48. National Council on Disability—Chairperson
49. National Endowment for Democracy—Chairperson
50. National Gallery of Art—Board of Trustees
51. National Mediation Board—Chairperson
52. National Transportation Safety Board—Chairperson
53. Neighborhood Reinvestment Corporation—Chairperson
54. Nuclear Waste Technical Review Board—Chairperson
55. Occupational Safety and Health Review Commission—Chairperson
56. Office of Government Ethics—Director
57. Office of Navajo and Hopi Indian Relocation—Chairperson
58. Office of Special Counsel—Special Counsel
59. Office of the Nuclear Waste Negotiator—Negotiator
60. Offices of Independent Counsels—Independent Counsels
61. Overseas Private Investment Corporation—Board of Directors
62. Pennsylvania Avenue Development Corporation—Chairperson
63. Postal Rate Commission—Chairperson
64. Selective Service System—Director
65. State Justice Institute—Director
66. Susquehanna River Basin Commission—U.S. Commissioner
67. Thrift Depositor Protection Oversight Board—Chairperson
68. U.S. Enrichment Corporation—Chairperson
69. U.S. Holocaust Memorial Council—Chairperson
70. U.S. Institute of Peace—Chairperson
71. Woodrow Wilson International Center for Scholars—Board of Trustees

[FR Doc. 93–19183 Filed 8–10–93; 8:45 am]
BILLING CODE 3110–01–P

OFFICE OF PERSONNEL MANAGEMENT

Federal Employees Health Benefits Program; Medically Underserved Areas for 1994

AGENCY: Office of Personnel Management.

ACTION: Notice of Medically Underserved Areas for 1994.

SUMMARY: The Office of Personnel Management has completed its annual determination of the States that qualify as Medically Underserved Areas under the Federal Employees Health Benefits (FEHB) Program for calendar year 1994. This determination is necessary to comply with a provision of FEHB law that mandates special consideration for enrollees of certain FEHB plans who receive covered health services in States with critical shortages of primary care physicians. Accordingly, for calendar year 1994, OPM has determined that the following States are Medically Underserved Areas under the FEHB Program: Alabama, Louisiana, Mississippi, New Mexico, North Dakota, South Carolina, South Dakota, West Virginia, and Wyoming. This list is the same as that for 1993, with the exception of the removal of Idaho.

EFFECTIVE DATE: January 1, 1994.

FOR FURTHER INFORMATION CONTACT: Abby L. Block, (202) 606–0191.

SUPPLEMENTARY INFORMATION: FEHB law [5 U.S.C. 8902(m)(2)] mandates special consideration for enrollees of certain FEHB plans who receive covered health services in States with critical shortages of primary care physicians. Such States are designated as Medically Underserved Areas for purposes of the FEHB Program, and the law requires payment to all qualified providers in these States.

FEHB regulations (5 CFR 890.701) require OPM to make an annual determination of the States that qualify as Medically Underserved Areas for the next calendar year by comparing the latest Department of Health and Human Services State-by-State population counts on primary medical care manpower shortage areas with U.S. Census figures on State resident population.

U.S. Office of Personnel Management.

Patricia W. Lattimore,

Acting Deputy Director.

[FR Doc. 93–19185 Filed 8–10–93; 8:45 am]
BILLING CODE 6325–01–M

RESOLUTION TRUST CORPORATION

Coastal Barrier Improvement Act; Property Availability; Blackstone Open Space Parcel, Contra Costa County, CA

AGENCY: Resolution Trust Corporation.

ACTION: Notice.

SUMMARY: Notice is hereby given that the property known as the Blackstone Open Space Parcel, located in Danville, Contra Costa County, California, is affected by section 10 of the Coastal Barrier Improvement Act of 1990, as specified below.

DATES: Written notices of serious interest to purchase or effect other transfer of the property may be mailed or faxed to the RTC until November 9, 1993.

ADDRESSES: Copies of detailed descriptions of the property, including maps, can be obtained from or are available for inspection by contacting the following person: Mr. E. Ted Hine, Resolution Trust Corporation, California Field Office, 4000 MacArthur Blvd., Third Floor, East Tower, Newport Beach, CA 92660–2516. (714) 263–4648; Fax (714) 852–7770.

SUPPLEMENTARY INFORMATION: The Blackstone Open Space Parcel is located

approximately 100 yards southeast of the intersection of Crow Canyon Road and Tassajara Ranch Drive in Danville, California. The property has recreational value and is adjacent to Alamo Creek and Diablo Vista Park which is a community park owned and managed by the Town of Danville. The property is covered property within the meaning of Section 10 of the Coastal Barrier Improvement Act of 1990, Public Law 101–591 (12 U.S.C. 1441a–3).

Characteristics of the property include: The Blackstone Open Space Parcel consists of approximately 57.1 acres of undeveloped grassy hillside and contains a landslide area. This property has recreational value and is adjacent to nearby housing subdivisions and the Diablo Vista Park.

Property size: Approximately 57.1 acres.

Written notice of serious interest in the purchase or other transfer of the property must be received on or before November 9, 1993 by the Resolution Trust Corporation at the address stated above.

Those entities eligible to submit written notices of serious interest are:

1. Agencies or entities of the Federal government;
2. Agencies or entities of State or local government; and
3. "Qualified organizations" pursuant to section 170(h)(3) of the Internal Revenue Code of 1986 (26 U.S.C. 170(h)(3)).

Written notices of serious interest to purchase or effect other transfer of the property must be submitted by November 9, 1993 to Mr. E. Ted Hine at the above **ADDRESSES** and in the following form:

Notice of Serious Interest

RE: Blackstone Open Space Parcel
Federal Register Publication Date:
August 11, 1993

1. Entity name.
2. Declaration of eligibility to submit Notice under criteria set forth in Coastal Barrier Improvement Act of 1990, Public Law 101–591, section 10(b)(2), (12 U.S.C. 1441a–3(b)(2)), including, for qualified organizations, a determination letter from the Internal Revenue Service regarding the organization's status under section 501(c)(3) of the Internal Revenue Code (26 U.S.C. 170(h)(3)).
3. Brief description of proposed terms of purchase or other offer (e.g., price and method of financing).
4. Declaration by entity that it intends to use the property primarily for wildlife refuge, sanctuary, open space, recreational, historical, cultural, or natural resource conservation purposes.
5. Authorized Representative (Name/Address/Telephone/Fax).

Dated: August 5, 1993.

Resolution Trust Corporation.

William J. Tricarico,

Assistant Secretary.

[FR Doc. 93–19238 Filed 8–10–93; 8:45 am]

BILLING CODE 6717–01–M

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

Intent To Prepare an Environmental Impact Statement and Hold a Scoping Meeting for Santa Barbara Municipal Airport, Santa Barbara, CA

AGENCY: Federal Aviation Administration, DOT.

ACTION: Notice to hold a public scoping meeting.

SUMMARY: The Federal Aviation Administration (FAA) is issuing this notice to advise the public that an Environmental Impact Statement will be prepared for development recommended by the Draft Master Plan Update for Santa Barbara Municipal Airport, Santa Barbara, California. To ensure that all significant issues related to the proposed action are identified, a public scoping meeting will be held.

FOR FURTHER INFORMATION CONTACT: David B. Kessler, Regional Airport Planner, AWP–611.2, Federal Aviation Administration, Airports Division, P.O. Box 92007, Worldway Postal Center, Los Angeles, California 90009–2007, Telephone: 310/297–1534.

SUPPLEMENTARY INFORMATION: The Federal Aviation Administration (FAA), in cooperation with the city of Santa Barbara, California will prepare an Environmental Impact Statement for development recommended by the Draft Master Plan Update for Santa Barbara Municipal Airport. Since the airport is located in the immediate vicinity of the Goleta Slough and the area around the airport contains non-compatible land uses in terms of aircraft noise; and the proposal is likely to be controversial, a decision has been made to prepare an Environmental Impact Statement (EIS). The city of Santa Barbara, pursuant to the California Environmental Quality Act (CEQA) will also prepare an Environmental Impact Report (EIR) for the proposed development. In an effort to eliminate unnecessary duplication and reduce delay, the document to be prepared, will be a joint EIR/EIS in accordance with the President's Council on Environmental Quality Regulations described in title 40 Code of Federal Regulations, § 1500.5.

The Joint Lead Agencies for the preparation of the EIR/EIS will be the Federal Aviation Administration and the city of Santa Barbara, California. Due to the proximity of the Goleta Slough and other water courses on the airport, the U.S. Army Corps of Engineers has been requested to participate as a cooperating agency in the preparation of the document.

The development recommended by the Draft Master Plan Update to be evaluated in the EIR/EIS includes:

1. Extend Runway 7/25, 400 feet to the west.
2. Construction of a 1,000-foot extended Runway Safety Area for each end of Runway 7/25.
3. Extend and widen runway 15R/33L, 600 feet to the north and 217 feet to the south and provide a Runway Safety area off the south end of the runway.
4. Terminal Building Expansion and associated terminal area improvements.

Alternatives

The alternatives to the proposed development that will be examined equally in the EIR/EIS include the following:

1. Provide a 1,000 foot safety area at each end of Runway 7/25 by using the existing runway and safety area length, thereby reducing the total available runway length.
2. Extend Runway 7/25 1,080 feet to the east and use the west end of the runway for the runway safety area.
3. Extend and widen runway 15R/33L only to the north.
4. Change the size and configuration of the Terminal Building .
5. Relocate the Terminal building to another site on the Airport.
6. No Action for each of the above projects and alternatives.

Comments and suggestions are invited from Federal, State and local agencies, and other interested parties to ensure that the full range of issues related to these proposed projects are addressed and all significant issues identified. Comments and suggestions may be mailed to the FAA informational contact listed above.

Public Scoping Meeting

To facilitate receipt of comments, the public scoping meeting will be held during the regular Environmental Review Committee meeting on Friday, September 17, 1993, City Council Chambers, Santa Barbara City Hall, 735 Anacapa Street, Santa Barbara, California. The Environmental Review

Committee meeting will begin at 9 a.m., Pacific Daylight time. The specific time during the Committee meeting when the public scoping meeting will begin is dependent upon the number of items on the committee agenda. Public comments on the scope of the EIR/EIS will be accepted through Friday, October 1, 1993.

Issued in Hawthorne, California on Monday, August 2, 1993.

Robert C. Bloom,

Acting Manager, Airports Division, AWP–600.

[FR Doc. 93–19233 Filed 8–10–93; 8:45 am]

BILLING CODE 4910–13–M

[Summary Notice No. PE–93–37]

Petitions for Exemption; Summary of Petitions Received; Dispositions of Petitions Issued

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Notice of petitions for exemption received and of dispositions of prior petitions.

SUMMARY: Pursuant to FAA's rulemaking provisions governing the application, processing, and disposition of petitions for exemption (14 CFR part 11), this notice contains a summary of certain petitions seeking relief from specified requirements of the Federal Aviation Regulations (14 CFR chapter I), dispositions of certain petitions previously received, and corrections. The purpose of this notice is to improve the public's awareness of, and participation in, this aspect of FAA's regulatory activities. Neither publication of this notice nor the inclusion or omission of information in the summary is intended to affect the legal status of any petition or its final disposition.

DATES: Comments on petitions received must identify the petition docket number involved and must be received on or before August 31, 1993.

ADDRESSES: Send comments on any petition in triplicate to: Federal Aviation Administration, Office of the Chief Counsel, Attn: Rule Docket (AGC–10), Petition Docket No. _____, 800 Independence Avenue, SW., Washington, DC 20591.

The petition, any comments received, and a copy of any final disposition are filed in the assigned regulatory docket and are available for examination in the Rules Docket (AGC–10), room 915G, FAA Headquarters Building (FOB 10A), 800 Independence Avenue, SW., Washington, DC 20591; telephone (202) 267–3132.

FOR FURTHER INFORMATION CONTACT: Mr. Frederick M. Haynes, Office of Rulemaking (ARM–1), Federal Aviation Administration, 800 Independence Avenue, SW., Washington, DC 20591; telephone (202) 267–3939

This notice is published pursuant to paragraphs (c), (e), and (g) of § 11.27 of part 11 of the Federal Aviation Regulations (14 CFR part 11).

Issued in Washington, DC, on August 3, 1993.

Donald P. Byrne,

Assistant Chief Counsel for Regulations.

Petitions for Exemption

Docket No.: 26592
Petitioner: Philadelphia Jet Service
Sections of the FAR Affected: 14 CFR 135.165
Description of Relief Sought: To extend Exemption No. 5341 to allow petitioner to continue to operate its HS125–700A equipped with one high frequency communication system in extended over water operations.

Docket No.: 27200
Petitioner: Corporate Aviation Services
Sections of the FAR Affected: 14 CFR 135.143
Description of Relief Sought: To allow petitioner to conduct passenger carrying operations in aircraft equipped with two Mode C transponders rather than a single Mode S transponder.

Docket No.: 27240
Petitioner: Mr. Bruce C. Kennedy
Sections of the FAR Affected: 14 CFR 121.383(c)
Description of Relief Sought: To allow petitioner to serve as a pilot in part 121 air carrier operations after his 60th birthday.

Docket No.: 27355
Petitioner: PZL Swidnik Co.
Sections of the FAR Affected: 14 CFR 135.152 and appendix C; and 91.609 and appendix D
Description of Relief Sought: To allow U.S. certificate holders to operate W–3A helicopters built in Poland that do not have flight data recorders that meet U.S. standards.

Docket No.: 27361
Petitioner: Air Transport Association of America
Sections of the FAR Affected: 14 CFR part 121, appendix A
Description of Relief Sought: To allow Air Transport Association member airlines and other similarly situated operators an exemption from the requirement to carry burn ointment as a required item in first aid kits.

Docket No.: 27364
Petitioner: Mr. Jerry P. Nusloch
Sections of the FAR Affected: 14 CFR 121.383(c)
Description of Relief Sought: To allow petitioner to serve as a pilot in part 121 air carrier operations after his 60th birthday.

Docket No: 27384
Petitioner: The Boeing Company
Sections of the FAR Affected: 14 CFR 25.1435(b)(1)
Description of Relief Sought: To allow Boeing to test the hydraulic system of the Model 777–200 airplane by a combination of a test of the complete hydraulic system at its design operating pressure, and component testing at 1.5 times design operating pressure, in lieu of the static test of the complete hydraulic system at 1.5 times the design operating pressure

Docket No.: 19651
Petitioner: Learjet, Inc.
Sections of the FAR Affected: 14 CFR 21.197
Description of Relief Sought/ Disposition: To extend Exemption No. 4593 to make Learjet, Inc. aircraft eligible for issuance of special flight permits for ferrying aircraft between Wichita, Kansas and Tucson, Arizona, for the purpose of completion, subject to certain conditions and limitations.
Grant, July 28, 1993, Exemption No. 4593E

Docket No.: 20044
Petitioner: Air Transport Association of America
Sections of the FAR Affected: 14 CFR 61.63(b) and 121.437 (c)
Description of Relief Sought/ Disposition: To extend Exemption No. 2965 to permit petitioner's member airlines' pilot employees to be issued a category and class rating by presenting proof of compliance with the training requirements of subpart O of part 121 and the proficiency check requirements of § 121.441 after July 1, 1980; and by allowing an air crew program designee (APD) to act on behalf of the Flight Standards District Office (FSDO) for the purposes of complying with condition and Limitation No. 4 of the Exemption, which requires a pilot to present proof of compliance with the other conditions of the exemption to a FSDO for the purpose of issuing a new category and class rating to the pilot's airman certificate.
Grant, July 29, 1993, Exemption No. 2965H

Docket No.: 23477
Petitioner: Experimental Aircraft Association
Sections of the FAR Affected: 14 CFR 103.1(a) and (e)(1) through (e)(4)
Description of Relief Sought/ Disposition: To extend Exemption No 3784 to permit individuals authorized

by the petitioner to give instruction in powered ultra-light vehicles that have a maximum empty weight of not more than 496 pounds, have a maximum fuel capacity of not more than 10 U.S. gallons, are not capable of more than 75 knots calibrated airspeed at full power in level flight, and have a power-off stall speed that does not exceed 35 knots calibrated airspeed.
Grant, July 26, 1993, Exemption No. 3784F

Docket No.: 25168
Petitioner: Evergreen International Airlines, Inc.
Sections of the FAR Affected: 14 CFR 121.583(a)(8)
Description of Relief Sought/ Disposition: To extend Exemption No. 4856 to continue to permit petitioner to transport employees/dependents on its DC–8–60 cargo flights.
Grant, July 27, 1993, Exemption No. 4856C

Docket No.: 26996
Petitioner: Trans-Florida Airlines
Sections of the FAR Affected: 14 CFR 121.356(a)
Description of Relief Sought/ Disposition: To allow the petitioner to extend from FAR requirements for the installation of a Traffic Alert and Collision Avoidance System on its Convair CV–240, 44 passenger aircraft.
Denial, July 2, 1993, Exemption No. 5673

Docket No.: 27108
Petitioner: American Airlines
Sections of the FAR Affected: 14 CFR 121.570 (a) and (b)
Description of Relief Sought/ Disposition: To permit aircraft movement on the surface without each automatically deployable emergency evacuation assisting means, installed pursuant to § 121.310(a), being armed; and to permit the petitioner to operate without ensuring that, at all times passengers are on board prior to aircraft movement on the surface, at least one floor-level exit provides for the egress of passengers through normal or emergency means.
Denial, July 29, 1993, Exemption No. 5703

Docket No.: 27136
Petitioner: Kenai Air Alaska, Inc
Sections of the FAR Affected: 14 CFR 135.143(c)(2)
Description of Relief Sought/ Disposition: To permit the petitioner to operate without a TSO–C112 (Mode S) transponder installed on its aircraft operating under the provisions of part 135.
Grant, July 22, 1993, Exemption No. 5699

Docket No.: 27139
Petitioner: Helicopter Adventures, Inc.
Sections of the FAR Affected: 14 CFR 135.143(c)(2)
Description of Relief Sought/ Disposition: To permit the petitioner to operate without a TSO–C112 (Mode S) transponder installed on its aircraft operating under the provisions of part 135.
Grant, July 22, 1993, Exemption No. 5698

Docket No.: 27141
Petitioner: Zebra Air Inc.
Sections of the FAR Affected: 14 CFR 135.143(c)(2)
Description of Relief Sought/ Disposition: To permit the petitioner to operate without to TSO–C112 (Mode S) transponder installed on its aircraft operating under the provisions of part 135.
Grant, July 22, 1993, Exemption No. 5700

Docket No.: 27153
Petitioner: Kachina Aviation
Sections of the FAR Affected: 14 CFR 135.143(c)(2)
Description of Relief Sought/ Disposition: To petitioner to operate without a TSO–C112 (Mode S) transponder installed on its aircraft operating under the provisions of part 135.
Grant, July 22, 1993, Exemption No. 5701

Docket No.: 27197
Petitioner: SuWest Airways
Sections of the FAR Affected: 14 CFR 135.143(c)(2)
Description of Relief Sought/ Disposition: To permit the petitioner to operate without a TSO–C112 (Mode S) transponder installed on its aircraft operating under the provisions of part 135.
Grant, July 22, 1993, Exemption No. 5697

Docket No.: 27143
Petitioner: Columbia Helicopters Inc.
Sections of the FAR Affected: 14 CFR 135.143(c)(2)
Description of Relief Sought/ Disposition: To permit the petitioner to operate without a TSO–C112 (Mode S) transponder installed on its aircraft operating under the provisions of part 135.
Grant, July 22, 1993, Exemption No. 5696

Docket No.: 27257
Petitioner: Great Northern Airlines Inc. D/B/A Great Northern Air Guides
Sections of the FAR Affected: 14 CFR 43.3(g)
Description of Relief Sought/ Disposition: To allow properly trained pilots, employed by the petitioner, to convert the cabins of certain of its aircraft operted under part 135 from passenger to cargo configurations, and the reverse, by removing and replacing passenger seats when such aircraft are spcifically designed for that purpose.
Grant, July 22, 1993, Exemption No. 5702

Docket No.: 27375
Petitioner: Vasi Air Charter
Sections of the FAR Affected: 14 CFR 135.143(c)(2)
Description of Relief Sought/ Disposition: To permit the petitioner to operate without a TSO–C112 (Modes S) transponder installed on its aircraft operating under the provisions of part 135.
Grant, July 22, 1993, Exemption No. 5695

[FR Doc. 93-19234 Filed 8-10-93; 8:45 am]
BILLING CODE 4010-13-M

RTCA, Inc.; 42nd Meeting of Special Committee 147, Traffic Alert and Collision Avoidance System (TCAS)

Pursuant to section 10(a)(2) of the Federal Advisory Committee Act (Pub. L. 92–463, 5 U.S.C., appendix I), notice is hereby given for Special Committee 147 meeting to be held September 15–16, 1993, in the RTCA Conference Room at 1140 Connecticut Avenue, SW., Suite 1020, Washington, DC 20036.

The agenda for this meeting is as follows:

(1) Chairman's Introductory Remarks;
(2) Review of meeting agenda;
(3) Approval of the minutes of the 42nd meeting held on June 10–11;
(4) Report of Working Group Activities: (a) Operations Working Group (OWG)—this discussion will include future plans to continue the activity of this group (b) Separation Assurance Task Force (C) Requirements Working Group (d) TCAS I Working Group (e) Lincoln Labs Update on Investigation of Mode S/TCAS II Enhancement Proposals;
(5) Report on FAA TCAS Symposium (a) TCAS I (b) TCAS II (c) TCAS III;
(6) Review of EUROCAE Working Group Activities;
(7) Change 6.04 and 6.04A proposed NPRM;
(8) Review and update of verification and validation process;
(9) Discussion of new committee terms of reference and committee plans for new working group activity;
(10) Review of action items from last meeting;
(11) Other business;
(12) Date and place of next meeting.

Attendance is open to the interested public but limited to space available.

With the approval of the Chairman, members of the public may present oral statements at the meeting. Persons wishing to present statements or obtain information should contact the RTCA Secretariat, 1140 Connecticut Avenue, NW., Suite 1020, Washington, DC 20036; (202) 833–9339. Any member of the public may present a written statement to the committee at any time.

Issued in Washington, DC, on August 5, 1993.

Joyce J. Gillen,

Designated Officer.

[FR Doc. 93–19236 Filed 8–10–93; 8:45 am]

BILLING CODE 4910–13–M

Maritime Administration

Revised Voluntary Tanker Agreement

AGENCY: Maritime Administration, Department of Transportation.

ACTION: Notice.

SUMMARY: The Maritime Administration (MARAD) is advising the public concerning the status of the Revised Voluntary Tanker Agreement (Agreement).

FOR FURTHER INFORMATION CONTACT: Bruce Hendrickson, Office of National Security Plans, room P1–1303, U.S. Department of Transportation, Maritime Administration, 400 Seventh Street SW., Washington, DC 20590. (202) 366–5900.

SUPPLEMENTARY INFORMATION: Under the authority of section 708 of the Defense Production Act of 1950 (DPA) as amended (50 U.S.C. App. 2158), MARAD is the sponsor of the Agreement whereby tanker owners and characters agree with MARAD to make available tankers and tanker space when needed for the national defense. The text of the agreement was published in the **Federal Register** on August 25, 1983 (48 CFR 38716). All voluntary agreements must be reviewed and approved by the Attorney General every two years. On July 27, 1993, the Attorney General, after consultation with the Chairman of the Federal Trade Commission, made the statutory findings and authorized the renewal of the Agreement for two years.

By order of the Maritime Administration, Department of Transportation.

Dated: August 5, 1993.

James E. Saari,

Secretary, Maritime Administration.

[FR Doc. 93–19171 Filed 8–10–93; 8:45 am]

BILLING CODE 4910–81–M

DEPARTMENT OF THE TREASURY

Public Information Collection Requirements Submitted to OMB for Review.

August 4, 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.

Special Request: The Department of the Treasury is requesting that the Office of Management and Budget review and approve the information collection listed below by September 17, 1993. All comments must be received by close of business September 10, 1993.

Departmental Offices/Office of the Assistant Secretary for Economic Policy/Office of Foreign Investment Studies

OMB Number: New.
Form Number: TD F 90.04.1, TD F 90–04.2, TD F 90–04.3, TD F 90–04.4, and TD F 90–04.5.
Type of Review: New collection.
Title: Outbound Portfolio Investment Survey: 1994 Benchmark Survey of U.S. Ownership of Foreign Long-Term Securities.
Description: The purpose of the survey is to obtain a current benchmark of the magnitude, aggregate market value, and character of foreign long-term securities owned by U.S. investors for portfolio investment purposes. The last comparable benchmark survey was conducted in May 1943. The data will be used to improve the accuracy of official balance of payments statistics and the international investment position of the U.S. and to aid in formulating international financial and monetary policies. Respondents will include depository institutions, securities firms, and institutional investors.
Respondents: Businesses or other for-profit, Federal agencies or employees, Non-profit institutions.
Estimated Number of Respondents/Recordkeepers: 2,500.
Estimated Burden Hours Per Response/Recordkeeper: 59 hours, 30 minutes.
Frequency of Response: Other (on as needed basis).
Estimated Total Reporting/Recordkeeping Burden: 151,250 hours.
Clearance Officer: Lois K. Holland (202) 622–1563, Departmental Offices, Room 3171, Treasury Annex, 1500 Pennsylvania Avenue, NW., Washington, DC 20220.
OMB Reviewer: Milo Sunderhauf (202) 395–6880, Office of Management and Budget, Room 3001, New Executive Office Building, Washington, DC 20503.

Lois K. Holland,

Departmental Reports Management Officer.

[FR Doc. 93–19196 Filed 8–10–93; 8:45 am]

BILLING CODE 4810–25–P

UNITED STATES INFORMATION AGENCY

Culturally Significant Objects Imported for Exhibition; Determination

Notice is hereby given of the following determination: Pursuant to the authority vested in me by the Act of October 19, 1965 (79 Stat. 985, 22 U.S.C. 2459), Executive Order 12047 of March 27, 1978 (43 FR 13359, March 29, 1978), and Delegation Order No. 85–5 of June 27, 1985 (50 FR 27393, July 2, 1985), I hereby determine that the objects in the exhibit, "From Elizabeth I to Elizabeth II: Master Drawings from the National Portrait Gallery, London," (see list) [1] imported from abroad for the temporary exhibition without profit within the United States, are of cultural significance. These objects are imported pursuant to a loan agreement with the foreign lender. I also determine that the temporary exhibition of the objects at the Philbrook Museum of Art, Tulsa, Oklahoma from on or about September 12, 1993, to on or about November 7, 1993; at the Center for Fine Arts, Miami, Florida from on or about December 11, 1993, to on or about February 6, 1994; and the National Portrait Gallery from on or about February 25, 1994, to on or about April 24, 1994, is in the national interest.

Public notice of this determination is ordered to be published in the **Federal Register.**

Dated: August 5, 1993.

R. Wallace Stuart,

Acting General Counsel.

[FR Doc. 93–19208 Filed 8–10–93; 8:45 am]

BILLING CODE 8230–01–M

[1] A copy of this list may be obtained by contacting Mr. R. Wallace Stuart of the Office of the General Counsel of USIA. The telephone number is 202/619–5078, and the address is room 700, U.S. Information Agency, 301 Fourth Street, SW., Washington, DC 20547.

Privacy Act of 1974; Addition of a New System of Records

AGENCY: United States Information Agency.

ACTION: Publication of a new system of records.

SUMMARY: This is a new system that is being added to the present USIA Systems of Records, as required by the Privacy Act of 1974.

DATES: Persons wishing to comment may do so by September 10, 1993.

EFFECTIVE DATE: This notice shall become final September 10, 1993.

ADDRESSES: 301 4th Street, SW., Washington, DC 20547.

FOR FURTHER INFORMATION CONTACT: Lola L. Secora, FOIA/PA Officer, Office of the General Counsel, USIA, 301 4th St., SW., rm. M–10, Washington, DC 20547, (202) 619–5499.

SUPPLEMENTARY INFORMATION: Agencies must comply with the provisions of the Privacy Act of 1974 (5 U.S.C. 552a, Public Law 93–579, 88 Stat. 1896)), and OMB Guidelines (54 FR 25828, June 19, 1989) on implementation of the requirements of the Act.

USIA–59

SYSTEM NAME:

Historical Collection Biographical Files—E/CLR.

SYSTEM LOCATION:

Bureau of Educational and Cultural Affairs, United States Information Agency (USIA), 330 C Street, SW., Washington, DC 20547.

SECURITY CLASSIFICATION:

None.

CATEGORIES OF INDIVIDUALS COVERED BY THE SYSTEM:

Current and former Agency Directors and Deputy Directors, VOA Directors and other prominent USIA officials and employees.

CATEGORIES OF RECORDS IN THE SYSTEM:

Presd releases, newspaper clippings, memos, reports and studies prepared by subject.

AUTHORITY FOR MAINTENANCE OF THE SYSTEM:

Biographical files created as part of Agency's permanent historical record. Files created 1942 to date and on-going.

ROUTINE USES OF RECORDS MAINTAINED IN THE SYSTEM, INCLUDING CATEGORIES OF USERS AND THE PURPOSES OF SUCH USES:

Reference information for USIA staff and outside researchers. Files are reviewed before being provided.

POLICIES AND PRACTICES FOR STORING, RETRIEVING, ACCESSING, RETAINING, AND DISPOSING OF RECORDS IN THE SYSTEM:

STORAGE:

Paper records in file folders arranged alphabetically.

RETRIEVABILITY:

Filed alphabetically by individual name.

SAFEGUARDS:

Maintained in file cabinets in supervised area.

RETENTION AND DISPOSAL:

Most files are kept permanently as part of the Agency's historical collection.

SYSTEM MANAGER AND ADDRESS:

Administrative Librarian, Historical Collection, USIA, 330 C Street, SW., Washington, DC 20547.

RECORD ACCESS PROCEDURE:

Users of Historical Collection may request bio files to review in Collection's reading room but all material is reviewed first. Requests by letter or by phone are treated as FOIA requests. FOIA requests should be addressed to FOIA/Privacy Act Unit, Office of General Counsel, USIA, 301 4th Street, SW., Washington, DC 20547.

CONTESTING RECORD PROCEDURES:

The Agency's rules for access and for contesting contents and appealing determinations by the individual concerned appear in 22 CFR part 505.

RECORD SOURCE CATEGORIES:

Press Reports, Press Releases. Selected material prepared by individual covered by system.

SYSTEMS EXEMPTED FROM CERTAIN PROVISIONS OF THE ACT:

Not applicable.

Dated: August 2, 1993.

R. Wallace Stuart,

Acting General Counsel.

[FR Doc. 93–19043 Filed 8–10–93; 8:45 am]

BILLING CODE 8230–01–M

UNITED STATES INSTITUTE OF PEACE

1993 Cycle of Solicited Grant Competition

ACTION: Notice; call for applications.

SUMMARY: The United States Institute of Peace announces the 1993 cycle of its annual Solicited Grant Competition from the Grants Program. This year's topics are: Solicitation A: Early Warning and Preventive Diplomacy; Solicitation B: Peace and Security in East and Southeast Asia; Solicitation C: Public Library Reading and Discussion Programs. The Institute encourages applications from nonprofit organizations, official public institutions, and individuals. Detailed information and application materials are available upon request.

DATES: Applications are due by January 2, 1994 in order to be considered in the current cycle. Announcements of awards will be made in April.

ADDRESSES: United States Institute of Peace; 1550 M Street NW., suite 700; Washington, DC 20005–1708.

FOR FURTHER INFORMATION CONTACT: Solicited Grant Projects; 202/429–3844.

Dated: August 5, 1993.

Bernice Carney,

Director of Administration.

[FR Doc. 93–19204 Filed 8–10–93; 8:45 am]

BILLING CODE 3155–01–M

DEPARTMENT OF VETERANS AFFAIRS

Summary of Precedent Opinions of the General Counsel

AGENCY: Department of Veterans Affairs.

ACTION: Notice.

SUMMARY: The Department of Veterans Affairs (VA) is publishing a summary of legal interpretations issued by the Department's General Counsel involving veterans' benefits under laws administered by VA. These interpretations are considered precedential by VA and will be followed by VA officials and employees in future claim matters. It is being published to provide the public, and, in particular, veterans' benefit claimants and their representatives, with notice of VA's interpretation regarding the legal matter at issue.

FOR FURTHER INFORMATION CONTACT: Jane L. Lehman, Chief, Law Library, Department of Veterans Affairs, 810 Vermont Avenue, NW., Washington, DC 20420, (202) 523–3826.

SUPPLEMENTARY INFORMATION: VA regulations at 38 CFR 2.6(e)(9) and 14.507 authorize the Department's General Counsel to issue written legal opinions having precedential effect in adjudications and appeals involving veterans' benefits under laws administered by VA. The General Counsel's interpretations on legal matters, contained in such opinions, are conclusive as to all VA officials and employees not only in the matter at issue but also in future adjudications

and appeals, in the absence of a change in controlling statute or regulation or a superseding written legal opinion of the General Counsel.

VA publishes summaries of such opinions in order to provide the public with notice of those interpretations of the General Counsel which must be followed in future benefit matters and to assist veterans' benefit claimants and their representatives in the prosecution of benefit claims. The full text of such opinions, with personal identifiers deleted, may be obtained by contacting the VA official named above.

O.G.C. Precedent Opinion 1–93

Question presented: Are the proceeds of a life insurance policy that is surrendered by its owner for cash considered income for the purpose of determining entitlement to improved pension?

Held: Proceeds of a life insurance policy that is surrendered for cash should not be considered income for purposes of determining entitlement to improved pension under title 38, United States Code, to the extent that such proceeds consist of return of sums paid as part of the insurance premiums. Interest on the policy holder's monetary contribution should be considered income.

Effective date: January 8, 1993.

O.G.C. Precedent Opinion 2–93

Questions presented:

a. Is nicotine dependence, per se, a disease or injury for which VA compensation benefits are payable?

b. Is disability or death resulting from identifiable residuals of injury or disease due to tobacco use while on active duty service connected?

c. Does tobacco use, per se, or based upon the level of consumption, constitute willful misconduct or abuse of a drug for purposes of line-of-duty determinations?

Held:

a. Determination of whether nicotine dependence, per se, may be considered a disease or injury for disability compensation purposes is essentially an adjudicative matter to be resolved by adjudicative personnel based on accepted medical principles relating to that condition.

b. Direct service connection of disability or death may be established if the evidence establishes that injury or disease resulted from tobacco use in line of duty in the active military, naval, or air service.

c. A determination of whether tobacco use constitutes willful misconduct for purposes of determining whether disability or death may be considered to have resulted from injury or disease incurred in line of duty depends upon whether the evidence in the particular case establishes that the veteran engaged in deliberate or intentional wrongdoing and either knew or intended the consequences of tobacco use or used tobacco with a wanton and reckless disregard of its probable consequences. However, tobacco use does not constitute drug abuse within the meaning of statues providing that injury or disease will not be considered incurred in line of duty where it results from abuse of drugs.

Effective date: January 13, 1993.

O.G.C. Precedent Opinion 3–93

Question presented: If a third party reimburses the Government for the reasonable cost of a veteran's hospitalization at a Department of Veterans Affairs (VA) medical facility for a nonservice-connected disability, is increased improved pension for aid and attendance payable to the veteran throughout the period of hospitalization?

Held: Regardless of whether a third party reimburses the Government under 38 U.S.C. 1729(a) for the reasonable cost of a veteran's hospitalization at a Department of Veterans Affairs (VA) medical facility for a nonservice-connected disability, the veteran may be considered hospitalized at VA expense for purposes of 38 CFR 3.552(b)(1), which requires discontinuance of increased improved pension for aid and attendance effective the last day of the first calendar month following the month of a veteran's admission for hospitalization at VA expense.

Effective date: January 27, 1993.

O.G.C Precedent 4–93

Questions presented:

A. Must the holdings of O.G.C. Prec. 12–89 concerning the countability of dividend distributions from Alaskan Native Corporations in income and net-worth determinations for improved-pension purposes be modified in light of amendments to the Alaskan Native Claims Settlement Act (ANCSA)?

B. Do the conclusions of O.G.C. Prec. 12–89 concerning the countability of dividend distributions from Alaskan Native Corporations in income and net-worth determinations for improved-pension purposes apply in the same manner to other VA income-related benefits?

Held:

A. There has been no amendment to the Alaskan Native Claims Settlement Act which changes the conclusions stated in O.G.C. Prec. 12–89 concerning the countability of dividend distributions from Alaskan Native Corporations in income and net-worth determinations for improved-pension purposes.

B. Dividends from Alaskan Native Corporations representing distributions from the Alaskan Native Fund are excluded from income determinations for the purposes of section-306 pension (pension payable under Public Law 86–211, as amended), old-law pension (pension payable under laws in effect on June 30, 1960), and parents' dependency and indemnity compensation; however, taxable dividend distributions derived from earnings of such corporations are not excluded from income determinations under those programs. Dividends from Alaskan Native Corporations, whether taxable or not, to the extent they do not exceed $2000, are excluded from net-worth determinations for purposes of section-306 pension. Net worth is not a factor in determination of eligibility for old-law pension and parents' DIC.

Effective date: March 18, 1993.

By Direction of the Secretary

Mary Lou Keener,

General Counsel.

[FR Doc. 93–19282 Filed 8–10–93; 8:45 am]

BILLING CODE 8320–01–M

Sunshine Act Meetings

Federal Register
Vol. 58, No. 153
Wednesday, August 11, 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).

BOARD OF GOVERNORS OF THE FEDERAL RESERVE SYSTEM

TIME AND DATE: 12:00 Noon, Monday, August 16, 1993.

PLACE: Marriner S. Eccles Federal Reserve Board Building, C Street entrance between 20th and 21st Streets, NW., Washington, DC 20551.

STATUS: Closed.

MATTERS TO BE CONSIDERED:

1. Personnel actions (appointments, promotions, assignments, reassignments, and salary actions) involving individual Federal Reserve System employees.
2. Any items carried forward from a previously announced meeting.

CONTACT PERSON FOR MORE INFORMATION: Mr. Joseph R. Coyne, Assistant to the Board; (202) 452-3204. You may call (202) 452-3207, beginning at approximately 5 p.m. two business days before this meeting, for a recorded announcement of bank and bank holding company applications scheduled for the meeting.

Dated: August 6, 1993.

Jennifer J. Johnson,

Associate Secretary of the Board.

[FR Doc. 93-19335 Filed 08-9-93; 9:06 am]
BILLING CODE 6210-01-P

Corrections

Federal Register
Vol. 58, No. 153
Wednesday, August 11, 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 COMMERCE

National Oceanic and Atmospheric Administration

50 CFR Part 672

[Docket No. 921107-3068; I.D. 072393A]

Groundfish of the Gulf of Alaska

Correction

In rule document 93-18037 appearing on page 40601 in the issue of Thursday, July 29, 1993, in the second column, in the **SUMMARY**, in the sixth line, remove the comma after "(SRRE)".

BILLING CODE 1505-01-D

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

50 CFR Parts 672 and 675

[Docket No. 930232-3166; I.D. 120492C]

RIN 0648-AD39

Groundfish of the Gulf of Alaska, Groundfish of the Bering Sea and Aleutian Islands Area

Correction

In rule document 93-17607 beginning on page 39680 in the issue of Monday, July 26, 1993, make the following corrections:

1. On page 39680, in the third column, in the **SUMMARY**, in the seventh line, "non-pelagic" should read ""nonpelagic".

2. On page 39681, in the second column, in the first full paragraph, in the third line, after the three stars, insert close quotation marks.

3. On page 39682, in the third column, in the fourth line from the top, "ground" should read "groundfish".

BILLING CODE 1505-01-D

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

[I.D. 072093A]

Groundfish of the Gulf of Alaska

Correction

In notice document 93-17606 beginning on page 39794 in the issue of Monday, July 26, 1993, make the following correction:

On page 39794, in the third column, in the first full paragraph, in the seventh line, "for" should read "of".

BILLING CODE 1505-01-D

DEPARTMENT OF THE INTERIOR

Bureau of Land Management

[MT-930-5410-10-EO21; MTM 82294; MT-930-5410-10-EO22; MTM 82295; MT-930-5410-10-EO23; MTM 82296]

Applications for Conveyance of Mineral Interests; Montana

Correction

In notice document 93-16191 appearing on page 36991 in the issue of Friday, July 9, 1993, in the first column, in the **SUMMARY**, in the second line, "section 290b" should read "section 209b".

BILLING CODE 1505-01-D

federal register

Wednesday
August 11, 1993

Part II

Environmental Protection Agency

40 CFR Parts 60, 61 and 63
National Emission Standards for Hazardous Air Pollutants for Source Categories; General Provisions; Proposed Rule

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Parts 60, 61, and 63

[FRL–4689–3]

RIN 2060–AC98

National Emission Standards for Hazardous Air Pollutants for Source Categories: General Provisions

AGENCY: Environmental Protection Agency (EPA).

ACTION: Proposed rule and opportunity for public hearing.

SUMMARY: This action proposes general provisions for national emission standards for hazardous air pollutants (NESHAP) and other regulatory requirements pursuant to section 112 of the Clean Air Act (Act) as amended November 15, 1990. The general provisions, located in subpart A of part 63 of title 40 of the Code of Federal Regulations, codify procedures and criteria to implement emission standards for stationary sources that emit (or have the potential to emit) one or more of the 189 substances listed as hazardous air pollutants (HAP) in section 112(b) of the Act. The general provisions eliminate the need to repeat general information and requirements within these standards. This action also proposes amendments to subpart A of parts 60 and 61 of title 40 of the Code of Federal Regulations to bring them up to date with the amended Act and, where appropriate, to make them consistent with requirements in subpart A of part 63.

DATES: *Comments.* Comments must be received on or before October 12, 1993.

Public Hearing. If anyone contacts the EPA requesting to speak at a public hearing by August 25, 1993, a public hearing will be held on September 14, 1993 beginning at 10 a.m.

ADDRESSES: *Comments.* Comments should be submitted (in duplicate if possible) to: Air Docket (LE–131), Attention Docket Number A–91–09, room M1500, U.S. Environmental Protection Agency, 401 M Street, SW., Washington, DC 20460.

Public Hearing. If a public hearing is held, it will take place at the EPA's Office of Administration auditorium, EPA Administration Building, 79 T. W. Alexander Drive, Research Triangle Park, North Carolina 27711. Persons interested in attending a hearing or wishing to present oral testimony should notify Ms. Julia Stevens (MD–13), U.S. Environmental Protection Agency, Research Triangle Park, North Carolina 27711, telephone (919) 541–5578. Persons interested in attending the hearing should call Ms. Stevens to verify that a hearing will be held.

Docket. Docket No. A–91–09, containing supporting information used in developing the proposed general provisions and background information on the existing general provisions in parts 60 and 61, is available for public inspection and copying between 8:30 a.m. and 4:30 p.m., Monday through Friday, at the EPA's Air Docket, room M1500, U.S. Environmental Protection Agency, 401 M Street, SW., Washington, DC 20460. A reasonable fee may be charged for copying.

Documents. The background information document may be obtained from the U.S. EPA Library (MD–35), Research Triangle Park, North Carolina 27711, telephone (919) 541–2777. Please refer to "General Provisions for 40 CFR Part 63, Background Information for Proposed Regulation" (EPA–450/3–91–019).

FOR FURTHER INFORMATION CONTACT: Ms. Michele Dubow, Standards Development Branch, Emission Standards Division (MD–13), U.S. Environmental Protection Agency, Research Triangle Park, North Carolina 27711, telephone (919) 541–3803.

SUPPLEMENTARY INFORMATION: The information presented in this preamble is organized as follows:

I. Summary of Action, Rationale, and Impacts
  A. Action
  B. Rationale
  C. Impacts
II. Background and Purpose
  A. Purpose of General Provisions
  B. Reasons for New General Provisions
  C. Approach to Developing New General Provisions
  D. Use of Existing General Provisions
  E. New Technical and Legal Requirements of the Act
III. Proposed General Provisions Based on New Requirements of the Clean Air Act Amendments of 1990
  A. Introduction
  B. Definition of "Source" and "Major Source"
  C. Permit Program Requirements under Title V
  D. List of Hazardous Air Pollutants
  E. Compliance with Standards
  F. Compliance Certification Requirements under Title VII
  G. Deletion of Source Categories from the Source Category List
IV. Proposed General Provisions Based on Revisions to the Existing General Provisions
  A. Introduction
  B. Suggestions by Affected Industries
  C. Suggestions by State and Local Air Pollution Control Agencies
  D. Quality Assurance and Quality Control Requirements
V. Administrative Requirements
  A. Docket
  B. Public Hearing
  C. Paperwork Reduction Act
  D. Office of Management and Budget Review
  E. Regulatory Flexibility Act

I. Summary of Action, Rationale, and Impacts

A. Action

The EPA is proposing general provisions for part 63 of title 40 of the Code of Federal Regulations (CFR). Part 63 has been set aside to codify national emission standards for hazardous air pollutants (NESHAP) for source categories covered under section 112 of the Act as amended November 15, 1990. The general provisions codify procedures and criteria needed to implement any NESHAP; they eliminate the need to repeat general information and requirements within each standard. General information includes definitions, scientific units and abbreviations, addresses of EPA Regional Offices and State air pollution control agencies to which implementation and enforcement authority has been delegated, and incorporation by reference of technical materials. The general requirements contained in these provisions include administrative procedures and compliance-related activities. Administrative procedures include steps taken by the EPA to determine the applicability of standards, to respond to other requests for determinations, to grant extensions of compliance, and to provide permission to use an alternative means of compliance from that specified in a standard. Compliance-related sections spell out the responsibilities of an owner or operator to comply with relevant emission standards and other requirements. These provisions include compliance dates, operation and maintenance requirements, methods for determining compliance with standards, procedures for emission (performance) testing and monitoring, and recordkeeping and reporting requirements. These sections also specify when and how an owner or operator may request an extension of compliance with specific requirements.

In addition, the EPA is proposing amendments to the general provisions for parts 60 and 61 of title 40 of the CFR to address new statutory requirements and, where appropriate, to make portions of these existing regulations consistent with the proposed general provisions for part 63.

B. Rationale

As discussed in more detail under the "Background and Purpose" section of

this preamble, the EPA decided to continue its use of general provisions as developed during the implementation of parts 60 and 61 of title 40 of the CFR. Parts 60 and 61 contain national standards required under sections 111 and 112 of the Act before it was amended in 1990. The EPA made the decision to continue this practice based on its experience with implementation of these national standards, in particular new source performance standards (NSPS) set under section 111 of the Act. The EPA's experience with the existing general provisions under parts 60 and 61 confirms that such provisions eliminate repetition within individual standards. They also improve consistency and understanding of the basic requirements for affected sources among the regulated community and compliance personnel.

In drafting the proposed general provisions for part 63, the EPA relied upon the existing general provisions in parts 60 and 61. The general provisions in parts 60 and 61 were based on many factors that are relevant to development of general provisions for part 63. While much of the language and style from parts 60 and 61 was adopted, the EPA reorganized the layout of the general provisions to make them more user-friendly to small businesses. In addition, the EPA reconsidered the appropriateness of the general recordkeeping and reporting requirements and carefully reviewed the requirements of new section 112 of the Act. Appropriate additional provisions are being proposed to ensure that new statutory requirements are addressed.

C. Impacts

There are no specific impacts associated with this action. The general provisions for part 63 do not require any activities beyond those required for all sources affected by the Act such as activities associated with permit program implementation under title V of the Act. For sources affected by section 112 only (and not, for example, other sections in title I of the Act), the general provisions mainly require activities after source category-specific standards have been proposed and promulgated. When the EPA develops standards under amended section 112, it will estimate the impacts associated with these general provisions.

The proposed amendments to the general provisions for parts 60 and 61 that address the new Federal operating permit program under title V of the Act merely inform owners and operators of requirements that will be codified elsewhere in the CFR; no additional activities that are unique to parts 60 and 61 are required. Furthermore, the flexibility that the EPA is proposing to add to reporting requirements in these parts will reduce the impact on affected sources and enforcement agencies.

II. Background and Purpose

A. Purpose of General Provisions

Section 301 of title III of the Clean Air Act Amendments of 1990, Pub. L. 101–549, enacted on November 15, 1990, substantially amended section 112 of the Act regarding promulgation of NESHAP. These NESHAP are to be established for categories of stationary sources that emit one or more of the 189 hazardous air pollutants (HAP) listed in section 112(b). Each standard established for a source category will be codified in a subpart (or multiple subparts) of 40 CFR part 63. In order to eliminate the repetition of general information and requirements within these subparts, general provisions that are applicable to all sources regulated by subsequent standards in part 63 are being proposed in subpart A of part 63.

The general provisions codify procedures and criteria that will be used to implement all NESHAP promulgated under the Act as amended November 15, 1990. The general provisions consist of three general classes of information: (1) "Generic" topics, (2) administrative sections, and (3) provisions that implement the technical and legal aspects of the Act. "Generic" topics concern basic information that does not require any action on the part of the regulated community or the EPA; they include definitions of terms, units and abbreviations, addresses of EPA Regional Offices and State air pollution control agencies to which implementation and enforcement authority has been delegated, and incorporation by reference of technical materials. Administrative sections concern EPA actions such as determining the applicability of standards, responding to requests for specific compliance-related determinations, evaluating and acting on requests for extensions of compliance requirements, evaluating and acting on requests to use an alternative means of compliance from that specified by a standard, enforcing the regulations (or delegating authority to States to do so), and making information available to the public under section 114 of the Act. Finally, the heart of the general provisions is the third class of information: Those sections that spell out the responsibilities of an owner or operator to comply with a relevant emission standard or other requirement. These provisions include compliance dates, operation and maintenance requirements, methods for determining compliance with standards, procedures for emission (performance) testing and monitoring, recordkeeping, reporting and notification requirements, procedures and criteria for obtaining approval to construct a new source or reconstruct an existing source, procedures and criteria for obtaining approval to use an alternative standard, and prohibited activities. These sections also specify when and how a source may request or be granted a waiver or extension of compliance with particular requirements. The general provisions have the legal force and effect of standards, and they may be enforced independently of relevant standards, if appropriate.

The general provisions supplement requirements for specific source categories that will be promulgated in other subparts of part 63. Owners or operators who are subject to a subpart promulgated for a specific source category are also subject to the requirements of the general provisions.

In the development of a part 63 subpart applicable to a specific source category, the EPA may determine that it is appropriate that the subpart contain provisions that override one or more requirements of the general provisions. When this occurs, the EPA will attempt to include explicit language in the subpart pointing to the requirements of the general provisions that are being overridden. If there is a conflict between requirements in the general provisions and the requirements of another subpart in part 63, the requirements of the other subpart will govern.

B. Reasons for New General Provisions

In the early 1970's, the EPA established general provisions in subpart A of parts 60 and 61 of title 40 of the CFR. Part 60 incorporates the requirements of section 111 of the Act; these requirements implement new source performance standards that reflect the "best demonstrated technology." Part 61 incorporates the requirements of section 112 of the Act before it was amended in 1990; these requirements implement NESHAP that were developed to reflect protection of public health with "an ample margin of safety." (The general provisions for parts 60 and 61 were amended numerous times. Background on the existing general provisions in parts 60 and 61, including a review of their content and the history of their development, may be obtained from the "General Provisions for 40 CFR Part 63, Background Information for Proposed

Regulation" (see ADDRESSES section of this preamble).)

The general provisions being proposed here are similar to those contained in 40 CFR parts 60 and 61. The general provisions in parts 60 and 61 serve the same purpose as the general provisions for part 63 but they were developed to address different sets of statutory directives. Because amended section 112 of the Act is somewhat different from former section 112, new general provisions are appropriate for effective implementation of the NESHAP that will be developed in accordance with the statutory requirements of new section 112.

Furthermore, new section 112(q) adds a "Savings Provision" that preserves the legality of existing NESHAP in part 61 until they are amended. Section 112(q) says that "any standard under [section 112] promulgated before the date of enactment of the Clean Air Act Amendments of 1990 shall remain in force and effect after such date unless modified as provided in this section before the date of enactment of such Amendments or under such Amendments." Existing NESHAP in part 61 must be reviewed and, if appropriate, revised to comply with the standard-setting requirements of new section 112 within 10 years of the date of enactment. If a standard, promulgated and subsequently judicially challenged before November 15, 1990, is remanded to the EPA, the Agency has the discretion to apply either the requirements of new section 112 or former section 112, as they were spelled out in the Act and in part 61. The consequence of section 112(q) is that the existing general provisions in part 61 are still relevant, even though the enabling portion of the Act has been revoked and replaced with new statutory language. Thus, the existing general provisions in part 61 are valid in the future for sources that are affected by existing NESHAP and must remain intact for the standards established under part 61.

For these reasons, a new part in the CFR, part 63, has been created to incorporate the new NESHAP established under amended section 112 of the Act and general provisions developed to implement them.

C. Approach to Developing New General Provisions

In developing the proposed general provisions for part 63, the EPA relied on many of the technical and policy approaches used in developing and implementing the existing general provisions under parts 60 and 61. In doing so, the EPA reconsidered and improved several elements of these approaches. In addition, the EPA reviewed the statutory requirements of amended section 112 and developed new general provisions where existing approaches were inadequate. Through a process of selective merging, deleting, and reorganizing, the EPA combined elements from the existing general provisions to form a template from which the new general provisions were further developed.

The existing provisions were further revised as needed to meet the new technical and legal requirements of the Act, to enhance their ability to promote compliance and enforcement (including correcting any obvious problems that have been encountered in their implementation), and to make them easier to use.

The approach used by the EPA to develop the new general provisions is explained in more detail in the next several paragraphs.

D. Use of Existing General Provisions

The key to the EPA's approach to developing the proposed general provisions for part 63 was to reuse as much as possible the technical and policy approaches associated with the existing general provisions in parts 60 and 61. This approach maintains consistency with the EPA's past regulatory perspectives developed for other national standards required by section 111 and former section 112 of the Act. The EPA believes this approach is reasonable because the implementation aspects of setting standards under new section 112 combine elements from the standard-setting criteria from both section 111 and former section 112. In addition to carrying forward precedents wherever possible, this approach takes advantage of the familiarity that the regulated community and compliance personnel have with the existing general provisions. Consequently, implementation of the new general provisions would occur with the least burden on the user communities.

Before section 112 was amended in 1990, it required the Administrator to determine which HAP warranted regulation and then prescribe health-based standards for those substances at a level to protect the public health with an "ample margin of safety." The general provisions in part 61 were drafted to implement these health-based standards. In addition, these standards required compliance by both new and existing sources within a relatively short period of time after the standards were promulgated. New section 112(f) of the Act is similar to former section 112 in that it provides for promulgation of health-based standards, although the EPA must consider all HAP being emitted from the sources being reviewed.

Section 111 directs the Administrator to promulgate technology-based performance standards (considering costs and other impacts) for new stationary sources that contribute significantly to air pollution. The pollutants that have been regulated under section 111 are generally either criteria pollutants or non-criteria, non-hazardous air pollutants. The general provisions for part 60 were drafted to implement national standards based on the use of the best demonstrated control technologies considering costs and other relevant impacts. In several ways the implementation of part 60 standards is similar to the implementation requirements of section 112(d) of the amended Act.

Initially, new section 112 is to be implemented through promulgation of technology-based emission standards (essentially equivalent to performance standards) for the source categories that emit the hazardous air pollutants of concern. This is analogous to the basis for part 60 regulations. The standards will be based on the use of "maximum achievable control technologies" (MACT) and, in certain cases, "generally available control technologies" (GACT) for sources of HAP. As in the development of section 111 standards, the EPA may consider costs and other impacts in the selection of these technology-based standards, except that in the case of MACT-based emission standards, new section 112 defines a minimum level of control, or "floor." The EPA considers cost and other impacts in evaluating options more stringent than the floor defined by the statute.

Eight years after promulgation of MACT-based emission standards for a category of sources, the EPA must assess the residual risk remaining after the application of MACT and, if necessary, revise the relevant standard on a health basis in accordance with the standard-setting criteria in effect before section 112 was amended.

The EPA has developed and implemented more than 70 national technology-based standards under part 60 and more than a dozen emission standards under part 61. The source categories affected under part 60 (and existing regulations under part 61) represent a significant cross-section of the source categories that may be regulated under amended section 112. Consequently, much of the potential regulated community and essentially all

of the compliance personnel have developed an understanding of and the skills needed to implement general provisions similar to those in parts 60 and 61.

The EPA views the past regulatory perspectives associated with the general provisions in parts 60 and 61 as a creditable starting point from which to develop new general provisions for national technology-based standards under amended section 112. These perspectives have been developed over many years of implementing such standards. In addition, the EPA considers the user communities' familiarity with the existing general provisions an important factor in developing general provisions under new section 112.

As discussed below, the EPA is aware that improvements to the existing general provisions are possible and that amended section 112 requires revisions to the approaches taken in the past (e.g., compliance dates differ). Accordingly, the EPA decided to combine elements from the existing general provisions and then revise these elements in order to:

(1) Meet the new technical and legal requirements of the Act;

(2) Enhance their ability to promote compliance and enforcement (including correcting any obvious problems that have been encountered in their implementation); and

(3) Make them easier to use.

E. New Technical and Legal Requirements of the Act

In considering how to use the existing general provisions as the basis for the general provisions for part 63, the EPA reviewed the amendments to section 112 and other amendments to the Act. With respect to changes within section 112, the EPA found only a few revisions that affect how the general provisions would be drafted.

A significant revision in section 112 that affects how the general provisions are drafted is the modification provisions. The modification provisions associated with section 112(g) are much more complicated than the provisions associated with section 112 before it was amended. Accordingly, the EPA has separated this effort into an individual rulemaking that will be proposed separately. In that rulemaking, the EPA will consider and propose how to implement the substantive requirements of section 112(g). Within today's rulemaking, the EPA has reserved space for provisions relating to section 112(g) that would be added to part 63 later.

Second, the compliance dates contained in section 112(i) are different from the compliance dates contained in previous section 112. For example, under section 112(i)(3), existing sources may have up to three years to come into compliance based on compliance dates established by the EPA, and some sources may be allowed an extra year to comply in certain circumstances. In addition, section 112(i)(5) provides for compliance extensions for sources that make "early reductions" of hazardous air pollutants, and section 112(i)(7) adds a special extension for certain new sources affected by standards under sections 112(d) and 112(f). (A final rulemaking on "early reductions" has been published by the EPA (see 57 FR 61970, December 29, 1992) and will be codified in subpart D of part 63.) Essentially, the compliance provisions of the Act differ from the provisions of section 112 before it was amended. Accordingly, the EPA is proposing appropriately different general provisions with respect to compliance dates.

Third, the style and requirements associated with coordination with other titles in the Act are an important change from the previous section 112. An important element of the EPA's approach to developing general provisions for part 63 is the coordination of the general provisions with new requirements under title V of the Clean Air Act Amendments of 1990. Title V introduces a Federal operating permit program similar to the National Pollutant Discharge Elimination System created by the Clean Water Act. The purpose of the new permit program is to ensure compliance with all applicable requirements of the Act and enhance the EPA's ability to enforce the Act. The program will clarify and make more enforceable a source's air pollution control requirements by consolidating all the source's obligations with respect to the Clean Air Act in one permit document. Sources will then file periodic reports identifying the extent to which they have complied with those obligations. Both of these features will greatly enhance the ability of Federal and State agencies (and the public) to evaluate a source's compliance status with regard to air quality regulations.

On July 21, 1992, the EPA promulgated in 40 CFR part 70 regulations requiring States to develop programs for issuing title V operating permits to stationary sources, including sources of HAP affected by part 63. Part 71 of title 40 of the CFR, to be proposed in the future, will contain regulations governing the operation of a federally-implemented permit program, should any State fail to have its program approved by the EPA. The permitting authority will be the State in the case of part 70 permits, and, in the case of permits issued under part 71, the permitting authority will be the Administrator. (The term "State" usually means the State air pollution control agency, but it may include reference to a local air pollution control agency.)

In developing the general provisions for part 63, the EPA's goal has been to reduce any unnecessary administrative burden on sources and implementing agencies that might arise from duplicative or conflicting requirements in parts 63, 70, and 71. In particular, the EPA is concerned about provisions that relate to the frequency and content of records and reports. While the general provisions implement section 112 standards when permit programs are not yet operable (except in the cases of sections 112(g) and 112(j), which can only be implemented after title V permit programs are effective) or when sources are exempt or deferred from the requirement to obtain a permit (see 57 FR 32250, July 21, 1992, Operating Permit Program: Final Rule, for an explanation of exempt and deferred sources), in cases when a source is required to obtain a title V operating permit, the general provisions will be implemented through the permit program. (See also the discussion under section III. C.(1) Relationship of the Permit Program Requirements to the General Provisions later in this preamble.) The EPA has decided not to incorporate relevant portions of parts 70 and 71 into the general provisions; rather, the general provisions are used to trigger owners or operators to apply for permits, when appropriate. Ultimately, owners or operators and their permitting authorities have the responsibility to coordinate all requirements applicable to a source under the Clean Air Act and prescribe the legal operating conditions for that source in its permit.

The EPA also recognizes that coordination will be needed between the requirements in titles III and I of the recent Clean Air Act Amendments, especially when volatile organic compounds (VOC) regulated under title I are hazardous air pollutants as listed under title III. This coordination will be handled during the development and implementation of individual NESHAP and State Implementation Plans, or in special circumstances, such as under the early reductions program, rather than through the general provisions for part 63.

Finally, in developing the new general provisions, the EPA decided to codify the HAP list, procedures for obtaining an extension of compliance

for "early reductions" (under section 112(i)(5)), and other associated regulations in separate subparts of part 63 instead of in the general provisions. This approach will make the general provisions easier to use for both the regulated community and compliance personnel. The "early reductions" regulations and the list of HAP to be regulated are part of separate rulemakings and their review by the public is not related to the general provisions proposed here. Where necessary, the general provisions reference appropriate sections in these other subparts so owners and operators of stationary sources may determine whether regulations in part 63 might apply to them. (In essence, these other subparts are also "general provisions.")

Furthermore, the EPA decided not to codify in subpart A statutory requirements dealing with construction, reconstruction, and modification of HAP-emitting sources under section 112(g) of the Act since the requirements specifically related to section 112(g) are being developed in a separate rulemaking. In contrast, the EPA decided to codify in subpart A statutory requirements dealing with construction and reconstruction of HAP-emitting sources under section 112(i). Historically, provisions governing new construction, reconstruction, and modification of stationary sources subject to NSPS or NESHAP have appeared in the general provisions in subpart A of parts 60 and 61. These provisions are integrally and substantively related to the general provisions as a whole. The requirements in today's proposal relate to section 112(i)(1) and allow the Administrator to implement and enforce emission standards by keeping track of new source construction and physical or operational changes to existing sources after applicable NESHAP are promulgated.

The EPA continues to believe that the interests of both the public and the EPA are best served by incorporating provisions for construction and reconstruction in the body of the general provisions; however, to reduce confusion, the EPA plans to issue the guidance required by section 112(g) in a separate subpart, subpart B of part 63. Regulations for subpart B of part 63 will be proposed by the EPA in the future. The guidance required by section 112(j), if codified through a rulemaking, would be proposed either in subpart A or in another subpart of part 63. In today's rulemaking, the EPA reserved space for these possible future rulemakings to insert appropriate language into subpart A. Subpart A would tie together the various statutory provisions dealing with construction, reconstruction, and modification by containing basic statutory requirements under sections 112(g), 112(i), and 112(j) and by referencing the guidance for sections 112(g) and 112(j), thus informing owners and operators where to look in the CFR to access relevant information.

III. Proposed General Provisions Based on New Requirements of the Clean Air Act Amendments of 1990

A. Introduction

A key element in the EPA's approach to developing general provisions for part 63 is to make them consistent with the technical and legal requirements introduced by the Clean Air Act Amendments of 1990. The statutory directives in the new Act are the basis for most of the changes that have been made to the existing general provisions in adapting them for use in part 63. Following are the major changes enacted by the recent Clean Air Act Amendments that affect the general provisions.

B. Definition of "Source" and "Major Source"

The definition of the term "stationary source" (sometimes referred to only as "source") plays an important part in the implementation of the Act. For the purposes of section 112, stationary source has the same meaning as defined under section 111(a) of the Act (see section 112(a)(3)). The term "stationary source" means "any building, structure, facility, or installation which emits or may emit any air pollutant" (see section 111(a)(3)).

The definition of "source" influences the implementation of section 112 in several ways. First, in selecting standards under sections 112(d) and 112(f), the EPA must define the source to which the standards apply. For example, in negotiating a draft rule for equipment leaks (44 FR 9315), the negotiating committee focused on the "process unit" to which these standards would apply. The "process unit" in this context is a collection of equipment used to produce one or more chemicals. The collection of equipment is identified for the purposes of demonstrating that the appropriate control technologies have been installed and are operating properly and that required work practices and other procedures are being followed by the owner or operator. Focusing on the process unit allows the owner or operator and the EPA to know which pieces of equipment are affected by the standards and what each piece of equipment must do to comply with the standards.

For the purposes of air toxics regulations established under new section 112 of the Act, stationary sources are divided into two types: "Major sources" and "area sources." "Major source" is defined as "any stationary source or group of stationary sources located within a contiguous area and under common control that emits or has the potential to emit * * * 10 tons per year or more of any hazardous air pollutant or 25 tons per year or more of any combination of hazardous air pollutants" (see section 112(a)(1)). The difference between major sources and area sources is the quantity of HAP they emit, or have the potential to emit, considering controls. By definition, area sources are all sources of HAP that are not major sources. The Administrator may establish lesser quantity cutoffs for certain HAP based on health considerations. In these cases, a source will be regulated as a major source even though it emits less than 10 (or 25) tons per year if it emits (or has the potential to emit) at least the lesser quantity of a pollutant for which a lesser quantity cutoff has been established. The distinction between major and area sources is significant for the general provisions because it determines how and when a source comes under the regulatory umbrella of part 63 (title III air toxics standards) and parts 70 and 71 (title V Federal operating permit program).

Second, in developing extensions of compliance under sections 112(i)(5) and 112(i)(6), in particular, the EPA must define the source to which these extensions apply. Under section 112(i)(5), an owner or operator may obtain an extension of compliance under certain circumstances. (See 57 FR 61970, December 29, 1992 for more details on this regulatory action.) Because these provisions must be effective before the date of proposal for standards under section 112(d), the EPA established a definition of the term "source" for the purpose of determining which pieces of equipment are affected by an extension. With respect to section 112(i)(6), an owner or operator may obtain an extension of compliance under certain conditions for existing sources that have installed best available control technology or technology required to meet a lowest achievable emission rate. For both of these provisions, the EPA must determine how the term "source" is to be used to implement these specific aspects of the Act, mainly to determine which pieces of equipment are affected

and what they must do to demonstrate compliance.

For the purpose of developing general provisions, the EPA decided to focus on the use of the term "source" as it relates to the implementation of standards under section 112(d). The EPA made this decision because the general provisions primarily are used in the implementation of these standards. In addition, other aspects of section 112, in particular the early reductions program under section 112(i)(5), must be considered on a case-by-case basis because these provisions are implemented before applicable NESHAP are promulgated.

In considering how to define the term "source" within the general provisions, the EPA considered three options. The first option was based on the approach used under part 60. This option—the NSPS approach—is based on how the EPA implemented the term "source" for the purpose of new source performance standards under section 111 of the Act. This is an obvious starting point because the Act instructs the EPA to use the definition of "source" given in section 111(a). The second option was based on considerations developed during the proposal and promulgation of the early reductions regulations. This option—the early reductions approach—is based on how the EPA implemented the term "source" for the purpose of section 112(i)(5). During development of the early reductions program, the EPA considered for the first time how to implement the term "source" under amended section 112; those considerations may be relevant to this rulemaking. The third option is based on considerations developed during the proposal and promulgation of the title V permit regulation. This option—the title V approach—is based on the EPA's interpretation of source in the context of the permit program. This title V option may shed light on the definition of source under this rulemaking. These three options are explained below.

(1) Option 1—NSPS Approach

The choice of the affected facility or source for standards under section 111 has been based on the EPA's interpretation of section 111 and on the judicial construction of its meaning (see *ASARCO Inc.* v. *EPA*, 578 F.2d 319 (D.C. Cir. 1978)). Under section 111, standards of performance for new stationary sources must apply to "new sources"; "source" is defined as "any building, structure, facility, or installation which emits or may emit any air pollutant" (section 111(a)(3)). Most industrial plants, however, may consist of numerous facilities—equipment or groups of equipment—that emit air pollutants and that, consequently, may be viewed as "sources." The EPA uses the term "affected facility" to designate the equipment or groups of equipment, within a particular kind of plant, chosen as the "source" affected by given standards.

In choosing the affected facility, the EPA must decide which equipment, or groups of equipment, is the appropriate unit for separate standards of performance in the relevant industrial context. The EPA has done this by examining the situation in light of the terms and purpose of section 111 of the Clean Air Act. One major consideration has been the scope of the definition of source. The scope of a particular definition focuses on how quickly replacement equipment is brought under the standards of performance. If, for example, an entire plant is designated as the affected facility, no part of the plant would be covered by the standards unless the plant as a whole is "modified" (see 40 CFR 60.14) or "reconstructed" (see 40 CFR 60.15). There would be no "new" plant in such situations. The plant as a whole would be considered modified only if the replacement resulted in an increase in the aggregate emissions from the entire plant. The plant as a whole would be considered reconstructed only if the cost of the replacement exceeded 50 percent of the cost of an entire new plant. If, on the other hand, each piece of equipment is designated as an affected facility, then as each piece is replaced, the replacement piece will be a new source subject to the standards, regardless of the cost of the replacement or whether the replacement caused emissions from the plant as a whole to increase.

Since the purpose of section 111 is to minimize emissions by application of the best demonstrated system of emission reduction at all new and modified sources (considering cost, non-air quality health and environmental impacts, and energy requirements), there is a presumption that a narrower designation of the affected facility is proper. This ensures that new emission sources within plants will be brought under the coverage of the standards as they are installed. This presumption can be overcome, however, if the EPA concludes either that: (1) A broader designation of the affected facility would result in greater emission reductions; or (2) consideration of the other relevant statutory factors (technical feasibility, costs, non-air quality health and environmental impacts, and energy requirements) leads to the conclusion that a broader designation is appropriate.

As the term "major source" was not part of section 112 before its amendment in 1990, the general provisions under part 61 did not address how to define "major source." Therefore, the existing general provisions do not provide guidance concerning interpretation of that term.

(2) Option 2—Early Reductions Approach

New section 112(i)(5)(A) of the Act specifies that the Administrator or a State with an approved permit program "* * * shall issue a permit allowing an existing source, for which the owner or operator demonstrates that the source has achieved a reduction of 90 percent or more in emissions of hazardous air pollutants (95 percent in the case of hazardous air pollutants which are particulates) from the source, to meet an alternative emission limitation reflecting such reduction in lieu of an emission limitation promulgated under section 112(d) for a period of 6 years from the compliance date for the otherwise applicable standard, provided that such reduction is achieved before the otherwise applicable standard under subsection (d) is first proposed."

The language of section 112(i)(5)(A) proceeds from the assumption that one can identify the "source" to which "the otherwise applicable standard" would apply. However, with one exception noted below, the EPA has not defined specific sources for purposes of establishing MACT standards under section 112(d) prior to their proposal. Therefore, prior to the time of proposal of a section 112(d) standard, the EPA can not define precisely an "existing source" to which an otherwise applicable standard might apply for any particular source category; the definition is established within the proposal. Nevertheless, the EPA had to define source for purposes of implementing the early reductions program.

The EPA recognizes that, depending on the considerations discussed under option 1, "source" may be defined narrowly or broadly, from an individual emission point up to and including an entire plant. The EPA's definition of "source" promulgated under the early reductions program is consistent with the broad flexibility encompassed under section 111(a)(3) and is designed to further the underlying purposes of the early reductions program. The definition represents the EPA's best efforts to balance the statutory policy to encourage maximum participation in

the program with the statutory constraints imposed by the requirements that 90 percent reduction must be achieved from an existing "source."

As set forth in the early reductions final rulemaking, the EPA established a multi-part definition of "source" for the purposes of that program. The final rulemaking defined source as follows:

(1) A building, structure, facility or installation identified as a source in appendix B of 40 CFR part 63 (only equipment leaks from synthetic organic chemical manufacturing is on this list (see 57 FR 62608, December 31, 1992));

(2) The entire contiguous facility;

(3) Any unit consisting of one or more emission points that can be characterized as a building, structure, facility, or installation; or

(4) Any combination of points, provided that emission reductions from such points constitute a significant reduction of hazardous air pollutant emissions from the entire contiguous facility. For the purposes of definition (4), emission reductions from a source are considered significant if they are made from a hazardous air pollutant baseline of not less than:

(i) A total of 10 tons per year, where the total base year emissions of hazardous air pollutants from the entire contiguous facility is greater than 25 tons per year; or

(ii) A total of 5 tons per year, where the total base year emissions of hazardous air pollutants from the entire contiguous facility are 25 tons or less per year.

In the preamble to the proposed early reductions rulemaking, the EPA offered several examples of the definition of source to illustrate the types of groupings that may reasonably fall within that proposed definition. Obviously, each plant is configured differently and it is impossible to contemplate all the combinations of emission points or units that may be unique to a particular contiguous facility. However, because the EPA has not developed a generic interpretation of "source" for the purposes of establishing MACT standards, the test for the definition of source under the early reductions program must be whether the application includes identifiable "sources" as that term is defined in the early reductions rule. The EPA's definition is an attempt to recognize the breadth of that flexibility.

The early reductions rule does not discuss the definition of "major source" because that term is not used in section 112(i)(5) of the Act as amended. Accordingly, the early reductions rule does not provide guidance concerning interpretation of that term.

(3) Option 3—Title V Approach

On July 21, 1992 (57 FR 32250), the EPA promulgated a regulation to implement title V of the Act; this regulation will be codified in 40 CFR part 70. In developing that rulemaking, the EPA clarified how the definitions of "stationary source" and "major source" would be applied under the operating permit program and explained how these concepts relate to the definitions of stationary source currently in effect in other programs under the Act. The EPA patterned its definition of "stationary source" for the permit program on the definition for "stationary source" contained in title I. The EPA determined that "stationary source" means any building, structure, facility, or installation that emits or may emit any air pollutant. This is the same definition provided in section 111(a)(3). Section 501(2) of the Act provides, in relevant part, that "the term 'major source' means any stationary source (or any group of stationary sources located within a contiguous area and under common control) that would be a major source under sections 112 or 302, or part D, of title I of the Act." As discussed below, the EPA decided that "stationary sources" are to be grouped to determine if a major source exists on the basis of the same industrial grouping, or "major group," in the Standard Industrial Classification Manual (SIC code). Accordingly, the EPA will require all commonly owned or controlled pollutant emitting activities on contiguous or adjacent properties to obtain an operating permit if they are within the same SIC major group, assuming the aggregated activities emit enough pollutants to trigger the applicable emissions thresholds provided in the Act. In addition, any equipment used to support the main activity at a site would also be considered part of the same major source regardless of the 2-digit SIC code for that equipment. For example, an automobile manufacturing plant may consist of a foundry (SIC group 33), a power plant (SIC group 49), and an assembly plant (SIC group 37). Assume that the equipment is situated at the same site, is under common ownership, and the foundry and power plant are used solely to supply the assembly plant. In this example, all three activities would be considered part of one major source. However, if less than 50 percent of the output of the foundry was dedicated to the mentioned auto assembly plant, it would be considered a separate source. If the power plant supported both the foundry and the assembly plant, it would be considered part of the source that consumes the largest percentage of the power generated.

(4) Conclusions

In reviewing the three options for defining "source," the EPA found that all three options contain elements of flexibility, consistency with the basic intent of the statutory provisions, and the need to identify clearly the entity to which the requirements apply. Under options 1 and 2, the EPA specifically addressed sources on a similar basis to the one the EPA must consider for the general provisions for part 63. In both cases, the EPA developed a flexible definition of the term source. Also, in both cases, the EPA limited its definition of source to the intent of the statutory provisions. For example, under part 60, the EPA clearly lays out that the definition of the term source should be construed so as to minimize emissions. Conversely, the EPA recognizes that exceptions to the "narrow" approach to defining source are appropriate; therefore, in part 60, no single definition can be used in the general provisions to prescribe specifically what the source must be for each standard. Thus, part 60 uses a definition of the term source that is essentially the statutory definition and then the EPA determines during each rulemaking what source means for that standard. The EPA is proposing to adopt this approach for the general provisions under part 63.

In considering how to define "major source" under part 63, the EPA found no support under options 1 and 2. Thus, the EPA considered the implications of adopting the approach taken under option 3. After doing so, the EPA selected an interpretation of major source that is based mainly on the statutory definition given in section 112(a)(1) and the approach taken in the regulation implementing title V of the Act. In doing so, however, the EPA recognized that most NESHAP will address groups of sources within a 2-digit SIC code and, therefore, the 2-digit SIC code limitation has not been proposed. Accordingly, major sources emit (or have the potential to emit) 10 tons per year or more of any HAP or 25 tons per year of any combination of HAP (unless lesser quantity cutoffs are established for specific pollutants) and are commonly owned or controlled pollutant-emitting activities on contiguous or adjacent properties. This does not conflict with the definition of source for the early reductions program

and will allow flexible development of rules for each source category.

The EPA believes Congress intended the term "contiguous area," as it is used to define major source in section 112, to have the same meaning as the term "contiguous or adjacent property," as it is used to define major source in section § 70.2 of the promulgated part 70 permit program regulation. The permit program regulation defines major source to include certain sources "on contiguous or adjacent property" in order to be consistent with language used in analogous provisions in previous Agency regulations (e.g., those dealing with the Prevention of Significant Deterioration and Nonattainment New Source Review permitting programs developed pursuant to parts C and D of title I of the Act (see 40 CFR 51.165(a)(1)(ii), 51.166(b)(4), and appendix S II. A. 2.; 40 CFR 52.21(b)(6)). Although "contiguous" is clear in its meaning of actually touching, "adjacent" is subject to broader interpretation, including that of being nearby but "not touching." What is "adjacent" depends not only on physical distance, but on related issues arising from the type of nexus existing between facilities. In ambiguous situations, the EPA prefers to make determinations of whether various industrial operations are part of the same source on a case-by-case basis based on implementation experience and common sense. For these reasons, the EPA has chosen not to include a single, inflexible definition of "contiguous or adjacent property" (or "contiguous area") in its regulations, including these general provisions for part 63.

(5) Miscellaneous Topics

After selecting the basis for defining "source" and "major source" for the purposes of part 63, the EPA considered how to draft the language in part 63 to implement these decisions. The EPA decided to use the term "affected source" to indicate those sources of HAP that are subject to the requirements of part 63. A separate term is needed to distinguish sources that are affected (or are being considered to determine if they are affected) by part 63 from sources that are not affected by part 63.

As with the term "affected facility" that is used in NSPS promulgated in part 60, the term "affected source" will be defined explicitly in each subpart in part 63 applicable to a specific source category. The definition established for a source category will determine which processes, equipment, or groups of equipment are subject to the part 63 standard for that category. If the standard is applicable, then each affected source must meet the requirements of the subpart, as well as those of the general provisions. If equipment subsequently is added to the source, and the added equipment falls within the definition of the affected source, that equipment also would be subject to the standard and the general provisions.

The EPA is soliciting comments on the usefulness of the term "affected source" for this purpose. Specifically, is this term confusing? If so, what other terms are tenable and how are they superior to "affected source?"

In addition, the EPA decided to use the term "major source" to define those stationary sources that emit (or have the potential to emit) 10 tons per year or more of any HAP or 25 tons per year of any combination of HAP (or lesser quantities, if lesser quantity cutoffs are established for particular pollutants) and are commonly owned or controlled pollutant-emitting activities on contiguous or adjacent properties.

The determination that an affected source has the potential to emit a certain quantity of HAP includes a consideration of controls (including controls already applied to reduce emissions) and must be made consistent with the permit program requirements of parts 70 and 71 and the regulatory requirements of part 63. For example, under the proposed requirements of subpart A, a determination must be made for existing sources soon after the effective date of an applicable subpart; however, it may be made earlier (see § 63.5(c) Review of Plans). The EPA believes it would be appropriate planning for owners and operators of sources that may be subject to part 63 emission standards to evaluate whether their sources are major soon after the EPA has proposed a part 63 standard to ensure that the sources can comply with the part 63 regulations. (At the time of proposal of a part 63 NESHAP, background information developed to support the standard should help owners and operators evaluate whether their sources are major.) It may be possible that a determination of whether a source is major could be made at any time through the source's federally enforceable part 70 or part 71 operating permit. Before a part 63 standard is promulgated that affects a particular category of sources, sources in that category that may be subject to section 112(g) of the Act may determine their applicability status through the part 70 or part 71 permit program.

For the purposes of part 63, the EPA is proposing to be consistent with the requirements of parts 51, 52, and 70 in considering which controls that have already been applied to reduce emissions could count toward limiting a source's potential to emit. Thus, "potential to emit" is defined in the proposed general provisions as "the maximum capacity of a stationary source to emit a pollutant under its physical and operational design," and "[a]ny physical or operational limitation on the capacity of the stationary source to emit a pollutant, including air pollution control equipment and restrictions on hours of operation or on the type or amount of material combusted, stored, or processed, shall be treated as part of its design if the limitation or the effect it would have on emissions is federally enforceable." (For more information about the EPA's policies regarding Federal enforceability, see 54 FR 27274, June 28, 1989, Requirements for the Preparation, Adoption, and Submittal of Implementation Plans; Air Quality, New Source Review; Final Rules.)

Sources may use any federally enforceable mechanism at their disposal to establish the Federal enforceability of physical or operational limitations on their capacity to emit a hazardous air pollutant, including restrictions or conditions included in: (1) State operating or preconstruction permits that are federally enforceable; (2) title V individual or general permits; or (3) State Implementation Plans (SIP's) or Federal Implementation Plans (FIP's) through the SIP or FIP revision processes. In effect, the EPA believes these mechanisms may incorporate restrictions on a source's operating capacity that could limit the source's potential to emit for the purposes of section 112. Further, existing limits incorporated into a SIP or FIP, and NSPS and NESHAP limits that are applicable at the time the source has to make the applicability determination, are federally enforceable even if they are not included in a federally enforceable permit.

Future EPA rulemakings may supplement the general provisions for section 112 standards and programs by further clarifying how and when sources may limit their potential to emit toxic pollutants below major source threshold levels. These rulemakings also would supplement the title V permit program with regard to making applicability determinations for sources of hazardous air pollutants.

Each source within a regulated category of sources must determine whether it is a major or area source and maintain a record of this determination. The proposed general provisions include requirements (in § 63.9) such

that owners or operators of affected sources subject to an emission standard (or certain other requirements) would submit an initial notification to the EPA or the delegated enforcement agency that would identify the source as subject to the specific part 63 standard (or other requirement) and supply specified information about the source.

Owners or operators of the following three categories of sources would have to submit initial notifications: (1) Affected sources that have an initial startup date before the effective date of a relevant standard; (2) sources that are area sources on the effective date of a part 63 standard but that subsequently become affected sources that are subject to that standard; and (3) new and reconstructed affected sources. The timing of the required initial notification is determined by the effective date of the relevant standard, and which of the three categories described above that the source is in. (See proposed § 63.9(b) for more details on the timing of initial notifications.)

Given the importance of a source's determination of whether it is a major source or an area source (e.g., because some part 63 emission standards will apply only to major sources within the category of sources regulated by that standard), the EPA considered proposing a requirement that all sources (including both affected and unaffected sources) within a category of sources for which a part 63 standard is promulgated must submit an initial notification. This would provide the EPA and delegated enforcement agencies with information on all potentially affected sources, and it would provide the greatest opportunity for the EPA and delegated agencies to review and confirm each source's major or area source determination. However, balanced against these benefits is the greater reporting burden that would fall on area sources, many of which are small businesses. On this basis, the EPA chose to propose a requirement that would require initial notification only by sources that determine they are affected sources (although all sources are responsible for maintaining a record of their determination of whether they are major or area sources).

Comments are requested on the proposed requirements for initial notification, specifically on whether the proposed requirements offer sufficient opportunity for the EPA or delegated agencies to identify sources that may be subject to a part 63 standard, or other requirement, and to review and confirm a source's determination of its applicability status with regard to that standard or requirement. In addition, comments are requested on the burden that would be associated with a requirement that all affected sources submit an initial notification. Based on the comments received, the EPA may promulgate a requirement in the general provisions that would require initial notification by all sources within a category of sources, including both affected and unaffected sources.

C. Permit Program Requirements Under Title V

Title V of the 1990 amendments to the Act instructs the EPA to establish the minimum elements of a national air pollution control operating permit program to be implemented by State or local agencies, if they qualify. Regulations in 40 CFR part 70 require States to develop and have approved by EPA programs for issuing Federal operating permits to stationary sources of air pollutants. (For a detailed discussion of the operating permit program, see 57 FR 32250, July 21, 1992, Operating Permit Program: Final Rule.)

After the effective date of a permit program approved or promulgated under title V, it is unlawful for any person to violate any requirement of a permit issued to him or her, or to operate a source subject to the requirement to obtain a permit except in compliance with a title V permit. Owners or operators are required to obtain a permit when a State's permit program becomes effective. In addition, when their source becomes subject to regulation (because of the nature and magnitude of the pollutants it emits), this regulation must then be incorporated into the permit for that source.

Sources must submit an application for a permit to the permitting authority no later than 12 months after the date on which the source becomes subject to a permit program (or by an earlier date established by the permitting authority).

Sources must submit with their permit application a compliance plan that includes a compliance schedule and schedule for submitting progress reports. Each permit must include enforceable emission limitations and standards, a schedule of compliance, inspection, entry, monitoring, compliance certification, and reporting requirements, and such other conditions as are necessary to ensure compliance with the applicable requirements of the Act. Permittees must certify at least annually that they are in compliance with permit requirements, and they must report deviations promptly.

Many of the requirements of the part 70 permit program regulations have implications for sources that will be regulated under new section 112. One of the purposes of the operating permit program is to provide a ready vehicle for the States to take over administration of significant parts of the Federal air toxics program. There are two aspects of the relationship between new section 112 and the permit program under title V that are relevant to this rulemaking. These aspects concern:

(1) The relationship between the applicability of permit program requirements to sources regulated (or scheduled to be regulated) by part 63 standards; and

(2) The effect of new permit-related requirements under section 112 on the permit programs under title V.

(1) Relationship of the Permit Program Requirements to the General Provisions

The regulations establishing approvable permit programs contain in 40 CFR 70.6 elements that are required as standard permit provisions. These elements include requirements for compliance with emission standards and limitations, testing and monitoring, recordkeeping and reporting, notifications, and entry and inspection. Many of these requirements also have been typically contained in general provisions. In general, however, § 70.6 does not specify the details of such conditions for any particular source or source category; it merely outlines the types of conditions to be included in the permit. Exceptions to this include a requirement for the permittee to retain records of all monitoring data and support information for a period of at least 5 years from the date of the monitoring sample, measurement, report, or application and a requirement that any report of monitoring results be submitted no less often than every 6 months. The requirements specified in permits for activities such as compliance, monitoring, and reporting will be drawn directly from the requirements in Federal regulations such as NESHAP. Thus, the general provisions in part 63 will form the basis for specific permit conditions.

Because of the non-specific way in which the permit program regulations are written, the general provisions, as a rule, do not need to include specific requirements as set forth in title V or in part 70. It is sufficient for the general provisions to set forth those requirements that the EPA deems appropriate and adequate for the implementation and enforcement of part 63 standards in the absence of title V operating permit programs. In developing the general provisions for part 63, however, the EPA has made an effort to be consistent with part 70,

particularly with regard to definitions and the requirement to retain records of all monitoring data, test results, and support information for a period of at least 5 years.

(2) Permit-Related Requirements Under Section 112

There are five situations in which a source of hazardous air pollutants may be required to obtain an operating permit. Each situation (with the exception of an "early reduction" alternative emission limitation) arises only after the effective date of an approved permit program in the State in which an affected source is located.

Accordingly, the EPA is proposing to include language in the general provisions that triggers the requirement that a source obtain a permit if it becomes subject to one of these situations.

The first situation arises from the applicability structure of title V, which requires that all sources that are "major" as defined in section 112 must obtain a title V permit. This is the case whether or not a relevant NESHAP has been promulgated for the particular category of sources to which that major source belongs. After a relevant NESHAP is promulgated, the permit would be revised later to incorporate the requirements of that standard, including the general provisions in subpart A of part 63.

The second situation occurs when a source becomes subject to a NESHAP under part 63. After the EPA promulgates a relevant NESHAP under section 112, any affected source that has not already been issued a title V permit must obtain its operating permit, and existing major sources must revise their permits to incorporate the requirements of the NESHAP. Existing sources are sources for which construction commenced before proposal of the NESHAP. Emission limitations and other requirements prescribed by a NESHAP would be incorporated into the part 70 or part 71 operating permit issued to the source.

As in the first situation described above, even if there is no relevant NESHAP, a part 70 or part 71 permit may still be required. This is true for the remaining three situations. The third situation occurs when a source desires to obtain an extension of compliance under subpart D of this part. Regulations governing compliance extensions for early reductions of HAP under section 112(i) will be codified in 40 CFR part 63, subpart D. (See the discussion in 57 FR 61970, December 29, 1992.) Under subpart D, owners or operators of existing sources can receive an extension of compliance with an applicable promulgated section 112(d) emission standard if they reduce their source's hazardous air pollutant emissions before the date the standard is first proposed. The extension occurs for a period not to exceed 6 years from the compliance date for the otherwise relevant standard. "Alternative emission limitations" are used to specify compliance requirements until the promulgated emission standard becomes effective for these sources. Sources that cannot achieve the required reductions by the date the standard is proposed but can achieve them by January 1, 1994 also may qualify for an alternative emission limitation if they make an enforceable commitment to achieve such reductions prior to proposal of the otherwise applicable section 112(d) standard. Each source that qualifies for and is granted an alternative emission limitation under subpart D must be issued an operating permit that reflects the alternative as an enforceable limitation.

The fourth and fifth situations arise under sections 112(g) and 112(j) of the Act. As in the first situation described above, major sources of HAP must obtain a title V permit whether or not a relevant NESHAP has been promulgated for the particular category of sources to which that major source belongs. However, under certain circumstances, sections 112(g) and 112(j) require the permit for a new major source to incorporate, and the permit for an existing major source to be revised to incorporate, requirements that would be established on a case-by-case basis for the source by the Administrator (or the relevant State permitting authority) in the absence of a promulgated part 63 standard. These requirements would reflect an emission standard that the Administrator (or the State with an approved permit program) determines on a case-by-case basis to be equivalent to the standard that would apply to the source, if such a standard had been promulgated by the Administrator under part 63 pursuant to section 112(d) or section 112(h) of the Act.

Specifically, in the fourth situation, as required under section 112(g) of the Act, after the effective date of a title V permit program in a State, a major source of HAP may not be constructed, reconstructed, or modified (without obtaining offsetting emissions) unless the Administrator (or the State) determines that the new or changed major source will not cause emissions in violation of the case-by-case requirements established for that source. The Administrator (or the State) must determine the MACT "equivalent emission limitation" on a case-by-case basis and then, at the appropriate time, add conditions to the source's Federal operating permit.

The fifth situation arises under section 112(j) of the Act. The requirements of section 112(j), the "permit hammer," become effective in each State when the State's permit program becomes effective, but not sooner than May 15, 1994. Under this section, if the EPA fails to promulgate a NESHAP for a source category according to the published regulation promulgation schedule, the owner or operator of a major source that would have been affected by that NESHAP must file an application for a permit (or an application to modify an existing permit) according to the procedures established in the title V permit program. The permit must contain an "equivalent emission limitation" (or, if appropriate, an "alternative emission limitation" pursuant to section 112(i)(5)) that is determined for the source (or category of sources) on a case-by-case basis. If the EPA then promulgates the relevant standard, the emission limitation in the permit must reflect the promulgated standard either immediately or upon the permit's renewal, depending on whether the standard is promulgated before or after the permit is issued.

D. List of Hazardous Air Pollutants

Section 112(b) of the Clean Air Act, as amended November 15, 1990, contains a list of hazardous air pollutants (HAP) and requires the EPA to amend that list under specific circumstances. Before the amendments in 1990, the Administrator listed individual air pollutants as hazardous under section 112 and codified the list in 40 CFR part 61. The basis for the listing was the potential of each pollutant to cause serious irreversible or incapacitating, reversible health effects, including cancer. Listing of HAP in part 61 removed public uncertainty regarding the status of a particular pollutant between listing and promulgation of its emission standard. The Administrator was required to review and revise the list "from time to time" by section 112(b)(1)(A) of the Act before the 1990 amendments.

In section 112 of the amended Act, a different approach was taken. Rather than requiring that emission standards be set for individual pollutants, section 112(b)(1) lists 189 chemicals and chemical categories that are to be controlled as HAP by standards established for categories of sources that emit, or have the potential to emit, one or more of these substances. While the Administrator still must review the list

periodically and, if necessary, revise it by rule to add other pollutants that present a threat of adverse health or environmental consequences, the amended Act introduces a provision to give the public the opportunity to seek amendment of the HAP list by petition. After the list is codified, any person may petition the Administrator to modify the list of HAP by adding or deleting a substance. The EPA believes that codifying the section 112(b) HAP list in the CFR will facilitate subsequent modifications of the list. Therefore, the list of hazardous air pollutants will be codified in subpart C of part 63. This list will be used in the proposed general provisions as the basis for determining if a source may be affected by rules contained in part 63. If a source does not emit one or more of the HAP on this list, then it is not affected by rules in part 63. In addition, procedures governing the petition process will be published and codified in subpart C. The rulemakings to establish these provisions are best handled separately from the general provisions and, therefore, will be codified in a separate subpart.

E. Compliance With Standards

In the existing general provisions for parts 60 and 61, compliance requirements exist for: (1) Dates by which compliance with standards must be achieved; (2) operation and maintenance of air pollution control equipment and monitoring systems; (3) methods for determining and demonstrating compliance, including specifications for emission/performance tests and monitoring systems; (4) notification of dates on which significant events occur (or are anticipated to occur) such as startup of the source and demonstration of monitoring system performance; (5) maintenance of records at the source; and (6) reporting on the status of compliance. Some of the requirements in parts 60 and 61, such as the compliance dates and permission for the Administrator to grant an existing source an extension of compliance (under part 61), followed directly from language in the statute. Most of the compliance requirements, however, were developed by the EPA over time under broader authority granted by the Act to take whatever reasonable actions are necessary to implement the statute. For the most part, the general provisions for part 63 carry over these precedents from the existing general provisions. Nevertheless, the proposed general provisions for part 63 have been updated to meet the compliance requirements of the amended Act since the statutory requirements of amended section 112 are more complicated than previously. The following discussion highlights the most significant compliance changes introduced by the new section 112.

Under former section 112, the determination of a compliance date for a source was straightforward: After the effective date of a relevant standard (i.e., the date of promulgation), no person could operate a new stationary source subject to that standard in violation of the standard. Also, existing sources subject to a part 61 NESHAP had to comply with the standard within 90 days of the effective date, unless the source was operating under a "waiver" of compliance granted by the Administrator or under a Presidential exemption. A "waiver" of compliance could be granted for up to 2 years, provided that steps would be taken during the waiver period to ensure that the health of persons would be protected from imminent endangerment, and provided that such a period was necessary for the installation of controls.

Under new section 112, emission standards are still effective upon promulgation, but determining compliance dates for both new and existing sources is more complicated. For example, after the effective date of a relevant standard established for new sources under any subsection of the new section 112, those sources must comply with the standard upon startup, but a facility for which construction or reconstruction is commenced between the proposal and promulgation dates of a relevant standard has 3 years after the date of promulgation to comply with the promulgated standard if the level of control in the promulgated standard is more stringent than that in the proposed standard and the source complies with the proposed standard during the 3-year period immediately after promulgation. A facility for which construction or reconstruction is commenced between the proposal dates of a relevant technology-based standard under new section 112(d) and a relevant health-based (residual risk) standard under new section 112(f) need not comply with the health-based standard until 10 years after the date construction or reconstruction is commenced (but not before the standard under section 112(f) is promulgated). Instead of the statutorily-defined compliance date of 90 days after the effective date, the compliance date for a category of existing sources now must be determined by the Administrator when the technology-based standard for that category is set under part 63; under no circumstances, however, may the promulgated compliance date be longer than 3 years after the effective date of the standard. Existing sources subject to a health-based standard established pursuant to new section 112(f) have the same compliance date as did existing sources under former section 112: 90 days after the effective date (with the possibility of an extension of compliance of up to 2 years).

Furthermore, compliance requirements under amended section 112 have been made considerably more complicated by the availability of a greater variety of compliance extension opportunities. For example, one new compliance extension is the 6-year extension for demonstration of early reduction of HAP in accordance with the provisions in subpart D of part 63 (pursuant to section 112(i)(5)).

Under amended section 112(i)(3)(B), existing sources that are unable to comply with an emission standard promulgated pursuant to section 112(d) may request that the Administrator, or a State with an approved title V permit program, grant an extension allowing the source up to 1 additional year to comply with the standard, if such additional period is necessary for the installation of controls. The EPA interprets section 112(i)(3)(B) to mean that Congress intended the provision for granting compliance extensions to existing sources unable to comply with section 112(d) standards to be implemented through the forthcoming title V operating permit program. This interpretation is consistent with the EPA's interpretation of similar language that deals with compliance extensions to be granted under section 112(i)(5) for early reductions of HAP. However, for source categories that will be regulated by emission standards in the near future (such as the synthetic organic chemical manufacturing industry to be regulated by the Hazardous Organic NESHAP (HON)), title V permit programs may not be approved in some States in time for State permitting authorities to implement the compliance extension provision of section 112(i)(3)(B). If this situation arises, sources should submit their requests for compliance extensions directly to the Administrator (through the appropriate EPA Regional Office). Additionally, sources affected by the HON should read the preamble and § 63.151 of the proposed HON regulation (57 FR 62608, December 31, 1992) for information about how compliance extensions may be handled for the purposes of that standard. The EPA is interested in receiving comments on how to interpret and implement the provisions of section 112(i)(3)(B).

F. Compliance Certification Requirements under Title VII

Section 702(b) of title VII of the Clean Air Act Amendments of 1990 amends section 114(a) of the Act to require the periodic submission of compliance certifications from owners or operators of major stationary sources and, at the discretion of the Administrator, other sources as well. This section of title VII also requires monitoring by a source to certify compliance with relevant emission standards or limitations. The EPA is developing regulations under 40 CFR part 64 that will specify the enhanced monitoring requirements for all existing rules that affect stationary sources of air pollutants. For new rules, such as those developed under part 63, the EPA will specify the enhanced monitoring requirements in the individual rule. This approach is being adopted because the EPA believes it is not possible at this time to define generic enhanced monitoring requirements for each future part 63 emission standard. Enhanced monitoring requirements developed in the part 63 rules will be directly enforceable under the requirements of section 114(a). As the individual part 63 standards are developed, the enhanced monitoring requirements for the standards will utilize the part 63 general provisions to the maximum extent possible. At some future date, as experience is gained with the enhanced monitoring program, generic requirements for enhanced monitoring may be added to the part 63 general provisions.

G. Deletion of Source Categories from the Source Category List

On July 16, 1992, the EPA published an initial list of categories of major and area sources of HAP, as required under amended section 112(c)(1), that would allow the Agency to promulgate emission standards for each listed category of major sources and area sources. (See 57 FR 31576, July 16, 1992, "Initial List of Categories of Sources Under Section 112(c)(1) of the Clean Air Act Amendments of 1990"). The July 16, 1992 notice does not constitute completion of the listing requirements under sections 112(c)(3) or 112(c)(6), nor does it contain guidance or procedures for filing petitions to delete listed categories of sources as allowed under section 112(c)(9)(B). Moreover, because of uncertainties in the available data bases concerning sources and emissions of HAP, all categories of major and area sources meeting the listing criteria in section 112(c)(1) may not be included in the notice. Furthermore, all categories of sources may not be disaggregated to the extent necessary for the eventual establishment of emission standards.

The Agency considers the listing of categories of sources under section 112(c)(1) to be an ongoing process. Under section 112(c)(1), the Agency is obligated to revise the list if appropriate, in response to public comment or new information, from "time to time, but no less often than every 8 years." The Agency intends to maintain the list as part of the regulatory development process of establishing emission standards. One way the list may be revised is on the basis of deletion determinations as part of the source category deletion process allowed for in section 112(c)(9)(B).

Section 112(c)(9)(B) of the amended CAA allows the Administrator to delete from the list of categories of sources to be regulated, either by petition from any person or at the Administrator's discretion, any category of sources that meets the risk criteria specified in that subsection. Specifically, section 112(c)(9)(B) states:

> The Administrator may delete any source category from the list under this subsection, on petition of any person or on the Administrator's own motion, whenever the Administrator makes the following determination or determinations, as applicable:
>
> (1) In the case of hazardous air pollutants emitted by sources in the category that may result in cancer in humans, a determination that no source in the category (or group of sources in the case of area sources) emits such hazardous air pollutants in quantities which may cause a lifetime risk of cancer greater than one in one million to the individual in the population who is most exposed to emissions of such pollutants from the source (or group of sources in the case of area sources);
>
> (2) In the case of hazardous air pollutants that may result in adverse health effects in humans other than cancer or adverse environmental effects, a determination that emissions from no source in the category or subcategory concerned (or group of sources in the case of area sources) exceed a level which is adequate to protect public health with an ample margin of safety and no adverse environmental effect will result from emissions from any source (or from a group of sources in the case of area sources).

In adopting this provision, Congress provided an exemption from the requirements of section 112 for source categories meeting the risk criteria in section 112(c)(9)(B). While the investigation of source categories for the purposes of "delisting" is a discretionary activity for the EPA, the Agency recognizes the potential value of removing categories that do not exceed the statutorily-defined risk levels from the list in order to direct the sections 112(d) and 112(f) regulatory efforts for sources affected by those sections. Implementing section 112(c)(9)(B) would assure that the EPA's resources—as well as society's—are directed toward those source categories exceeding the risk criteria identified by Congress in that subsection.

The EPA currently is developing guidance to establish the procedures for source owners or operators, or other members of the public, to file petitions to delete listed categories of sources as allowed under section 112(c)(9)(B). The Agency intends to publish the "delisting" guidance in the **Federal Register** as expeditiously as possible. Toward that end, the Agency intends to consider recommendations about improving current risk assessment methodologies that will be developed pursuant to various studies required by Congress in the CAA. Because of uncertainties in the risk assessment process as it has been used to regulate HAP emissions under section 112 in the past, the EPA and the National Academy of Sciences (NAS) are each charged with studying the EPA's risk assessment methodology and making recommendations to Congress about revising such methodology. The following paragraphs provide a short history of how risk assessment has been used under section 112 in the past and describe some of the CAA's new requirements for evaluating existing risk assessment methodologies.

Prior to being amended in 1990, section 112 of the CAA required the EPA to regulate HAP individually on a health basis. Before establishing emission standards, the EPA listed individual air pollutants as hazardous and codified the list in 40 CFR part 61. The basis for the listing was the potential of each pollutant to "[cause or contribute to] air pollution which may reasonably be anticipated to result in an increase in mortality or an increase in serious irreversible, or incapacitating reversible, illness." After listing HAP, the EPA established emission standards to regulate the emissions of the listed HAP. The standard of protection required under former section 112 was to protect the public health with an "ample margin of safety." This involved a two-step process. First, a "safe" level had to be determined (without considering the economic costs); then, in a second step, considering cost, the standard was set at a level providing an "ample margin of safety." The process of setting emission standards under section 112 often involved conducting a detailed risk assessment to determine that the emission standard met the

statutory requirement to protect the public health with an ample margin of safety. Relatively few standards were set under section 112 because disagreements over risk assessment methodologies and depths of analyses led to long delays in the standard-setting process.

In 1990, Congress amended section 112 in part to circumvent the lengthy and controversial risk assessment process for each HAP and each emission standard. To facilitate the rapid regulation of the 189 HAP listed by Congress in section 112(b)(1), amended section 112 requires the EPA first to establish standards for categories of sources that emit these HAP based on "achievable technology" rather than on an assessment of health risk. Section 112 includes statutorily mandated deadlines for when these standards must be established. All the listed source categories are to be controlled according to a schedule that ensures that all technology-based control standards will be established within 10 years of enactment of the 1990 CAAA. On September 24, 1992, the EPA published a draft schedule for the promulgation of emission standards under amended section 112. (See 57 FR 44147, September 24, 1992, "National Emission Standards for Hazardous Air Pollutants; Availability: Draft Schedule for the Promulgation of Emission Standards.") In establishing this schedule, as required under section 112(e), one of the factors the EPA considered in prioritizing promulgation dates for emission standards was the potential of sources in each category to cause adverse effects on public health and the environment. (The September 24, 1992 notice explains how the Source Category Ranking System addresses health effects and exposure data.)

While section 112 requires emission standards initially to be technology-based, Congress maintained a role for the use of risk assessment to control HAP emissions. Eight years after promulgation of MACT standards pursuant to section 112(d) for each category of major sources, the EPA must examine the health risk levels posed by such regulated major sources and determine whether additional controls are necessary to reduce unacceptable "residual risk" from exposure to emissions from these facilities. Under section 112(f), the EPA is required to establish "residual risk" standards for such categories of major sources to provide an "ample margin of safety to protect public health" in accordance with the health-based standard-setting criteria of section 112 as in effect before November 15, 1990, unless the EPA determines that a more stringent standard is necessary to prevent (taking into consideration costs, energy, safety, and other relevant factors) an adverse environmental effect.

Specifically, the health-based criterion that would trigger standard setting under section 112(f) is whether any source in a category of major sources regulated under section 112(d) emits a pollutant (or pollutants) classified as a known, probable, or possible human carcinogen such that the individual most exposed to emissions from the source has a lifetime excess cancer risk of greater than one in one million. If such a condition exists, and if Congress does not act on recommendations from the EPA regarding the need for or the practicality of setting residual risk standards, the EPA must promulgate a residual risk standard for that source category.

In the interim, before residual risk standards are set under section 112(f), the EPA and the NAS are each charged with studying the EPA's risk assessment methodology and making recommendations to Congress about revising such methodology for the explicit purpose of preparing to develop health-based standards under section 112(f). Section 112(o) requires the NAS to conduct a review of: (1) The risk assessment methodology used by the EPA to determine the carcinogenic risk associated with exposure to HAP from source categories subject to regulation under section 112; (2) improvements in such methodology; and (3) to the extent practical, the methodology for assessing the risk of adverse human health effects other than cancer for which safe thresholds of exposure may not exist. Section 112(f) requires the EPA to investigate and report on: (1) Methods of calculating the risk to public health remaining, or likely to remain, from sources subject to regulation under section 112 after the application of MACT standards; (2) the public health significance of such estimated remaining risk and the technologically and commercially available methods and costs of reducing such risks; (3) the actual health effects with respect to persons living in the vicinity of sources, any available epidemiological or other health studies, risks presented by background concentrations of HAP, any uncertainties in the risk assessment methodology or other health assessment technique, and any negative health or environmental consequences to the community of efforts to reduce such risks; and (4) recommendations as to legislation regarding such remaining risk.

As mentioned earlier, the EPA currently is developing procedures for source owners or operators, or other members of the public, to file petitions to delete listed categories of sources as allowed under section 112(c)(9)(B). After the various risk assessment studies are completed, the EPA will consider what to do regarding having the Administrator initiate the delisting process. While the EPA could rely solely on petitions from the public as a way of implementing section 112(c)(9)(B), the Agency recognizes the benefits of having the Administrator initiate the delisting process, where the Agency deems it appropriate to avoid setting unnecessary standards. Such a process would enable the Agency to focus its resources—as well as societal resources—on those sources posing risks intended to be regulated under section 112. For many source categories, the Agency already has, or is in the process of obtaining, the source-specific data needed to make such a determination. Further, the process envisioned by the Agency may require less data to make its determination because it could be structured on a positive finding that at least one source within the category exceeds these risk thresholds. The data collection costs may be lower for Agency-initiated deletions than they would be if the Agency relied solely on petitions from the public, especially when there are few sources in the category and the Agency has sufficient data to perform this determination.

The Agency will consider initiating the delisting process if, during the development of a MACT standard, the Agency determines that a particular source category may meet the decision criteria. The Agency will address this issue in the forthcoming **Federal Register** notice to establish the petitioning procedures and guidelines. Today the Agency is soliciting comments on all aspects of this issue.

IV. Proposed General Provisions Based on Revisions to the Existing General Provisions

A. Introduction

The majority of the proposed general provisions have been developed directly from the existing general provisions in parts 60 and 61. However, in response to requests made during the development of this rulemaking by representatives of affected industries and State and local agencies, the EPA is proposing to clarify a few aspects of the compliance and reporting procedures in the general provisions. The EPA's responses to these requests are

discussed below. In addition, the EPA restructured the organization of the existing general provisions in drafting the proposed requirements in an attempt to make them easier to use.

The most significant aspects of the existing general provisions that have been carried over to the proposed general provisions concern the compliance responsibilities of owners or operators and the EPA's (or the delegated State's) responsibilities for ensuring compliance with the regulations. Moreover, the proposed general provisions would continue to provide opportunities for owners or operators to request permission to use alternative means of compliance with an applicable standard (e.g., alternative means of emission limitation, and alternative testing or monitoring methods) and to request extensions or waivers of particular requirements, when appropriate. The basic schemes in the existing provisions for notifications, recordkeeping, reporting, and administrative review and approval of construction and reconstruction projects would remain the same in the proposed general provisions for part 63.

Owners or operators would be required to comply with all the requirements in the general provisions except those specifically excluded or overridden in an applicable NESHAP or test method (and as otherwise allowed for in the general provisions). The EPA plans to reference the general provisions in each NESHAP to ensure that owners or operators know about the general provisions. Furthermore, if appropriate, each standard will include language that makes it explicit when the general provisions have been overridden.

Under the proposed general provisions (and if required by an applicable standard), owners or operators of affected sources would be required to monitor process and control device equipment; conduct tests of emission control equipment and monitoring systems; provide facilities to conduct tests; analyze and report data resulting from monitoring, testing, or malfunctioning equipment; and keep records of all significant events, periods of operation, downtime, or malfunctions, measurements, maintenance, corrective action, and reports. (A provision has been added to allow records to be maintained on microfilm, on computers, or on computer floppy disks where owners or operators are using modern recordkeeping techniques.) The proposed general provisions would continue to require all owners or operators to properly operate and maintain process and control equipment at all times including during startups, shutdowns, and malfunctions of this equipment. In addition, the proposed general provisions would provide detailed information on the compliance requirements for standards (including operation and maintenance requirements) and requirements for emission tests (including specification of acceptable test methods, monitoring systems, and procedures for analyzing and reporting data). The proposed general provisions also reference various appendices in relevant parts of the CFR where further information about required test methods and performance specifications may be found.

The EPA believes that the proposed general provisions for part 63 will be easier to use than the existing general provisions in parts 60 and 61. In drafting the new provisions, the EPA: (1) Reorganized the order of the sections in the existing regulations; (2) regrouped material among sections; (3) rearranged material within sections; (4) made extensive use of paragraphs and titles for paragraphs; (5) added explicit provisions dealing with applicability and compliance dates; (6) made the regulatory language more precise; (7) clarified procedures and timelines for the submittal and review of information; and (8) used cross-referencing to tie together the various sections (and other relevant regulations in parts 63, 70, and 71). The EPA believes these changes will enable users of the general provisions to locate and understand applicable requirements more quickly and easily; the changes are especially important since, in many cases, the requirements of the amended Act are more numerous and complicated and because there will be many new users of the general provisions for part 63, including small business owners or operators, who may be unfamiliar with similar Federal regulations.

In order to tie together the requirements of titles III and V of the amendments to the Act that affect (or potentially affect) stationary sources to be regulated under new section 112, the proposed general provisions for part 63 include numerous cross-references to other, related regulations. By the time of this proposal, however, some of these regulations will not have been proposed, and some will have been proposed but will have yet to be promulgated. Because the Office of Federal Register prohibits the inclusion of references to non-promulgated portions of the CFR when final rules are published in the **Federal Register**, the EPA will have to delete many of the cross-references that appear in the proposed general provisions when this rulemaking is promulgated. Then, as the related regulations are promulgated, the EPA will amend subpart A of part 63 to restore the deleted cross-references and their accompanying regulatory language. Thus, in its early stages, the final version of this rulemaking undoubtedly will be missing some information that the EPA intends to be present; for this reason, the EPA urges readers to keep a copy of this proposal even after the general provisions rulemaking is promulgated.

B. Suggestions by Affected Industries

Representatives of industries that will be affected by the general provisions after specific standards are established discussed several suggestions that would improve the proposed general provisions. The EPA found these suggestions appropriate and adopted them in the proposed general provisions; however, the EPA is soliciting public comments on changes made to the general provisions in response to these suggestions. Additional suggestions made by representatives of affected industries will be considered by the EPA during the development of individual standards.

Representatives of affected industries suggested that the EPA base the frequency of reporting on the performance of the affected source. After considering this suggestion, the following proposal resulted. If an affected source complies with an applicable part 63 standard (or other applicable standard established pursuant to new section 112 of the Act) for at least one year, then quarterly (or more frequent) reporting could be reduced to semiannual reporting. Semiannual reporting is the lowest allowable reporting frequency because this frequency is the minimum set forth in the statutory provisions of title V. To obtain this adjustment to the required reporting frequency, an owner or operator would request the adjustment while demonstrating the required compliance finding over the previous 1-year period. The EPA (or delegated State) would approve the request unless it is determined that, for specific reasons, the adjustment would impede the implementing agency's service to the public. Frequency reductions would not similarly be available for recordkeeping because the EPA views the records required by the general provisions to be the minimum needed to determine compliance with the requirements of part 63. Based on required monitoring and recordkeeping, an owner or operator would resume

reporting on a quarterly (or more frequent) basis, as specified in the applicable standard, if compliance with the standard is not maintained. Similar provisions have been added to the reporting requirements in subpart A of part 60 to apply to sources affected by periodic reporting requirements in NSPS established pursuant to section 111 of the Act.

The EPA would like to emphasize several points with regard to the proposed provisions that would allow an affected source to reduce the frequency of excess emissions and monitoring system performance (and summary) reports. First, the flexibility that has been added to parts 60 and 63 to allow reduced frequency of reporting for sources with a record of compliance applies to standards individually; that is, if the Administrator allows an owner or operator affected by a standard under one part, e.g., part 63, to submit reports less frequently, that allowance does not automatically apply to the same owner or operator who is affected by a standard under the other part, in this case, part 60. In this situation, the owner or operator would have to demonstrate separately on-going compliance with the applicable part 60 standard to be allowed to reduce the frequency of reporting for standards under both part 60 and part 63. Second, the Administrator would have latitude in deciding whether to disallow an owner or operator's intention to reduce the frequency of reporting for a particular standard. Although the proposed regulation specifies that the affected source must have a history of on-going compliance with the applicable standard for at least 1 year to become eligible to reduce its frequency of reporting, the Administrator would have latitude to review the source's entire previous performance history (during the 5-year recordkeeping period prior to the intended change) in deciding whether to approve the change. The Administrator could use information concerning a source's compliance history prior to the specified 1-year period (including performance test results, monitoring data, and evaluations of an owner or operator's conformance with operation and maintenance requirements) to make a judgment about the source's potential for noncompliance in the future. Furthermore, other requirements, such as those in a source's part 70 or part 71 operating permit, may limit the availability of this flexibility to a particular source; the role of the permitting authority is to review the range of reporting requirements under all applicable air-related Federal regulatory programs and decide if such flexibility is appropriate. Third, the proposed general provisions are drafted with the presumption that a legitimate request to reduce the frequency of reporting would be approved unless the reviewing agency (i.e., the EPA or the State or local agency with delegated authority) explicitly denies the request. The EPA is particularly interested in receiving comments on whether such requests should not be approved unless the reviewing agency determines that a higher frequency of reporting is not necessary to accurately assess the compliance status of the source, or whether such requests should be approved unless the reviewing agency determines that, for specific reasons, the adjustment would impede the agency's service to the public. The EPA will decide which position to take on this issue after evaluating public comments received in response to this proposal.

Next, representatives of affected industries requested that the EPA provide flexibility in the calendar schedules for submitting periodic reports to enforcement agencies. With respect to schedules for the submission of periodic reports, the EPA is proposing to allow owners or operators to adjust schedules required by the general provisions by mutual agreement between an owner or operator and the EPA (or the State permitting authority). This provision would enable owners or operators to submit reports on a schedule that is consistent with pre-established State reporting time-lines. It also would allow owners or operators to synchronize their periodic reporting for standards under parts 60, 61, and/or 63 in situations where the owner or operator supervises one or more stationary sources affected by multiple standards. "Mutual agreement" between an owner or operator and the EPA (or the State permitting authority) would be established when an owner or operator proposes in writing a change in reporting schedule to the reviewing agency and the agency approves that change in writing. Until there is mutual agreement, the owner or operator must comply strictly with the schedule(s) specified in the general provisions for any and all applicable standards. The EPA believes that owners or operators could arrange to change the dates for the submittal of periodic reports without conflicting with the reporting requirements of the sources' title V permits if permits are created, in advance, that are flexible enough to accommodate such a change.

In addition, in response to requests by industry representatives, the EPA is proposing to allow adjustments to other submittal and administrative review deadlines specified in the general provisions by mutual agreement between an owner or operator and the Administrator. This provision would be available both to an owner or operator seeking an adjustment to a time period or postmark deadline specified for a required activity and to the Administrator (or delegated enforcement agency) seeking an adjustment to the time period specified for the review of information submitted by the owner or operator. Although this provision is being handled like the flexibility added for periodic reporting, it has limited usefulness given that the EPA cannot allow delays for compliance beyond those provided in standards or the statute. Furthermore, in individual rulemakings, as appropriate, the EPA may decide to limit the applicability of this provision so that changes to specific deadline requirements would not be allowed. The EPA is soliciting comments on this overall approach to providing flexibility in the general provisions.

On a related topic, representatives of affected industries requested that the EPA clarify what reporting schedule should be used for sources that construct between proposal and promulgation of a standard. For such sources, the EPA is proposing in the general provisions that the date of promulgation be used to trigger the schedule for initial notifications, compliance tests, and other reporting provisions.

Industry representatives noted that required time periods specified in the general provisions for an owner or operator to submit an initial notification that his or her source is subject to a standard, submit a notification of the date of a required performance test, and conduct the performance test, should be reasonable and achievable, especially for new sources. These representatives questioned the reasonableness of the number of days specified in the proposed general provisions for these activities. The EPA agrees that such deadlines should be reasonable, yet at the same time provide for expeditious demonstrations of compliance with standards. The EPA plans to scrutinize all the deadlines and time periods specified in the general provisions between proposal and promulgation of this rulemaking and adjust them, where feasible, to make them more reasonable. The EPA added the proposed requirement that notifications of performance tests be submitted 75 calendar days before the performance test is scheduled to begin to allow

adequate time for the review and approval of site-specific testing and monitoring plans before performance tests are conducted (including the resubmittal of plans when they are initially disapproved) and adequate time (i.e., at least 30 days) for the owner or operator to plan for the performance test in accordance with the site-specific plan agreed upon by the owner or operator and the enforcement agency. The 10- or 20-day notification period suggested by industry representatives (i.e., a notice similar to that in the asbestos NESHAP in part 61) would be insufficient for these purposes. (For a discussion of site-specific testing and monitoring plans, see section IV. D. of this preamble, below.)

In addition, the EPA believes the general provisions provide ample opportunities for owners and operators to request adjustments to required deadlines, either through formal application procedures or by mutual agreement (in writing) between an owner or operator and the enforcement agency. The EPA is seeking comments on the reasonableness of time periods and due dates specified in the general provisions and suggestions for alternatives to help the Agency develop reasonable schedules for compliance activities associated with these provisions.

With regard to compliance extensions, the EPA has been asked to clarify which part of the proposed definition of compliance schedule applies when an existing source has requested a compliance extension under the general provisions. For the purposes of granting an extension of compliance under §63.6(i) of the proposed general provisions, part (2) of the definition of compliance schedule would apply. A stationary source that is required to comply with an emission standard promulgated in part 63 and that has been granted an extension of compliance under the general provisions would not be considered out of compliance with the applicable emission standard during the period of the compliance extension if the source is making suitable progress toward compliance by meeting all terms and conditions established in the source's compliance schedule.

Industry representatives questioned the proposed requirement that a copy of each notification (or other required communication) be sent to the appropriate EPA Regional Office (in addition to sending a copy to the State) in the case where the State is the permitting authority under title V. The EPA is seeking comments on the appropriateness of this provision as well as its opposite: whether notifications submitted to EPA Regional Offices should also be submitted to all appropriate delegated authorities.

Representatives of affected industries requested that the EPA establish a 2-tier approach to excess emission reports. One tier would be associated with relatively minor excess emission events. The other tier would be associated with other more significant events. For minor events, excess emissions would be reported quarterly, whereas for other events, excess emissions would be reported expeditiously, for example, within 24 hours. The EPA finds this suggestion valuable and will consider how to implement it on a rule-by-rule basis. It is impractical, however, to develop this request for these general provisions. The EPA would appreciate suggestions on how to distinguish between minor and more significant events, especially in the context of technology-based standards.

Representatives of affected industries also made several suggestions to reduce the volume of records that sources must maintain to comply with standards and the general provisions. First, industry sources informed the EPA that some existing computer-controlled processes have monitoring systems that only store data that is outside some predetermined range of acceptable values. For example, these systems could be set to record and store all monitored values outside a range such as ±1 percent. If a monitored value did not exceed the specified range, no value would be stored. When the value exceeds the range, a value would be stored. It is then deemed that all data in between the stored values are the same as the last recorded value. This system could also be used to record those periods when a monitored parameter may be outside the parameter ranges established by the source to represent proper operation of a control device. Keeping only these records would dramatically reduce the data storage requirements.

Industry representatives also informed the EPA that many existing process control computer systems obtain monitoring data much more frequently than every 15 minutes, but are not designed to maintain a record of such data for 5 years. Such systems use this extensive monitoring data to calculate average parameter values for the compliance period for the emission source (e.g., 3-hour average). The individual data points could be kept in an accessible record for a period of several days so that the averaging procedure could be verified, and then could be "written over" to conserve computer time and memory storage space. The average for the 3-hour compliance period would be retained in an accessible record for 5 years.

At this time, the EPA does not have a sufficient understanding of these systems to ensure that they provide sufficient support data to accurately and reliably reflect the source's continued compliance. Therefore, the EPA has not included them as a recordkeeping option in the proposed general provisions. Instead, the EPA is seeking comment on whether and how these systems should be allowed for compliance with the recordkeeping requirements in the general provisions and part 63 standards. Specifically, the EPA is interested in: What criteria are used to determine the values that are stored by these existing monitoring systems; how the validity of the data is verified; the frequency of calibration for this type of system; how operators ensure the accuracy of the results from these existing systems; and what types of processes or controls are currently being monitored with these systems. In addition, the EPA is seeking comment on how the requirements allowing the use of these systems to comply with part 63 standards might be structured. Finally, the EPA is seeking comment on the concept of determining compliance based on data that do not include values to represent the entire compliance period (i.e., absence of data indicating a violation would constitute evidence of compliance).

Representatives of affected industries also raised concerns about the on-site storage capabilities at certain facilities and suggested that the burden of recordkeeping could be reduced if the EPA reduced the volume of on-site records that sources must maintain to comply with applicable standards and the general provisions. In this context, industry representatives asked the EPA to clarify what is meant by the terms "readily available" and "expeditious review" in the proposed general provisions requirement that "[t]he owner or operator * * * shall maintain files of all information (including all reports and notifications) required by this part recorded in a permanent form suitable and readily available for inspection and expeditious review * * * for at least 5 years following the date of each occurrence, measurement, maintenance, corrective action, report, or record." The issues in question concern the purported difficulty of: Storing data at some kinds of sites (such as unmanned facilities); storing 5-years' worth of data at a regulated site (particularly when a company has a centralized data storage system or when the data are recorded by a process

control system that records much more information than is required by applicable requirements); and retrieving data in a timely way for the purposes of inspection or review by an enforcement agency.

As mentioned earlier in this preamble, the EPA is proposing to adopt a 5-year recordkeeping requirement for part 63 to be consistent with the recordkeeping requirements of the title V permit program. However, consistent with the 2-year recordkeeping period for part 60 and part 61 standards, the EPA believes that keeping 2 years of records on site is not overly burdensome. Since the requirement for record retention is 5 years, the balance of the 3 years of records could be stored at an off-site location. By "readily available" for "expeditious review," the EPA means that records must be available immediately for records retained on site and within 2 days for records archived off site.

The EPA's primary interest in proposing the recordkeeping requirements described above is to allow an inspector to review all relevant records during a site visit. For planned site visits, when the owner or operator is notified of the inspection sufficiently in advance to retrieve archived records, having some records stored off site may not be a problem. For unannounced site visits, however, when information must be retrieved in a matter of minutes or hours, the EPA believes that at least 2 years of records should be available on site to accommodate the Agency's need to review records on short notice.

One way to accommodate the interests of both the EPA and regulated industries may be through the use of electronic data retrieval systems that can access relevant data during a site visit, even though the data are "stored" elsewhere. All data required must be immediately electronically transferable to the on-site location and hard copies must be made available if requested. The Agency prefers to deal with the special needs of unmanned sites during the development of emission standards for source categories that contain such facilities. If special requirements are appropriate for unmanned sites, then these can be addressed in individual standards that override the general provisions with regard to data storage requirements.

The Agency also would like to receive comments on the appropriateness of adopting the proposed 5-year recordkeeping requirement for part 63. Under 5 CFR 1320.6, the Office of Management and Budget (OMB) may approve a record retention period (that would apply to an affected source, or category of sources) of up to 3 years, unless the Agency is able to demonstrate that a longer record retention period is necessary to satisfy statutory requirements or other substantial need. For example, the rule establishing the part 70 permit program requires retention of records of all required monitoring data and support information for a period of at least 5 years from the date of the monitoring sample, measurement, report, or application because permit terms will last for 5 years. (See 57 FR 32304, July 21, 1992, § 70.6(a)(3)(ii)(B).)

Under § 70.6(a)(3)(ii)(B), support information includes calibration and maintenance records, strip-chart recordings for continuous monitoring instrumentation, copies of all reports required by the permit and records of other types of information. Support information also includes emission or performance test data that would be required to demonstrate compliance under part 63, because the "monitoring" requirements of § 70.6(a)(3)(i) cover a broad range of compliance-"monitoring" activities. These activities include "all emissions monitoring and analysis procedures or test methods required under the applicable requirements, including any procedures and methods promulgated pursuant to sections 114(a)(3) or 504(b) of the Act," and any recordkeeping that is designed to serve as monitoring. The requirements in part 63 emission standards are "applicable requirements" that would satisfy these criteria.

A recordkeeping period of 5 years is being proposed for part 63 so that sources affected by both part 63 and part 70 would be subject to consistent requirements for recordkeeping. The Agency believes that, as a practical matter, sources affected by part 63 and part 70 would prefer that the required retention period for records in these parts be consistent to minimize confusion in the development and implementation of recordkeeping systems. Comments are requested on the need to make the record retention period under part 63 consistent with that under part 70. Comments are also requested on possible alternatives to the proposed 5-year record retention period for part 63 that would satisfy sources' need for simplified recordkeeping systems, the Agency's need for an appropriate amount of records to support determinations of compliance and enforcement actions, and OMB's guidelines for approving recordkeeping requirements. One possible alternative is that sources affected by both part 63 and part 70 could be required to keep records under part 63 for as long as they are required to keep records under part 70, while sources that are affected by part 63 but that are not required to obtain part 70 permits could be required to keep records under part 63 for a period of 3 years.

Finally, affected industries asked the EPA to clarify the intended scope of the preconstruction review and approval process developed to implement section 112(i)(1) of the amended Act. Section 112(i)(1) authorizes the Administrator (or a State with a permit program approved under title V) to review plans for construction of a new major source or reconstruction of a major source after the effective date of an applicable part 63 emission standard to determine that the new or reconstructed source, if properly built and operated, will comply with the standard.

The scope of the preconstruction review under the proposed part 63 general provisions requirements would be similar to existing requirements in the general provisions to 40 CFR part 61. Preconstruction reviews under part 63 would involve all items specified in the preconstruction review requirements in the general provisions. It is the responsibility of the owner or operator to submit information that is sufficient to allow the Administrator to determine if the source will be in compliance with applicable requirements when it begins operation. Interested parties may further their understanding of the nature and scope of preconstruction reviews under the part 63 general provisions by discussing the topic with implementing personnel at the EPA's Regional Offices.

The proposed review process would require the owner or operator to submit an application for approval of construction or reconstruction at least 180 days before construction or reconstruction is planned to commence (but it need not be submitted sooner than 45 days after the effective date of the relevant standard). Within 30 days of receipt of the initial application, the EPA or the delegated State agency would notify the owner or operator if his or her application were complete. Additional information may be requested if the initial application does not contain sufficient information to make the determination. Within 60 days after receipt of sufficient information, the EPA or the delegated agency would notify the owner or operator of the determination on the application for approval of construction or reconstruction.

The EPA believes that the steps proposed for the process for approval of construction or reconstruction, and the time limits proposed for each step,

would ensure that the EPA or the delegated agency has an adequate time to review information submitted and also that sources would be notified of the determination in a timely manner. The Agency is seeking comments on alternatives for the process for approval of construction or reconstruction that may be more effective in accomplishing the same objectives.

The EPA also would like to clarify what activities the source could pursue while waiting for the Administrator's decision to approve or disapprove the construction or reconstruction project. Consistent with policy that has been developed to implement the preconstruction review provisions of the Nonattainment New Source Review and the Prevention of Significant Deterioration programs under 40 CFR 52.21, 51.165, and 51.166, certain limited activities would be allowed, such as planning, ordering of equipment and materials, site clearing, grading, and on-site storage of equipment and materials. Under all circumstances, all on-site activities of a permanent nature (including, but not limited to, installation of building supports and foundations, paving, laying of underground pipe work, construction of large permanent storage structures, and activities of a similar nature) are prohibited until approval is granted by the Administrator. Any activities undertaken prior to construction/reconstruction approval would be at the risk of the owner or operator.

C. Suggestions by State and Local Air Pollution Control Agencies

In developing the proposed general provisions, the EPA discussed the experiences of agencies responsible for determining compliance with the existing section 111 and section 112 standards and the general provisions in parts 60 and 61. Representatives of these agencies made two suggestions to help improve the implementation of standards in part 63.

First, the existing standards in parts 60 and 61 generally use continuous monitoring systems as tools in determining the effectiveness of an operator's operation and maintenance practices. On the other hand, State and local agencies often establish permit conditions based on these systems. These conditions are then directly enforceable, without further evaluation of the operator's operation and maintenance practices. Representatives of these agencies requested that the EPA make these conditions directly enforceable through the general provisions in part 63.

The EPA has developed a few emission and performance standards that use continuous monitoring systems directly in enforcing the standards. Generally, however, the data needed to establish specific limits associated with such systems for the purposes of developing national standards have not been available (although data have been available to establish specific limits on a case-by-case basis for particular sources). Consequently, the EPA has relied upon monitoring systems as tools in determining the quality of an operator's operation and maintenance practices. With the use of these systems by State and local agencies for enforcement purposes, the EPA believes that standards developed in the future are more likely to require these systems for direct enforcement of the standards.

For standards where continuous monitoring systems are not used to directly set enforceable limits, the EPA encourages State and local agencies to continue the practice of establishing such limits on a permit basis. In fact, title VII of the Clean Air Act Amendments of 1990 directs the EPA to develop regulations to ensure appropriate compliance certifications by operators. For these regulations, the EPA will consider adopting the approach used by State and local agencies in developing measures of continuous compliance.

Another topic raised by representatives of State and local agencies is a misinterpretation of the general provisions relating to startups, shutdowns, and malfunctions. These representatives requested that the EPA follow the provisions of part 61 where exceedances of emission limits or enforceable monitoring parameters in standards are not allowed during startups, shutdowns, and malfunctions. Under part 61, compliance with numerical emissions limits is required at all times unless specifically addressed in an applicable NESHAP. Under part 60, however, compliance with the numerical emission limits is not determined during startups, shutdowns, and malfunctions, unless otherwise specified in the applicable standard. In contrast to the interpretation of many State and local agencies, some operators have interpreted these provisions to allow controls to be inappropriately operated and, in some cases, not operated at all during startups, shutdowns, or malfunctions. This interpretation was not intended by the EPA. Owners and operators should operate sources and their controls consistent with good air pollution control practices for minimizing emissions at all times, including during startups, shutdowns, and malfunctions.

In developing the proposed general provisions for part 63, the EPA began by considering the requirements in part 61 as they relate to startups, shutdowns, and malfunctions; however, in recognition of the difficulty of determining compliance during these periods, the EPA has adopted the provisions from part 60 that clarify that performance tests are not generally appropriate during startups, shutdowns, and malfunctions. In addition, since the EPA believes it is appropriate to require compliance on a continual basis for sources that emit hazardous air pollutants, the EPA has added recordkeeping requirements to allow operators to develop a plan for how process and control systems would be operated during startups, shutdowns, and malfunctions and how malfunctioning process and control systems would be repaired. If process and control systems are operated in a manner consistent with the plan during these events, and if malfunctions are corrected consistent with the plan, then no additional records of these activities are required beyond the records necessary to demonstrate conformance with the plan for each event. (To demonstrate conformance with the plan, the owner or operator could use a "checklist," or some other effective form of recordkeeping, in order to minimize the recordkeeping burden for conforming events.) Records are required of all periods of startup, shutdown, and malfunction of process and control equipment and all measurements taken during these periods. This approach carries forward the requirement that control systems be operated at all times, but it allows special situations to occur, such as unpredicted and reasonably unavoidable failures of air pollution control systems, when it is technically impossible to properly operate these systems.

In clarifying the startup, shutdown, and malfunction provisions in the general provisions for part 63, the EPA has:

(1) Redefined the term "malfunction" so that it excludes "failures that are caused in part by poor maintenance or careless operation;"

(2) Added language that clarifies that operation and maintenance requirements are independently enforceable from other requirements, such as emission limits, in applicable NESHAP; and

(3) Added a requirement that owners and operators develop, implement, and document a startup, shutdown, and

malfunction plan for each affected source.

D. Quality Assurance and Quality Control Requirements

The EPA and State and local air pollution control agencies use, among other information, results of performance tests of a source's air pollution control systems to determine whether the source is in compliance with emission limits specified in applicable standards. Owners or operators must conduct performance tests soon after the affected source begins operating and when requested to do so by the EPA or a State air pollution control program. The results of the tests are compared to the limits in the standards to determine if the source complies with these limits. In the case of NSPS and NESHAP established under sections 111 and 112 of the Act, if the source has not achieved the appropriate air pollution control limits, then the source has not achieved the intended goals of the enabling legislation and may be found in violation of the Act. Given the importance of confirming the goals of the Act, it is important that performance tests be conducted in a high-quality manner; this helps to ensure that the resulting data are true indicators of a source's compliance status.

Monitoring data are used by the EPA and State agencies to indicate excess emissions or improper operation and maintenance practices at an affected source and, in some instances, to measure continuous performance. The purpose of including requirements for good operation and maintenance practices in the general provisions is to ensure that the appropriate equipment is used properly on an ongoing basis, thus achieving the required emissions reductions continually. Generally, continuous emission monitoring system measurements are used to determine whether good operation and maintenance practices are being followed; however, they are sometimes used to determine compliance with a mass emission standard. As was true for performance test results, the quality of monitoring data is crucial for the effective implementation of national air emission standards.

For this reason, in drafting new general provisions for part 63, the EPA improved the existing general provisions by adding quality assurance (QA) and quality control (QC) requirements for performance tests and continuous monitoring systems. The proposed QA/QC additions address planning for compliance demonstrations, data quality objectives for performance testing and monitoring, and maintenance and operation of continuous monitoring systems. The proposed QA/QC additions consist of requirements for:

(1) The review and approval by the implementing agency of a site-specific test plan prepared by the source for any performance test it is required to conduct to demonstrate compliance with a relevant NESHAP (or for a required performance evaluation of a continuous monitoring system);

(2) A test method performance audit performed during any performance test required for compliance purposes (when audit materials are available from the EPA for a required test method); and

(3) Development of written procedures and records for maintenance and operation of continuous monitoring systems, corrective action, if required, and reporting of monitoring system malfunctions.

The EPA historically has developed source-specific test methods to define the procedures to be used in obtaining compliance-related data to ensure the uniformity and quality of this data. Performance tests must be conducted by following specified methods that are typically codified in appendices associated with NSPS and NESHAP. These methods include requirements for the equipment needed for an apparatus (e.g., how to assemble and check the apparatus); requirements concerning reagents; requirements concerning the test procedures (such as operation of the apparatus); and requirements concerning calibration, calculations, and quality control. In the late 1980's, the EPA began including performance audit requirements in test methods for the measurement of gaseous pollutants (e.g., the EPA added Procedure 2: "Procedure for Field Auditing GC Analysis" to appendix C of part 61).

A performance test audit is a procedure to analyze blind samples, the content of which is known by the EPA, simultaneously with the analysis of performance test samples. The purpose of a performance test audit is to check bias in the measurement of compounds in the performance test sample, that is, to check whether the tester is measuring the right compound with an acceptable degree of accuracy. Performance test audits check data quality at the time of the test or analysis and they are specific to the equipment and personnel involved with the test.

The EPA is continuing its performance test audit program to ensure the quality of data from performance tests. This program has been established by the EPA's Office of Air Quality Planning and Standards and the Atmospheric Research and Exposure Assessment Laboratory. It can be used by Federal, State, or local air pollution control agencies to request performance test audits. Because it is important to obtain performance data of high quality and because the EPA has developed a functioning performance test audit program, the EPA is proposing a requirement that includes the analysis of performance test audits as proof of acceptable sample preparation and analysis. In considering the quality of a performance test and its results, the results of a performance test audit would be used at the discretion of the enforcement agency to demonstrate the acceptability of the data.

Many State agencies, industries, and contractors already follow the proposed QA/QC practices. In most cases the proposed requirements represent standard industrial and State agency practices. In some cases, such as the performance test audit, these practices stem from requirements in test methods or technical guidance prepared by the EPA. The EPA recognizes that the addition to the general provisions of the requirement for performance test audits during compliance tests is a restatement of a requirement already included in test methods codified in appendices to parts 60 and 61. (Test methods also will be codified in appendices to part 63.) The EPA believes, however, that placing these requirements in the general provisions lends emphasis to the need to plan for performance tests and evaluations; it also informs owners or operators of applicable requirements specified elsewhere in the CFR. Thus, adding QA/QC requirements to the general provisions would formalize what is now carried out informally, make these requirements explicit in the regulations, and clarify the EPA's expectations for everyone.

Adding QA/QC requirements to the general provisions also would help to correct existing compliance problems by making implementing agencies aware before a performance test of a source's compliance requirements. This would give agencies an opportunity to correct errors in sources' plans for conducting performance tests before those tests (including making sources aware up front of certain test method requirements that are not now regularly carried out) and the chance to ensure the quality of data that will result from performance testing and self-monitoring.

By shifting oversight of testing procedures and data quality from after testing has been completed to before testing is performed, QA/QC requirements would incur benefits on

regulated sources, implementing agencies, and the public. These benefits would include confidence in the quality of reported data, time and cost savings for sources and agencies from fewer repeated performance tests, improvement in compliance and enforcement determinations, and improvement in public health and environmental quality from decreased emissions of hazardous air pollutants. Furthermore, owners or operators and implementing agencies would be able to come to agreement in advance on the specific goals and requirements of a compliance test; during the test plan review process the site-specific details of testing and monitoring would be determined, and owners or operators would have the opportunity to request permission to use alternative means of compliance from those specified in applicable requirements. The EPA encourages States to expedite sources' requests to use alternatives insofar as the EPA allows alternatives through the general provisions. A guidance document supporting test plan development (including a sample test plan format) is available from the EPA through the Emission Measurement Technical Information Center (EMTIC), MD–19, Research Triangle Park, North Carolina 27711 and on the Technology Transfer Network (TTN) (telephone (919) 541–5742).

The EPA considered several options for inclusion of QA/QC requirements in part 63 during development of this rulemaking. These options include: (1) Adding QA/QC requirements to the general provisions to apply to all sources covered by part 63; (2) adding QA/QC requirements to the general provisions, letting individual standards incorporate requirements as appropriate for the regulated source categories; (3) adding QA/QC requirements to the general provisions to apply to major sources only; (4) adding QA/QC requirements to the general provisions, leaving their application to the discretion of enforcement agencies; and (5) adding QA/QC requirements to individual standards on a source category-specific basis. For the purpose of soliciting comments on all the options, the EPA has chosen to follow the first option for this proposal. Comments on this approach would be useful to help the EPA decide how to proceed with this aspect of the general provisions.

V. Administrative Requirements

A. Docket

The docket for this regulatory action is A–91–09. The docket is an organized and complete file of all the information submitted to or otherwise considered by the EPA in the development of this proposed rulemaking. The principal purposes of the docket are: (1) To allow interested parties a means to identify and locate documents so that they can effectively participate in the rulemaking process; and (2) to serve as the record in case of judicial review (except for interagency review materials) (307(d)(7)(A)). The docket is available for public inspection at the EPA's Air Docket, which is listed under the **ADDRESSES** section of this notice.

B. Public Hearing

One public hearing will be held to discuss the proposed regulation if any person is interested in presenting oral testimony. Persons wishing to make oral presentations at a public hearing should contact the EPA at the address given in the **ADDRESSES** section of this preamble. If necessary, oral presentations will be limited to 15 minutes each. Any member of the public may file a written statement with the EPA before, during, or within 30 days after the hearing. Written statements should be addressed to the Air Docket address given in the **ADDRESSES** section of this preamble.

A verbatim transcript of the public hearing, written statements, and a summary of the public meetings will be available for public inspection and copying during normal working hours at the EPA's Air Docket in Washington, DC (see **ADDRESSES** section of this preamble.)

C. Paperwork Reduction Act

As required by the Paperwork Reduction Act (PRA), 44 U.S.C. 3501 *et seq.*, the OMB must clear any reporting and recordkeeping requirements that qualify as an "information collection request" under PRA. Approval of an information collection request is not required for this proposed rulemaking since for sources affected by section 112 only, the general provisions do not require any activities until source category-specific standards have been proposed and promulgated or until title V permit programs become effective. The actual recordkeeping and reporting burden that would be imposed by the general provisions for each source category covered by part 63 will be estimated when a standard applicable to such category is promulgated.

D. Office of Management and Budget Review

Under Executive Order 12291 (E.O. 12291), the EPA must judge whether a regulation is "major" or "non-major" for purposes of review by the OMB. According to E.O. 12291, major rules are likely to result in:

(1) An annual effect on the economy of $100 million or more;

(2) A major increase in costs or prices to consumers, individual industries, Federal, State, or local government agencies, or geographic regions; or

(3) Significant adverse effects on competition, employment, investment, productivity, innovation, or international trade.

Because the general provisions do not take effect until relevant standards are promulgated under part 63 (or until title V permit programs are approved in States), there are no environmental, economic, or energy impacts associated with the proposed rulemaking. Because there are no costs or other adverse effects associated with the general provisions, this rulemaking is not considered major for the purposes of E.O. 12291. The EPA will estimate the impacts associated with the general provisions when it develops standards under section 112.

E. Regulatory Flexibility Act

The Regulatory Flexibility Act of 1980 requires that a Regulatory Flexibility Analysis be performed for all rules that have "significant impact on a substantial number of small entities." Small entities are small businesses, organizations, and governmental jurisdictions. This analysis is not necessary for this rulemaking, however, since it is unknown at this time which requirements from the general provisions will be applicable to any particular source category, whether such category includes small businesses, and how significant the impacts of those requirements would be on small businesses. Impacts on small entities associated with the general provisions will be assessed when emission standards affecting those sources are developed.

List of Subjects

40 CFR Part 60

Administrative practice and procedure, Air pollution control, Intergovernmental relations, Reporting and recordkeeping requirements.

40 CFR Part 61

Air pollution control, Hazardous substances, Reporting and recordkeeping requirements.

40 CFR Part 63

Administrative practice and procedure, Air pollution control, Hazardous substances, Intergovernmental relations, Reporting

and recordkeeping requirements, Incorporation by reference.

Dated: August 2, 1993.

Carol M. Browner,

Administrator.

For the reasons set out in the preamble, chapter I of title 40 of the Code of Federal Regulations is proposed to be amended as follows.

PART 60—STANDARDS OF PERFORMANCE FOR NEW STATIONARY SOURCES

1. The authority citation for part 60 continues to read as follows:

Authority: Sections 101, 111, 114, 116, and 301 of the Clean Air Act as amended (42 U.S.C. 7401, 7411, 7414, 7416, 7601).

2. Section 60.1 is amended by adding paragraph (c) to read as follows:

§ 60.1 Applicability.

* * * * *

(c) In addition to complying with the provisions of this part, the owner or operator of an affected facility may be required to obtain an operating permit issued to stationary sources by an authorized State air pollution control agency or by the Administrator of the U.S. Environmental Protection Agency (EPA) pursuant to title V of the Clean Air Act as amended November 15, 1990. For more information about obtaining an operating permit see parts 70 and 71 [1] of this chapter.

3. Section 60.2 is amended by adding in alphabetical order the definitions "Approved permit program," "Issuance," "Part 70 permit," "Part 71 permit," "Permit program," "Permitting authority," "State," and "Stationary source" to read as follows:

§ 60.2 Definitions.

* * * * *

Approved permit program means a State permit program approved by the Administrator as meeting the requirements of part 70 of this chapter or a Federal permit program established under part 71 of this chapter.

* * * * *

Issuance of a part 70 permit occurs, if the State is the permitting authority, when a final permit completes all administrative concurrence and review procedures at the State and Federal levels. This term applies to permit modifications and renewals, as well as to the original permit. Issuance of a part 71 permit occurs immediately after the EPA takes final action on a final permit if the EPA is the permitting authority.

* * * * *

Part 70 permit means any permit issued, renewed, or revised pursuant to part 70 of this chapter.

Part 71 permit means any permit issued, renewed, or revised pursuant to part 71 of this chapter.

* * * * *

Permit program means a comprehensive State or Federal operating permit system established pursuant to regulations codified in part 70 of this chapter and applicable State regulations, or in part 71 of this chapter.

Permitting authority means:

(1) The State air pollution control agency, local agency, other State agency, or other agency authorized by the Administrator to carry out a permit program under part 70 of this chapter; or

(2) The Administrator, in the case of EPA-implemented permit programs under part 71 of this chapter.

* * * * *

State means all non-Federal authorities, including local agencies, interstate associations, and State-wide programs, that have delegated authority to implement: (1) The provisions of this part; and/or (2) The permit program established under part 70 of this chapter. The term State shall have its conventional meaning where clear from the context.

Stationary source means any building, structure, facility, or installation which emits or may emit any air pollutant.

* * * * *

4. In § 60.7, paragraphs (e), (f), and (g) are redesignated as paragraphs (f), (g), and (h), respectively, and new paragraph (e) is added to read as follows:

§ 60.7 Notification and recordkeeping.

* * * * *

(e)(1) Notwithstanding the frequency of reporting requirements specified in paragraph (c) of this section, an owner or operator who is required by an applicable subpart to submit excess emissions and monitoring systems performance reports (and summary reports) on a quarterly (or more frequent) basis may reduce the frequency of reporting for that standard to semiannual if the following conditions are met:

(i) For 1 full year (e.g., 4 quarterly or 12 monthly reporting periods) the affected facility's excess emissions and monitoring systems reports submitted to comply with a standard under this part continually demonstrate that the facility is in compliance with the applicable standard;

(ii) The owner or operator continues to comply with all recordkeeping and monitoring requirements specified in this subpart and the applicable standard; and

(iii) The Administrator does not object to a reduced frequency of reporting for the affected facility, as provided in paragraph (e)(2) of this section.

(2) The frequency of reporting of excess emissions and monitoring systems performance reports (and summary reports) may be reduced only after the owner or operator notifies the Administrator in writing of his or her intention to make such a change and the Administrator does not object to the intended change. In deciding whether to approve a reduced frequency of reporting, the Administrator may review information concerning the source's entire previous performance history during the required recordkeeping period prior to the intended change, including performance test results, monitoring data, and evaluations of an owner or operator's conformance with operation and maintenance requirements. Such information may be used by the Administrator to make a judgment about the source's potential for noncompliance in the future. If the Administrator disapproves the owner or operator's request to reduce the frequency of reporting, the Administrator will notify the owner or operator in writing within 30 days after receiving notice of the owner or operator's intention. The notification from the Administrator to the owner or operator will specify the grounds on which the disapproval is based.

(3) As soon as monitoring data indicate that the affected facility is not in compliance with any emission limitation or operating parameter specified in the applicable standard, the frequency of reporting shall revert to the frequency specified in the applicable standard, and the owner or operator shall submit an excess emissions and monitoring systems performance report (and summary report, if required) at the next appropriate reporting period following the noncomplying event. After demonstrating compliance with the applicable standard for another full year, the owner or operator may again request approval from the Administrator to reduce the frequency of reporting for that standard as provided for in paragraphs (e)(1) and (e)(2) of this section.

5. Section 60.19 is added to subpart A to read as follows:

§ 60.19 General notification and reporting requirements.

(a) For the purposes of this part, time periods specified in days shall be measured in calendar days, even if the

[1] Part 71 regulations will be proposed by the EPA in the future.

word "calendar" is absent, unless otherwise specified in an applicable requirement.

(b) For the purposes of this part, if an explicit postmark deadline is not specified in an applicable requirement for the submittal of a notification, application, report, or other written communication to the Administrator, the owner or operator shall postmark the submittal on or before the number of days specified in the applicable requirement. For example, if a notification must be submitted 15 days before a particular event is scheduled to take place, the notification must be postmarked on or before 15 days preceding the event; likewise, if a notification must be submitted 15 days after a particular event takes place, the notification must be postmarked on or before 15 days following the event.

(c) Notwithstanding time periods or postmark deadlines specified in this part for the submittal of information to the Administrator by an owner or operator, or the review of such information by the Administrator, such time periods or deadlines may be changed by mutual agreement between the owner or operator and the Administrator. Procedures governing the implementation of this provision are specified in paragraph (f) of this section.

(d) If an owner or operator of an affected facility in a State with an approved permit program is required to submit periodic reports under this part to the State permitting authority, and if the State has an established time-line for the submission of periodic reports that is consistent with the reporting frequency(ies) specified for such facility under this part, the owner or operator may change the dates by which periodic reports under this part shall be submitted (without changing the frequency of reporting) to be consistent with the State's schedule by mutual agreement between the owner or operator and the State permitting authority. The allowance in the previous sentence applies in each State beginning 1 year after the affected facility is required to be in compliance with the applicable subpart in this part. Procedures governing the implementation of this provision are specified in paragraph (f) of this section.

(e) If an owner or operator supervises one or more stationary sources affected by standards set under this part and standards set under part 61, part 63, or both such parts of this chapter, he/she may arrange by mutual agreement between the owner or operator and the Administrator (or the State with an approved permit program) a common schedule on which periodic reports required by each applicable standard shall be submitted throughout the year. The allowance in the previous sentence applies in each State beginning 1 year after the stationary source is required to be in compliance with the applicable subpart in this part, or 1 year after the stationary source is required to be in compliance with the applicable 40 CFR part 61 or part 63 standard, whichever is latest. Procedures governing the implementation of this provision are specified in paragraph (f) of this section.

(f)(1)(i) Until an adjustment of a time period or postmark deadline has been approved by the Administrator under paragraphs (f)(2) and (f)(3) of this section, the owner or operator of an affected facility remains strictly subject to the requirements of this part.

(ii) An owner or operator shall request the adjustment provided for in paragraphs (f)(2) and (f)(3) of this section each time he or she wishes to change an applicable time period or postmark deadline specified in this part.

(2) Notwithstanding time periods or postmark deadlines specified in this part for the submittal of information to the Administrator by an owner or operator, or the review of such information by the Administrator, such time periods or deadlines may be changed by mutual agreement between the owner or operator and the Administrator. An owner or operator who wishes to request a change in a time period or postmark deadline for a particular requirement shall request the adjustment in writing as soon as practicable before the subject activity is required to take place. The owner or operator shall include in the request whatever information he or she considers useful to convince the Administrator that an adjustment is warranted. If the Administrator wishes to change a specified time period for the review of information submitted by an owner or operator, the Administrator will request in writing, as soon as practicable before the subject activity is required to take place, the owner or operator's permission to make such an adjustment. The Administrator will include in the request whatever information he or she considers useful to convince the owner or operator that an adjustment is warranted.

(3) If, in the Administrator's judgment, an owner or operator's request for an adjustment to a particular time period or postmark deadline is warranted, the Administrator will approve the adjustment. The Administrator will notify the owner or operator in writing of approval or disapproval of the request for an adjustment within 7 calendar days of receiving sufficient information to evaluate the request.

(4) An owner or operator responding to a request from the Administrator to change a specified time period for the review of information submitted by the owner or operator shall respond in writing within 7 calendar days of receiving the request.

PART 61—NATIONAL EMISSION STANDARDS FOR HAZARDOUS AIR POLLUTANTS

6. The authority citation for part 61 continues to read as follows:

Authority: Secs. 101, 112, 114, 116, and 301 of the Clean Air Act as amended (42 U.S.C. 7401, 7412, 7414, 7416, 7601).

7. Section 61.01 is amended by adding paragraph (d) to read as follows:

§ 61.01 List of pollutants and applicability of part 61.

* * * * *

(d) In addition to complying with the provisions of this part, the owner or operator of a stationary source subject to a standard in this part may be required to obtain an operating permit issued to stationary sources by an authorized State air pollution control agency or by the Administrator of the U.S. Environmental Protection Agency (EPA) pursuant to title V of the Clean Air Act as amended November 15, 1990. For more information about obtaining an operating permit see parts 70 and 71 [2] of this chapter.

* * * * *

8. Section 61.02 is amended by adding in alphabetical order the definitions "Approved permit program," "Issuance," "Part 70 permit," "Part 71 permit," "Permit program," "Permitting authority," and "State" to read as follows:

§ 61.02 Definitions.

* * * * *

Approved permit program means a State permit program approved by the Administrator as meeting the requirements of part 70 of this chapter or a Federal permit program established under part 71 of this chapter.

* * * * *

Issuance of a part 70 permit occurs, if the State is the permitting authority, when a final permit completes all administrative concurrence and review procedures at the State and Federal levels. This term applies to permit modifications and renewals, as well as to the original permit. Issuance of a part 71 permit occurs immediately after EPA

[2] Part 71 regulations will be proposed by the EPA in the future.

takes final action on a final permit if the EPA is the permitting authority.

* * * * *

Part 70 permit means any permit issued, renewed, or revised pursuant to part 70 of this chapter.

Part 71 permit means any permit issued, renewed, or revised pursuant to part 71 of this chapter.

* * * * *

Permit program means a comprehensive State or Federal operating permit system established pursuant to regulations codified in part 70 of this chapter and applicable State regulations, or in part 71 of this chapter.

* * * * *

Permitting authority means: (1) The State air pollution control agency, local agency, other State agency, or other agency authorized by the Administrator to carry out a permit program under part 70 of this chapter; or (2) the Administrator, in the case of EPA-implemented permit programs under part 71 of this chapter.

State means all non-Federal authorities, including local agencies, interstate associations, and State-wide programs, that have delegated authority to implement: (1) The provisions of this part; and/or (2) The permit program established under part 70 of this chapter. The term State shall have its conventional meaning where clear from the context.

* * * * *

9. Section 61.10 is amended by adding paragraphs (e) through (j) to read as follows:

§ 61.10 Source reporting and waiver request.

* * * * *

(e) For the purposes of this part, time periods specified in days shall be measured in calendar days, even if the word "calendar" is absent, unless otherwise specified in an applicable requirement.

(f) For the purposes of this part, if an explicit postmark deadline is not specified in an applicable requirement for the submittal of a notification, application, report, or other written communication to the Administrator, the owner or operator shall postmark the submittal on or before the number of days specified in the applicable requirement. For example, if a notification must be submitted 15 days before a particular event is scheduled to take place, the notification must be postmarked on or before 15 days preceding the event; likewise, if a notification must be submitted 15 days after a particular event takes place, the notification must be postmarked on or before 15 days following the event.

(g) Notwithstanding time periods or postmark deadlines specified in this part for the submittal of information to the Administrator by an owner or operator, or the review of such information by the Administrator, such time periods or deadlines may be changed by mutual agreement between the owner or operator and the Administrator. Procedures governing the implementation of this provision are specified in paragraph (j) of this section.

(h) If an owner or operator of a stationary source in a State with an approved permit program is required to submit reports under this part to the State permitting authority, and if the State has an established time line for the submission of reports that is consistent with the reporting frequency(ies) specified for such source under this part, the owner or operator may change the dates by which reports under this part shall be submitted (without changing the frequency of reporting) to be consistent with the State's schedule by mutual agreement between the owner or operator and the State permitting authority. The allowance in the previous sentence applies in each State beginning 1 year after the source is required to be in compliance with the applicable subpart in this part. Procedures governing the implementation of this provision are specified in paragraph (j) of this section.

(i) If an owner or operator supervises one or more stationary sources affected by standards set under this part and standards set under part 60, part 63, or both such parts of this chapter, he/she may arrange by mutual agreement between the owner or operator and the Administrator (or the State with an approved permit program) a common schedule on which reports required by each applicable standard shall be submitted throughout the year. The allowance in the previous sentence applies in each State beginning 1 year after the source is required to be in compliance with the applicable subpart in this part, or 1 year after the source is required to be in compliance with the applicable part 60 or part 63 standard, whichever is latest. Procedures governing the implementation of this provision are specified in paragraph (j) of this section.

(j)(1)(i) Until an adjustment of a time period or postmark deadline has been approved by the Administrator under paragraphs (j)(2) and (j)(3) of this section, the owner or operator of an affected source remains strictly subject to the requirements of this part.

(ii) An owner or operator shall request the adjustment provided for in paragraphs (j)(2) and (j)(3) of this section each time he or she wishes to change an applicable time period or postmark deadline specified in this part.

(2) Notwithstanding time periods or postmark deadlines specified in this part for the submittal of information to the Administrator by an owner or operator, or the review of such information by the Administrator, such time periods or deadlines may be changed by mutual agreement between the owner or operator and the Administrator. An owner or operator who wishes to request a change in a time period or postmark deadline for a particular requirement shall request the adjustment in writing as soon as practicable before the subject activity is required to take place. The owner or operator shall include in the request whatever information he or she considers useful to convince the Administrator that an adjustment is warranted. If the Administrator wishes to change a specified time period for the review of information submitted by an owner or operator, the Administrator will request in writing, as soon as practicable before the subject activity is required to take place, the owner or operator's permission to make such an adjustment. The Administrator will include in the request whatever information he or she considers useful to convince the owner or operator that an adjustment is warranted.

(3) If, in the Administrator's judgment, an owner or operator's request for an adjustment to a particular time period or postmark deadline is warranted, the Administrator will approve the adjustment. The Administrator will notify the owner or operator in writing of approval or disapproval of the request for an adjustment within 7 calendar days of receiving sufficient information to evaluate the request.

(4) An owner or operator responding to a request from the Administrator to change a specified time period for the review of information submitted by the owner or operator shall respond in writing within 7 calendar days of receiving the request.

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

10. The authority citation for part 63 is revised to read as follows:

Authority: Secs. 101, 112, 114, 116, and 301 of the Clean Air Act as amended by Pub

L. 101–549 (42 U.S.C. 7401, 7412, 7414, 7416, 7601).

11. Part 63 is amended by adding subpart A to read as follows:

Subpart A—General Provisions

Sec.
63.1 Applicability.
63.2 Definitions.
63.3 Units and abbreviations.
63.4 Prohibited activities and circumvention.
63.5 Construction and reconstruction.
63.6 Compliance with standards and maintenance requirements.
63.7 Performance testing requirements.
63.8 Monitoring requirements.
63.9 Notification requirements.
63.10 Recordkeeping and reporting requirements.
63.11 Control device requirements.
63.12 State authority and delegations.
63.13 Addresses of State air pollution control agencies and the EPA Regional Offices.
63.14 Incorporations by reference.
63.15 Availability of information and confidentiality.

Subpart A—General Provisions

§63.1 Applicability.

(a) *General.* (1) Terms used throughout part 63 are defined in § 63.2 or in the Clean Air Act (Act) as amended in 1990, except that individual subparts of this part may include specific definitions in addition to or that supersede definitions in § 63.2.

(2) This part contains national emission standards for hazardous air pollutants (NESHAP) established pursuant to section 112 of the Act as amended November 15, 1990. These standards regulate specific categories of stationary sources that emit (or have the potential to emit) one or more hazardous air pollutants listed in this part pursuant to section 112(b) of the Act. This section explains the applicability of such standards to sources affected by them. The standards in this part are independent of NESHAP contained in 40 CFR part 61. The NESHAP in part 61 promulgated by signature of the Administrator before November 15, 1990 (i.e., the date of enactment of the Clean Air Act Amendments of 1990) remain in effect until they are amended, if appropriate, and added to this part.

(3) No emission standard or other requirement established under this part shall be interpreted, construed, or applied to diminish or replace the requirements of a more stringent emission limitation or other applicable requirement established by the Administrator pursuant to other authority of the Act (including those requirements in part 60 of this chapter), or a standard issued under State authority.

(4) This subpart (i.e., subpart A of this part) contains procedures and criteria that apply to all subsequent subparts of part 63, except when otherwise specified in a particular subpart. The general provisions in subpart A eliminate the repetition of requirements applicable to all owners or operators affected by part 63. The general provisions in subpart A do not apply to regulations developed pursuant to section 112(r) of the amended Act, unless otherwise specified in those regulations.

(5) [Reserved]

(6) Subpart C[3] of this part contains the list of hazardous air pollutants and petition processes for adding or deleting pollutants from the list of hazardous air pollutants (pursuant to section 112(b)(2) of the Act). To obtain the most current list of categories of sources to be regulated under section 112 of the Act, or to obtain the most recent regulation promulgation schedule established pursuant to section 112(e) of the Act, contact the Office of the Director, Emission Standards Division, Office of Air Quality Planning and Standards, U.S. EPA (MD–13), Research Triangle Park, North Carolina 27711.

(7) Subpart D of this part contains regulations that address procedures for an owner or operator to obtain an extension of compliance with a relevant standard through an early reduction of emissions of hazardous air pollutants pursuant to section 112(i)(5) of the Act.

(8) Subpart E[4] of this part contains regulations that provide for the establishment of procedures consistent with section 112(l) of the Act for the approval of State rules or programs to be implemented and enforced in place of certain otherwise applicable Federal rules promulgated under the authority of section 112. Subpart E also establishes procedures for the review and withdrawal of section 112 implementation and enforcement authorities granted through a section 112(l) approval.

(9) [Reserved]

(10) For the purposes of this part, time periods specified in days shall be measured in calendar days, even if the word "calendar" is absent, unless otherwise specified in an applicable requirement.

(11) For the purposes of this part, if an explicit postmark deadline is not specified in an applicable requirement for the submittal of a notification, application, test plan, report, or other written communication to the Administrator, the owner or operator shall postmark the submittal on or before the number of days specified in the applicable requirement. For example, if a notification must be submitted 15 days before a particular event is scheduled to take place, the notification must be postmarked on or before 15 days preceding the event; likewise, if a notification must be submitted 15 days after a particular event takes place, the notification must be postmarked on or before 15 days following the event.

(12) Notwithstanding time periods or postmark deadlines specified in this part for the submittal of information to the Administrator by an owner or operator, or the review of such information by the Administrator, such time periods or deadlines may be changed by mutual agreement between the owner or operator and the Administrator. Procedures governing the implementation of this provision are specified in § 63.9(i).

(13) Special provisions set forth under an applicable subpart of this part shall supersede any conflicting provisions of this subpart. Individual subparts will specify which provisions of subpart A are superseded.

(14) For the purposes of implementing section 112 of the Act, any standards, limitations, prohibitions, or other federally enforceable requirements established pursuant to procedural regulations in this part shall have the force and effect of standards, limitations, prohibitions, or other federally enforceable requirements promulgated in this part 63. Such requirements also shall be subject to the requirements of this subpart, except when explicitly specified otherwise.

(b) *Initial applicability determination for this part 63.* (1) The provisions of this part apply to the owner or operator of any stationary source that—

(i) Is included in any category of sources listed in the most up-to-date source category list published in the Federal Register (that may be obtained by contacting the Office of the Director, Emission Standards Division, Office of Air Quality Planning and Standards, U.S. EPA (MD–13), Research Triangle Park, North Carolina 27711); and

(ii) Emits or has the potential to emit any hazardous air pollutant listed in subpart C of this part.

(2) In addition to complying with the provisions of this part, the owner or operator of any such source may be required to obtain an operating permit issued to stationary sources by an

[3] The EPA plans to propose regulations for subpart C in the future.

[4] The EPA proposed regulations for subpart E on May 19, 1993 at 58 FR 29296.

authorized State air pollution control agency or by the Administrator of the U.S. Environmental Protection Agency (EPA) pursuant to title V of the Act. For more information about obtaining an operating permit see parts 70 and 71[5] of this chapter.

(c) *Applicability of this part 63 after a relevant standard has been set under this part.* (1) If a relevant standard has been established under this part, the owner or operator of an affected source shall comply with the provisions of this subpart and the provisions of that standard, except as specified otherwise in this subpart and that standard.

(2) If a relevant standard has been established under this part, the owner or operator of an affected source may be required to obtain a part 70 or part 71 permit from the permitting authority in the State in which the source is located. Emission standards established in this part 63 for area sources will specify whether the owner or operator of an affected source is not required to obtain a part 70 or part 71 permit. If the owner or operator is required to obtain a part 70 or part 71 permit, he/she shall apply for and obtain such permit in accordance with the regulations contained in part 70 or part 71 of this chapter, whichever is applicable, and in applicable State regulations.

(3) [Reserved]

(4) If the owner or operator of an existing source obtains an extension of compliance for such source in accordance with the provisions of subpart D of this part, the owner or operator shall comply with all requirements of this subpart that are specifically addressed in the extension of compliance for that source.

(5) If an area source that otherwise would be subject to an emission standard established under this part if it were a major source subsequently increases its emissions of hazardous air pollutants (or its potential to emit hazardous air pollutants) such that the source is a major source that is subject to the emission standard, such source shall be subject to the notification requirements of this subpart.

(d) [Reserved]

(e) *Applicability of permit program before a relevant standard has been set under this part.* After the effective date of an approved permit program in the State in which a stationary source is (or would be) located, the owner or operator of such source may be required to obtain a part 70 or part 71 permit from the permitting authority in that State (or revise such a permit if one has already been issued to the source) before a relevant standard is established under this part. If the owner or operator is required to obtain (or revise) a part 70 or part 71 permit, he/she shall apply for and obtain (or revise) such permit in accordance with the regulations contained in part 70 of this chapter and applicable State regulations, or part 71 of this chapter, whichever is applicable.

[5] The EPA plans to propose regulations for part 71 in the future.

§ 63.2 Definitions.

The terms used in this part are defined in the Act or in this section as follows:

Act means the Clean Air Act (42 U.S.C. 7401 *et seq.*, as amended by Public Law 101–549, 104 Stat. 2399).

Actual emissions is defined in subpart D of this part for the purpose of granting a compliance extension for an early reduction of hazardous air pollutants.

Administrator means the Administrator of the United States Environmental Protection Agency or his or her authorized representative (e.g., a State that has been delegated the authority to implement the provisions of this part).

Affected source, for the purposes of this part, means a stationary source, a group of stationary sources, or a portion of a stationary source to which any requirement established pursuant to section 112 of the Act is applicable.

Alternative emission limitation means conditions established pursuant to sections 112(i)(5) or 112(i)(6) of the Act by a State with an approved permit program or by the Administrator.

Alternative emission standard means an alternative means of emission limitation that, after notice and opportunity for public comment, has been demonstrated by an owner or operator to the Administrator's satisfaction to achieve a reduction in emissions of any air pollutant at least equivalent to the reduction in emissions of such pollutant achieved under a relevant design, equipment, work practice, or operational emission standard, or combination thereof, established under this part pursuant to section 112(h) of the Act.

Alternative test method means any method of sampling and analyzing for an air pollutant that is not a test method in this chapter and that has been demonstrated to the Administrator's satisfaction, using Method 301 in appendix A of this part, to produce results adequate for the Administrator's determination that it may be used in place of a test method specified in this part.

Approved permit program means a State permit program approved by the Administrator as meeting the requirements of part 70 of this chapter or a Federal permit program established under part 71 of this chapter.

Area source means any stationary source of hazardous air pollutants that is not a major source as defined in this part.

Capital expenditure means an expenditure for a physical or operational change to an affected source that exceeds the product of the applicable "annual asset guideline repair allowance percentage" specified in the 1981 edition of the Internal Revenue Service (IRS) Publication 534 and the affected source's basis, as defined by section 1012 of the Internal Revenue Code, or as specified in an applicable subpart of this part. However, the total expenditure for a physical or operational change to an affected source must not be reduced by any "excluded additions" as defined in IRS Publication 534, as would be done for tax purposes. In addition, "annual asset guideline repair allowance" may be used, even though it is excluded for tax purposes in IRS Publication 534.

Commenced means, with respect to construction or reconstruction of a stationary source, that an owner or operator has undertaken a continuous program of construction or reconstruction or that an owner or operator has entered into a contractual obligation to undertake and complete, within a reasonable time, a continuous program of construction or reconstruction.

Compliance date means the date by which an affected source is required to be in compliance with a relevant standard, limitation, prohibition, or any federally enforceable requirement established by the Administrator (or a State with an approved permit program) pursuant to section 112 of the Act.

Compliance plan means a plan that contains all of the following:

(1) A description of the compliance status of the affected source with respect to all applicable requirements established under this part;

(2) A description as follows:

(i) For applicable requirements for which the source is in compliance, a statement that the source will continue to comply with such requirements;

(ii) For applicable requirements that the source is required to comply with by a future date, a statement that the source will meet such requirements on a timely basis;

(iii) For applicable requirements for which the source is not in compliance, a narrative description of how the source will achieve compliance with such requirements on a timely basis;

(3) A compliance schedule, as defined in this section; and

(4) A schedule for the submission of certified progress reports no less frequently than every 6 months for affected sources required to have a schedule of compliance to remedy a violation.

Compliance schedule means: (1) In the case of an affected source that is in compliance with all applicable requirements established under this part, a statement that the source will continue to comply with such requirements; or

(2) In the case of an affected source that is required to comply with applicable requirements by a future date, a statement that the source will meet such requirements on a timely basis, and, if required by an applicable requirement, a detailed schedule of the dates by which each step toward compliance will be reached; or

(3) In the case of an affected source not in compliance with all applicable requirements established under this part, a schedule of remedial measures, including an enforceable sequence of actions or operations with milestones and a schedule for the submission of certified progress reports, where applicable, leading to compliance with a relevant standard, limitation, prohibition, or any federally enforceable requirement established pursuant to section 112 of the Act for which the affected source is not in compliance. This compliance schedule shall resemble and be at least as stringent as that contained in any judicial consent decree or administrative order to which the source is subject. Any such schedule of compliance shall be supplemental to, and shall not sanction noncompliance with, the applicable requirements on which it is based.

Construction means the fabrication (on-site), erection, or installation of a stationary source, group of stationary sources, or portion of a stationary source that is or may be subject to a standard, limitation, prohibition, or other federally enforceable requirement established by the Administrator (or a State with an approved permit program) pursuant to section 112 of the Act.

Continuous emission monitoring system (CEMS) means the total equipment that may be required to meet the data acquisition and availability requirements of this part, used to sample, condition (if applicable), analyze, and provide a permanent record of emissions.

Continuous monitoring system (CMS) means either a continuous emission monitoring system or a continuous parameter monitoring system.

Continuous opacity monitoring system (COMS) means a continuous monitoring system that measures the opacity of emissions.

Continuous parameter monitoring system means the total equipment that may be required to meet the data acquisition and availability requirements of this part, used to sample, condition (if applicable), analyze, and provide a permanent record of process or control system parameters.

Effective date means: (1) With regard to an emission standard established under this part, the date of promulgation in the **Federal Register** of such standard; or (2) With regard to an alternative emission limitation or equivalent emission limitation determined by the Administrator (or a State with an approved permit program), the date that the alternative emission limitation or equivalent emission limitation becomes effective according to the provisions of this part. The effective date of a permit program under part 70 or part 71 of this chapter is determined according to the provisions of those parts.

Emission standard means a national standard, limitation, prohibition, or other regulation proposed or promulgated in a subpart of this part pursuant to sections 112(d), 112(h), or 112(f) of the Act.

Emissions averaging is a way to comply with the emission limitations specified in a relevant standard, whereby an affected source, if allowed under a subpart of this part, may create emission credits by reducing emissions from specific points to a level below that required by the relevant standard, and those credits are used to offset emission debits from points that are not controlled to the level required by the relevant standard.

EPA means the United States Environmental Protection Agency.

Equivalent emission limitation means the maximum achievable control technology emission limitation (MACT emission limitation) for hazardous air pollutants that the Administrator (or a State with an approved permit program) determines on a case-by-case basis, pursuant to section 112(g) or section 112(j) of the Act, to be equivalent to the emission standard that would apply to an affected source if such standard had been promulgated by the Administrator under this part pursuant to section 112(d) or section 112(h) of the Act.

Excess emissions and continuous monitoring system performance report is a report that must be submitted periodically by an affected source in order to provide data on its compliance with relevant emission limits, operating parameters, and the performance of its continuous parameter monitoring systems.

Existing source means any affected source that is not a new source or a reconstructed source.

Federally enforceable means all limitations and conditions that are enforceable by the Administrator. Examples of federally enforceable limitations and conditions include, but are not limited to:

(1) Emission standards, alternative emission standards, alternative emission limitations, and equivalent emission limitations established pursuant to section 112 of the Act as amended in 1990;

(2) New source performance standards established pursuant to section 111 of the Act, and emission standards established pursuant to section 112 of the Act before it was amended in 1990;

(3) Any limitations and conditions that limit a source's potential to emit under section 112 of the Act that are established pursuant to the provisions of this part;

(4) All terms and conditions in a part 70 or part 71 permit, including any provisions that limit a source's potential to emit, unless expressly designated as not federally enforceable;

(5) Limitations and conditions that are part of an approved State Implementation Plan (SIP) or a Federal Implementation Plan (FIP);

(6) A Federal construction permit issued under 40 CFR 52.21 or any construction permit issued under regulations approved by the EPA in accordance with 40 CFR part 51;

(7) Operating permits approved by the EPA as part of a SIP as meeting EPA-defined minimum criteria for Federal enforceability; and

(8) Individual consent agreements or contracts that the EPA has legal authority to create.

Fixed capital cost means the capital needed to provide all the depreciable components of an existing source.

Fugitive emissions means those emissions from a stationary source that could not reasonably pass through a stack, chimney, vent, or other functionally equivalent opening. Fugitive emissions do not include equipment leaks regulated under this chapter or equipment leaks that could reasonably be corrected by proper maintenance practices.

Hazardous air pollutant means any air pollutant listed in section 112(b) of the Act and codified in subpart C of this part. When there is a discrepancy between the hazardous air pollutant list in section 112(b) and the list in subpart

C, the list in subpart C shall supersede the list in section 112(b).

Issuance of a part 70 permit occurs, if the State is the permitting authority, when a final permit completes all administrative concurrence and review procedures at the State and Federal levels. This term applies to permit modifications and renewals, as well as to the original permit. Issuance of a part 71 permit occurs immediately after the EPA takes final action on a final permit if the EPA is the permitting authority.

Lesser quantity means a quantity of a hazardous air pollutant that is or may be emitted by a stationary source that the Administrator establishes in order to define a major source under an applicable subpart of this part.

Major source means any stationary source or group of stationary sources located within a contiguous area and under common control that emits or has the potential to emit considering controls, in the aggregate, 10 tons per year or more of any hazardous air pollutant or 25 tons per year or more of any combination of hazardous air pollutants, unless the Administrator establishes a lesser quantity, or in the case of radionuclides, different criteria from those specified in this sentence.

Malfunction means any sudden, infrequent, and not reasonably preventable failure of air pollution control equipment, process equipment, or a process to operate in a normal or usual manner. Failures that are caused in part by poor maintenance or careless operation are not malfunctions.

New source means any affected source the construction or reconstruction of which is commenced after the Administrator first proposes a relevant standard under this part.

One-hour period, unless otherwise defined in an applicable subpart, means any continuous 60-minute period.

Opacity means the degree to which emissions reduce the transmission of light and obscure the view of an object in the background. For continuous opacity monitoring systems, opacity means the fraction of incident light that is attenuated by an optical medium.

Owner or operator means any person who owns, leases, operates, controls, or supervises a stationary source.

Part 70 permit means any permit issued, renewed, or revised pursuant to part 70 of this chapter.

Part 71 permit means any permit issued, renewed, or revised pursuant to part 71 of this chapter.

Performance audit means a procedure to analyze blind samples, the content of which is known by the Administrator, simultaneously with the analysis of performance test samples in order to provide a measure of test data quality.

Permit modification means a change to a part 70 or part 71 permit as defined in those parts.

Permit program means a comprehensive State or Federal operating permit system established pursuant to regulations codified in part 70 of this chapter and applicable State regulations, or in part 71 of this chapter.

Permit revision means any permit modification or administrative permit amendment to a part 70 or part 71 permit as defined in those parts.

Permitting authority means:

(1) The State air pollution control agency, local agency, other State agency, or other agency authorized by the Administrator to carry out a permit program under part 70 of this chapter; or

(2) The Administrator, in the case of EPA-implemented permit programs under part 71 of this chapter.

Potential to emit means the maximum capacity of a stationary source to emit a pollutant under its physical and operational design. Any physical or operational limitation on the capacity of the stationary source to emit a pollutant, including air pollution control equipment and restrictions on hours of operation or on the type or amount of material combusted, stored, or processed, shall be treated as part of its design if the limitation or the effect it would have on emissions is federally enforceable.

Reconstruction, for the purposes of this subpart, means the replacement of components of an affected source to such an extent that: (1) The fixed capital cost of the new components exceeds 50 percent of the fixed capital cost that would be required to construct a comparable new source; and (2) It is technologically and economically feasible for the reconstructed source to meet the promulgated emission standard(s) established by the Administrator pursuant to section 112 of the Act. Upon reconstruction, an affected source is subject to relevant standards for new sources, including compliance dates, irrespective of any change in emissions of hazardous air pollutants from that source.

Regulation promulgation schedule means the schedule for the promulgation of emission standards under this part, established by the Administrator pursuant to section 112(e) of the Act and published in the Federal Register.

Relevant standard means: (1) An emission standard; (2) An alternative emission standard; (3) An alternative emission limitation; or (4) An equivalent emission limitation that applies to a stationary source, a group of stationary sources, or a portion of a stationary source regulated by such standard or limitation. A relevant standard may include or consist of a design, equipment, work practice, or operational requirement, or other measure, process, method, system, or technique (including prohibition of emissions) that the Administrator (or a State with an approved permit program) establishes for new or existing sources to which such standard or limitation applies. Every relevant standard established pursuant to section 112 of the Act includes subpart A of this part and all applicable appendices of parts 51, 60, 61, and 63 of this chapter that are referenced in that standard.

Responsible official means one of the following:

(1) For a corporation: A president, secretary, treasurer, or vice president of the corporation in charge of a principal business function, or any other person who performs similar policy or decision-making functions for the corporation, or a duly authorized representative of such person if the representative is responsible for the overall operation of one or more manufacturing, production, or operating facilities and either:

(i) The facilities employ more than 250 persons or have gross annual sales or expenditures exceeding $25 million (in second quarter 1980 dollars); or

(ii) The delegation of authority to such representative is approved in advance by the Administrator.

(2) For a partnership or sole proprietorship: A general partner or the proprietor, respectively.

(3) For a municipality, State, Federal, or other public agency: Either a principal executive officer or ranking elected official. For the purposes of this part, a principal executive officer of a Federal agency includes the chief executive officer having responsibility for the overall operations of a principal geographic unit of the agency (e.g., a Regional Administrator of the EPA).

(4) For affected sources (as defined in this part):

(i) The designated representative shall be the responsible official insofar as actions, standards, requirements, or prohibitions under section 112 of the Act or the regulations established thereunder are concerned;

(ii) The designated representative may also be the responsible official for any other purposes under section 112.

(5) For affected sources (as defined in this part) applying for or subject to a part 70 or part 71 permit: *Responsible official* shall have the same meaning as

defined in part 70 or part 71 of this chapter, whichever is applicable.

Run means one of a series of emission or other measurements needed to determine emissions for a representative operating period or cycle as specified in this part.

Shutdown means the cessation of operation of an affected source for any purpose.

Six-minute period means, with respect to opacity determinations, any one of the 10 equal parts of a 1-hour period.

Standard conditions means a temperature of 293 K (68° F) and a pressure of 101.3 kilopascals (29.92 in. Hg).

Startup means the setting in operation of an affected source for any purpose.

State means all non-Federal authorities, including local agencies, interstate associations, and State-wide programs, that have delegated authority to implement: (1) The provisions of this part and/or (2) The permit program established under part 70 of this chapter. The term State shall have its conventional meaning where clear from the context.

Stationary source means any building, structure, facility, or installation which emits or may emit any air pollutant. For the purposes of this part, stationary sources of hazardous air pollutants are listed in categories pursuant to section 112(c) of the Act and published in the **Federal Register**.

Test method means the validated procedure for sampling, preparing, and analyzing for an air pollutant specified in a relevant standard as the performance test procedure. The test method may include methods described in an appendix of this chapter, test methods incorporated by reference in this part, or methods validated for an application through procedures in Method 301 of appendix A of this part.

Visible emission means the observation of an emission of opacity or optical density above the threshold of vision.

§63.3 Units and abbreviations.

Used in this part are abbreviations and symbols of units of measure. These are defined as follows:

(a) *System International (SI) units of measure:*

A=ampere
g=gram
Hz=hertz
J=joule
°K=degree Kelvin
kg=kilogram
l=liter
m=meter
m^3=cubic meter
mg=milligram=10^{-3} gram
ml=milliliter=10^{-3} liter
mm=millimeter=10^{-3} meter
Mg=megagram=10^6 gram=metric ton
MJ=megajoule
mol=mole
N=newton
ng=nanogram=10^{-9} gram
nm=nanometer=10^{-9} meter
Pa=pascal
s=second
V=volt
W=watt
Ω=ohm
µg=microgram=10^{-6} gram
µl=microliter=10^{-6} liter

(b) *Other units of measure:*

Btu=British thermal unit
°C=degree Celsius (centigrade)
cal=calorie
cfm=cubic feet per minute
cc=cubic centimeter
cu ft=cubic feet
d=day
dcf=dry cubic feet
dcm=dry cubic meter
dscf=dry cubic feet at standard conditions
dscm=dry cubic meter at standard conditions
eq=equivalent
°F=degree Fahrenheit
ft=feet
ft^2=square feet
ft^3=cubic feet
gal=gallon
gr=grain
g-eq=gram equivalent
g-mole=gram mole
hr=hour
in.=inch
in. H^2O=inches of water
K=1,000
kcal=kilocalorie
lb=pound
lpm=liter per minute
meq=milliequivalent
min=minute
MW=molecular weight
oz=ounces
ppb=parts per billion
ppbw=parts per billion by weight
ppbv=parts per billion by volume
ppm=parts per million
ppmw=parts per million by weight
ppmv=parts per million by volume
psia=pounds per square inch absolute
psig=pounds per square inch gauge
°R=degree Rankine
scf=cubic feet at standard conditions
scfh=cubic feet at standard conditions per hour
scm=cubic meter at standard conditions
sec=second
sq ft=square feet
std=at standard conditions
v/v=volume per volume
yd^2=square yards
yr=year

(c) *Miscellaneous:*

act=actual
avg=average
I.D.=inside diameter
M=molar
N=normal
O.D.=outside diameter
%=percent

§63.4 Prohibited activities and circumvention.

(a) *Prohibited activities.* (1) No owner or operator subject to the provisions of this part shall operate any affected source in violation of the requirements of this part except under—

(i) An extension of compliance granted by the Administrator under this part; or

(ii) An extension of compliance granted under this part by a State with an approved permit program; or

(iii) An exemption from compliance granted by the President under section 112(i)(4) of the Act.

(2) No owner or operator subject to the provisions of this part shall fail to keep records, notify, report, or revise reports as required under this part.

(3) After the effective date of an approved permit program in a State, no owner or operator of an affected source in that State who is required under this part to obtain a part 70 or part 71 permit shall operate such source except in compliance with the provisions of this part and part 70 or part 71 of this chapter.

(4) [Reserved]

(5) An owner or operator of an affected source who is subject to an emission standard promulgated under this part shall comply with the requirements of that standard by the date(s) established in the applicable subpart(s) of this part (including this subpart) regardless of whether—

(i) A part 70 or part 71 permit has been issued to that source; or

(ii) If a part 70 or part 71 permit has been issued to that source, whether such permit has been revised or modified to incorporate the emission standard.

(b) *Circumvention.* No owner or operator subject to the provisions of this part shall build, erect, install, or use any article, machine, equipment, or process to conceal an emission that would otherwise constitute noncompliance with a relevant standard. Such concealment includes, but is not limited to—

(1) The use of diluents to achieve compliance with a relevant standard based on the concentration of a pollutant in the effluent discharged to the atmosphere;

(2) The use of gaseous diluents to achieve compliance with a relevant standard for visible emissions; and

(3) The fragmentation of an operation such that the operation avoids regulation by a relevant standard that applies only to operations larger than a specified size.

(c) *Severability.* Notwithstanding any requirement incorporated into a part 70

or part 71 permit obtained by an owner or operator subject to the provisions of this part, the provisions of this part are federally enforceable.

§ 63.5 Construction and reconstruction.

(a) *Applicability.* (1)(i) This section implements the preconstruction review requirements of section 112(i)(1) for sources subject to a relevant emission standard that has been promulgated in this part. This section does not implement the modification requirements of sections 112(g)(1), 112(g)(2)(A), and 112(g)(3), nor does it implement the requirements in section 112(g)(2)(B) for sources that are constructed or reconstructed before an applicable emission standard has been promulgated in this part.

(ii) After the effective date of a relevant standard promulgated under this part, the requirements in this section apply to owners or operators who construct a new source or reconstruct a source after the proposal date of that standard. New or reconstructed sources that start up before the standard's effective date are not subject to the preconstruction review requirements specified in paragraphs (b)(3), (d), and (e) of this section.

(2) After the effective date of an approved permit program in the State in which an affected source is located, an owner or operator subject to the requirements of this section shall obtain a part 70 or part 71 permit (or revise an existing part 70 or part 71 permit) in accordance with the provisions of this part and part 70 or part 71 of this chapter (whichever is applicable) and shall comply with all other applicable requirements of this subpart, unless the affected source is an area source that is exempt from the requirement to obtain a permit.

(3) Special provisions set forth under an applicable subpart of this part shall supersede any conflicting provisions of this section. Individual subparts will specify which provisions of this section are superseded.

(b) *Requirements for existing, newly constructed, and reconstructed sources.* (1) Upon construction an affected source is subject to relevant standards for new sources, including compliance dates. Upon reconstruction, an affected source is subject to relevant standards for new sources, including compliance dates, irrespective of any change in emissions of hazardous air pollutants from that source.

(2) [Reserved]

(3) After the effective date of any relevant standard promulgated by the Administrator under this part, whether or not an approved permit program is effective in the State in which an affected source is (or would be) located, no person may construct a new major source or reconstruct a major source subject to such standard without obtaining written approval, in advance, from the Administrator in accordance with the procedures specified in paragraphs (d) and (e) of this section.

(4) After the effective date of any relevant standard promulgated by the Administrator under this part, whether or not an approved permit program is effective in the State in which an affected source is (or would be) located, no person may construct a new source or reconstruct a source subject to such standard without notifying the Administrator of the intended construction or reconstruction. The notification shall be submitted in accordance with the procedures in § 63.9(b) of this subpart and shall include all the information required for an application for approval of construction or reconstruction as specified in paragraph (d) of this section.

(5) After the effective date of any relevant standard promulgated by the Administrator under this part, whether or not an approved permit program is effective in the State in which an affected source is located, no person may operate such source without complying with the provisions of this subpart and the relevant standard.

(6) After the effective date of any relevant standard promulgated by the Administrator under this part, whether or not an approved permit program is effective in the State in which an affected source is located, equipment added (or a process change) to an affected source that is within the scope of the definition of affected source under the relevant standard shall be considered part of the affected source and subject to all provisions of the relevant standard established for that affected source. This paragraph is not intended to implement the modification provisions of section 112(g) of the Act.

(7)–(8) [Reserved]

(c) *Review of plans.* (1) When requested to do so by an owner or operator, the Administrator will review complete written plans for construction or reconstruction for the purpose of——

(i) Advising whether actions to be taken by the owner or operator would constitute construction or reconstruction, or the commencement of one of these actions; or

(ii) Providing general technical advice to the owner or operator on proposed constructions or reconstructions.

(2) The review in paragraph (c)(1) of this section is available to the owner or operator of a stationary source that commences construction or reconstruction after the proposal date of a relevant standard.

(3) A separate request shall be submitted in writing for each construction or reconstruction. Each request shall identify—

(i) The location (i.e., the physical address) of the construction or reconstruction;

(ii) Technical information describing the proposed nature, size, design, method of operation, and operating capacity of each affected source involved in the construction or reconstruction;

(iii) Information on any equipment or methods to be used for the control of emissions; and

(iv) Any additional information that is relevant to the Administrator providing advice on the nature of the proposed construction or reconstruction.

(4) The Administrator will respond to the owner or operator's request for a review of plans under this paragraph within 60 calendar days after receipt of sufficient information to evaluate the plans. The 60-day period will begin after the owner or operator has been notified that his/her submittal is complete. The Administrator (or the State) will notify the owner or operator in writing of the status of his/her submittal, that is, whether sufficient information to make a determination has been received, within 30 calendar days after receipt of the original plans and within 30 calendar days after receipt of any supplementary information that is submitted.

(5) Neither a request for review of plans nor advice furnished by the Administrator in response to such a request shall—

(i) Relieve the owner or operator of legal responsibility for compliance with any provision of this part or of any applicable State or local requirement; or

(ii) Prevent the Administrator from implementing or enforcing any provision of this part or taking any other action authorized by the Act.

(d) *Application for approval of construction or reconstruction.* The provisions of this paragraph implement section 112(i)(1) of the Act.

(1) *General application requirements.* (i) Before the effective date of an approved permit program in the State in which a major source subject to the requirement of paragraph (b)(3) of this section is (or would be) located, the owner or operator of such source shall submit to the Administrator an application for approval of the

construction of a new source or the reconstruction of an affected source. After the effective date of an approved permit program in the State in which such source is (or would be) located, the owner or operator shall submit the application to the permitting authority in that State. The application shall be postmarked at least 180 days before the construction or reconstruction is planned to commence (but it need not be sooner than 45 days after the effective date of the relevant standard) if the construction or reconstruction commences after the effective date of a relevant standard established under this part, or within 45 days after the effective date of a relevant standard established under this part if the construction or reconstruction had commenced and initial startup had not occurred before the standard's effective date.

(ii) A separate application shall be submitted for each construction or reconstruction. Each application for approval of construction or reconstruction shall include at a minimum:

(A) The applicant's name and address;

(B) A notification of intention to construct a new major source or make any physical or operational change to a major source that may meet or has been determined to meet the criteria for a reconstruction, as defined in § 63.2;

(C) The address (i.e., physical location) or proposed address of the source;

(D) An identification of the relevant standard that is the basis of the application;

(E) The expected commencement date of the construction or reconstruction;

(F) The expected completion date of the construction or reconstruction;

(G) The anticipated date of (initial) startup of the source;

(H) The type and quantity of hazardous air pollutants emitted by the source, reported in units and averaging times and in accordance with the test methods specified in the relevant standard, or if actual emissions data are not yet available, an estimate of the type and quantity of hazardous air pollutants emitted by the source reported in units and averaging times specified in the relevant standard;

(I) An analysis demonstrating whether the reconstructed or new source is or is expected to be a major source or an area source (using the emissions data or estimates generated for this application); and

(J) Other information as specified in paragraphs (d)(2) and (d)(3) of this section.

(iii) An owner or operator who submits estimates or preliminary information in place of the actual emissions data and analysis required in paragraphs (d)(1)(ii)(H) and (d)(1)(ii)(I) of this section shall submit the actual, measured emissions data and other correct information with the notification of compliance status required in § 63.9(h) [see § 63.9(h)(5)].

(2) *Application for approval of construction.* Each application for approval of construction shall include, in addition to the information required in paragraph (d)(1)(ii) of this section, technical information describing the proposed nature, size, design, operating design capacity, and method of operation of the source, including an identification of each point of emission for each hazardous air pollutant that is emitted (or could be emitted) and a description of the planned air pollution control system (equipment or method) for each emission point. The description of the equipment to be used for the control of emissions shall include each control device for each hazardous air pollutant and the estimated control efficiency (percent) for each control device. The description of the method to be used for the control of emissions shall include an estimated control efficiency (percent) for that method. Such technical information shall include calculations of emission estimates in sufficient detail to permit assessment of the validity of the calculations.

(3) *Application for approval of reconstruction.* Each application for approval of reconstruction shall include, in addition to the information required in paragraph (d)(1)(ii) of this section—

(i) A brief description of the affected source and the components that are to be replaced;

(ii) A description of present and proposed emission control systems (i.e., equipment or methods). The description of the equipment to be used for the control of emissions shall include each control device for each hazardous air pollutant and the estimated control efficiency (percent) for each control device. The description of the method to be used for the control of emissions shall include an estimated control efficiency (percent) for that method. Such technical information shall include calculations of emission estimates in sufficient detail to permit assessment of the validity of the calculations;

(iii) An estimate of the fixed capital cost of the replacements and of constructing a comparable entirely new source;

(iv) The estimated life of the affected source after the replacements; and

(v) A discussion of any economic or technical limitations the source may have in complying with relevant standards or other requirements after the proposed replacements.

(4) *Additional information.* The Administrator may request additional relevant information after the submittal of an application for approval of construction or reconstruction.

(e) *Approval of construction or reconstruction.* (1)(i) If the Administrator determines that, if properly constructed, or reconstructed, and operated, a new or existing source for which an application under paragraph (d) of this section was submitted will not cause emissions in violation of the relevant standard(s) and any other federally enforceable requirements, the Administrator will approve the construction or reconstruction.

(ii) In addition, in the case of reconstruction, the Administrator's determination under this paragraph will be based on:

(A) The fixed capital cost of the replacements in comparison to the fixed capital cost that would be required to construct a comparable entirely new source;

(B) The estimated life of the source after the replacements compared to the life of a comparable entirely new source;

(C) The extent to which the components being replaced cause or contribute to the emissions from the source; and

(D) Any economic or technical limitations on compliance with relevant standards that are inherent in the proposed replacements.

(2)(i) The Administrator will notify the owner or operator in writing of approval or intention to deny approval of construction or reconstruction within 60 calendar days after receipt of sufficient information to evaluate an application submitted under paragraph (d) of this section. The 60-day approval or denial period will begin after the owner or operator has been notified in writing that his/her application is complete. The Administrator will notify the owner or operator in writing of the status of his/her application, that is, whether the application contains sufficient information to make a determination, within 30 calendar days after receipt of the original application and within 30 calendar days after receipt of any supplementary information that is submitted.

(ii) When notifying the owner or operator that his/her application is not complete, the Administrator will specify the information needed to complete the application and provide notice of

opportunity for the applicant to present, in writing, within 30 calendar days after he/she is notified of the incomplete application, additional information or arguments to the Administrator to enable further action on the application.

(3) Before denying any application for approval of construction or reconstruction, the Administrator will notify the applicant of the Administrator's intention to issue the denial together with—

(i) Notice of the information and findings on which the intended denial is based; and

(ii) Notice of opportunity for the applicant to present, in writing, within 30 calendar days after he/she is notified of the intended denial, additional information or arguments to the Administrator to enable further action on the application.

(4) A final determination to deny any application for approval will be in writing and will specify the grounds on which the denial is based. The final determination will be made within 60 calendar days of presentation of additional information or arguments (if the application is complete), or within 60 calendar days after the final date specified for presentation if no presentation is made.

(5) Neither the submission of an application for approval nor the Administrator's approval of construction or reconstruction shall—

(i) Relieve an owner or operator of legal responsibility for compliance with any applicable provisions of this part or with any other applicable Federal, State, or local requirement; or

(ii) Prevent the Administrator from implementing or enforcing this part or taking any other action under the Act.

§ 63.6 Compliance with standards and maintenance requirements.

(a) *Applicability.* (1) The requirements in this section apply to owners or operators of affected sources for which any relevant standard has been established pursuant to section 112 of the Act unless—

(i) The Administrator (or a State with an approved permit program) has granted an extension of compliance consistent with paragraph (i) of this section; or

(ii) The President has granted an exemption from compliance with any relevant standard established pursuant to section 112(i)(4) of the Act (see paragraph (j) of this section).

(2) If an area source that otherwise would be subject to an emission standard established under this part if it were a major source subsequently increases its emissions of hazardous air pollutants (or its potential to emit hazardous air pollutants) such that the source is a major source, such source shall be subject to the relevant emission standard.

(3) Special provisions established under this part shall supersede any conflicting provisions of this section. Individual subparts will specify which provisions of this section are superseded.

(b) *Compliance dates for new and reconstructed sources.* (1) The owner or operator of a new or reconstructed source that has an initial startup before the effective date of a relevant standard established under this part pursuant to sections 112(d), 112(h), or 112(f) of the Act shall comply with such standard not later than the standard's effective date.

(2) The owner or operator of a new or reconstructed source that has an initial startup after the effective date of a relevant standard established under this part pursuant to sections 112(d), 112(h), or 112(f) of the Act shall comply with such standard upon startup of the source.

(3) Notwithstanding the requirement in § 63.5(b)(3), the owner or operator of an affected source for which construction or reconstruction is commenced after the proposal date of a relevant standard established under this part pursuant to sections 112(d) or 112(h) of the Act but before the effective date (that is, promulgation) of such standard shall comply with the relevant emission standard not later than the date 3 years after the effective date if—

(i) The promulgated standard (that is, the relevant standard) requires a more stringent level of control than would have been required by the proposed standard; and

(ii) The owner or operator complies with the standard as proposed during the 3-year period immediately after the effective date.

(4) The owner or operator of an affected source for which construction or reconstruction is commenced after the proposal date of a relevant standard established pursuant to section 112(d) of the Act but before the proposal date of a relevant standard established pursuant to section 112(f) shall comply with the emission standard under section 112(f) not later than the date 10 years after the date construction or reconstruction is commenced, except that, if the section 112(f) standard is promulgated more than 10 years after construction or reconstruction is commenced, the owner or operator shall comply with the standard as provided in paragraphs (b)(1), (b)(2), and (c)(2) of this section.

(5) The owner or operator of a new source that is subject to the compliance requirements of paragraph (b)(3) or paragraph (b)(4) of this section shall notify the Administrator in accordance with § 63.9(d).

(6) [Reserved]

(c) *Compliance dates for existing sources.* (1) After the effective date of a relevant standard established under this part pursuant to section 112(d) or 112(h) of the Act, the owner or operator of an existing source shall comply with such standard by the compliance date established by the Administrator in the applicable subpart, unless the existing source is a coke oven battery, in which case the compliance requirements of section 112(i)(8) of the Act, as codified in an applicable subpart of this part, shall apply. Except for coke oven batteries, in no case will the compliance date established for an existing source in an applicable subpart of this part exceed 3 years after the effective date of such standard.

(2) After the effective date of a relevant standard established under this part pursuant to section 112(f) of the Act, the owner or operator of an existing source shall comply with such standard not later than 90 days after the standard's effective date.

(3)–(4) [Reserved]

(d) [Reserved]

(e) *Operation and maintenance requirements.* (1)(i) At all times, including periods of startup, shutdown, and malfunction, owners or operators shall operate and maintain any affected source, including associated air pollution control equipment, in a manner consistent with good air pollution control practices for minimizing emissions.

(ii) Malfunctions shall be corrected as soon as practicable after their occurrence in accordance with the startup, shutdown, and malfunction plan required in paragraph (e)(3) of this section.

(iii) Operation and maintenance requirements established pursuant to section 112 of the Act are enforceable independent of emissions limitations or other requirements in relevant standards.

(2) Determination of whether acceptable operation and maintenance procedures are being used will be based on information available to the Administrator which may include, but is not limited to, monitoring results, review of operation and maintenance procedures (including the startup, shutdown, and malfunction plan required in paragraph (e)(3) of this section), review of operation and

maintenance records, and inspection of the source.

(3) *Startup, Shutdown, and Malfunction Plan.* (i) The owner or operator of an affected source shall develop and implement a written startup, shutdown, and malfunction plan that describes, in detail, step-by-step procedures for operating and maintaining the source during periods of startup, shutdown, and malfunction and a program of corrective action for malfunctioning process and air pollution control equipment. The purpose of the startup, shutdown, and malfunction plan is to——

(A) Ensure that, at all times, owners or operators operate and maintain affected sources, including associated air pollution control equipment, in a manner consistent with good air pollution control practices for minimizing emissions;

(B) Ensure that owners or operators are prepared to correct malfunctions as soon as practicable after their occurrence in order to minimize excess emissions of hazardous air pollutants; and

(C) Reduce the reporting burden associated with periods of startup, shutdown, and malfunction (including corrective action taken to restore malfunctioning process and air pollution control equipment to its normal or usual manner of operation).

(ii) During periods of startup, shutdown, and malfunction, the owner or operator of an affected source shall operate and maintain such source (including associated air pollution control equipment) in accordance with the procedures specified in the startup, shutdown, and malfunction plan developed under paragraph (e)(3)(i) of this section.

(iii) When actions taken by the owner or operator during a startup, shutdown, or malfunction (including actions taken to correct a malfunction) are completely consistent with the procedures specified in the affected source's startup, shutdown, and malfunction plan, the owner or operator shall keep records for that event that demonstrate that the procedures specified in the plan were followed. These records may take the form of a "checklist," or other effective form of recordkeeping, that confirms conformance with the startup, shutdown, and malfunction plan for that event. In addition, the owner or operator shall keep records of these events as specified in § 63.10(b) (and elsewhere in this part), including records of the occurrence and duration of each startup, shutdown, or malfunction of operation and each malfunction of the air pollution control equipment. Furthermore, the owner or operator shall confirm that actions taken during the relevant reporting period during periods of startup, shutdown, and malfunction were consistent with the affected source's startup, shutdown and malfunction plan in the semiannual (or more frequent) startup, shutdown, and malfunction report required in § 63.10(d)(5).

(iv) If an action taken by the owner or operator during a startup, shutdown, or malfunction (including an action taken to correct a malfunction) is not completely consistent with the procedures specified in the affected source's startup, shutdown, and malfunction plan, the owner or operator shall record the actions taken for that event and shall report such actions within 24 hours after the event commences, followed by a letter within 7 days after the event commences, in accordance with § 63.10(d)(5) (unless the owner or operator makes alternative reporting arrangements, in advance, with the appropriate permitting authority in that State (see § 63.10(d)(5)(ii))).

(v) The owner or operator shall keep the written startup, shutdown, and malfunction plan on record after it is developed to be made available for inspection, upon request, by the Administrator for the life of the affected source or until the affected source is no longer subject to the provisions of this part. In addition, if the startup, shutdown, and malfunction plan is revised, the owner or operator shall keep previous (i.e., superseded) versions of the startup, shutdown, and malfunction plan on record, to be made available for inspection, upon request, by the Administrator, for a period of 5 years after each revision to the plan.

(vi) To satisfy the requirements of this section to develop a startup, shutdown, and malfunction plan, the owner or operator may use the affected source's standard operating procedures (SOP) manual, provided the SOP manual meets all the requirements of this section and is made available for inspection when requested by the Administrator.

(vii) Based on the results of a determination made under paragraph (e)(2) of this section, the Administrator may require that an owner or operator of an affected source make changes to the startup, shutdown, and malfunction plan for that source. The Administrator may require reasonable revisions to a startup, shutdown, and malfunction plan, if the Administrator finds that the plan:

(A) Does not address a startup, shutdown, or malfunction event that has occurred;

(B) Fails to provide for the operation of the source (including associated air pollution control equipment) during a startup, shutdown, or malfunction event in a manner consistent with good air pollution control practices for minimizing emissions; or

(C) Does not provide adequate procedures for correcting malfunctioning process and/or air pollution control equipment as quickly as practicable.

(viii) If the startup, shutdown, and malfunction plan fails to address or inadequately addresses an event that meets the characteristics of a malfunction but was not included in the startup, shutdown, and malfunction plan at the time the owner or operator developed the plan, the owner or operator shall revise the startup, shutdown, and malfunction plan soon after that event to include step-by-step procedures for operating and maintaining the source during similar malfunction events and a program of corrective action for similar malfunctions of process or air pollution control equipment.

(f) *Compliance with non-opacity emission standards*—(1) *Applicability.* The non-opacity emission standards set forth in this part shall apply at all times except during periods of startup, shutdown, and malfunction, and as otherwise specified in an applicable subpart.

(2) *Methods for determining compliance.* (i) Compliance with non-opacity emission standards in this part will be determined by the Administrator based on the results of performance tests conducted according to the procedures in § 63.7, unless otherwise specified in an applicable subpart of this part.

(ii) Compliance with non-opacity emission standards in this part also will be determined by the Administrator by evaluation of an owner or operator's conformance with operation and maintenance requirements, including the evaluation of monitoring data, as specified in paragraph (e) of this section and applicable subparts of this part.

(iii) If an affected source undergoes performance testing at startup to obtain an operating permit in the State in which the source is located, the results of such testing may be used to demonstrate compliance with a relevant standard if—

(A) The performance test was conducted within a reasonable amount of time before an initial performance test is required to be conducted under the relevant standard;

(B) The performance test was conducted under representative operating conditions for the source;

(C) The performance test was conducted and the resulting data were reduced using EPA-approved test methods and procedures, as specified in paragraph (e) of this section; and

(D) The performance test was appropriately quality-assured, as specified in paragraph (c) of this section.

(iv) Compliance with design, equipment, work practice, or operational emission standards in this part will be determined by the Administrator by review of records, inspection of the source, and other procedures specified in applicable subparts of this part.

(v) Compliance with design, equipment, work practice, or operational emission standards in this part also will be determined by the Administrator by evaluation of an owner or operator's conformance with operation and maintenance requirements, as specified in paragraph (e) of this section and applicable subparts of this part.

(3) *Finding of compliance.* The Administrator will make a finding concerning an affected source's compliance with a non-opacity emission standard, as specified in paragraphs (f)(1) and (f)(2) of this section, upon obtaining all the compliance information required by the relevant standard (including the written reports of performance test results, monitoring results, and other information, if applicable) and any information available to the Administrator needed to determine whether proper operation and maintenance practices are being used.

(g) *Use of an alternative non-opacity emission standard.* (1) If, in the Administrator's judgment, an owner or operator of an affected source has established that an alternative means of emission limitation will achieve a reduction in emissions of a hazardous air pollutant from an affected source at least equivalent to the reduction in emissions of that pollutant from that source achieved under any design, equipment, work practice, or operational emission standard, or combination thereof, established under this part pursuant to section 112(h) of the Act, the Administrator will publish in the **Federal Register** a notice permitting the use of the alternative emission standard for purposes of compliance with the promulgated standard. The Administrator will not permit, without making an appropriate finding under section 112(h), the use of an alternative emission standard as allowed under this paragraph when the relevant promulgated standard is a numerical emission limitation established under this part pursuant to sections 112(d) or 112(f) of the Act. Any **Federal Register** notice under this paragraph shall be published only after the public is notified and given the opportunity to comment. Such notice will restrict the permission to the stationary source(s) or category(ies) of sources from which the alternative emission standard will achieve equivalent emission reductions. The Administrator will condition permission in such notice on requirements to assure the proper operation and maintenance of equipment and practices required for compliance with the alternative emission standard and other requirements, including appropriate quality assurance and quality control requirements, that are deemed necessary.

(2) An owner or operator requesting permission under this paragraph shall, unless otherwise specified in an applicable subpart, submit a proposed test plan or the results of testing and monitoring in accordance with § 63.7 and § 63.8, a description of the procedures followed in testing or monitoring, and a description of pertinent conditions during testing or monitoring. Any testing or monitoring conducted to request permission to use an alternative non-opacity emission standard must be appropriately quality assured and quality controlled, as specified in § 63.7 and § 63.8.

(3) The Administrator may establish general procedures in an applicable subpart that accomplish the requirements of paragraphs (g)(1) and (g)(2) of this section.

(h) *Compliance with opacity and visible emission standards*—(1) *Applicability.* The opacity and visible emission standards set forth in this part shall apply at all times except during periods of startup, shutdown, and malfunction, and as otherwise specified in an applicable subpart.

(2) *Methods for determining compliance.* (i) Compliance with opacity and visible emission standards in this part will be determined by the Administrator based on the results of the test method specified in an applicable subpart. Whenever a continuous opacity monitoring system (COMS) is required to be installed to determine compliance with numerical opacity emission standards in this part, compliance with opacity emission standards in this part shall be determined by using the results from the COMS. Whenever an opacity emission test method is not specified, compliance with opacity emission standards in this part shall be determined by conducting observations in accordance with Test Method 9 in appendix A of part 60 of this chapter or the method specified in paragraph (h)(7)(ii) of this section. Whenever a visible emission test method is not specified, compliance with visible emission standards in this part shall be determined by conducting observations in accordance with Test Method 22 in appendix A of part 60 of this chapter.

(ii) Compliance with opacity and visible emission standards in this part also will be determined by the Administrator by evaluation of an owner or operator's conformance with operation and maintenance requirements, as specified in paragraph (e) of this section and applicable subparts of this part.

(iii) If an affected source undergoes opacity or visible emission testing at startup to obtain an operating permit in the State in which the source is located, the results of such testing may be used to demonstrate compliance with a relevant standard if—

(A) The opacity or visible emission test was conducted within a reasonable amount of time before a performance test is required to be conducted under the relevant standard;

(B) The opacity or visible emission test was conducted under representative operating conditions for the source;

(C) The opacity or visible emission test was conducted and the resulting data were reduced using EPA-approved test methods and procedures, as specified in paragraph (e) of this section; and

(D) The opacity or visible emission test was appropriately quality assured, as specified in paragraph (c) of this section.

(3) [Reserved]

(4) *Notification of opacity or visible emission observations.* The owner or operator of an affected source shall notify the Administrator in writing of the anticipated date for conducting opacity or visible emission observations in accordance with § 63.9(f), if such observations are required for the source by a relevant standard.

(5) *Conduct of opacity or visible emission observations.* When a relevant standard under this part includes an opacity or visible emission standard, the owner or operator of an affected source shall comply with the following:

(i) For the purpose of demonstrating initial compliance, opacity or visible emission observations shall be conducted concurrently with the initial

performance test required in § 63.7 unless one of the following conditions apply:

(A) If no performance test under § 63.7 is required, opacity or visible emission observations shall be conducted within 60 days after achieving the maximum production rate at which a new or reconstructed source will be operated, but not later than 120 days after initial startup of the source, or within 120 days after the effective date of the relevant standard in the case of new sources that start up before the standard's effective date. If no performance test under § 63.7 is required, opacity or visible emission observations shall be conducted within 120 days after the compliance date for an existing or modified source; or

(B) If visibility or other conditions prevent the opacity or visible emission observations from being conducted concurrently with the initial performance test required under § 63.7, or within the time period specified in paragraph (h)(5)(i)(A) of this section, the source's owner or operator shall reschedule the opacity or visible emission observations as soon after the initial performance test, or time period, as possible, but not later than 30 days thereafter, and shall advise the Administrator of the rescheduled date. The rescheduled opacity or visible emission observations shall be conducted (to the extent possible) under the same operating conditions that existed during the initial performance test conducted under § 63.7. The visible emissions observer shall determine whether visibility or other conditions prevent the opacity or visible emission observations from being made concurrently with the initial performance test in accordance with procedures contained in Test Method 9 or Test Method 22 in appendix A of part 60 of this chapter.

(ii) For the purpose of demonstrating initial compliance, the minimum total time of opacity observations shall be 3 hours (30 6-minute averages) for the performance test or other required set of observations (e.g., for fugitive-type emission sources subject only to an opacity emission standard).

(iii) The owner or operator of an affected source to which an opacity or visible emission standard in this part applies shall conduct opacity or visible emission observations in accordance with the provisions of this section, record the results of the evaluation of emissions, and report to the Administrator the opacity or visible emission results in accordance with the provisions of § 63.10(d).

(iv) The inability of the owner or operator to secure a visible emissions observer shall not be considered a reason for not conducting the opacity or visible emission observations concurrent with the initial performance test.

(v) Opacity readings of portions of plumes that contain condensed, uncombined water vapor shall not be used for purposes of determining compliance with opacity emission standards.

(6) *Availability of records.* The owner or operator of an affected source shall make available, upon request by the Administrator, such records that the Administrator deems necessary to determine the conditions under which the visual observations were made and shall provide evidence indicating proof of current visible observer emission certification.

(7) *Use of a continuous opacity monitoring system.* (i) The owner or operator of an affected source required to use a continuous opacity monitoring system (COMS) shall record the monitoring data produced during a performance test required under § 63.7 and shall furnish the Administrator a written report of the monitoring results in accordance with the provisions of § 63.10(e)(4).

(ii) Whenever an opacity emission test method has not been specified in an applicable subpart, or an owner or operator of an affected source is required to conduct Test Method 9 observations (see appendix A of part 60 of this chapter), the owner or operator may submit, for compliance purposes, continuous opacity monitoring system (COMS) data results produced during any performance test required under § 63.7 in lieu of Method 9 data. If the owner or operator elects to submit COMS data for compliance with the opacity emission standard, he or she shall notify the Administrator of that decision, in writing, simultaneously with the notification under § 63.7(b) of the date the performance test is scheduled to begin. Once the owner or operator of an affected source has notified the Administrator to that effect, the COMS data results will be used to determine opacity compliance during subsequent performance tests required under § 63.7, unless the owner or operator notifies the Administrator in writing to the contrary not later than with the notification under § 63.7(b) of the date the subsequent performance test is scheduled to begin.

(iii) For the purposes of determining compliance with the opacity emission standard during a performance test required under § 63.7 using COMS data, the COMS data shall be reduced to 6-minute averages over the duration of the mass emission performance test.

(iv) The owner or operator of an affected source using a COMS for compliance purposes is responsible for demonstrating that he/she has complied with the performance evaluation requirements of § 63.8(e), that the COMS has been properly maintained, operated, and data quality assured, as specified in § 63.8(c) and § 63.8(d), and that the resulting data have not been altered in any way.

(v) Except as provided in paragraph (h)(7)(ii) of this section, the results of continuous monitoring by a COMS that indicate that the opacity at the time visual observations were made was not in excess of the emission standard are probative but not conclusive evidence of the actual opacity of an emission, provided that the affected source proves that, at the time of the alleged violation, the instrument used was properly maintained, as specified in § 63.8(c), and met Performance Specification 1 in appendix B of part 60 of this chapter, and that the resulting data have not been altered in any way.

(8) *Finding of compliance.* The Administrator will make a finding concerning an affected source's compliance with an opacity or visible emission standard upon obtaining all the compliance information required by the relevant standard (including the written reports of the results of the performance tests required by § 63.7, the results of Test Method 9 or another required opacity or visible emission test method, the observer certification required by paragraph (h)(6) of this section, and the continuous opacity monitoring system results, whichever is/are applicable) and any information available to the Administrator needed to determine whether proper operation and maintenance practices are being used.

(9) *Adjustment to an opacity emission standard.* (i) If the Administrator finds under paragraph (h)(8) of this section that an affected source is in compliance with all relevant standards for which initial performance tests were conducted under § 63.7, but during the time such performance tests were conducted fails to meet any relevant opacity emission standard, the owner or operator of such source may petition the Administrator to make appropriate adjustment to the opacity emission standard for the affected source. Until the Administrator notifies the owner or operator of the appropriate adjustment, the relevant opacity emission standard remains applicable.

(ii) The Administrator may grant such a petition upon a demonstration by the owner or operator that—

(A) The affected source and its associated air pollution control equipment were operated and maintained in a manner to minimize the opacity of emissions during the performance tests;

(B) The performance tests were performed under the conditions established by the Administrator; and

(C) The affected source and its associated air pollution control equipment were incapable of being adjusted or operated to meet the relevant opacity emission standard.

(iii) The Administrator will establish an adjusted opacity emission standard for the affected source meeting the above requirements at a level at which the source will be able, as indicated by the performance and opacity tests, to meet the opacity emission standard at all times during which the source is meeting the mass or concentration emission standard. The Administrator will promulgate the new opacity emission standard in the **Federal Register.**

(iv) After the Administrator promulgates an adjusted opacity emission standard for an affected source, the owner or operator of such source shall be subject to the new opacity emission standard, and the new opacity emission standard shall apply to such source during any subsequent performance tests.

(i) *Extension of compliance with emission standards.* (1) Until an extension of compliance has been granted by the Administrator (or a State with an approved permit program) under this paragraph, the owner or operator of an affected source subject to the requirements of this section shall comply with all applicable requirements of this part.

(2) *Extension of compliance for early reduction.* If the owner or operator of an existing source demonstrates that the source has achieved a reduction in emissions of hazardous air pollutants in accordance with the provisions of subpart D of this part, the Administrator (or the State with an approved permit program) will grant the owner or operator an extension of compliance with specific requirements of this part, as specified in subpart D.

(3) *Request for extension of compliance.* Paragraphs (i)(4) through (i)(7) of this section concern requests for an extension of compliance with a relevant standard under this part (except requests for an extension of compliance under paragraph (i)(2) of this section will be handled through procedures specified in subpart D of this part).

(4) The owner or operator of an existing source unable to comply with a relevant standard established under this part pursuant to section 112(d) of the Act may request that the Administrator (or a State with an approved part 70 permit program) issue a permit that grants an extension allowing the source up to 1 additional year to comply with the standard, if such additional period is necessary for the installation of controls. An additional extension of up to 3 years may be added for mining waste operations, if the 1-year extension of compliance is insufficient to dry and cover mining waste in order to reduce emissions of any hazardous air pollutant. After the effective date of an approved part 70 permit program in a State, the owner or operator shall submit the request for an extension of compliance to the State permitting authority.

(5) The owner or operator of an existing source unable to comply with a relevant standard established under this part pursuant to section 112(f) of the Act may request that the Administrator grant an extension allowing the source up to 2 years after the standard's effective date to comply with the standard. The Administrator may grant such an extension if he/she finds that such additional period is necessary for the installation of controls and that steps will be taken during the period of the extension to assure that the health of persons will be protected from imminent endangerment.

(6) Any request for an extension of compliance with a relevant standard under paragraph (i)(4) of this section shall be submitted in writing to the Administrator (or the State with an approved permit program) not later than the date 12 months before the affected source's compliance date (as specified in paragraphs (b) and (c) of this section) for sources that are not including emission points in an emissions average, or not later than 18 months before the affected source's compliance date (as specified in paragraphs (b) and (c) of this section) for sources that are including emission points in an emissions average. Any request for an extension of compliance with a relevant standard under paragraph (i)(5) of this section shall be submitted in writing to the Administrator not later than 15 calendar days after the effective date of the relevant standard. Emission standards established under this part 63 may specify alternative dates for the submittal of requests for an extension of compliance if alternatives are appropriate for the source categories affected by those standards, e.g., a compliance date specified by the standard is less than 12 (or 18) months after the standard's effective date. The request for a compliance extension shall include the following information:

(i) A description of the controls to be installed to comply with the standard;

(ii) A compliance schedule, including the date by which each step toward compliance will be reached. At a minimum, the list of dates shall include:

(A) The date by which contracts for emission control systems or process changes for emission control will be awarded, or the date by which orders will be issued for the purchase of component parts to accomplish emission control or process changes;

(B) The date by which on-site construction, installation of emission control equipment, or a process change is to be initiated;

(C) The date by which on-site construction, installation of emission control equipment, or a process change is to be completed;

(D) The date by which final compliance is to be achieved; and

(iii) A description of interim emission control steps that will be taken during the extension period, including milestones to assure proper operation and maintenance of emission control and process equipment.

(7) Advice on requesting an extension of compliance may be obtained from the Administrator (or the State with an approved permit program).

(8) *Approval of request for extension of compliance.* Paragraphs (i)(9) through (i)(14) of this section concern approval of an extension of compliance requested under paragraphs (i)(4) through (i)(6) of this section.

(9) Based on the information provided in any request made under paragraphs (i)(4) through (i)(6) of this section, or other information, the Administrator (or the State with an approved permit program) may grant an extension of compliance with an emission standard, as specified in paragraphs (i)(4) and (i)(5) of this section, if such additional period is necessary for the installation of controls.

(10) The extension will be in writing and will—

(i) Identify each affected source covered by the extension;

(ii) Specify the termination date of the extension;

(iii) Specify the dates by which steps toward compliance are to be taken; and

(iv) Specify any additional conditions that the Administrator (or the State) deems necessary to assure installation of the necessary controls and protection of

the health of persons during the extension period.

(11) The owner or operator of an existing source that has been granted an extension of compliance under paragraph (i)(10) of this section may be required to submit to the Administrator (or the State with an approved permit program) progress reports indicating whether the steps toward compliance outlined in the compliance schedule have been reached. The contents of the progress reports and the dates by which they must be submitted will be specified in the written extension of compliance granted under paragraph (i)(10) of this section.

(12)(i) The Administrator (or the State with an approved permit program) will notify the owner or operator in writing of approval or intention to deny approval of a request for an extension of compliance within 30 calendar days after receipt of sufficient information to evaluate a request submitted under paragraph (i)(4) of this section. The 30-day approval or denial period will begin after the owner or operator has been notified in writing that his/her application is complete. The Administrator (or the State) will notify the owner or operator in writing of the status of his/her application, that is, whether the application contains sufficient information to make a determination, within 15 calendar days after receipt of the original application and within 15 calendar days after receipt of any supplementary information that is submitted.

(ii) When notifying the owner or operator that his/her application is not complete, the Administrator will specify the information needed to complete the application and provide notice of opportunity for the applicant to present, in writing, within 15 calendar days after he/she is notified of the incomplete application, additional information or arguments to the Administrator to enable further action on the application.

(iii) Before denying any request for an extension of compliance, the Administrator (or the State with an approved permit program) will notify the owner or operator in writing of the Administrator's (or the State's) intention to issue the denial, together with—

(A) Notice of the information and findings on which the intended denial is based; and

(B) Notice of opportunity for the owner or operator to present in writing, within 7 calendar days after he/she is notified of the intended denial, additional information or arguments to the Administrator (or the State) before further action on the request.

(iv) A final determination to deny any request for an extension will be in writing and will set forth the specific grounds on which the denial is based. The final determination will be made within 30 calendar days after presentation of additional information or argument (if the application is complete), or within 30 calendar days after the final date specified for the presentation if no presentation is made.

(13)(i) The Administrator will notify the owner or operator in writing of approval or intention to deny approval of a request for an extension of compliance within 15 calendar days after receipt of sufficient information to evaluate a request submitted under paragraph (i)(5) of this section. The 15-day approval or denial period will begin after the owner or operator has been notified in writing that his/her application is complete. The Administrator (or the State) will notify the owner or operator in writing of the status of his/her application, that is, whether the application contains sufficient information to make a determination, within 7 calendar days after receipt of the original application and within 7 calendar days after receipt of any supplementary information that is submitted.

(ii) When notifying the owner or operator that his/her application is not complete, the Administrator will specify the information needed to complete the application and provide notice of opportunity for the applicant to present, in writing, within 7 calendar days after he/she is notified of the incomplete application, additional information or arguments to the Administrator to enable further action on the application.

(iii) Before denying any request for an extension of compliance, the Administrator will notify the owner or operator in writing of the Administrator's intention to issue the denial, together with—

(A) Notice of the information and findings on which the intended denial is based; and

(B) Notice of opportunity for the owner or operator to present in writing, within 7 calendar days after he/she is notified of the intended denial, additional information or arguments to the Administrator before further action on the request.

(iv) A final determination to deny any request for an extension will be in writing and will set forth the specific grounds on which the denial is based. The final determination will be made within 15 calendar days after presentation of additional information or argument (if the application is complete), or within 15 calendar days after the final date specified for the presentation if no presentation is made.

(14) The Administrator (or the State with an approved permit program) may terminate an extension of compliance at an earlier date than specified if any specification under paragraph (i)(10)(iii) or (i)(10)(iv) of this section is not met.

(15) The owner or operator of an affected source who wishes to obtain an extension of compliance under paragraph (i)(4) of this section shall obtain a part 70 or part 71 permit or apply to have the source's part 70 or part 71 permit revised to incorporate the conditions of the extension of compliance. The conditions of an extension of compliance granted pursuant to a request under paragraph (i)(4) will be incorporated into the affected source's part 70 or part 71 permit according to the provisions of part 70 or part 71 of this chapter, whichever is applicable.

(16) The granting of an extension under this section shall not abrogate the Administrator's authority under section 114 of the Act.

(j) *Exemption from compliance with emission standards.* The President may exempt any stationary source from compliance with any relevant standard established pursuant to section 112 of the Act for a period of not more than 2 years if the President determines that the technology to implement such standard is not available and that it is in the national security interests of the United States to do so. An exemption under this paragraph may be extended for 1 or more additional periods, each period not to exceed 2 years.

§ 63.7 Performance testing requirements.

(a) *Applicability and performance test dates.* (1) Unless otherwise specified, this section applies to the owner or operator of an affected source required to do performance testing, or another form of compliance demonstration, under a relevant standard.

(2) If required to do performance testing by a relevant standard, and unless a waiver of performance testing is obtained under this section or the conditions of paragraph (c)(3)(ii)(B) of this section apply, the owner or operator of the affected source shall perform such tests as follows—

(i) Within 120 days after the effective date of a relevant standard for a new source that has an initial startup date before the effective date; or

(ii) Within 120 days after initial startup for a new source that has an initial startup date after the effective date of a relevant standard; or

(iii) Within 120 days after the compliance date specified in an

applicable subpart of this part for an existing source subject to an emission standard established pursuant to section 112(d) of the Act; or

(iv) Within 120 days after the compliance date for an existing source subject to an emission standard established pursuant to section 112(f) of the Act; or

(v) Within 120 days after the termination date of the source's extension of compliance for an existing source that obtains an extension of compliance under § 63.6(i); or

(vi) Within 120 days after the compliance date for a new source, subject to an emission standard established pursuant to section 112(f) of the Act, for which construction or reconstruction is commenced after the proposal date of a relevant standard established pursuant to section 112(d) of the Act but before the proposal date of the relevant standard established pursuant to section 112(f) (see § 63.6(b)(4)); or

(vii) [Reserved]; or

(viii) [Reserved]; or

(ix) When an emission standard promulgated under this part is more stringent than the standard proposed (see § 63.6(b)(3)), the owner or operator of a new or reconstructed source subject to that standard for which construction or reconstruction is commenced between the proposal and promulgation dates of the standard shall comply with performance testing requirements as follows:

(A) For a new or reconstructed source that has a startup date before the effective date of the relevant standard, performance tests shall be conducted as required in the proposed standard within 120 days after the effective date, and within 3 years and 120 days after the effective date, performance tests shall be conducted as required in the promulgated standard;

(B) For a new or reconstructed source that has a startup date after the effective date of the relevant standard, performance tests shall be conducted as required in the proposed standard within 120 days after startup of the source, and within 3 years and 120 days after startup, performance tests shall be conducted as required in the promulgated standard.

(3) The Administrator may require an owner or operator to conduct performance tests at the affected source at any other time when the action is authorized by section 114 of the Act.

(4) Special provisions set forth or established under an applicable subpart of this part shall supersede any conflicting provisions of this section. Individual subparts will specify which provisions of this section are superseded.

(b) *Notification of performance test.* The owner or operator of an affected source shall notify the Administrator in writing of his or her intention to conduct a performance test at least 75 calendar days before the performance test is scheduled to begin to allow the Administrator to review and approve the site-specific test plan required under paragraph (c) of this section and to have an observer present during the test.

(c) *Quality assurance program.* (1) The results of the quality assurance program required in this paragraph will be considered by the Administrator when he/she determines the validity of a performance test.

(2)(i) *Submission of site-specific test plan.* Before conducting a required performance test, the owner or operator of an affected source shall develop and submit a site-specific test plan to the Administrator for approval. The test plan shall include a test program summary, the test schedule, data quality objectives, and both an internal and external quality assurance (QA) program. Data quality objectives are the pretest expectations of precision, accuracy, and completeness of data.

(ii) The internal QA program shall include, at a minimum, the activities planned by routine operators and analysts to provide an assessment of test data precision; an example of internal QA is the sampling and analysis of replicate samples.

(iii) The external QA program shall include, at a minimum, application of plans for a test method performance audit (PA) during the performance test. The PA's consist of blind audit samples provided by the Administrator and analyzed during the performance test in order to provide a measure of test data bias. The external QA program may also include systems audits that include the opportunity for on-site evaluation by the Administrator of instrument calibration, data validation, sample logging, and documentation of quality control data and field maintenance activities.

(iv) The owner or operator of an affected source shall submit the site-specific test plan to the Administrator at least 75 calendar days before the performance test is scheduled to take place, that is, simultaneously with the notification of intention to conduct a performance test required under paragraph (b) of this section.

(v) The Administrator may request additional relevant information after the submittal of a site-specific test plan.

(3) *Approval of site-specific test plan.* (i) The Administrator will notify the owner or operator of approval or intention to deny approval of the site-specific test plan within 15 calendar days after receipt of the original plan and within 15 calendar days after receipt of any supplementary information that is submitted under paragraph (c)(3)(i)(B) of this section. Before disapproving any site-specific test plan, the Administrator will notify the applicant of the Administrator's intention to disapprove the plan together with—

(A) Notice of the information and findings on which the intended disapproval is based; and

(B) Notice of opportunity for the owner or operator to present, within 15 calendar days after he/she is notified of the intended disapproval, additional information to the Administrator before final action on the plan.

(ii) In the event that the Administrator fails to approve or disapprove the site-specific test plan within the time period specified in paragraph (c)(3)(i) of this section, the following conditions shall apply:

(A) If the owner or operator intends to demonstrate compliance using the test method(s) specified in the relevant standard, the owner or operator shall conduct the performance test within the time specified in this section using the specified method(s);

(B) If the owner or operator intends to demonstrate compliance by using an alternative to any test method specified in the relevant standard, the owner or operator shall refrain from conducting the performance test until the Administrator approves the use of the alternative method when the Administrator approves the site-specific test plan. Consistent with the requirement in the preceding sentence, the performance test dates specified in paragraph (a) of this section may be extended such that the owner or operator shall conduct the performance test within 30 calendar days after the Administrator approves the site-specific test plan. Notwithstanding the requirements in the preceding two sentences, the owner or operator may proceed to conduct the performance test as required in this section (without the Administrator's prior approval of the site-specific test plan) if he/she subsequently chooses to use the specified testing and monitoring methods instead of an alternative.

(iii) Neither the submission of a site-specific test plan for approval, nor the Administrator's approval or disapproval of a plan, nor the Administrator's failure to approve or disapprove a plan in a timely manner shall—

(A) Relieve an owner or operator of legal responsibility for compliance with

any applicable provisions of this part or with any other applicable Federal, State, or local requirement; or

(B) Prevent the Administrator from implementing or enforcing this part or taking any other action under the Act.

(4)(i) *Performance test method audit program.* The owner or operator shall analyze performance audit (PA) samples during each performance test when audit materials are available from the Administrator for the required test method(s). Information concerning the availability of audit materials for a specific performance test may be obtained by contacting the Emission Measurement Technical Information Center (EMTIC), U.S. EPA (MD–19), Research Triangle Park, North Carolina 27711. If the Administrator has prior knowledge that an audit material is available, the Administrator may contact the Atmospheric Research and Exposure Assessment Laboratory (AREAL) directly. Cylinder audit gases may be obtained by contacting the Cylinder Audit Coordinator, Quality Assurance Division (MD–77B), AREAL, U.S. EPA, Research Triangle Park, North Carolina 27711. All other audit materials may be obtained by contacting the Source Test Audit Coordinator, Quality Assurance Division (MD–77B), AREAL, U.S. EPA, Research Triangle Park, North Caroline 27711.

(ii) The Administrator shall have sole discretion to require any subsequent remedial actions of the owner or operator based on the PA results.

(iii) If the Administrator fails to provide required PA materials to an owner or operator of an affected source in time to analyze the PA samples during a performance test, the requirement to conduct a PA under this paragraph shall be waived for such source for that performance test. Waiver under this paragraph of the requirement to conduct a PA for a particular performance test does not constitute a waiver of the requirement to conduct a PA for future required performance tests.

(d) *Performance testing facilities.* If required to do performance testing, the owner or operator of each new source and, at the request of the Administrator, the owner or operator of each existing source shall provide performance testing facilities as follows:

(1) Sampling ports adequate for test methods applicable to such source. This includes:

(i) Constructing the air pollution control system such that volumetric flow rates and pollutant emission rates can be accurately determined by applicable test methods and procedures; and

(ii) Providing a stack or duct free of cyclonic flow during performance tests, as demonstrated by applicable test methods and procedures;

(2) Safe sampling platform(s);

(3) Safe access to sampling platform(s);

(4) Utilities for sampling and testing equipment; and

(5) Any other facilities that the Administrator deems necessary for safe and adequate testing of a source.

(e) *Conduct of performance tests.* (1) Performance tests shall be conducted under such conditions as the Administrator specifies to the owner or operator based on representative performance of the affected source. Operations during periods of startup, shutdown, and malfunction shall not constitute representative conditions for the purpose of a performance test, nor shall emissions in excess of the level of the relevant standard during periods of startup, shutdown, and malfunction be considered a violation of the relevant standard unless otherwise specified in the relevant standard or a determination of noncompliance is made under § 63.6(e). Upon request, the owner or operator shall make available to the Administrator such records as may be necessary to determine the conditions of performance tests.

(2) Performance tests shall be conducted and data shall be reduced in accordance with the test methods and procedures set forth in this section, in each relevant standard, and, if required, in applicable appendices of parts 51, 60, 61, and 63 of this chapter unless the Administrator—

(i) Specifies or approves, in specific cases, the use of a test method with minor changes in methodology; or

(ii) Approves the use of an alternative test method, the results of which the Administrator has determined to be adequate for indicating whether a specific affected source is in compliance; or

(iii) Approves shorter sampling times and smaller sample volumes when necessitated by process variables or other factors; or

(iv) Waives the requirement for performance tests because the owner or operator of an affected source has demonstrated by other means to the Administrator's satisfaction that the affected source is in compliance with the relevant standard.

(3) Unless otherwise specified in a relevant standard or test method, each performance test shall consist of three separate runs using the applicable test method. Each run shall be conducted for the time and under the conditions specified in the relevant standard. For the purpose of determining compliance with a relevant standard, the arithmetic mean of the results of the three runs shall apply. Upon receiving approval from the Administrator, results of a test run may be replaced with results of an additional test run in the event that—

(i) A sample is accidentally lost after the testing team leaves the site; or

(ii) Conditions occur in which one of the three runs must be discontinued because of forced shutdown; or

(iii) Extreme meteorological conditions occur; or

(iv) Other circumstances occur that are beyond the owner or operator's control.

(4) Nothing in paragraphs (e)(1) through (e)(3) of this section shall be construed to abrogate the Administrator's authority to require testing under section 114 of the Act.

(f) *Use of an alternative test method.*—(1) *General.* Until permission to use an alternative test method has been granted by the Administrator under this paragraph, the owner or operator of an affected source remains subject to the requirements of this section and the relevant standard.

(2) The owner or operator of an affected source required to do performance testing by a relevant standard may use an alternative test method from that specified in the standard provided that the owner or operator—

(i) Notifies the Administrator of his or her intention to use an alternative test method not later than with the submission of the site-specific test plan required under paragraph (c) of this section;

(ii) Uses Method 301 in appendix A of this part to validate the alternative test method; and

(iii) Submits the results of the Method 301 validation process along with the notification of intention and the justification for not using the specified test method. The owner or operator may submit the information required in this paragraph well in advance of the site-specific test plan to ensure a timely review by the Administrator in order to meet the performance test date specified in this section or the relevant standard.

(3) The Administrator will determine whether the owner or operator's validation of the proposed alternative test method is adequate when the Administrator approves or disapproves the site-specific test plan required under paragraph (c) of this section. If the Administrator finds reasonable grounds to dispute the results obtained by the Method 301 validation process, the Administrator may require the use of a

test method specified in a relevant standard.

(4) If the Administrator finds reasonable grounds to dispute the results obtained by an alternative test method for the purposes of demonstrating compliance with a relevant standard, the Administrator may require the use of a test method specified in a relevant standard.

(5) If the owner or operator uses an alternative test method for an affected source during a required performance test, the owner or operator of such source shall continue to use the alternative test method for subsequent performance tests at that affected source.

(6) Neither the validation and approval process nor the failure to validate an alternative test method shall abrogate the owner or operator's responsibility to comply with the requirements of this part.

(g) *Data analysis, recordkeeping, and reporting.* (1) Unless otherwise specified in a relevant standard or test method, or as otherwise approved by the Administrator in writing, samples shall be analyzed and emissions determined within 45 days after each performance test has been completed. A performance test is "completed" when field sample collection is terminated.

(2) Before a part 70 or part 71 permit has been issued to the owner or operator of an affected source, the owner or operator shall send the results of the performance test to the Administrator. After a part 70 or part 71 permit has been issued to the owner or operator of an affected source, the owner or operator shall send the results of the performance test to the appropriate permitting authority. The owner or operator of an affected source shall report the results of the performance test to the Administrator (or the State with an approved permit program) by a registered letter sent before the close of business on the 45th day following the completion of the performance test, unless specified otherwise in a relevant standard or as approved otherwise in writing by the Administrator (see § 63.9(i)). The results of the performance test shall be submitted as part of the notification of compliance status required under § 63.9(h). The Administrator (or the State with an approved permit program) may request that the owner or operator submit the raw data from a performance test in the report of the performance test results.

(3) For a minimum of 5 years after a performance test is conducted, the owner or operator shall retain and make available, upon request, for inspection by the Administrator the records or results of such performance test and other data needed to determine emissions from an affected source.

(h) *Waiver of performance tests.* (1) Until a waiver of a performance testing requirement has been granted by the Administrator under this paragraph, the owner or operator of an affected source remains subject to the requirements of this section.

(2) Individual performance tests may be waived upon written application to the Administrator if, in the Administrator's judgment, the source is meeting the relevant standard(s) on a continuous basis, or the source is being operated under an extension of compliance, or the owner or operator has requested an extension of compliance and the Administrator is still considering that request.

(3) *Request to waive a performance test.* (i) If a request is made for an extension of compliance under § 63.6(i), the application for a waiver of an initial performance test shall accompany the information required for the request for an extension of compliance. If no extension of compliance is requested or if the owner or operator has requested an extension of compliance and the Administrator is still considering that request, the application for a waiver of an initial performance test shall accompany the submission of the site-specific test plan under paragraph (c) of this section.

(ii) If an application for a waiver of a subsequent performance test is made, the application may accompany any required compliance progress report, compliance status report, or excess emissions and continuous monitoring system performance report (such as those required under § 63.6(i), § 63.9(h), and § 63.10(e) or specified in a relevant standard or in the source's part 70 or part 71 permit), but it shall not be submitted later than with the site-specific test plan required under paragraph (c) of this section.

(iii) Any application for a waiver of a performance test shall include information justifying the owner or operator's request for a waiver, such as the technical or economic infeasibility, or the impracticality, of the affected source performing the required test.

(4) *Approval of request to waive performance test.* The Administrator will approve or deny a request for a waiver of a performance test made under paragraph (h)(3) of this section when he/she—

(i) Approves or denies an extension of compliance; or

(ii) Approves or disapproves a site-specific test plan; or

(iii) Makes a determination of compliance following the submission of a required compliance status report or excess emissions and continuous monitoring systems performance report; or

(iv) Makes a determination of suitable progress towards compliance following the submission of a compliance progress report, whichever is applicable.

(5) Approval of any waiver granted under this section shall not abrogate the Administrator's authority under the Act or in any way prohibit the Administrator from later canceling the waiver. The cancellation will be made only after notice is given to the owner or operator of the affected source.

§ 63.8 Monitoring requirements.

(a) *Applicability.* (1)(i) Unless otherwise specified in a relevant standard, this section applies to the owner or operator of an affected source required to do monitoring under that standard.

(ii) Relevant standards established under this part will specify monitoring systems, methods, or procedures, monitoring frequency, and other pertinent requirements for source(s) regulated by those standards. This section specifies general monitoring requirements such as those governing the conduct of monitoring and requests to use alternative monitoring methods. In addition, this section specifies detailed requirements that apply to affected sources required to use continuous monitoring systems under a relevant standard.

(2) For the purposes of this part, all continuous monitoring systems (CMS) required under relevant standards shall be subject to the provisions of this section upon promulgation of performance specifications for CMS in appendix B of part 60 of this chapter and, if the CMS are used to demonstrate compliance with emission limits on a continuous basis, appendix F of part 60, unless otherwise specified in a relevant standard or by the Administrator.

(3) [Reserved]

(4) Additional monitoring requirements for control devices used to comply with provisions in relevant standards of this part are specified in § 63.11.

(5) Special provisions set forth under an applicable subpart of this part shall supersede any conflicting provisions of this section. Individual subparts will specify which provisions of this section are superseded.

(b) *Conduct of monitoring.* (1) Monitoring shall be conducted as set forth in this section and the relevant standard(s) unless the Administrator—

(i) Specifies or approves the use of minor changes in methodology for the specified monitoring requirements and procedures; or

(ii) Approves the use of alternatives to any monitoring requirements or procedures.

(2)(i) When the effluents from a single affected source, or from two or more affected sources, are combined before being released to the atmosphere, the owner or operator shall install an applicable continuous monitoring system on each effluent.

(ii) If the relevant standard is a mass emission standard and the effluent from one affected source is released to the atmosphere through more than one point, the owner or operator shall install an applicable continuous monitoring system at each emission point unless the installation of fewer systems is—

(A) Approved by the Administrator; or

(B) Provided for in a relevant standard (e.g., instead of requiring that a CMS be installed at each emission point before the effluents from those points are channeled to a common control device, the standard specifies that only one CMS is required to be installed at the vent of the control device).

(3) When more than one continuous monitoring system is used to measure the emissions from one affected source (e.g., multiple breechings, multiple outlets), the owner or operator shall report the results as required for each continuous monitoring system. However, when one CMS is used as a backup to another CMS, the owner or operator shall report the results from the CMS that was used to meet the monitoring requirements of this part. If both such CMS were used during a particular reporting period to meet the monitoring requirements of this part, then the owner or operator shall report the results from each CMS for the period during which it was used for compliance purposes.

(c) *Operation and maintenance of continuous monitoring systems.* (1) The owner or operator of an affected source shall maintain and operate each continuous monitoring system as specified in this section, or in a relevant standard, and in a manner consistent with good air pollution control practices. Any unavoidable breakdown or malfunction of the continuous monitoring system shall be repaired or adjusted as soon as practicable but not later than 7 days after its occurrence. The Administrator's determination of whether acceptable operation and maintenance procedures are being used will be based on information that may include, but is not limited to, review of operation and maintenance procedures, operation and maintenance records, manufacturing recommendations and specifications, and inspection of the continuous monitoring system.

(2) All continuous monitoring systems shall be installed such that representative measurements of emissions or process parameters from the affected source are obtained. In addition, continuous emission monitoring systems shall be located according to procedures contained in the applicable performance specification(s) in appendix B of part 60 of this chapter.

(3) All continuous monitoring systems (CMS) shall be installed, operational, and certified (i.e., they shall successfully pass the applicable performance specifications in appendix B of part 60 of this chapter) prior to conducting performance tests under § 63.7 of this subpart. Verification of operational status shall, at a minimum, include completion of the manufacturer's written specifications or recommendations for installation, operation, and calibration of the system.

(4) Except for system breakdowns, out-of-control periods, repairs, calibration checks, and zero (low-level) and high-level calibration drift adjustments required under paragraphs (c)(6) and (c)(7) of this section, all continuous monitoring systems (CMS), including continuous opacity monitoring systems (COMS), shall be in continuous operation and shall meet minimum frequency of operation requirements as follows:

(i) All COMS shall complete a minimum of one cycle of sampling and analyzing for each successive 10-second period and one cycle of data recording for each successive 6-minute period.

(ii) All CMS for measuring emissions other than opacity shall complete a minimum of one cycle of operation (sampling, analyzing, and data recording) for each successive 15-minute period.

(5) Unless otherwise approved by the Administrator, minimum procedures for continuous opacity monitoring systems shall include a method for producing a simulated zero opacity condition and an upscale (high-level) opacity condition using a certified neutral density filter or other related technique to produce a known obscuration of the light beam. Such procedures shall provide a system check of all the analyzer's internal optical surfaces and all electronic circuitry, including the lamp and photodetector assembly normally used in the measurement of opacity.

(6) The owner or operator of a continuous monitoring system (CMS) installed in accordance with the provisions of this part and appendix B of part 60 of this chapter shall check the zero (low-level) and high-level calibration drifts at least once daily in accordance with the written procedure specified in the performance evaluation plan developed under paragraphs (e)(3)(i) and (e)(3)(ii) of this section. The zero (low-level) and high-level calibration drifts shall be adjusted, at a minimum, whenever the 24-hour zero (low-level) drift exceeds two times the limits of the applicable performance specifications in appendix B of part 60 of this chapter. The system must allow the amount of excess zero (low-level) and high-level drift measured at the 24-hour interval checks to be recorded and quantified, whenever specified. For COMS, all optical and instrumental surfaces exposed to the effluent gases shall be cleaned prior to performing the zero (low-level) and high-level drift adjustments; the optical surfaces and instrumental surfaces shall be cleaned when the cumulative automatic zero compensation, if applicable, exceeds 4 percent opacity.

(7)(i) A continuous monitoring system (CMS) is out of control if—

(A) The zero (low-level), mid-level (if applicable), or high-level calibration drift (CD) exceeds two times the applicable CD specification in appendix B of part 60 of this chapter or an applicable subpart; or

(B) The CMS fails a performance test audit (e.g., cylinder gas audit), relative accuracy audit, relative accuracy test audit, or linearity test audit; or

(C) The COMS CD exceeds two times the applicable specification in appendix B of part 60 of this chapter, or the system is found to exceed the other specifications in appendix B of part 60 of this chapter.

(ii) When the CMS or COMS is out of control, the owner or operator of the affected source shall take the necessary corrective action and shall repeat all necessary tests, or portions thereof, which indicate that the system is out of control. The owner or operator shall take corrective action and conduct retesting until the performance requirements are below the applicable limits. The beginning of the out-of-control period is the hour the owner or operator conducts a performance check (e.g., calibration drift) that indicates an exceedance of the performance requirements established under this part. The end of the out-of-control period is the hour following the completion of corrective action and successful demonstration that the system is within the allowable limits. During the period the CMS or COMS is

out of control, recorded data shall not be used in data averages and calculations, or to meet any data availability requirement established under this part.

(8) The owner or operator of a continuous monitoring system that is out of control as defined in paragraph (c)(7) of this section shall submit all information concerning out-of-control periods, including start and end dates and hours and descriptions of corrective actions taken, in the excess emissions and continuous monitoring system performance report required in § 63.10(e)(3).

(d) *Quality control program.* (1) The results of the quality control program required in this paragraph will be considered by the Administrator when he/she determines the validity of monitoring data.

(2) The owner or operator of an affected source that is required to use a continuous monitoring system (CMS) and is subject to the monitoring requirements of this section and a relevant standard shall develop and implement a CMS quality control program. As part of the quality control program, the owner or operator shall develop and submit to the Administrator for approval a site-specific performance evaluation test plan for the CMS performance evaluation required in paragraph (e)(3)(i) of this section, according to the procedures specified in paragraph (e) of this section. In addition, each quality control program shall include, at a minimum, a written protocol that describes, in detail, step-by-step procedures for each of the following operations:

(i) Initial and any subsequent calibration of the CMS;

(ii) Determination and adjustment of the calibration drift of the CMS;

(iii) Preventive maintenance of the CMS, including spare parts inventory;

(iv) Data recording, calculations, and reporting;

(v) Accuracy audit procedures, including sampling and analysis methods; and

(vi) Program of corrective action for a malfunctioning CMS.

(3) The owner or operator shall keep these written procedures on record for the life of the affected source, or until the affected source is no longer subject to the provisions of this part, to be made available for inspection, upon request, by the Administrator. Where relevant, e.g., program of corrective action for a malfunctioning CMS, these written procedures may be incorporated as part of the affected source's startup, shutdown, and malfunction plan to avoid duplication of planning and recordkeeping efforts.

(e) *Performance evaluation of continuous monitoring systems*—(1) *General.* When required by a relevant standard, and at any other time the Administrator may require under section 114 of the Act, the owner or operator of an affected source being monitored shall conduct a performance evaluation of the continuous monitoring system. Such performance evaluation shall be conducted according to the applicable specifications and procedures described in this section or in the relevant standard.

(2) *Notification of performance evaluation.* The owner or operator shall notify the Administrator in writing of the date of the performance evaluation simultaneously with the notification of the performance test date required under § 63.7(b), the submission of the site-specific test plan required under § 63.7(c), and the submission of the site-specific performance evaluation test plan required under paragraph (e)(3)(i) of this section. If no performance test is required, or if the requirement to conduct a performance test has been waived for an affected source under § 63.7(h), the owner or operator shall notify the Administrator in writing of the date of the performance evaluation at least 75 calendar days before the evaluation is scheduled to begin, simultaneously with the submission of the site-specific performance evaluation test plan, to allow the Administrator to review and approve the site-specific performance evaluation test plan in advance of the performance evaluation.

(3)(i) *Submission of site-specific performance evaluation test plan.* Before conducting a required continuous monitoring system (CMS) performance evaluation, the owner or operator of an affected source shall develop and submit a site-specific performance evaluation test plan to the Administrator for approval. The performance evaluation test plan shall include the evaluation program objectives, an evaluation program summary, the performance evaluation schedule, data quality objectives, and both an internal and external quality assurance (QA) program. Data quality objectives are the pre-evaluation expectations of precision, accuracy, and completeness of data.

(ii) The internal QA program shall include, at a minimum, the activities planned by routine operators and analysts to provide an assessment of CMS performance. The external QA program shall include, at a minimum, systems audits that include the opportunity for on-site evaluation by the Administrator of instrument calibration, data validation, sample logging, and documentation of quality control data and field maintenance activities.

(iii) When a performance test is required, the owner or operator of an affected source shall submit the site-specific performance evaluation test plan to the Administrator with the site-specific test plan required under § 63.7(c), and review and approval of the performance evaluation test plan by the Administrator will occur with the review and approval of the site-specific test plan. When a performance test is not required, or the requirement for a performance test has been waived under § 63.7(h), the owner or operator of an affected source shall submit the performance evaluation test plan to the Administrator not later than 75 days before the performance evaluation is scheduled to begin, and review and approval of the performance evaluation test plan by the Administrator will occur as in § 63.7(c)(3).

(iv) The Administrator may request additional relevant information after the submittal of a site-specific performance evaluation test plan.

(v) In the event that the Administrator fails to approve or disapprove the site-specific performance evaluation test plan within the time period specified in § 63.7(c)(3), the following conditions shall apply:

(A) If the owner or operator intends to demonstrate compliance using the monitoring method(s) specified in the relevant standard, the owner or operator shall conduct the performance evaluation within the time specified in this subpart using the specified method(s);

(B) If the owner or operator intends to demonstrate compliance by using an alternative to a monitoring method specified in the relevant standard, the owner or operator shall refrain from conducting the performance evaluation until the Administrator approves the use of the alternative method. Consistent with the requirement in the preceding sentence, the performance evaluation deadlines specified in paragraph (e)(4) of this section may be extended such that the owner or operator shall conduct the performance evaluation within 30 calendar days after the Administrator approves the use of the alternative method. Notwithstanding the requirements in the preceding two sentences, the owner or operator may proceed to conduct the performance evaluation as required in this section (without the Administrator's prior approval of the site-specific performance evaluation test plan) if he/she subsequently chooses to use the

specified monitoring method(s) instead of an alternative.

(vi) Neither the submission of a site-specific performance evaluation test plan for approval, nor the Administrator's approval or disapproval of a plan, nor the Administrator' failure to approve or disapprove a plan in a timely manner shall—

(A) Relieve an owner or operator of legal responsibility for compliance with any applicable provisions of this part or with any other applicable Federal, State, or local requirement; or

(B) Prevent the Administrator from implementing or enforcing this part or taking any other action under the Act.

(4) *Conduct of performance evaluation and performance evaluation dates.* The owner or operator of an affected source shall conduct a performance evaluation of a required continuous monitoring system during any performance test required under § 63.7 in accordance with the applicable performance specification in appendix B of part 60 of this chapter. Notwithstanding the requirement in the previous sentence, if the owner or operator of an affected source elects to submit continuous opacity monitoring system (COMS) data for compliance with a relevant opacity emission standard as provided under § 63.6(h)(7), he/she shall conduct a performance evaluation of the COMS as specified in Performance Specification 1, appendix B of part 60 of this chapter, before the performance test required under § 63.7 is conducted in time to submit the results of the performance evaluation as specified in paragraph (e)(5)(ii) of this section. If a performance test is not required, or the requirement for a performance test has been waived under § 63.7(h), the owner or operator of an affected source shall conduct the performance evaluation not later than 120 days after the appropriate compliance date for the affected source, as specified in § 63.7(a), or as otherwise specified in the relevant standard.

(5) *Reporting performance evaluation results.* (i) The owner or operator shall furnish the Administrator a copy of a written report of the results of the performance evaluation simultaneously with the results of the performance test required under § 63.7, unless otherwise specified in a relevant standard. The Administrator may request that the owner or operator submit the raw data from a performance evaluation in the report of the performance evaluation results.

(ii) The owner or operator of an affected source using a continuous opacity monitoring system (COMS) to determine opacity compliance during any performance test required under § 63.7 and described in § 63.6(d)(6) shall furnish the Administrator two, or upon request, three copies of a written report of the results of the COMS performance evaluation under this paragraph. The copies shall be provided at least 15 calendar days before the performance test required under § 63.7 is conducted.

(f) *Use of an alternative monitoring method.*—(1) *General.* Until permission to use an alternative monitoring method has been granted by the Administrator under this paragraph, the owner or operator of an affected source remains subject to the requirements of this section and the relevant standard.

(2) After receipt and consideration of written application, the Administrator may approve alternatives to any monitoring methods or procedures of this part including, but not limited to, the following:

(i) Alternative monitoring requirements when installation of a continuous monitoring system specified by a relevant standard would not provide accurate measurements due to liquid water or other interferences caused by substances with the effluent gases; or

(ii) Alternative monitoring requirements when the affected source is infrequently operated; or

(iii) Alternative monitoring requirements to accommodate continuous emission monitoring systems that require additional measurements to correct for stack moisture conditions; or

(iv) Alternative locations for installing continuous monitoring systems when the owner or operator can demonstrate that installation at alternate locations will enable accurate and representative measurements; or

(v) Alternate methods for converting pollutant concentration measurements to units of the relevant standard; or

(vi) Alternate procedures for performing daily checks of zero (low-level) and high-level drift that do not involve use of high-level gases or test cells; or

(vii) Alternatives to the American Society for Testing and Materials (ASTM) test methods or sampling procedures specified by any relevant standard; or

(viii) Alternative continuous emission monitoring systems that do not meet the design or performance requirements in Performance Specification 1, appendix B of part 60 of this chapter, but adequately demonstrate a definite and consistent relationship between their measurements and the measurements of opacity by a system complying with the requirements in Performance Specification 1. The Administrator may require that such demonstration be performed for each affected source; or

(ix) Alternative monitoring requirements when the effluent from a single affected source or the combined effluent from two or more affected sources is released to the atmosphere through more than one point.

(3) If the Administrator finds reasonable grounds to dispute the results obtained by an alternative monitoring method, requirement, or procedure, the Administrator may require the use of a method, requirement, or procedure specified in this section or in the relevant standard. If the results of the specified and alternative method, requirement, or procedure do not agree, the results obtained by the specified method, requirement, or procedure shall prevail.

(4)(i) *Request to use alternative monitoring method.* An owner or operator who wishes to use an alternative monitoring method shall submit an application to the Administrator as described in paragraph (f)(4)(ii) of this section. The application may be submitted at any time provided that the monitoring method is not used to demonstrate compliance with a relevant standard or other requirement. If the alternative monitoring method is to be used to demonstrate compliance with a relevant standard and a performance test is required, the application shall be submitted not later than with the site-specific test plan required in § 63.7(c). Alternatively, if the alternative monitoring method is to be used for a compliance demonstration and no performance test is required, the application shall be submitted either with the initial notification required in § 63.9(b)(2) for a new source that has an initial startup before the effective date of a relevant standard, or with the initial notification required in § 63.9(b)(3) or the notification of startup required in § 63.9(b)(4) for a new source that has an initial startup after the effective date of a relevant standard, or no later than 45 days after the compliance date for an existing source (i.e., when the site-specific test plan would have been submitted had a performance test been required).

(ii) The application shall contain a description of the proposed alternative monitoring system and a performance evaluation test plan, if required, as specified in paragraph (e)(3) of this section. In addition, the application shall include information justifying the owner or operator's request for an alternative monitoring method, such as the technical or economic infeasibility,

or the impracticality, of the affected source using the required method.

(iii) The owner or operator may submit the information required in this paragraph well in advance of the submittal dates specified in paragraph (f)(4)(i) of this section to ensure a timely review by the Administrator in order to meet the compliance demonstration date specified in this section or the relevant standard.

(5) *Approval of request to use alternative monitoring method.* (i) The Administrator will notify the owner or operator of approval or intention to deny approval of the request to use an alternative monitoring method within 30 calendar days after receipt of the original request and within 30 calendar days after receipt of any supplementary information that is submitted. Before disapproving any request to use an alternative monitoring method, the Administrator will notify the applicant of the Administrator's intention to disapprove the request together with—

(A) Notice of the information and findings on which the intended disapproval is based; and

(B) Notice of opportunity for the owner or operator to present additional information to the Administrator before final action on the request. At the time the Administrator notifies the applicant of his or her intention to disapprove the request, the Administrator will specify how much time the owner or operator will have after being notified of the intended disapproval to submit the additional information.

(ii) The Administrator may establish general procedures and criteria in a relevant standard to accomplish the requirements of paragraph (f)(5)(i) of this section.

(iii) If the Administrator approves the use of an alternative monitoring method for an affected source under paragraph (f)(5)(i) of this section, the owner or operator of such source shall continue to use the alternative monitoring method until the Administrator notifies the owner or operator to the contrary.

(6) *Alternative to the relative accuracy test.* An alternative to the relative accuracy test for continuous emission monitoring systems (CEMS) specified in Performance Specification 2 in appendix B of 40 CFR part 60 may be requested as follows:

(i) *Criteria for approval of alternative procedures.* An alternative to the test method for determining relative accuracy is available for affected sources with emission rates demonstrated to be less than 50 percent of the relevant standard. The owner or operator of an affected source may petition the Administrator under paragraph (f)(6)(ii) of this section to substitute the relative accuracy test in section 7 of Performance Specification 2 with the procedures in section 10 if the results of a performance test conducted according to the requirements in § 63.7, or other tests performed following the criteria in § 63.7, demonstrate that the emission rate of the pollutant of interest in the units of the relevant standard is less than 50 percent of the relevant standard. For affected sources subject to emission limitations expressed as control efficiency levels, the owner or operator may petition the Administrator to substitute the relative accuracy test with the procedures in section 10 of Performance Specification 2 if the control device exhaust emission rate is less than 50 percent of the level needed to meet the control efficiency requirement. The alternative procedures do not apply if the continuous emission monitoring system is used continuously to determine compliance with the relevant standard.

(ii) *Petition to use alternative to relative accuracy test.* The petition to use an alternative to the relative accuracy test shall include a detailed description of the procedures to be applied, the location and the procedure for conducting the alternative, the concentration or response levels of the alternative relative accuracy materials, and the other equipment checks included in the alternative procedure(s). The Administrator will review the petition for completeness and applicability. The Administrator's determination to approve an alternative will depend on the intended use of the continuous emission monitoring system data and may require specifications more stringent than in Performance Specification 2.

(iii) *Rescission of approval to use alternative to relative accuracy test.* The Administrator will review the permission to use an alternative to the continuous emission monitoring system (CEMS) relative accuracy test and may rescind such permission if the CEMS data from a successful completion of the alternative relative accuracy procedure indicate that the affected source's emissions are approaching the level of the relevant standard. The criterion for reviewing the permission is that the collection of CEMS data shows that emissions have exceeded 70 percent of the relevant standard for any averaging period, as specified in the relevant standard. For affected sources subject to emission limitations expressed as control efficiency levels, the criterion for reviewing the permission is that the collection of CEMS data shows that exhaust emissions have exceeded 70 percent of the level needed to meet the control efficiency requirement for any averaging period, as specified in the relevant standard. The owner or operator of the affected source shall maintain records and determine the level of emissions relative to the criterion for permission to use an alternative for relative accuracy testing. If this criterion is exceeded, the owner or operator shall notify the Administrator within 10 days of such occurrence and include a description of the nature and cause of the increased emissions. The Administrator will review the notification and may rescind permission to use an alternative and require the owner or operator to conduct a relative accuracy test of the CEMS as specified in section 7 of Performance Specification 2.

(g) *Reduction of monitoring data.* (1) The owner or operator of each continuous monitoring system shall reduce the monitoring data as specified in this paragraph. In addition, each relevant standard may contain additional requirements for reducing monitoring data. When additional requirements are specified in a relevant standard, the standard will identify any unnecessary or duplicated requirements in this paragraph that the owner or operator need not comply with.

(2) The owner or operator of each continuous opacity monitoring system shall reduce all data to 6-minute averages calculated from 36 or more data points equally spaced over each 6-minute period. Data from continuous emission monitoring systems (CEMS) for measurement other than opacity, unless otherwise specified in the relevant standard, shall be reduced to 1-hour averages computed from four or more data points equally spaced over each 1-hour period. Alternatively, an arithmetic or integrated 1-hour average of CEMS data may be used. Time periods for averaging are defined in § 63.2.

(3) The data may be recorded in reduced or nonreduced form (e.g., ppm pollutant and percent O2 or ng/J of pollutant).

(4) All emission data shall be converted into units of the relevant standard for reporting purposes using the conversion procedures specified in that standard. After conversion into units of the relevant standard, the data may be rounded to the same number of significant digits as used in that standard to specify the emission limit (e.g., rounded to the nearest 1 percent opacity).

(5) Monitoring data recorded during periods of unavoidable continuous monitoring system breakdowns, out-of-

control periods, repairs, calibration checks, and zero (low-level) and high-level adjustments shall not be included in any data average computed under this part.

§ 63.9 Notification requirements.

(a) *Applicability and general information.* (1) The requirements in this section apply to owners and operators of affected sources that are subject to the provisions of this part, unless specified otherwise in a relevant standard.

(2) For affected sources that have been granted an extension of compliance under subpart D of this part, the requirements of this section do not apply to those sources while they are operating under such compliance extensions.

(3) If any State requires a notice that contains all the information required in a notification listed in this section, the owner or operator may send the Administrator a copy of the notice sent to the State to satisfy the requirements of this section for that notification.

(4)(i) Before the effective date of an approved permit program in a State, the owner or operator of an affected source in such State subject to the notification requirements in this part shall submit notifications to the appropriate Regional Office of the EPA (to the attention of the Director of the Division indicated in the list of the EPA Regional Offices in § 63.13) and to all appropriate delegated authorities.

(ii) After the effective date of an approved permit program in a State, the owner or operator of an affected source in such State subject to notification requirements in this part shall submit notifications to the permitting authority. In addition, if the permitting authority is the State, the owner or operator shall send a copy of each notification submitted to the State to the appropriate Regional Office of the EPA, as specified in paragraph (a)(4)(i) of this section.

(5) For the purposes of this section, time periods specified in days shall be measured in calendar days, even if the word "calendar" is absent, unless otherwise specified in an applicable requirement.

(6) For the purposes of this part, if an explicit postmark deadline is not specified in an applicable requirement for the submittal of a notification, application, test plan, report, or other written communication to the Administrator, the owner or operator shall postmark the submittal on or before the number of days specified in the applicable requirement. For example, if a notification must be submitted 15 days before a particular event is scheduled to take place, the notification must be postmarked on or before 15 days preceding the event; likewise, if a notification must be submitted 15 days after a particular event takes place, the notification must be postmarked on or before 15 days following the event.

(7) Notwithstanding time periods or postmark deadlines specified in this part for the submittal of information to the Administrator by an owner or operator, or the review of such information by the Administrator, such time periods or deadlines may be changed by mutual agreement between the owner or operator and the Administrator. Procedures governing the implementation of this provision are specified in paragraph (i) of this section.

(8) Special provisions set forth under an applicable subpart of this part shall supersede any conflicting provisions of this section. Individual subparts will specify which provisions of this section are superseded.

(b) *Initial notifications.* (1)(i) The requirements of this paragraph apply to the owner or operator of an affected source when such source becomes subject to a relevant standard.

(ii) If an area source that otherwise would be subject to an emission standard established under this part if it were a major source subsequently increases its emissions of hazardous air pollutants (or its potential to emit hazardous air pollutants) such that the source is a major source that is subject to the emission standard, such source shall be subject to the notification requirements of this section.

(2) The owner or operator of an affected source that has an initial startup before the effective date of a relevant standard under this part shall notify the Administrator in writing that the source is subject to the relevant standard. The notification, which shall be submitted not later than 45 calendar days after the effective date of the relevant standard (or within 45 calendar days after the source becomes subject to the relevant standard), shall provide the following information:

(i) The name and address of the owner or operator;

(ii) The address (i.e., physical location) of the affected source;

(iii) An identification of the relevant standard, or other requirement, that is the basis of the notification and the source's compliance date;

(iv) A brief description of the nature, size, design, and method of operation of the source, including its operating design capacity and an identification of each point of emission for each hazardous air pollutant, or if a definitive identification is not yet possible, a preliminary identification of each point of emission for each hazardous air pollutant;

(v) The type and quantity of hazardous air pollutants emitted by the source, reported in units and averaging times and in accordance with the test methods specified in the relevant standard, or if actual emissions data are not yet available, an estimate of the type and quantity of hazardous air pollutants emitted by the source reported in units and averaging times specified in the relevant standard;

(vi) An analysis demonstrating whether the affected source is a major source or an area source (using the emissions data or estimates generated for this notification);

(vii) A description of the existing or the planned air pollution control equipment (or method) for each emission point, including each control device (or method) for each hazardous air pollutant and the estimated control efficiency (percent) for each control device (or method) or;

(viii) A statement by the owner or operator of an affected new or reconstructed source as to whether the source has complied with the relevant standard, or other requirements, by the source's compliance date;

(ix) A statement by the owner or operator of an affected existing source as to whether the owner or operator expects the source to comply with the relevant standard, or other requirements, by the source's compliance date, if such information is known by the owner or operator at the time of this notification.

(3) The owner or operator of a new or reconstructed source that has an initial startup after the effective date of a relevant standard under this part and for which an application for approval of construction or reconstruction is not required under § 63.5(d) shall notify the Administrator in writing that the source is subject to the relevant standard. The notification shall provide all the information required in paragraphs (b)(2)(i) through (b)(2)(viii) of this section, postmarked with the notification required in paragraph (b)(5) of this section that the owner or operator intends to construct a new source or reconstruct an affected source.

(4) The owner or operator of a new or reconstructed source that has an initial startup after the effective date of a relevant standard under this part and for which an application for approval of construction or reconstruction is required under § 63.5(d) shall provide the following information in writing to the Administrator:

(i) A notification of intention to construct a new major source or reconstruct a major source with the application for approval of construction or reconstruction;

(ii) A notification of the date when construction or reconstruction was commenced, submitted simultaneously with the application for approval of construction or reconstruction, if construction or reconstruction was commenced before the effective date of the relevant standard;

(iii) A notification of the date when construction or reconstruction was commenced, postmarked not later than 30 days after such date, if construction or reconstruction was commenced after the effective date of the relevant standard;

(iv) A notification of the anticipated date of startup of the source, postmarked not more than 60 days nor less than 30 days before such date; and

(v) A notification of the actual date of startup of the source, postmarked within 15 calendar days after that date.

(5) After the effective date of any relevant standard established by the Administrator under this part, whether or not an approved permit program is effective in the State in which an affected source is (or would be) located, an owner or operator who intends to construct a new source or reconstruct an affected source subject to such standard shall notify the Administrator, in writing, of the intended construction or reconstruction. After the effective date of an approved permit program in the State in which such source is (or would be) located, the owner or operator shall submit the notification to the permitting authority in that State. The notification shall be postmarked at least 180 days before the construction or reconstruction is planned to commence (but it need not be sooner than 45 days after the effective date of the relevant standard) if the construction or reconstruction commences after the effective date of a relevant standard established under this part. The notification shall be postmarked within 45 days after the effective date of a relevant standard established under this part if the construction or reconstruction had commenced and initial startup had not occurred before the effective date. The notification shall include all the information required for an application for approval of construction or reconstruction as specified in § 63.5(d). For major sources, the application for approval of construction or reconstruction may be used to fulfill the requirements of this paragraph.

(6) An owner or operator who submits estimates or preliminary information in place of the actual emissions data, descriptions, or identifications required in paragraphs (b)(2)(iv) through (b)(2)(vii) and paragraph (b)(3) of this section shall submit the actual, measured emissions data and other correct information with the notification of compliance status required in paragraph (h) of this section (see § 63.9(h)(4)).

(c) *Request for extension of compliance.* If the owner or operator of an affected source cannot comply with a relevant standard by the applicable compliance date for that source, he/she may submit to the Administrator (or the State with an approved permit program) a request for an extension of compliance as specified in § 63.6(i)(4) through § 63.6(i)(6). If a request for an extension of compliance is submitted under this paragraph, it shall be submitted not later than the dates specified in § 63.6(i)(6).

(d) *Notification that source is subject to special compliance requirements.* An owner or operator of a new source that is subject to special compliance requirements as specified in § 63.6(b)(3) and § 63.6(b)(4) shall notify the Administrator of his/her compliance obligations not later than the notification dates established in paragraph (b) of this section for new sources that are not subject to the special provisions.

(e) *Notification of performance test.* The owner or operator of an affected source shall notify the Administrator in writing of his or her intention to conduct a performance test at least 75 calendar days before the performance test is scheduled to begin to allow the Administrator to review and approve the site-specific test plan required under § 63.7(c) and to have an observer present during the test.

(f) *Notification of opacity and visible emission observations.* The owner or operator of an affected source shall notify the Administrator in writing of the anticipated date for conducting the opacity or visible emission observations specified in § 63.6(h)(5), if such observations are required for the source by a relevant standard. The notification shall be submitted with the notification of the performance test date, as specified in paragraph (e) of this section, or if no performance test is required or visibility or other conditions prevent the opacity or visible emission observations from being conducted concurrently with the initial performance test required under § 63.7, the owner or operator shall postmark the notification not less than 30 days before the opacity or visible emission observations are scheduled to take place.

(g) *Additional notification requirements for sources with continuous monitoring systems.* The owner or operator of an affected source required to use a continuous monitoring system (CMS) by a relevant standard shall furnish the Administrator written notification as follows:

(1) A notification of the date the CMS performance evaluation under § 63.8(e) is scheduled to begin, submitted simultaneously with the notification of the performance test data required under § 63.7(b) and the submission of the site-specific test plan and site-specific performance evaluation test plan required under § 63.7(c) and § 63.8(e). If no performance test is required, or if the requirement to conduct a performance test has been waived for an affected source under § 63.7(h), the owner or operator shall notify the Administrator in writing of the date of the performance evaluation at least 75 calendar days before the evaluation is scheduled to begin;

(2) A notification that continuous opacity monitoring system data results will be used to determine compliance with the applicable opacity emission standard during a performance test required by § 63.7 in lieu of Method 9 or other opacity emissions test method data, as allowed by § 63.6(h)(7)(ii), if compliance with an opacity emission standard is required for the source by a relevant standard. The notification shall be submitted with the notification required under paragraph (e) of this section of the date the performance test is scheduled to begin; and

(3) A notification that the criterion necessary to continue use of an alternative to relative accuracy testing, as provided by § 63.8(f)(6), has been exceeded. The notification shall be postmarked not later than 10 days after the occurrence of such exceedance, and it shall include a description of the nature and cause of the increased emissions.

(h) *Notification of compliance status.* (1) The requirements of paragraphs (h)(2) through (h)(4) of this section apply when an affected source becomes subject to a relevant standard.

(2)(i) Before a part 70 or part 71 permit has been issued to the owner or operator of an affected source, and each time a notification of compliance status is required under this part, the owner or operator of such source shall submit to the Administrator a notification of compliance status, signed by the responsible official who shall certify its accuracy, attesting to whether the

source has complied with the relevant standard. The notification shall list—

(A) The methods that were used to determine compliance;

(B) The results of any performance tests, opacity or visible emission observations, continuous monitoring system performance evaluations, and/or other monitoring procedures or methods that were conducted; and

(C) The methods that will be used for determining continuing compliance, including a description of monitoring and reporting requirements and test methods.

(ii) The notification shall be sent by registered letter before the close of business on the 45th day following the completion of the relevant compliance demonstration activity specified in the relevant standard (unless a different reporting period is specified in a relevant standard, in which case the letter shall be sent before the close of business on the day the report of the relevant testing or monitoring results is required to be postmarked). For example, the notification shall be sent before close of business on the 45th (or other required) day following completion of the initial performance test and again before the close of business on the 45th (or other required) day following the completion of any subsequent required performance test. If no performance test is required but opacity or visible emission observations are required to demonstrate compliance with an opacity or visible emission standard under this part, the notification of compliance status shall be sent before close of business on the 30th day following the completion of opacity or visible emission observations.

(3) After a part 70 or part 71 permit has been issued to the owner or operator of an affected source, the owner or operator of such source shall comply with all requirements for compliance status reports contained in the source's part 70 or part 71 permit, including reports required under this part. After a part 70 or part 71 permit has been issued to the owner or operator of an affected source, and each time a notification of compliance status is required under this part, the owner or operator of such source shall submit the notification of compliance status to the appropriate permitting authority.

(4) If an owner or operator of an affected source submits estimates or preliminary information in the initial notification required in paragraphs (b)(2) and (b)(3) of this section in place of the actual emissions data, descriptions, or identifications required in paragraphs (b)(2)(iv) through (b)(2)(vii) of this section, the owner or operator shall submit the actual emissions data and other correct information (as specified in paragraphs (b)(2)(iv) through (b)(2)(vii) of this section) with the initial notification of compliance status required in this section.

(5) If an owner or operator of an affected source submits estimates or preliminary information in the application for approval of construction or reconstruction required in § 63.5(d) in place of the actual emissions data and analysis required in paragraphs (d)(1)(ii)(H) and (d)(1)(ii)(I) of § 63.5, the owner or operator shall submit the actual emissions data and other correct information with the initial notification of compliance status required in this section.

(6) Advice on a notification of compliance status may be obtained from the Administrator.

(i) *Adjustment to time periods or postmark deadlines for submittal and review of required communications.* (1)(i) Until an adjustment of a time period or postmark deadline has been approved by the Administrator under paragraphs (i)(2) and (i)(3) of this section, the owner or operator of an affected source remains strictly subject to the requirements of this part.

(ii) An owner or operator shall request the adjustment provided for in paragraphs (i)(2) and (i)(3) of this section each time he or she wishes to change an applicable time period or postmark deadline specified in this part.

(2) Notwithstanding time periods or postmark deadlines specified in this part for the submittal of information to the Administrator by an owner or operator, or the review of such information by the Administrator, such time periods or deadlines may be changed by mutual agreement between the owner or operator and the Administrator. An owner or operator who wishes to request a change in a time period or postmark deadline for a particular requirement shall request the adjustment in writing as soon as practicable before the subject activity is required to take place. The owner or operator shall include in the request whatever information he or she considers useful to convince the Administrator that an adjustment is warranted. If the Administrator wishes to change a specified time period for the review of information submitted by an owner or operator, the Administrator will request in writing, as soon as practicable before the subject activity is required to take place, the owner or operator's permission to make such an adjustment. The Administrator will include in the request whatever information he or she considers useful to convince the owner or operator that an adjustment is warranted.

(3) If, in the Administrator's judgment, an owner or operator's request for an adjustment to a particular time period or postmark deadline is warranted, the Administrator will approve the adjustment. The Administrator will notify the owner or operator in writing of approval or disapproval of the request for an adjustment within 7 calendar days of receiving sufficient information to evaluate the request.

(4) An owner or operator responding to a request from the Administrator to change a specified time period for the review of information submitted by the owner or operator shall respond in writing within 7 calendar days of receiving the request.

(j) *Change in information already provided.* Any change in the information already provided under this section shall be provided to the Administrator in writing within 15 calendar days after the change.

§ 63.10 Recordkeeping and reporting requirements.

(a) *Applicability and general information.* (1)The requirements of this section apply to owners or operators of affected sources who are subject to the provisions of this part, unless specified otherwise in a relevant standard.

(2) For affected sources that have been granted an extension of compliance under subpart D of this part, the requirements of this section do not apply to those sources while they are operating under such compliance extensions.

(3) If any State requires a report that contains all the information required in a report listed in this section, an owner or operator may send the Administrator a copy of the report sent to the State to satisfy the requirements of this section for that report.

(4)(i) Before the effective date of an approved permit program in a State, the owner or operator of an affected source in such State subject to recordkeeping and reporting requirements in this part shall submit reports to the appropriate Regional Office of the EPA (to the attention of the Director of the Division indicated in the list of the EPA Regional Offices in § 63.13 of this subpart) and to all appropriate delegated authorities.

(ii) After the effective date of an approved permit program in a State, the owner or operator of an affected source in such State subject to recordkeeping and reporting requirements in this part shall submit reports to the permitting authority. In addition, if the permitting

authority is the State, the owner or operator shall send a copy of each report submitted to the State to the appropriate Regional Office of the EPA, as specified in paragraph (a)(4)(i) of this section.

(5) If an owner or operator of an affected source in a State with an approved permit program is required to submit periodic reports under this part to the State permitting authority, and if the State has an established time-line for the submission of periodic reports that is consistent with the reporting frequency(ies) specified for such source under this part, the owner or operator may change the dates by which periodic reports under this part shall be submitted (without changing the frequency of reporting) to be consistent with the State's schedule by mutual agreement between the owner or operator and the State permitting authority. For each relevant standard established pursuant to section 112 of the Act, the allowance in the previous sentence applies in each State beginning 1 year after the affected source's compliance date for that standard. Procedures governing the implementation of this provision are specified in § 63.9(i).

(6) If an owner or operator supervises one or more stationary sources affected by more than one standard established pursuant to section 112 of the Act, he/she may arrange by mutual agreement between the owner or operator and the Administrator (or the State permitting authority) a common schedule on which periodic reports required for each source shall be submitted throughout the year. The allowance in the previous sentence applies in each State beginning 1 year after the latest compliance date for any relevant standard established pursuant to section 112 of the Act for any such affected source(s). Procedures governing the implementation of this provision are specified in § 63.9(i).

(7) If an owner or operator supervises one or more stationary sources affected by standards established pursuant to section 112 of the Act (as amended November 15, 1990) and standards set under part 60, part 61, or both such parts of this chapter, he/she may arrange by mutual agreement between the owner or operator and the Administrator (or the State permitting authority) a common schedule on which periodic reports required by each relevant (i.e., applicable) standard shall be submitted throughout the year. The allowance in the previous sentence applies in each State beginning 1 year after the stationary source is required to be in compliance with the relevant section 112 standard, or 1 year after the stationary source is required to be in compliance with the applicable part 60 or part 61 standard, whichever is latest. Procedures governing the implementation of this provision are specified in § 63.9(i).

(8) For the purposes of this section, time periods specified in days shall be measured in calendar days, even if the word "calendar" is absent, unless otherwise specified in an applicable requirement.

(9) For the purposes of this part, if an explicit postmark deadline is not specified in an applicable requirement for the submittal of a notification, application, test plan, report, or other written communication to the Administrator, the owner or operator shall postmark the submittal on or before the number of days specified in the applicable requirement. For example, if a notification must be submitted 15 days before a particular event is scheduled to take place, the notification must be postmarked on or before 15 days preceding the event; likewise, if a notification must be submitted 15 days after a particular event takes place, the notification must be postmarked on or before 15 days following the event.

(10) Notwithstanding time periods or postmark deadlines specified in this section for the submittal of information to the Administrator by an owner or operator, or the review of such information by the Administrator, such time periods or deadlines may be changed by mutual agreement between the owner or operator and the Administrator. Procedures governing the implementation of this provision are specified in § 63.9(i).

(11) Special provisions set forth under an applicable subpart of this part shall supersede any conflicting provisions of this section. Individual subparts will specify which provisions of this section are superseded.

(b) *General recordkeeping requirements.* (1) The owner or operator of an affected source subject to the provisions of this part shall maintain files of all information (including all reports and notifications) required by this part recorded in a permanent form suitable and readily available for expeditious inspection and review. The files shall be retained for at least 5 years following the date of each occurrence, measurement, maintenance, corrective action, report, or record. Such files may be maintained on microfilm, on a computer, or on computer floppy disks. For each file maintained on a computer or floppy disk, a backup copy shall be generated on a floppy disk and retained for at least 5 years following the date of each item recorded.

(2) The owner or operator of an affected source subject to the provisions of this part shall maintain records for such source of——

(i) The occurrence and duration of each startup, shutdown, or malfunction of operation (i.e., process equipment);

(ii) The occurrence and duration of each malfunction of the air pollution control equipment;

(iii) All maintenance performed on the air pollution control equipment;

(iv) Actions taken during periods of startup, shutdown, and malfunction (including corrective actions to restore malfunctioning process and air pollution control equipment to its normal or usual manner of operation) when such actions are different from the procedures specified in the affected source's startup, shutdown, and malfunction plan (see § 63.6(e)(3);

(v) All information necessary to demonstrate conformance with the affected source's startup, shutdown, and malfunction plan (see § 63.6(e)(3)) when all actions taken during periods of startup, shutdown, and malfunction (including corrective actions to restore malfunctioning process and air pollution control equipment to its normal or usual manner of operation) are completely consistent with the procedures specified in such plan. (The information needed to demonstrate conformance with the startup, shutdown, and malfunction plan may be recorded using a "checklist," or some other effective form of recordkeeping, in order to minimize the recordkeeping burden for conforming events);

(vi) Each period during which a continuous monitoring system is malfunctioning or inoperative (including out-of-control periods);

(vii) All required measurements needed to demonstrate compliance with a relevant standard (including, but not limited to, 15 minute averages of continuous monitoring system data, raw performance testing measurements, and raw performance evaluation measurements, that support data that the source is required to report);

(viii) All results of performance tests, continuous monitoring system performance evaluations, and opacity and visible emission observations;

(ix) All measurements as may be necessary to determine the conditions of performance tests and performance evaluations;

(x) All continuous monitoring system calibration checks;

(xi) All adjustments and maintenance performed on continuous monitoring systems;

(xii) Any information demonstrating whether a source is meeting the

requirements for a waiver of recordkeeping or reporting requirements under this part, if the source has been granted a waiver under paragraph (f) of this section;

(xiii) All emission levels relative to the criterion for obtaining permission to use an alternative to the relative accuracy test, if the source has been granted such permission under § 63.8(f)(6); and

(xiv) All documentation supporting initial notifications and notifications of compliance status under § 63.9.

(c) *Additional recordkeeping requirements for sources with continuous monitoring systems.* In addition to complying with the requirements specified in paragraphs (b)(1) and (b)(2) of this section, the owner or operator of an affected source required to install a continuous monitoring system (CMS) by a relevant standard shall maintain records for such source of—

(1) All required CMS measurements (including monitoring data recorded during unavoidable CMS breakdowns and out-of-control periods);

(2)–(4) [Reserved]

(5) The date and time identifying each period during which the CMS was inoperative except for zero (low-level) and high-level checks;

(6) The date and time identifying each period during which the CMS was out of control, as defined in § 63.8(c)(7).

(7) The specific identification (i.e., the date and time of commencement and completion) of each period of excess emissions and parameter monitoring exceedances, as defined in the relevant standard(s), that occurs during startups, shutdowns, and malfunctions of the affected source;

(8) The specific identification of (i.e., the date and time of commencement and completion) of each time period of excess emissions and parameter monitoring exceedances, as defined in the relevant standard(s), that occur during periods other than startups, shutdowns, and malfunctions of the affected source;

(9) The magnitude of excess emissions computed in accordance with the provisions of § 63.8(g) and any conversion factor(s) used;

(10) The nature and cause of any malfunction (if known);

(11) The corrective action taken or preventive measures adopted;

(12) The nature of the repairs or adjustments to the CMS that was inoperative or out of control;

(13) The total process operating time during the reporting period; and

(14) All procedures that are part of a quality control program developed and implemented for CMS under § 63.8(d).

(15) In order to satisfy the requirements of paragraphs (c)(10) through (c)(12) of this section and to avoid duplicative recordkeeping efforts, the owner or operator may use the affected source's startup, shutdown, and malfunction plan or records kept to satisfy the recordkeeping requirements of the startup, shutdown, and malfunction plan specified in § 63.6(e), provided that such plan and records adequately address the requirements of paragraphs (c)(10) through (c)(12).

(d) *General reporting requirements.* (1) Notwithstanding the requirements in this paragraph or paragraph (e) of this section, the owner or operator of an affected source subject to reporting requirements under this part shall submit reports to the Administrator in accordance with the reporting requirements in the relevant standard(s).

(2) *Reporting results of performance tests.* Before a part 70 or part 71 permit has been issued to the owner or operator of an affected source, the owner or operator shall report the results of any performance test under § 63.7 to the Administrator. After a part 70 or part 71 permit has been issued to the owner or operator of an affected source, the owner or operator shall report the results of a required performance test to the appropriate permitting authority. The owner or operator of an affected source shall report the results of the performance test to the Administrator (or the State with an approved permit program) by a registered letter sent before the close of business on the 45th day following the completion of the performance test, unless specified otherwise in a relevant standard or as approved otherwise in writing by the Administrator. The results of the performance test shall be submitted as part of the notification of compliance status required under § 63.9(h).

(3) *Reporting results of opacity or visible emission observations.* The owner or operator of an affected source required to conduct opacity or visible emission observations by a relevant standard shall report the opacity or visible emission results (produced using Test Method 9 or Test Method 22, or an alternative to these test methods) along with the results of the performance test required under § 63.7. If no performance test is required, or if visibility or other conditions prevent the opacity or visible emission observations from being conducted concurrently with the performance test required under § 63.7, the owner or operator shall report the opacity or visible emission results by registered letter sent before the close of business on the 30th day following the completion of the opacity or visible emission observations.

(4) *Progress reports.* The owner or operator of an affected source who is required to submit progress reports as a condition of receiving an extension of compliance under § 63.6(i) shall submit such reports to the Administrator (or the State with an approved permit program) by the dates specified in the written extension of compliance.

(5)(i) *Periodic startup, shutdown, and malfunction reports.* If actions taken by an owner or operator during a startup, shutdown, or malfunction of an affected source (including actions taken to correct a malfunction) are completely consistent with the procedures specified in the source's startup, shutdown, and malfunction plan (see § 63.6(e)(3)), the owner or operator shall state such information in a startup, shutdown, and malfunction report. The startup, shutdown, and malfunction report shall consist of a letter, containing the name, title, and signature of the responsible official who is certifying its accuracy, that shall be submitted to the Administrator semiannually (or on a more frequent basis if specified otherwise in a relevant standard or as established otherwise by the permitting authority in the source's part 70 or part 71 permit). The startup, shutdown, and malfunction report shall be postmarked by the 30th day following the end of each calendar half (or other calendar reporting period, as appropriate). If the owner or operator is required to submit excess emissions and continuous monitoring system performance (or other periodic) reports under this part, the startup, shutdown, and malfunction reports required under this paragraph may be submitted simultaneously with the excess emissions and continuous monitoring system performance (or other) reports. If startup, shutdown, and malfunction reports are submitted with excess emissions and continuous monitoring system performance (or other periodic) reports, and the owner or operator receives approval to reduce the frequency of reporting for the latter under paragraph (e) of this section, the frequency of reporting for the startup, shutdown, and malfunction reports also may be reduced if the Administrator does not object to the intended change. The procedures to implement the allowance in the preceding sentence shall be the same as the procedures specified in paragraph (e)(3) of this section.

(ii) *Immediate startup, shutdown, and malfunction reports.* Notwithstanding the allowance to reduce the frequency of

reporting for periodic startup, shutdown, and malfunction reports under paragraph (d)(5)(i) of this section, any time an action taken by an owner or operator during a startup, shutdown, or malfunction (including actions taken to correct a malfunction) is not completely consistent with the procedures specified in the affected source's startup, shutdown, and malfunction plan, the owner or operator shall report the actions taken for that event within 24 hours after the event commences followed by a letter within 7 days after the event commences. The immediate report required under this paragraph shall consist of a telephone call (or facsimile [FAX] transmission) to the Administrator within 24 hours after the event commences, and it shall be followed by a letter, postmarked within 7 days after the event commences and containing the name, title, and signature of the responsible official who is certifying its accuracy, explaining the circumstances of the event, the reasons for not following the startup, shutdown, and malfunction plan, and whether any excess emissions and/or parameter monitoring exceedances are believed to have occurred. Notwithstanding the requirements of the previous sentence, after the effective date of an approved permit program in the State in which an affected source is located, the owner or operator may make alternative reporting arrangements, in advance, with the permitting authority in that State. Procedures governing the arrangement of alternative reporting requirements under this paragraph are specified in § 63.9(i).

(e) *Additional reporting requirements for sources with continuous monitoring systems*—(1) *General.* When more than one continuous emission monitoring system (CEMS) is used to measure the emissions from one affected source (e.g., multiple breechings, multiple outlets), the owner or operator shall report the results as required for each CEMS.

(2) *Reporting results of continuous monitoring system performance evaluations.* (i) The owner or operator of an affected source required to install a continuous monitoring system (CMS) by a relevant standard shall furnish the Administrator a copy of a written report of the results of the CMS performance evaluation, as required under § 63.8(e), simultaneously with the results of the performance test required under § 63.7, unless otherwise specified in the relevant standard.

(ii) The owner or operator of an affected source using a continuous opacity monitoring system (COMS) to determine opacity compliance during any performance test required under § 63.7 and described in § 63.6(d)(6) shall furnish the Administrator two, or upon request, three copies of a written report of the results of the COMS performance evaluation conducted under § 63.8(e). The copies shall be furnished at least 15 calendar days before the performance test required under § 63.7 is conducted.

(3) *Excess emissions and continuous monitoring system performance report and summary report.* (i) Excess emissions and parameter monitoring exceedances are defined in relevant standards. The owner or operator of an affected source required to install a continuous monitoring system by a relevant standard shall submit an excess emissions and continuous monitoring system performance report and/or a summary report to the Administrator semiannually, except when—

(A) More frequent reporting is specifically required by a relevant standard; or

(B) The continuous monitoring system data are to be used directly for compliance determination, in which case quarterly reports shall be submitted; or

(C) The Administrator determines on a case-by-case basis that more frequent reporting is necessary to accurately assess the compliance status of the source.

(ii) *Request to reduce frequency of excess emissions and continuous monitoring system performance reports.* Notwithstanding the frequency of reporting requirements specified in paragraph (e)(3)(i) of this section, an owner or operator who is required by a relevant standard to submit excess emissions and continuous monitoring system performance (and summary) reports on a quarterly (or more frequent) basis may reduce the frequency of reporting for that standard to semiannual if the following conditions are met:

(A) For 1 full year (e.g., 4 quarterly or 12 monthly reporting periods) the affected source's excess emissions and continuous monitoring system performance reports continually demonstrate that the source is in compliance with the relevant standard;

(B) The owner or operator continues to comply with all recordkeeping and monitoring requirements specified in this subpart and the relevant standard; and

(C) The Administrator does not object to a reduced frequency of reporting for the affected source, as provided in paragraph (e)(3)(iii) of this section.

(iii) The frequency of reporting of excess emissions and continuous monitoring system performance (and summary) reports required to comply with a relevant standard may be reduced only after the owner or operator notifies the Administrator in writing of his or her intention to make such a change and the Administrator does not object to the intended change. In deciding whether to approve a reduced frequency of reporting, the Administrator may review information concerning the source's entire previous performance history during the 5-year recordkeeping period prior to the intended change, including performance test results, monitoring data, and evaluations of an owner or operator's conformance with operation and maintenance requirements. Such information may be used by the Administrator to make a judgment about the source's potential for noncompliance in the future. If the Administrator disapproves the owner or operator's request to reduce the frequency of reporting, the Administrator will notify the owner or operator in writing within 30 days after receiving notice of the owner or operator's intention. The notification from the Administrator to the owner or operator will specify the grounds on which the disapproval is based.

(iv) As soon as continuous monitoring system data indicate that the source is not in compliance with any emission limitation or operating parameter specified in the relevant standard, the frequency of reporting shall revert to the frequency specified in the relevant standard, and the owner or operator shall submit an excess emissions and continuous monitoring system performance (and summary) report at the next appropriate reporting period following the noncomplying event. After demonstrating ongoing compliance with the relevant standard for another full year, the owner or operator may again request approval from the Administrator to reduce the frequency of reporting for that standard, as provided for in paragraphs (e)(3)(ii) and (e)(3)(iii) of this section.

(v) *Content and submittal dates for excess emissions and monitoring system performance reports.* All excess emissions and monitoring system performance reports and all summary reports, if required, shall be postmarked by the 30th day following the end of each calendar half or quarter, as appropriate. Written reports of excess emissions or exceedances of process or control system parameters shall include all the information required in paragraphs (c)(5) through (c)(13) of this section, in § 63.8(c)(7) and § 63.8(c)(8), and in the relevant standard, and they shall contain the name, title, and signature of the responsible official who

is certifying the accuracy of the report. When no excess emissions or exceedances of a parameter have occurred, or a continuous monitoring system has not been inoperative, out of control, repaired, or adjusted, such information shall be stated in the report.

(vi) *Summary report.* As required under paragraphs (e)(3)(vii) and (e)(3)(viii) of this section, one summary report shall be submitted for the hazardous air pollutants monitored at each affected source (unless the relevant standard specifies that more than one summary report is required, e.g., one summary report for each hazardous air pollutant monitored). The summary report shall be entitled "Summary Report—Gaseous and Opacity Excess Emission and Continuous Monitoring System Performance" and shall contain the following information:

(A) The company name and address of the affected source;

(B) An identification of each hazardous air pollutant monitored at the affected source;

(C) The beginning and ending dates of the reporting period;

(D) A brief description of the process units;

(E) The emission and operating parameter limitations specified in the relevant standard(s);

(F) The monitoring equipment manufacturer(s) and model number(s);

(G) The date of the latest continuous monitoring system certification or audit;

(H) The total operating time of the affected source during the reporting period;

(I) An emission data summary, including the total duration of excess emissions during the reporting period (recorded in minutes for opacity and hours for gases), the total duration of excess emissions expressed as a percent of the total source operating time during that reporting period, and a breakdown of the total duration of excess emissions during the reporting period into those that are due to startup/shutdown, control equipment problems, process problems, other known causes, and other unknown causes;

(J) A continuous monitoring system (CMS) performance summary, including the total CMS downtime during the reporting period (recorded in minutes for opacity and hours for gases), the total duration of CMS downtime expressed as a percent of the total source operating time during that reporting period, and a breakdown of the total CMS downtime during the reporting period into periods that are due to monitoring equipment malfunctions, nonmonitoring equipment malfunctions, quality assurance/quality control calibrations, other known causes, and other unknown causes;

(K) A description of any changes in continuous monitoring systems, processes, or controls since the last reporting period;

(L) The name, title, and signature of the responsible official who is certifying the accuracy of the report; and

(M) The date of the report.

(vii) If the total duration of excess emissions or process or control system parameter exceedances for the reporting period is less than 1 percent of the total operating time for the reporting period, and continuous monitoring system downtime for the reporting period is less than 5 percent of the total operating time for the reporting period, only the summary report shall be submitted, and the full excess emissions and continuous monitoring system performance report need not be submitted unless required by the Administrator.

(viii) If the total duration of excess emissions or process or control system parameter exceedances for the reporting period is 1 percent or greater of the total operating time for the reporting period, or the total continuous monitoring system downtime for the reporting period is 5 percent or greater of the total operating time for the reporting period, both the summary report and the excess emissions and continuous monitoring system performance report shall be submitted.

(4) *Reporting continuous opacity monitoring system data produced during a performance test.* The owner or operator of an affected source required to use a continuous opacity monitoring system (COMS) shall record the monitoring data produced during a performance test required under § 63.7 and shall furnish the Administrator a written report of the monitoring results. The report of COMS data shall be submitted simultaneously with the report of the performance test results required in paragraph (d)(2) of this section.

(f) *Waiver of recordkeeping or reporting requirements.* (1) Until a waiver of a recordkeeping or reporting requirement has been granted by the Administrator under this paragraph, the owner or operator of an affected source remains subject to the requirements of this section.

(2) Recordkeeping or reporting requirements may be waived upon written application to the Administrator if, in the Administrator's judgment, the affected source is achieving the relevant standard(s), or the source is operating under an extension of compliance, or the owner or operator has requested an extension of compliance and the Administrator is still considering that request.

(3) If an application for a waiver of recordkeeping or reporting is made, the application shall accompany the request for an extension of compliance under § 63.6(i), any required compliance progress report or compliance status report required under this part (such as under § 63.6(i) and § 63.9(h) of this subpart) or in the source's part 70 or part 71[3] permit, or an excess emissions and continuous monitoring system performance report required under paragraph (e) of this section, whichever is applicable. The application shall include whatever information the owner or operator considers useful to convince the Administrator that a waiver of recordkeeping or reporting is warranted.

(4) The Administrator will approve or deny a request for a waiver of recordkeeping or reporting requirements under this paragraph when he/she—

(i) Approves or denies an extension of compliance; or

(ii) Makes a determination of compliance following the submission of a required compliance status report or excess emissions and continuous monitoring systems performance report; or

(iii) Makes a determination of suitable progress towards compliance following the submission of a compliance progress report, whichever is applicable.

(5) A waiver of any recordkeeping or reporting requirement granted under this paragraph may be conditioned on other recordkeeping or reporting requirements deemed necessary by the Administrator.

(6) Approval of any waiver granted under this section shall not abrogate the Administrator's authority under the Act or in any way prohibit the Administrator from later canceling the waiver. The cancellation will be made only after notice is given to the owner or operator of the affected source.

§ 63.11 Control device requirements.

(a) *Applicability.* This section contains requirements for control devices used to comply with provisions in relevant standards. These requirements apply only to affected sources covered by relevant standards referring directly or indirectly to this section.

(b) *Flares.* (1) Owners or operators using flares to comply with the provisions of this part shall monitor these control devices to assure that they are operated and maintained in conformance with their designs. Applicable subparts will provide

provisions stating how owners or operators using flares shall monitor these control devices.

(2) Flares shall be steam-assisted, air-assisted, or non-assisted.

(3) Flares shall be operated at all times when emissions may be vented to them.

(4) Flares shall be designed for and operated with no visible emissions, except for periods not to exceed a total of 5 minutes during any 2 consecutive hours. Test Method 22 in appendix A of part 60 of this chapter shall be used to determine the compliance of flares with the visible emission provisions of this part. The observation period is 2 hours and shall be used according to Method 22.

(5) Flares shall be operated with a flame present at all times. The presence of a flare pilot flame shall be monitored using a thermocouple or any other equivalent device to detect the presence of a flame.

(6) Flares shall be used only with the net heating value of the gas being combusted at 11.2 MJ/scm (300 Btu/scf) or greater if the flare is steam-assisted or air-assisted; or with the net heating value of the gas being combusted at 7.45 MJ/scm (200 Btu/scf) or greater if the flare is non-assisted. The net heating value of the gas being combusted in a flare shall be calculated using the following equation:

$$H_T = K\sum_{i=1}^{n} C_i H_i$$

Where:

H_T=Net heating value of the sample, MJ/scm; where the net enthalpy per mole of offgas is based on combustion at 25 °C and 760 mm Hg, but the standard temperature for determining the volume corresponding to one mole is 20 °C.

K=Constant=

$$1.740\times10^{-7}\left(\frac{1}{\text{ppm}}\right)\left(\frac{\text{g-mole}}{\text{scm}}\right)\left(\frac{\text{MJ}}{\text{kcal}}\right)$$

where the standard temperature for (g-mole/scm) is 20 °C.

C_i=Concentration of sample component i in ppm on a wet basis, as measured for organics by Test Method 18 and measured for hydrogen and carbon monoxide by American Society for Testing and Materials (ASTM) D1946–77 (incorporated by reference as specified in § 63.14).

H_i=Net heat of combustion of sample component i, kcal/g-mole at 25 °C and 760 mm Hg. The heats of combustion may be determined using ASTM D2382–76 (incorporated by reference as specified in § 63.14) if published values are not available or cannot be calculated.

n=Number of sample components.

(7)(i) Steam-assisted and nonassisted flares shall be designed for and operated with an exit velocity less than 18.3 m/sec (60 ft/sec), except as provided in paragraphs (b)(7)(ii) and (b)(7)(iii) of this section. The actual exit velocity of a flare shall be determined by dividing the volumetric flow rate (in units of emission standard temperature and pressure), as determined by Test Methods 2, 2A, 2C, or 2D in appendix A to 40 CFR part 60 of this chapter, as appropriate, by the unobstructed (free) cross sectional area of the flare tip.

(ii) Steam-assisted and nonassisted flares designed for and operated with an exit velocity, as determined by the method specified in paragraph (b)(7)(i) of this section, equal to or greater than 18.3 m/sec (60 ft/sec) but less than 122 m/sec (400 ft/sec), are allowed if the net heating value of the gas being combusted is greater than 37.3 MJ/scm (1,000 Btu/scf).

(iii) Steam-assisted and nonassisted flares designed for and operated with an exit velocity, as determined by the method specified in paragraph (b)(7)(i) of this section, less than the velocity V_{max}, as determined by the method specified in this paragraph, but less than 122 m/sec (400 ft/sec) are allowed. The maximum permitted velocity, V_{max}, for flares complying with this paragraph shall be determined by the following equation:

$$\text{Log}_{10}(V_{max}) = (H_T + 28.8)/31.7$$

Where:

V_{max}=Maximum permitted velocity, m/sec.

28.8=Constant.

31.7=Constant.

H_T=The net heating value as determined in paragraph (b)(6) of this section.

(8) Air-assisted flares shall be designed and operated with an exit velocity less than the velocity V_{max}, as determined by the method specified in paragraph (b)(7)(iii) of this section. The maximum permitted velocity, V_{max}, for air-assisted flares shall be determined by the following equation:

$$V_{max} = 8.706 + 0.7084(H_T)$$

Where:

V_{max}=Maximum permitted velocity, m/sec.

8.706=Constant.

0.7084=Constant.

H_T=The net heating value as determined in paragraph (b)(6) of this section.

§ 63.12 State authority and delegations.

(a) The provisions of this part shall not be construed in any manner to preclude any State or political subdivision thereof from—

(1) Adopting and enforcing any standard, limitation, prohibition, or other regulation applicable to an affected source subject to the requirements of this part, provided that such standard, limitation, prohibition, or regulation is not less stringent than any requirement applicable to such source established under this part; or

(2) Requiring the owner or operator of an affected source to obtain permits, licenses, or approvals prior to initiating construction, reconstruction, modification, or operation of such source; or

(3) Requiring emission reductions in excess of those specified in subpart D of this part as a condition for granting the extension of compliance authorized by section 112(i)(5) of the Act.

(b)(1) Section 112(l) of the Act directs the Administrator to delegate to each State, when appropriate, the authority to implement and enforce standards and other requirements pursuant to section 112 for stationary sources located in that State. Because of the unique nature of radioactive material, delegation of authority to implement and enforce standards that control radionuclides may require separate approval.

(2) Subpart E of this part establishes procedures consistent with section 112(l) for the approval of State rules or programs to be implemented and enforced in place of certain otherwise applicable Federal rules promulgated under the authority of section 112. Subpart E also establishes procedures for the review and withdrawal of section 112 implementation and enforcement authorities granted through a section 112(l) approval.

(c) All information required to be submitted to the EPA under this part

also shall be submitted to the appropriate State agency of any State to which authority has been delegated under section 112(l) of the Act, provided that each specific delegation may exempt sources from a certain Federal or State reporting requirement. The Administrator may permit all or some of the information to be submitted to the appropriate State agency only, instead of to the EPA and the State agency. The appropriate mailing addresses for those States whose delegation requests have been approved can be found in § 63.13.

§ 63.13 Addresses of State air pollution control agencies and the EPA Regional Offices.

(a)–(b) [Reserved]

(c) If any State requires a submittal that contains all the information required in an application, notification, request, report, statement, or other communication required in this part, an owner or operator may send the appropriate Regional Office of the EPA a copy of that submittal to satisfy the requirements of this part for that communication.

§ 63.14 Incorporations by reference.

(a) The materials listed in this section are incorporated by reference in the corresponding sections noted. These incorporations by reference were approved by the Director of the Federal Register on the date listed. These materials are incorporated as they exist on the date of the approval, and a notice of any change in these materials will be published in the **Federal Register**. The materials are available for purchase at the corresponding addresses noted below, and all are available for inspection at the Office of the Federal Register, Room 8401, 1100 L Street, NW, Washington, DC 20408 and at the EPA Library (MD–35), U.S. EPA, Research Triangle Park, North Carolina 27711.

(b) The materials listed below are available for purchase from at least one of the following addresses: American Society for Testing and Materials (ASTM), 1916 Race Street, Philadelphia, Pennsylvania 19103; or University Microfilms International, 300 North Zeeb Road, Ann Arbor, Michigan 48106.

(1) ASTM D1946–77, Standard Method for Analysis of Reformed Gas by Gas Chromatography, IBR approved [*Insert effective date of approval by the Director of the Federal Register] for § 63.11(b)(6).*

(2) ASTM D2382–76, Heat of Combustion of Hydrocarbon Fuels by Bomb Calorimeter [High-Precision Method], IBR approved [Insert effective date of approval by the Director of the *Federal Register] for § 63.11(b)(6).*

§ 63.15 Availability of information and confidentiality.

(a) *Availability of information.* (1) With the exception of trade secrets protected through part 2 of this chapter, all reports, records, and other information collected by the Administrator under this part are available to the public. In addition, a copy of each permit application, compliance plan (including the schedule of compliance), notification of compliance status, excess emissions and continuous monitoring systems performance report, and part 70 or part 71[3] permit is available to the public, consistent with protections recognized in section 503(e) of the Act.

(2) The availability to the public of information provided to or otherwise obtained by the Administrator under this part shall be governed by part 2 of this chapter. (Information submitted voluntarily to the Administrator for the purposes of § 63.5(c) is governed by § 2.201 through § 2.213 of this chapter and not by § 2.301 of this chapter.)

(b) *Confidentiality.* (1) If an owner or operator is required to submit information entitled to protection from disclosure under section 114(c) of the Act, the owner or operator may submit such information separately. The requirements of section 114(c) shall apply to such information.

(2) The contents of a part 70 or part 71 permit shall not be entitled to protection under section 114(c) of the Act; however, information submitted as part of an application for a part 70 or part 71 permit may be entitled to protection from disclosure.

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Part III

Department of Transportation

Federal Aviation Administration

14 CFR Part 170

Establishment and Discontinuance Criteria for LORAN–C; Nonprecision Approach Procedures; Rule

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 170

[Docket No. 26758; Amendment 170–1]

RIN 2120–AD68

Establishment and Discontinuance Criteria for LORAN–C; Nonprecision Approach Procedures

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Final rule.

SUMMARY: This final rule prescribes benefit-cost based criteria for the establishment and discontinuance of LORAN–C nonprecision approach procedures at airports. Under the criteria, the FAA will consider traffic density, passengers served, and aircraft operation efficiencies along with the cost of establishing and maintaining an approach. The criteria provide a guide to FAA management to assure the cost-effective placement of LORAN–C approaches. This regulation implements the requirements of Public Law (Pub. L.) 100–223, which requires the publication of criteria for navigational aids and airport traffic control towers.

EFFECTIVE DATE(S): September 10, 1993.

FOR FURTHER INFORMATION CONTACT: Mr. Frank Emerson, Office of Aviation Policy and Plans (APO–220), Federal Aviation Administration, 800 Independence Avenue SW., Washington, DC 20591; telephone (202) 267–3298.

SUPPLEMENTARY INFORMATION:

Background

The FAA has the responsibility to establish or discontinue LORAN–C nonprecision approach procedures when activity levels merit such action.

The FAA, and its predecessor agency, have been developing, approving, and publishing criteria for approach procedures since 1951. Currently, establishment and discontinuance criteria for certain navigational facilities and control towers are published in an internal FAA document: Airway Planning Standard Number One—Terminal Air Navigation Facilities and Air Traffic Control Services (FAA Order No. 7031.2C, issued November 15, 1984). The existing document does not include the criteria for establishing LORAN–C nonprecision approaches to runways. The Airport and Airway Safety and Capacity Expansion Act of 1987, Public Law 100–223, section 308 (49 U.S.C. 1348), mandates that certain criteria be promulgated through Federal regulations.

A LORAN–C nonprecision approach procedure is established under FAA Handbook 8260.3B, United States Standard for Terminal Instrument Procedures (TERPS), as amended, which provides guidance for preparation, approval, and promulgation of terminal instrument approach procedures. LORAN–C operates through the low-frequency transmission of timed signals with controlled coded pulses that furnish nonprecision guidance to pilots with appropriately equipped aircraft. The LORAN–C signal is transmitted by groups of three to six stations, called chains; each chain includes a designated master station and several secondary stations.

In a separate rulemaking, the FAA published a new part 170 to the Federal Aviation Regulations (14 CFR part 170) to list the criteria on which it will base its decision to establish or discontinue certain navigation facilities and procedures. On January 3, 1991, the FAA published The Establishment and Discontinuance Criteria for Airport Traffic Control Tower Facilities (56 FR 336). It is anticipated that, in the future, part 170 will include criteria for other kinds of navigation facilities and services. The LORAN–C criteria will be set forth in subpart C of the new part.

The Criteria

New benefit-cost criteria for LORAN–C nonprecision approaches are established by this regulation. The criteria are explained in detail in FAA report number FAA–APO–90–5, Establishment Criteria for LORAN–C Approach Procedures. The criteria for LORAN–C approaches require that, to be eligible for establishment, a candidate runway must meet all FAA standards for nonprecision approaches and must have life-cycle benefits that exceed life-cycle costs. Discontinuance criteria state that a LORAN–C approach is subject to discontinuance when the present value of its remaining life-cycle benefits falls below the level of the cost of its continued maintenance.

The economic benefit of a LORAN–C approach is improved efficiency associated with a lower approach minimum which permits the runway to remain open at times when weather conditions would otherwise have closed the airport, thereby reducing flight disruptions. A safety benefit for LORAN–C was not included in the benefit-cost analysis because the procedure only enables approaches to be made that weather conditions might otherwise preclude. LORAN–C provides a nonprecision approach signal that guides a pilot to a specific heading that is in line with a runway. Upon descending to a specified altitude, it is then necessary for a pilot to complete the approach and landing visually or to execute a missed approach if the runway is not in sight. Because the final descent to the runway must be made visually, the level of safety is considered the same as landing during visual flight rules conditions, and therefore unaffected by the existence of a LORAN–C approach. Furthermore, the establishment of a LORAN–C approach is meant to enhance operational efficiencies; the FAA does not deem this rule to have safety-enhancement as a primary objective. The costs of initiating a LORAN–C approach relate to investment and maintenance. Investment costs include the initial costs associated with the development, publication, and flight testing of a LORAN–C approach. Maintenance costs consist of annual flight inspection and annual updating of procedures. For discontinuance of an approach, the Agency need only consider maintenance costs. There are no unique added costs to implement the discontinuance decision.

Explicit dollar values assigned to passenger time and aircraft operating costs provide a basis for comparing benefits to costs. LORAN–C economic benefits are based on future aviation activity projected in FAA's annual Terminal Area Forecast which contains airport-specific forecasts. Benefits and costs are based on a 15-year life cycle and are discounted to their present value using a 7 percent discount rate as directed by the Office of Management and Budget. The 15-year life cycle is the same as that used for most other FAA navigational facilities criteria.

How the Criteria Are Applied

FAA will use the benefit-cost criteria to determine the eligibility of runways for LORAN–C nonprecision approach procedures. A runway is considered to be eligible for establishment of a LORAN–C approach procedure when the ratio of the benefits to the costs of establishment equals or exceeds 1.0 and all other requirements of the criteria are met. A LORAN–C approach procedure may be discontinued if the benefits expected to be realized over the remainder of its life cycle fall below its recurring maintenance costs.

Meeting the economic criteria is usually a necessary condition to include a site in the FAA budget; however, it is not a guarantee that a site will be funded.

Criteria Results

Runways at 4,078 airports from the Terminal Area Forecast were examined to determine their current benefit-cost (B/C) ratios. Of this universe, at least 1,880, or 46 percent, have one or more runways with a B/C ratio of 1.0 or greater with the remainder falling below the criteria standard. The results show that about three quarters of the airports not qualifying have a B/C ratio below 0.3.

Need for the Regulation

This final rule is issued in compliance with the Airport and Airway Safety and Capacity Expansion Act of 1987, Public Law 100–223 (49 U.S.C. 1348), which requires the promulgation of regulations to establish criteria for the installation of airport control towers and other navigational aids. Its fundamental purpose is to improve the efficiency of FAA resource allocation. Also, the final rule will assist in the establishment of airport and funding priorities.

Discussion of Comments

Six comments were received in response to the Notice of Proposed Rulemaking (NPRM) Notice No. 92–1 (57 FR 3830, January 31, 1992). Most commenters express support for the development of LORAN–C approaches, stating they will be of particular benefit to rural America and airports without an existing approach.

Use of Benefit-Cost Analysis for Establishing LORAN–C Approaches

Comments: Several commenters disagree with the application of benefit-cost criteria that prevent development of approaches into small, rural communities. One commenter recommends that all airports and heliports meeting the requirements of United States Standard for Terminal Instrument Procedures (TERPS) and part 77 criteria be equally considered. Additionally, if a benefit-cost analysis must be conducted, the commenter advises that a relationship be established that weighs the value of an instrument approach into an airport without an existing approach.

A second commenter claims that the NPRM fails to acknowledge the premise behind efforts devoted to the establishment of LORAN–C approaches. The commenter asserts that the application of strict establishment criteria arbitrarily reduces the number of eligible airports and, therefore, may negate the usefulness of LORAN–C for business and general aviation. Moreover, the commenter alleges that discussion of establishment for LORAN approaches has never been based on the type of consideration listed in Airport Planning Standard Number One. In this regard, a third commenter questions the inclusion of "traffic density" and "number of passengers served" as considerations in these deliberations.

FAA Response: With limited resources available to establish LORAN–C (as well as other) airport approach procedures, the most likely impact of applying establishment criteria, at least over the next several years, may be to influence the order in which LORAN–C approaches are established, rather than on the number of such approaches established. Over the longer term, strict application of the criteria could limit the establishment of LORAN–C approaches at airports that have low levels of traffic.

The establishment of LORAN–C approaches is evaluated for airports both with and without established approaches. The application of the criteria involves assigning greater benefits to the establishment of approaches that are expected to result in greater increases in activity. Thus, other factors being held constant, an airport that already has an established approach would be expected to have lower incremental benefits from establishing a LORAN–C approach than would an otherwise-identical airport without an established approach.

The FAA expects relatively little variation among sites in the cost of establishing LORAN–C approaches. Thus, the greatest net benefit (total benefits minus total costs) to the aviation community should be derived by first establishing approaches at those airports having the highest benefit-cost ratios, then proceeding to establish approaches at airports where these ratios are lower. The use of benefit-cost criteria that consider all benefits (including avoided flight delays and benefits to passengers, where applicable) provides a systematic basis for recommending priorities among airports that are candidates for the establishment of LORAN–C approaches.

In view of the current backlog of sites designated for LORAN–C approaches under a cooperative arrangement between FAA and the National Association of State Aviation Officials, the application of establishment criteria is unlikely to either cause or prevent a LORAN–C approach from being installed at an airport in the near term. In addition, as noted in § 170.23(c) of the rule, "the criteria do not cover all situations that may arise and are not used as a sole determinant in denying or granting the establishment of a nonprecision LORAN–C approach for which there is a demonstrated operational or air traffic control requirement."

Application of Establishment Criteria for LORAN–C Approaches

Comments: Some commenters indicate that LORAN–C is a "navigational aid," but not in the sense that it is located on or in the vicinity of the airport/heliport being served, as would be the case for a nondirectional beacon (NDB) or very high frequency omnidirectional range station (VOR). Accordingly, they claim it is unclear from Public Law 100–223 whether "procedure development criteria" fall within this context so that LORAN–C should not be considered in the same category as airport-based facilities. Such classification, in their opinion, makes LORAN–C subject to a "planning standard" which may be a misapplication of Public Law 100–223.

FAA Response: Although LORAN–C installations typically serve wide areas rather than a particular airport, establishment of a LORAN–C approach at a particular airport is conceptually similar to establishment of any other approach. An incremental expenditure is made in order to reap an incremental benefit. For LORAN–C, incremental expenditures consist of the airport-specific costs of establishing and operating the approach. Incremental benefits consist of the airport-specific benefits—over and above those already provided by other aids or by the availability of LORAN–C for en route naviation—that the LORAN–C approach makes possible. The criteria are designed to ensure that the incremental airport-specific benefits exceed or equal incremental costs. Thus, the use of establishment criteria for LORAN–C approaches that are similar to those for other types of nonprecision approaches is appropriate.

Evaluation of LORAN–C

Comments: Three commenters raise issues pertaining to the evaluation of LORAN–C approaches. One commenter asks whether credit for en route guidance was included in the evaluation of LORAN–C approaches. A second commenter questions the validity of projections contained in the FAA's Terminal Area Forecasts (TAF) publication, alleging that restricting LORAN–C approach evaluations to airports included in FAA Terminal Area Forecasts artificially limits the number of airports considered. Another commenter states that the aviation community considers LORAN–C to be a "valuable navigational [aid]", and disagrees with it being labeled non-precision. The commenter further states

that LORAN–C users are kept in an ellipsoid sphere of airspace wherever coverage exists, and that LORAN–C's accuracy is not downgraded or improved based on distance; it stays the same throughout the entire flight from takeoff to landing.

FAA Response: Like VORs and many radar installations, LORAN–C installations provide benefits to aircraft operators both en route and on approach to an airport. However, the final rule and evaluation criteria are based solely on estimated incremental benefits and costs associated with establishing approaches, rather than with en route benefits. Airports in the FAA's TAF were used in the sample evaluation that was performed prior to publishing the NPRM as a matter of convenience. Nothing in the final rule limits future evaluations solely to airports presently in the TAF. In addition, TAF forecasts are routinely reviewed and updated. Finally, LORAN–C is referred to as "non-precision" because, like an NDB or VOR, it does not provide information on altitude for use in glide slope guidance, as is the case for a precision approach based on an Instrument Landing System or Microwave Landing System.

LORAN–C Safety Benefit

Comments: Several commenters mention the NPRM's statement that a safety benefit for LORAN–C was not included in the benefit-cost study. Two commenters believe a safety benefit should be included in any benefit-cost study. In addition, one commenter claims that using an approach enhances overall safety even in visual flying rules (VFR) conditions.

FAA Response: A safety benefit for LORAN–C was not included in the benefit-cost analysis. The existence of a LORAN–C approach permits aircraft to make approaches under instrument meteorological conditions with a level of safety equivalent to that under visual conditions. The LORAN–C approach provides a nonprecision approach signal that guides a pilot to a specific heading that is in line with a runway. Upon descending to a specified altitude, it is then necessary for a pilot to complete the approach and landing visually or to execute a missed approach if the runway is not in sight. Because the descent to the runway must be made visually, the level of safety is considered the same as landing during visual flight rules conditions. Similarly, the level of safety of a LORAN–C approach is considered the same as that of a visual approach in visual meteorological conditions. LORAN–C merely enables an instrument approach to be made that otherwise could not be made at all, rather than make such an approach safer. The intent of this rule is to set guidelines for establishing LORAN–C approaches for operational efficiency. The FAA does not disagree that the existence of an instrument approach may in some cases or situations contribute an element of added safety The FAA does not deem that contribution to rise to a sufficient level, however, to be included as a quantifiable benefit for the purposes of this rule.

Effects of Lower Costs for Developing and Maintaining Approaches

Comments: Several commenters claim the FAA appears to have not considered the reduced costs for developing approaches using automated technology rather than the current laborious hand method. These commenters suggest that, with ground-based monitors in place to continuously check signal guidance accuracy, the frequency for flight checks could be reduced, resulting in cost savings. Moreover, the current flight inspection criteria for annual inspections may not be necessary; therefore, the possibility of eliminating annual flight check evaluations could be considered. As a result, because of the low cost, many more airports should be eligible.

FAA response: The criteria is based on a comparison of benefits with costs. Should new technologies lower costs, these newer, lower costs will be used in the benefit-cost evaluations. The result of lower costs, other factors being held constant, will be increased numbers of runways for which the establishment of a LORAN–C approach will have benefits that equal or exceed costs.

Combine LORAN–C and Global Positioning System (GPS)

Comment: Some commenters indicate that the FAA should investigate the possibility that a GPS non-precision approach could overlay a LORAN–C approach, or at least make use of some of the work done in preparing a LORAN–C approach, and that consideration, therefore, should be given to the potential combination of GPS and LORAN–C approaches. Commenters indicate that both GPS and LORAN–C approaches will benefit from an automated approach procedure development capability and from obstacle clearance evaluation. In addition, they argue that once a LORAN–C approach is developed, it also can be used as a GPS approach once the system is operational. In this regard, credit should be taken for cost savings because future costs for establishing GPS approaches will be lowered once LORAN–C approaches are in place.

FAA Response: The possibility of overlaying GPS approaches on LORAN–C approaches is acknowledged and may be considered in future rulemakings on GPS approaches. To the extent that LORAN–C approaches may be used for GPS approaches, thereby resulting in cost savings, the net benefits of approaches that eventually may be designated as LORAN–C/GPS approaches may be raised. However, in the absence of a developed standard for GPS approaches, designating and accounting for benefits of GPS approaches would be premature. When and if appropriate, GPS approach establishment criteria will be pursued.

The inclusion of potential GPS benefits would likely result in higher benefit-cost ratios for candidate approach sites examined, rather than in significant shifts in the relative benefit-cost ratios for candidate approach sites examined. It should be noted that exclusion from consideration of potential GPS benefits of LORAN–C approaches is not expected to have any near-term effect on the priority in which approaches are developed for various airports.

Capital Costs

Comments: One commenter questions whether it is appropriate to use life cycle costs evaluated over a 15-year period. Similarly, a second commenter asserts that the actual cost of equipment maintenance at the airport/heliport is zero since there is no navigational equipment located there.

FAA Response: The use of 15-year life cycle costs parallels the methodology used for analyzing most other FAA investments subject to establishment/discontinuance criteria, including alternative airport instrument approach aids. FAA utilizes the 15-year life cycle in recognition of both equipment useful life and the potential for technological obsolescence. The FAA recognizes that, where capital investment is involved, it is appropriate to use the expected useful lifetime of the investment as the relevant period for life-cycle cost analysis. In this instance, however, since LORAN–C approaches are relatively new, the FAA does not have sufficient experience-based data to estimate lifetimes for the investments in approaches, but has determined that 15 years represents a reasonable assumption in the absence of such data.

The FAA agrees with the commenter's statement that the actual cost of equipment maintenance at the airport/heliport is zero. Indeed, the Agency's

proposed methodology reflects this fact by including only those costs associated with establishing and inspecting the approaches, versus including costs pertaining to airport installed equipment.

Weather Information

Comment: One commenter questions the necessity and usefulness of requiring the availability of weather information and air-to-ground communications.

FAA Response: The weather information and air-to-ground communications requirements for a LORAN–C approach at an airport conform with longstanding requirements for instrument approaches. Weather forecasts are necessary when planning a trip under instrument flight rules (IFR) for determining whether a pilot is required to specify an alternate to the airport of intended landing. To be listed as an alternate, weather information about an airport must also be available. Barometric readings at an airport (or nearby airport) must be available in order for a pilot to set the altimeter to determine when the minimum descent altitude during a non-precision approach to an airport has been reached. This is particularly crucial in view of the fact that a LORAN–C approach minimum descent altitude can be as low as 250 feet.

Federalism Implications

Comment: One commenter believes that the NPRM's Federalism Implications statement is inappropriate because it ignores a long-standing partnership between the FAA and State aviation agencies and their representatives.

FAA Response: The FAA is well aware of past and current cooperation with the State aviation agencies and their representatives. This cooperation has been undertaken to accelerate work on the establishment of LORAN–C approaches. The final rule is not intended to interfere with the arrangement to proceed with work on the approaches for airports that have been nominated through the National Association of State Aviation Officials.

Paperwork Reduction Act

There are no reporting or recordkeeping requirements associated with this final rule.

Regulatory Evaluation Summary

Introduction

The issuance of this final rule is expected to have no direct cost impact on the public. There is only a minimal administrative cost to the FAA of applying the criteria. The FAA uses an automated benefit-cost calculation procedure that provides results at minimal cost. This procedure is embodied in the Aviation Data Analysis (ADA) system maintained by the Office of Aviation Policy and Plans. ADA uses a 15-year forecast of aviation activity, as well as economic and other values, to estimate life-cycle B/C ratios. This final rule merely formalizes this application of criteria as part of normal agency procedures. The benefit of the rule is to inform the public of the benefit-cost criteria the FAA uses to allocate resources for establishment of LORAN–C nonprecision approach procedures, and further, to assure adequate consideration of the efficiency effects of potential LORAN–C approaches. Since this action is expected to have no cost impact to the public and have a positive, although unquantifiable, benefit, further regulatory evaluation is unnecessary.

International Trade Impact Analysis

This rule has no effect on the sale of foreign aviation products or services in the United States or on the sale of American products or services in foreign countries.

Regulatory Flexibility Determination

The Regulatory Flexibility Act (RFA) of 1980 was enacted by Congress to ensure that small entities are not unnecessarily and disproportionately burdened by Government regulations. The RFA requires agencies to review rules that may have "a significant economic impact on a substantial number of small entities."

This final rule provides a guide for internal FAA management in the establishment and discontinuance of LORAN–C nonprecision approaches. It is not expected to have cost impact; therefore, FAA certifies that this final rule will not have a significant economic impact on a substantial number of small entities under the criteria of the Regulatory Flexibility Act.

Federalism Implications

The regulations herein are not expected to have substantial direct effects on the States, in 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 regulation does not have sufficient federalism implications to warrant the preparation of Federalism Assessment.

Conclusion

Since the regulation contained in this FAA document is expected to impose only a minimal administrative cost of the FAA, the estimated benefits are expected to exceed the estimated costs of their implementation. For the reasons discussed above, this regulation is not expected to have significant economic impact on a substantial number of small entities, and a regulatory flexibility analysis is not required. In addition, for the same reasons, the rule is not "major" under Executive Order 12291 and is not a "significant rule" under DOT Regulatory Policies and Procedures (44 11034; February 26, 1997).

List of Subjects in 14 CFR Part 170

Air traffic control, Navigation (air).

The Amendment

In consideration of the foregoing, the Federal Aviation Administration amends part 170 of the Federal Aviation Regulations (14 CFR part 170) as follows:

PART 170—ESTABLISHMENT AND DISCONTINUANCE CRITERIA FOR AIR TRAFFIC CONTROL SERVICES AND NAVIGATIONAL FACILITIES

1. The authority citation for part 170 is revised to read as follows:

Authority: 49 U.S.C. app. 1343, 1346, 1348, 1354(a), 1355, 1401, 1421, 1422 through 1430, 1472(c), 1502, and 1522; 49 U.S.C. 106(g).

2. Part 170 is amended by adding subpart C consisting of §§ 170.21, 170.23, and 170.25 to read as follows:

Sec.
170.21 Scope.
170.23 LORAN–C establishment criteria.
179.25 LORAN–C discontinuance criteria.

Subpart C—LORAN–C

§ 170.21 Scope.

This subpart sets forth establishment and discontinuance criteria for LORAN–C.

§ 170.23 LORAN–C establishment criteria.

(a) The criteria in paragraphs (a)(1) through (a)(6) of this section, along with general facility and navigational aid establishment requirements, must be met before a runway can be eligible for LORAN–C approach.

(1) A runway must have landing surfaces judged adequate by the FAA to accommodate aircraft expected to use the approach and meet all FAA-required airport design criteria for nonprecision runways.

(2) A runway must be found acceptable for instrument flight rules

operations as a result of an airport airspace analysis conducted in accordance with the current FAA regulations and provisions.

(3) The LORAN–C signal must be of sufficient quality and accuracy to pass an FAA flight inspection.

(4) It must be possible to remove, mark, or light all approach obstacles in accordance with FAA marking and lighting provisions.

(5) Appropriate weather information must be available.

(6) Air-to-ground communications must be available at the initial approach fix minimum altitude and at the missed approach altitude.

(b) A runway meets the establishment criteria for a LORAN–C approach when it satisfies paragraphs (a)(1) through (a)(6) of this section and the estimated value of benefits associated with the LORAN–C approach equals or exceeds the estimated costs (benefit-cost ratio equals or exceeds one). As defined in § 170.3 of this part, the benefit-cost ratio is the ratio of the present value of the LORAN–C life-cycle benefits (PVB) to the present value of LORAN–C life-cycle costs (PVC):

$$PVB/PVC \geq 1.0$$

(c) The criteria do not cover all situations that may arise and are not used as a sole determinant in denying or granting the establishment of non-precision LORAN–C approach for which there is a demonstrated operational or air traffic control requirement.

§ 170.25 LORAN–C discontinuance criteria.

A LORAN–C nonprecision approach may be subject to discontinuance when the present value of the continued maintenance costs (PVCM) of the LORAN–C approach exceed the present value of its remaining life-cycle benefits (PVB):

$$PVB/PVCM < 1.0$$

Issued in Washington, DC on August 4, 1993.

Joseph M. Del Balzo,

Acting Administrator.

[FR Doc. 93–19257 Filed 8–10–93; 8:45 am]

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federal register

Wednesday
August 11, 1993

Part IV

Department of Education

Centers for Independent Living; Final Priority for Fiscal Year 1993; Notice

DEPARTMENT OF EDUCATION

Centers for Independent Living; Final Priority for Fiscal Year 1993

AGENCY: Department of Education.

ACTION: Notice of final priority for Fiscal Year (FY) 1993.

SUMMARY: The Secretary announces a final priority for FY 1993 to provide training and technical assistance with respect to planning, developing, conducting, administering, and evaluating centers for independent living and to provide transition assistance to assist centers to achieve compliance with the standards and assurances in section 725(b) and (c) of the Rehabilitation Act of 1973, as amended (the Act).

This priority establishes a national project to provide training, technical assistance, and transition assistance to centers for independent living.

EFFECTIVE DATE: This priority takes effect either September 27, 1993 or later if the Congress takes certain adjournments. If you want to know the effective date of this priority, call or write the Department of Education contact person.

FOR FURTHER INFORMATION CONTACT: John Nelson, U.S. Department of Education, 400 Maryland Avenue, SW., room 3326, Switzer Building, Washington, DC 20202–2741. Telephone: (202) 205–9362. Individuals who use a telecommunications device for the deaf (TDD) may call (202) 205–9362.

SUPPLEMENTARY INFORMATION: Title VII, chapter 1, part C, section 721(e)(1)(B) of the Act authorizes grants to provide training and technical assistance with respect to planning, developing, conducting, administering, and evaluating centers for independent living and to provide transition assistance to assist centers to achieve compliance with the standards and assurances in section 725 of the Act. To be eligible to apply for funds under this priority, an entity must demonstrate in its application that it has experience in the operation of centers for independent living. Experience of an applicant in the operation of a center for independent living is determined by whether or not the applicant's management and staff have engaged in the planning, development, conduct, administration, and evaluation of centers for independent living. A center for independent living is defined in section 702(1) of the Act as a consumer-controlled, community-based, cross-disability, nonresidential private nonprofit agency that is designed and operated within a local community by individuals with disabilities and provides an array of independent living services.

This program supports moving the Nation toward achieving the National Education Goals by enhancing programs that develop the skills of individuals with severe disabilities to exercise the rights and responsibilities of citizenship.

On April 22, 1993 the Secretary published a notice of proposed priority for this competition in the **Federal Register** (58 FR 21630).

Note: This notice of final priority does not solicit applications. On June 29, 1993 a notice inviting applications under this competition was published in a separate notice in the **Federal Register** (58 FR 34788).

Analysis of Comments and Changes

In response to the Secretary's invitation in the notice of proposed priority, 13 parties submitted comments. An analysis of the comments and of the changes in the priority since publication of the notice of proposed priority follows. Technical and other minor changes—and suggested changes the Secretary is not legally authorized to make under the applicable statutory authority—are not addressed.

Comments: Four commenters recommended funding one or two national projects as opposed to three multi-regional projects. The commenters thought a national project would be more effective because it would reduce redundant organizational and materials development efforts without significantly increasing travel costs. The commenters also thought funding one or two national projects would be more likely to promote greater consistency in policy, training, and technical assistance across the country. One commenter appeared to recommend funding a project that would serve only one State, and another commenter recommended dividing geographic area 1 (Department of Education regions I-IV) into two areas and funding a total of four geographic areas.

Discussion: The Secretary agrees that funding one national project will lessen the possibility of duplicating efforts in development of materials and inconsistencies in information provided. The Secretary also agrees that the most effective method of providing training and technical assistance to centers for independent living in all States is to fund a project that will be national in scope and serve centers in all States. It is important that training curricula address issues affecting centers for independent living nationally, as well as addressing specific regional and local issues.

Changes: The language of the priority has been modified to fund one national training and technical assistance project.

Comments: Two commenters recommended specific curriculum areas for training and technical assistance.

Discussion: The Secretary agrees that it is appropriate to include the recommended curriculum areas for training and technical assistance.

Changes: The language of the final priority has been changed to include the recommended curriculum areas for training and technical assistance.

Comments: Two commenters expressed concern about whether, given the statutory requirements on eligibility, the Regional Rehabilitation Continuing Education programs would qualify for this competition.

Discussion: The eligibility requirements for funding under this priority are mandated by section 721(e)(1)(B) of the Act.

Accordingly, the Secretary has not imposed any additional requirements for eligibility on applicants, including Regional Rehabilitation Continuing Education programs, to participate in this program.

Changes: None.

Comments: Three commenters recommended providing multiple-year funding for the project.

Discussion: The Secretary agrees that multi-year funding is appropriate for this program and intends to award grants for multi-year projects under this priority.

Changes: None.

Priority: National Training, Technical Assistance, and Transition Assistance Center

Under section 721(e)(1)(B) of the Act and 34 CFR 75.105(c)(3), the Secretary gives an absolute preference to applications that meet the following priority. The Secretary funds under this competition only applications that meet this absolute priority:

One national project must provide coordinated and comprehensive training and technical assistance in planning, developing, conducting, administering, and evaluating centers for independent living. The national project must serve centers for independent living in all States, address regional and State differences, and use innovative and cost-effective approaches in providing technical assistance and training, e.g., satellite training, video taped presentations, and interactive computer-based training.

The project also must provide transition assistance to help centers to achieve compliance with the standards

and assurances in section 725(b) and (c) of the Act, provide training and technical assistance in the areas of resource development techniques, independent living philosophy, governing board development, forming effective collaborative relationships, and innovative techniques for providing independent living services and program evaluation.

Intergovernmental Review

This program is subject to the requirements of Executive Order 12372 and the regulations in 34 CFR part 79. The objective of the Executive order is to foster an intergovernmental partnership and a strengthened federalism by relying on processes developed by State and local governments for coordination and review of proposed Federal financial assistance.

In accordance with the order, this document is intended to provide early notification of the Department's specific plans and actions for this program.

(Catalog of Federal Domestic Assistance Number 84.132B, Centers for Independent Living)

Program Authority: 29 U.S.C. 721(b) and (e) and 796(e).

Dated: August 5, 1993.

Richard W. Riley,

Secretary of Education.

[FR Doc. 93–19262 Filed 8–10–93; 8:45 am]

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federal register

Wednesday
August 11, 1993

Part V

Department of Education

34 CFR Part 653
Paul Douglas Teacher Scholarship Program; Rule

DEPARTMENT OF EDUCATION

34 CFR Part 653

RIN 1840–AB76

Paul Douglas Teacher Scholarship Program

AGENCY: Department of Education.

ACTION: Final regulations.

SUMMARY: The Secretary amends the regulations governing the Paul Douglas Teacher Scholarship Program, which is authorized by title V, part C (formerly part D), subpart 1 of the Higher Education Act of 1965, as amended (HEA). These final regulations are needed to implement changes made by the Higher Education Amendments of 1992 (Pub. L. 102–325) (1992 Amendments), enacted July 23, 1992, and to make other changes to improve administration and management of the program. The regulations establish eligibility criteria, selection criteria, and other terms and conditions for making grants to States to award scholarships to outstanding secondary school graduates who demonstrate an interest in teaching to enable and encourage them to pursue teaching careers at the preschool, elementary, or secondary level.

EFFECTIVE DATE: These regulations take effect either September 27, 1993, or later if the Congress takes certain adjournments. If you want to know the effective date of these regulations, call or write the Department of Education contact person. A document announcing the effective date will be published in the **Federal Register**.

FOR FURTHER INFORMATION CONTACT: Valerie Hurry. Telephone: (202) 708–9453. 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: The Paul Douglas Teacher Scholarship Program supports the National Education Goals. By encouraging and enabling outstanding students to become teachers, the program will improve the quality of education, thereby furthering Goal 3, which calls for American students to leave grades 4, 8, and 12 having demonstrated competency in challenging subject matter, and Goal 4, which calls for U.S. students to be first in the world in science and mathematics achievement. In addition, by encouraging and enabling students to pursue postsecondary education, the program furthers Goal 5, which calls for every adult American to be literate and possess the knowledge and skills necessary to compete in a global economy.

On May 14, 1993, the Secretary published a notice of proposed rulemaking (NPRM) for this program in the **Federal Register** (58 FR 28530). The major issues addressed by the NPRM are discussed in the preamble to the NPRM. The major differences between the NPRM and the final regulations are discussed below in the Analysis of Comments and Changes.

Analysis of Comments and Changes

Seven commenters responded to the Secretary's invitation to comment on the NPRM. The following is an analysis of comments and changes in the regulations since publication of the NPRM. Substantive issues are discussed under the section of the regulations to which they pertain. Technical and other minor changes to the language published in the NPRM—and other changes the Secretary is not legally authorized to make under applicable statutory authority—may not be addressed.

Administrative Costs (§ 653.3)

Comment: Several commenters requested that the regulations be revised to permit States to use Federal funds received under this program to cover administrative expenses incurred in operating the program.

Discussion: The statute does not authorize the Secretary to provide for administrative expenses, and administrative expenses have not been covered under this program in the past. The Secretary does not believe it is appropriate to reduce the funds available for scholarships in order to cover State administrative expenses.

Changes: None.

Students Who Are From Disadvantaged Backgrounds (§ 653.5)

Comment: One commenter recommended that the definition of this term be revised to remove the reference to students from low-income backgrounds because that group is not specifically identified as disadvantaged by the statute and because income information is not currently collected on the application for a scholarship under this program. The commenter further recommended that the definition be revised to include any student who identifies herself or himself as disadvantaged on the scholarship application.

Discussion: Students from low-income backgrounds are identified by section 523(b)(9) of the statute as a group that the State agency must make particular efforts to attract to this program. Accordingly, the Secretary believes it is consistent with legislative intent to include those students in the definition of students who are disadvantaged for the purposes of receiving special consideration in the selection criteria. The Secretary does not believe it is appropriate to give special consideration to any student who self-identifies as disadvantaged on the basis of no particular criteria or definition.

Changes: None.

Teach on a Full-time Basis (§ 653.5)

Comment: Two commenters suggested modifying the definition of this term to eliminate the one academic term minimum so that part-time teachers could be given pro-rated credit.

Discussion: The Secretary believes the proposed definition of this term made a reasonable accommodation to the realities of the teaching job market by providing pro-rated credit to teachers who teach full time for a minimum of one academic term. The Secretary declines to modify the definition as suggested because awarding pro-rated credit for any time period of part-time teaching, no matter how small, would require extensive tracking and administration in order to implement the repayment and interest requirements under this program. The Secretary believes this would impose too great an administrative burden on States, particularly since States are not reimbursed for administrative expenses under this program.

Changes: None.

Course of Study Leading to Teacher Certification (§§ 653.5 and 653.50(a)(1))

Comment: One commenter recommended adding a definition of this term to clarify that it includes any four-year collegiate academic program as long as students certify that they will pursue teacher certification immediately following graduation.

Discussion: The Secretary agrees that the term, as used in the eligibility requirements in § 653.50(a)(1), could include any four-year collegiate academic program that met a State's teacher certification requirements. The Secretary believes the scholarship agreement provisions in § 653.50 of the regulations are clear and does not believe a definition of the term is necessary.

Changes: None.

Teacher Shortage Areas (§ 653.11(b)(2)(iii)(A))

Comment: Several commenters requested that the regulations be revised

to limit the requirement that States notify scholars of their present and projected teacher shortage and surplus areas to require notification only to the extent that those areas are "known" by the State agency. The commenters stated that the information is not readily available to the agency that administers this program in all States.

Discussion: The requirement that States describe in their applications how they will inform recipients of present and projected teacher shortage and surplus areas within the State is taken from section 523(b)(4) of the statute. The Secretary does not believe it would be consistent with the statute or legislative intent to limit this requirement by adding the qualification "if known." Moreover, the Secretary believes it is important for scholarship recipients to have all of this information in order to make informed choices about their course of study.

Changes: None.

Selection Panel Representation Requirement (§ 653.11(d))

Comment: Some commenters recommended that the requirement in the regulations that selection panels be representative of school administrators, teachers, including preschool and special education teachers, and parents be limited to 7-member statewide panels and not be imposed on existing grant agencies or panels that are designated to select scholars under this program. Commenters pointed out that the representation requirement in the statute refers only to the statewide panels. One commenter stated that one panel member should be permitted to satisfy more than one of the representation requirements.

Discussion: The Secretary recognizes that the express language of section 525(a) of the statute requires representation in reference to "statewide panels." However, the Secretary continues to interpret this requirement to apply to all selection panels, whether they are newly appointed 7-member statewide panels or existing agencies or panels. Moreover, section 525(a) of the statute also requires that existing agencies and panels be approved by the Secretary, and the Secretary believes as a matter of policy that all selection panels should meet the representation requirements.

The Secretary agrees with the commenter that one panel member may meet more than one of the representation requirements. In addition, the Secretary believes that former teachers and school administrators can meet the representation requirements. For example, a school administrator who is a former special education teacher could meet both the requirement for representation of special education teachers and the requirement for representation of administrators.

Changes: None.

Evaluation Requirements (§ 653.11(d)(2)(vi) and (vii))

Comment: One commenter expressed the view that requiring a State agency to assure in its application that it will cooperate with the Secretary in "any" evaluation of its project and provide "any" information or reports required by the Secretary might lead to unreasonable demands. The commenter recommended modifying these provisions by removing the word "any" and instead requiring cooperation in "an" evaluation and the provision of "program information or reports required by the Secretary."

Discussion: The evaluation requirements under this program are consistent with the requirement in the Education Department General Administrative Regulations (EDGAR) that a grantee cooperate in "any" evaluation of a program by the Secretary (34 CFR 76.591). In light of the extensive evaluation requirements in the statute, the Secretary declines to modify the evaluation requirements for applicants under this program.

Changes: None.

Eligibility Requirements: Scheduled to Graduate Within Three Months (§ 653.41(b)(2))

Comment: One commenter stated that the requirement limiting the eligibility of secondary school students to those scheduled to graduate from secondary school within three months of the date of the award is overly restrictive and would preclude early notification. The commenter recommended revising the provision to require that the applicant be scheduled to graduate by the end of the present school term or within five months of the date of the award.

Discussion: The Secretary agrees with the commenter that the three-month period provided in the proposed regulations is unnecessarily restrictive.

Changes: Paragraph (b)(2) of § 653.41 has been revised to provide that in order to be eligible a secondary school student must be scheduled to graduate by the end of the secondary school year in which the award is made.

Eligibility: Top Ten Percent Requirements (§ 653.41(c)(1))

Comment: Several commenters objected to the provision that limits eligibility to students who graduate in the top ten percent of their class or receive equivalent GED test scores. In particular, commenters were concerned that the ten percent requirements would eliminate from eligibility some adult candidates who are returning to college after taking time off and who were not in the top ten percent of their class during high school but would make excellent teachers for other reasons. Some commenters were also concerned that this requirement would have a discriminatory impact on minority students.

Discussion: The top ten percent requirement is taken from section 525(b) of the statute, and the Secretary does not have the authority to change the requirement in the regulations. The Secretary notes that section 523(d)(6) of the statute also requires States to target racial and ethnic minorities for special consideration for scholarships under this program, which will counter any potentially discriminatory impact of the ten percent requirement on minority students.

Changes: None.

Selection Criteria: Responsibility for Developing (§ 653.42)

Comment: Several commenters objected to the provisions in the regulations that require the State educational agency (SEA) to develop the selection criteria. The commenters recommended that these provisions be modified to require the State agency to develop the selection criteria because the SEA is not the agency responsible for administering this program.

Discussion: The requirement in paragraph (a) of § 653.42 of the regulations that the SEA develop the selection criteria in consultation with the State higher education agency is taken directly from section 523(c) of the statute. The Secretary does not have the authority to modify this requirement in the regulations. However, paragraph (b) of § 653.42, which requires the SEA to solicit views of other parties in the development of the selection criteria, goes beyond the express statutory requirement that the State solicit those views. The Secretary interpreted the statutory requirement to mean the SEA because the SEA is the agency of the State that is responsible for developing the selection criteria. However, the Secretary agrees that under the statute, the State could solicit those views through other channels.

Changes: Paragraphs (b)(1) and (b)(2) of § 653.42 have been revised to replace references to "SEA" with "State."

Special Consideration Requirements (§ 653.42(c))

Comment: A number of commenters were concerned about the special consideration requirements. A few commenters objected to the 75 percent requirement as too high. Many of the commenters wondered what happens if there are not enough eligible applicants who meet the special consideration criteria to satisfy the 75 percent requirement. Several commenters recommended that States be permitted to carry over funds that they cannot award because they do not have enough special consideration applicants.

Some commenters requested that the regulations be revised to clarify procedures for implementing the special consideration provisions. For example, one commenter recommended that the regulations require student certifications as a basis for special consideration, and another commenter requested that the regulations clarify that the 75 percent requirement applies only to new awards each year. One commenter objected to the reference in the regulations to a "two-part" selection process as overly restrictive, and recommended removing it. Another commenter wrote in favor of the two-part selection process.

Discussion: Section 525(c) of the statute authorizes the Secretary to waive the special consideration requirements for not more than 25 percent of the individuals receiving scholarships under this part. The Secretary believes the criteria for special consideration are sufficiently numerous and broad that if properly publicized, explained, and incorporated into the scholarship application, States should not have trouble attracting applicants who meet at least one of them. However, under the Education Department General Administrative Regulations (EDGAR), States may carry over funds not awarded in one award year to the following award year (34 CFR 76.705).

The Secretary does not believe it is necessary to revise the regulations to set out additional procedures for implementing the special consideration criteria. Section 653.42(c) of the regulations is clear that 75 percent of the scholars selected each year must meet the special consideration criteria. Continuing scholars do not need to be re-selected each year. The Secretary believes the certification procedure recommended by one commenter is an appropriate method for implementing the special consideration requirements, but leaves it to each State to establish its own procedures.

The Secretary agrees with the commenter that objected to the reference in the regulations to a "two-part" selection process. Although the Secretary believes a two-part selection process would be an effective method for implementing the special consideration criteria, the Secretary does not believe it is necessary to require that States establish a "two-part" process.

Changes: The term "two-part" has been removed from paragraph (c)(4) of § 653.42 of the regulations.

Priority for Scholars Who Intend to Attend In-State Institutions or Teach In-State (§ 653.42)

Comment: A few commenters suggested that States be permitted to develop selection criteria that give priority to students who express an intent to attend an in-State institution or to teach in the State where the award is made. The commenters expressed the view that an in-State priority would be consistent with the emphasis in the statute and the regulations on addressing the present and projected teacher shortage areas of the States.

Discussion: Although an in-State priority may be a useful mechanism for reducing teacher shortage areas in a State, the Secretary believes that restricting the options of scholars, both in terms of the institution they attend and the State in which they will live and teach after they graduate, would be counter-productive to the primary purpose of the program, which is to attract outstanding secondary school graduates into teaching careers.

Changes: None.

Scholarship Agreement: Teaching Obligation Period (§ 653.50(a)(3))

Comment: One commenter recommended that the ten-year period for scholars to meet their teaching obligation be adjusted down for scholars who receive less than four years of scholarship funds.

Discussion: The Secretary does not believe it is necessary to revise the regulations because they already contain provisions to make adjustments based on whether a scholar fulfills his or her obligations under the scholarship agreement. For example, a scholar who receives less than four years of scholarship funds because the scholar did not continue to pursue a course of study leading to teacher certification would enter repayment status six months after the scholar was no longer enrolled in such a course of study, unless the scholar filed for and received a deferment under § 653.62(g). Scholars in repayment are required to pay no less than $1,200 annually, unless the State grants them a waiver under § 653.62(b)(2)(ii). Accordingly, a scholar who did not continue a course of study leading to teacher certification would have less time to pay back the scholarship funds. On the other hand, scholars who do not receive four years of scholarship funds because they do not meet the other continuing eligibility criteria, such as satisfactory progress or full-time enrollment, would not be required to enter repayment status early, as long as they continued to pursue a course of study leading to teacher certification. However, if those students never teach, they will be required to pay more interest on their loan because interest will accrue from the date of the first scholarship payment under § 653.62(c)(1)(ii).

Changes: None.

Maintaining Satisfactory Progress (§ 653.51)

Comment: Several commenters recommended that the continuing eligibility criteria requiring scholars to maintain satisfactory progress be strengthened to require scholars to maintain a 3.0 grade point average. Commenters pointed out that scholars are selected based on outstanding academic performance and that students who maintain only minimum requirements for satisfactory progress may have difficulty finding teaching positions.

Discussion: The Secretary understands the commenters concerns, but declines to incorporate a 3.0 standard into the regulations. A 3.0 grade point average may be more difficult to maintain at one institution than another. The Secretary believes satisfactory progress is best determined by each institution.

Changes: None.

Other Federal Student Financial Assistance (§ 653.51(b))

Comment: Several commenters asked for clarification of whether receipt of an award under this program can result in the reduction of a Federal Pell grant.

Discussion: Under section 524(b) of the statute, funds awarded under this program must be considered in determining eligibility for student financial assistance under Title IV of the HEA, including a Federal Pell grant. Moreover, section 524(c) requires that a scholarship under this program not be reduced on the basis of a student's receipt of other Federal financial assistance. Taken together, these provisions call for the reduction of other forms of Federal assistance under title IV, including a Federal Pell grant, before a scholarship under this program.

Changes: None.

Teacher Shortage Areas (§ 653.61)

Comment: Some commenters expressed the view that it is unfair to disallow a scholar the benefit of a reduced teaching obligation if the scholar pursues certification in an area that was publicized as a teacher shortage area at the time the scholar first received the scholarship, but was removed from the list before the scholar started teaching. The commenters recommended expanding the reduction benefit to include teaching in an area that was a teacher shortage area when a scholar first began seeking a teaching degree.

A few commenters also objected to the provision in the regulations that requires scholars to obtain a certification that they are teaching in a teacher shortage area from the principal in the school in which they are teaching. Those commenters suggested that the determination should be made by the State agency in reference to the federally approved list. One commenter stated that the superintendent, rather than the principal, should be the official responsible for the certification.

Discussion: Section 523(b)(5)(A) of the statute provides for a reduction in the teaching benefit for individuals who "teach" in a shortage area established by the Secretary. The Secretary does not interpret the statutory provision to include individuals who pursue certification in a teacher shortage area that is removed from the list before they ever teach. In contrast, the Secretary believes it is consistent with statutory intent to provide for continuation of the reduction benefit for individuals who teach in areas that are approved teacher shortage areas when they start teaching and are subsequently removed from the list because those individuals did "teach" in shortage areas, and they should not be penalized for their contribution to the elimination of those shortage areas.

The Secretary does not agree that the principal certification requirement should be removed from this section of the regulations because the State agency is not in a position to certify that a scholar is teaching in a particular area. The Secretary believes that the definition of principal is sufficiently broad to cover variations of responsibilities and authority in particular districts.

Changes: None.

Deferment of Repayment Status (§ 653.62(g))

Comment: Several commenters recommended that the deferment provisions be expanded to include deferments for Peace Corps and VISTA service so that scholars are not discouraged from serving in Federal public service programs.

Discussion: The Secretary agrees that deferment of repayment status would be appropriate during periods when individuals are participating in Federal public service programs.

Changes: Paragraph (g)(2) of § 653.62 has been revised to add deferments for scholars who are serving as members of the Peace Corps or VISTA for a period not in excess of three years.

Paperwork Burden (§§ 653.11 and 653.42)

Comment: Two commenters expressed the view that the paperwork burden on States exceeds the estimated average of five hours. One commenter stated that the State application preparation takes 24 hours. The other commenter stated that it averages 2 to 3 days, noting that many offices are not computerized. One commenter recommended that a survey of respondents be done to ascertain the average.

Discussion: The Secretary agrees that the average paperwork burden is likely to exceed five hours.

Changes: The estimated average paperwork burden has been increased from five to twelve hours.

Executive Order 12291

These regulations have been reviewed in accordance with Executive Order 12291. They are not classified as major because they do not meet the criteria for major regulations established in the order.

Intergovernmental Review

This program is subject to the requirements of Executive Order 12372 and the regulations in 34 CFR part 79. The objective of the Executive order is to foster an intergovernmental partnership and a strengthened federalism by relying on processes developed by State and local governments for coordination and review of proposed Federal financial assistance.

In accordance with the order, this document is intended to provide early notification of the Department's specific plans and actions for this program.

Assessment of Educational Impact

In the NPRM, the Secretary requested comments on whether the proposed regulations would require transmission of information that is being gathered by or is available from any other agency or authority of the United States.

Based on the response to the proposed regulations and on its own review, the Department has determined that the regulations in this document do not require transmission of information that is being gathered by or is available from any other agency or authority of the United States.

List of Subjects in 34 CFR Part 653

Education, Grant programs-education, State administered education, Student aid.

(Catalog of Federal Domestic Assistance Number 84.176—Paul Douglas Teacher Scholarship Program)

Dated: August 5, 1993.

Richard W. Riley,

Secretary of Education.

The Secretary amends title 34 of the Code of Federal Regulations by revising part 653 to read as follows:

PART 653—PAUL DOUGLAS TEACHER SCHOLARSHIP PROGRAM

Subpart A—General

Sec.

653.1 What is the Paul Douglas Teacher Scholarship Program?
653.2 Who is eligible for an award?
653.3 What kind of activity may be assisted?
653.4 What regulations apply?
653.5 What definitions apply?

Subpart B—How Does a State Apply for a Grant?

653.10 What must a State do to apply for a grant?
653.11 What is the content of a grant application?

Subpart C—How Does the Secretary Make a Grant to a State?

653.20 How does the Secretary approve a grant application?
653.21 How does the Secretary determine the amount of a grant to a State?

Subpart D—How Does a Student Apply for a Scholarship?

653.30 What must a student do to apply for a scholarship?
653.31 Where does a student obtain an application?

Subpart E—How Does a State Select Scholars?

653.40 How does the selection panel select scholars?
653.41 Who is eligible to be selected as a scholar?
653.42 What are the selection criteria and procedures?

Subpart F—What Are the Scholarship Conditions?

653.50 What agreement must a scholar have with the State Agency?
653.51 What are the requirements for a scholar to receive scholarship payments?

Subpart G—What Post-Award Conditions Must Be Met by State Agencies and Scholars?

653.60 What requirements must a State Agency meet in the administration of this program?
653.61 How does a scholar fulfill the teaching obligation under this program?
653.62 What are the consequences of a scholar's noncompliance with the scholarship agreement?

Authority: 20 U.S.C. 1104–1104k, unless otherwise noted.

Subpart A—General

§ 653.1 What is the Paul Douglas Teacher Scholarship Program?

Under the Paul Douglas Teacher Scholarship Program the Secretary makes grants to the States to award scholarships to outstanding secondary school graduates who demonstrate an interest in teaching to enable and encourage them to pursue teaching careers at the preschool, elementary, or secondary level.

(Authority: 20 U.S.C. 1104)

§ 653.2 Who is eligible for an award?

(a) States are eligible for grants under this program.

(b) Students who meet the eligibility criteria in § 653.41 are eligible to be selected for scholarships under this program.

(Authority: 20 U.S.C. 1104 and 1104b)

§ 653.3 What kind of activity may be assisted?

A State may use its funds under this program, including principal and interest payments it receives from scholars under § 653.62, only for making scholarship payments to scholars.

(Authority: 20 U.S.C. 1104)

§ 653.4 What regulations apply?

The following regulations apply to this program:

(a) The Education Department General Administrative Regulations (EDGAR) as follows:

(1) 34 CFR 75.60–75.62 (regarding the ineligibility of certain individuals to receive assistance under part 75 (Direct Grant Programs)).

(2) 34 CFR part 76 (State-Administered Programs).

(3) 34 CFR part 77 (Definitions that Apply to Department Regulations).

(4) 34 CFR part 79 (Intergovernmental Review of Department of Education Programs and Activities).

(5) 34 CFR part 80 (Uniform Administrative Requirements for Grants and Cooperative Agreements to State and Local Governments).

(6) 34 CFR part 82 (New Restrictions on Lobbying).

(7) 34 CFR part 85 (Governmentwide Debarment and Suspension (Nonprocurement) and Governmentwide Requirements for Drug-Free Workplace (Grants)).

(8) 34 CFR part 86 (Drug-Free Schools and Campuses).

(b) The regulations in this part 653.

(Authority: 20 U.S.C. 1104 *et seq.*)

§ 653.5 What definitions apply?

(a) *Definitions in the HEA.*

(1) The following term used in this part is defined in section 472 of the HEA:

Cost of attendance

(2) The following term used in this part is defined in section 1201(a) of the HEA:

Institution of higher education

(b) *Definitions in EDGAR.* The following terms used in this part are defined in 34 CFR 77.1:

Application
Department
EDGAR
Elementary school
Local educational agency (LEA)
Nonprofit
Preschool
Private
Public
Secondary school
Secretary
State
State educational agency (SEA)

(c) *Other definitions.* The following definitions also apply to this part:

Academic year means a period of time during which a full-time student at an institution of higher education is expected to complete the equivalent of one of the following:

(i) Two semesters.

(ii) Two trimesters.

(iii) Three quarters.

Award year means the period of time from July 1 of one year through June 30 of the following year.

Federally approved teacher shortage areas means areas that are—

(i)(A) Geographic regions in a State in which there are shortages of elementary or secondary school teachers; or

(B) Specific grade levels or academic, instructional, subject matter, or discipline classifications in which there are statewide shortages of elementary or secondary school teachers; and

(ii) Designated by the Secretary in accordance with 34 CFR 682.210(j) (6) or (7), except that the Secretary gives special consideration to areas—

(A) In which emergency certification of individuals is being used to correct teacher shortages; and

(B) In States that have retirement laws permitting early retirement.

Full-time student means a student enrolled in an institution of higher education who is carrying a full-time academic workload as determined by the institution under standards applicable to all students enrolled in that student's program.

Geographically isolated area means an area that lacks close economic and social relationships with an urbanized area, as defined by the Bureau of the Census, that is not easily accessible by public transportation.

Group historically underrepresented in teaching means a group of individuals whose representation among teachers in the State is proportionately less than its representation among the general population in the State, as determined by the State, over a significant period of time.

HEA means the Higher Education Act of 1965, as amended.

Inner city means the central or most densely populated region within an incorporated city that has a population of 50,000 or more.

Limited English proficient students means students—

(i)(A) Who were not born in the United States;

(B) Whose parents normally use a language other than English;

(C) Who come from environments in which a language other than English is dominant; or

(D) Who are American Indian and Alaskan Natives and come from environments where a language other than English has had a significant impact on their level of English language proficiency; and

(ii) Who by reason thereof, have sufficient difficulty speaking, reading, writing, or understanding the English language to deny these students the opportunity to learn successfully in classrooms in which English is the language of instruction, or to participate fully in society.

Participating State means a State that has submitted a grant application that has been approved by the Secretary under this program.

Preschool-age children means children who are younger than the age at which their State of residence provides elementary education.

Present and projected teacher shortage and surplus areas means present and projected teacher shortage and surplus areas in a State, as determined by the State on the basis of the demand for and supply of qualified early childhood, elementary, and secondary teachers in the State and the demand for and supply of teachers with

training in specific academic disciplines.

Principal means a school principal or the principal's designee.

Related services has the meaning given that term in section 602(a)(17) of the Individuals with Disabilities Education Act.

Rural means any area that is outside an urbanized area, as defined by the Bureau of the Census, and outside any place, incorporated or Bureau of the Census designated, having a population of 2,500 or more.

Scholar means an individual who is selected as a Paul Douglas Teacher Scholar.

Scholarship means an award made to a scholar under this part.

School-age population means the population ages 5 to 17.

Students from low-income backgrounds means students from families whose taxable income for the preceding year did not exceed 150 percent of an amount equal to the poverty level determined by using criteria of poverty established by the Bureau of Census of the U.S. Department of Commerce.

Students with disabilities has the meaning given the term "children with disabilities" in section 602(a)(1) of the Individuals with Disabilities Education Act.

Students who are from disadvantaged backgrounds means students—

(i) From low-income backgrounds;

(ii) Who are ethnic or racial minorities; or

(iii) With disabilities.

Teach on a full-time basis means teach the same number of hours required of teachers who have full-time contracts, as determined by the institution or agency in which an individual is teaching, for a minimum of one academic term, as defined by the institution or agency in which an individual is teaching.

(Authority: 20 U.S.C. 1104 *et seq.*, 1141)

Subpart B—How Does a State Apply for a Grant?

§653.10 What must a State do to apply for a grant?

(a) To apply for a grant under this program, a State must submit an application to the Secretary—for review and approval—by the deadline announced annually by the Secretary in the Federal Register.

(b) On the Secretary's approval of its initial grant application for fiscal year 1993 or thereafter, a State need not submit new applications to be considered for funding under this program in subsequent years, except that any changes in the State's program must be incorporated in a revised application which must be submitted to the Secretary for approval.

(Authority: 20 U.S.C. 1104b)

§653.11 What is the content of a grant application?

A State's grant application must—

(a) Identify—

(1) The State agency responsible for administering this program (SA), which must be—

(i) The State agency that administers the State Student Incentive Grants Program under title IV, part A, subpart 4 of the HEA;

(ii) The State agency that administers the Federal Family Education Loan Program and with which the Secretary has an agreement under section 428(b) of the HEA; or

(iii) Any other appropriate State agency approved by the Secretary; and

(2) The composition of the selection panel responsible for selecting scholars under this program, which must be—

(i)(A) A seven-member statewide panel appointed by the chief State elected official acting in consultation with the State educational agency (SEA); or

(B) An existing grant agency or panel designated by the chief State elected official and approved by the Secretary; and

(ii) Representative of school administrators, teachers, including preschool and special education teachers, and parents;

(b) Describe a program of activities for carrying out the purposes of this program in accordance with the requirements of this part, including—

(1) The criteria and procedures the selection panel plans to use to select eligible scholars, including an explanation of how the criteria and procedures meet the requirements of §653.42; and

(2) The criteria and procedures the SA plans to use to—

(i) Publicize the availability of scholarships to secondary school students in the State;

(ii) Notify scholars of their selection; and

(iii) Inform scholars annually, on disbursement of the scholarship funds, of—

(A) The State's present and projected teacher shortage and surplus areas; and

(B) The federally approved teacher shortage areas within the State;

(iv) Monitor the continuing eligibility of scholars;

(v) Disburse scholarship funds;

(vi) Collect funds improperly disbursed;

(vii) Monitor scholars' compliance with the teaching obligation requirements; and

(viii) Administer the repayment provisions under §653.62;

(c) Provide a copy of—

(1) The scholarship application form, which must disclose the terms and conditions of the scholarship agreement; and

(2) The scholarship agreement form, containing the terms and conditions provided in §653.50; and

(d) Provide assurances that—

(1) The selection panel—

(i) Is representative of administrators, teachers (including preschool and special education teachers), and parents, as required by paragraph (a)(2)(ii) of this section; and

(ii) Will select scholars who are eligible under §653.41; and

(2) The SA will—

(i) Comply with the criteria and procedures described in the State's approved grant application;

(ii) Submit for the Secretary's prior written approval any changes in the criteria and procedures described in its approved grant application;

(iii) Make particular efforts to attract students from low-income backgrounds, ethnic and racial minority students, students with disabilities, students from groups historically underrepresented in teaching, students who express a willingness or desire to teach in rural schools, urban schools, or schools having less than average academic results or serving large numbers of economically disadvantaged students, or women or minority students who show interest in pursuing teaching careers in mathematics and science and who are underrepresented in those fields;

(iv) Disburse no scholarship funds to scholars who do not meet the requirements of §653.51;

(v) Expend the funds it receives under this program only as provided in §653.3;

(vi) Cooperate with the Secretary in any evaluation of its project; and

(vii) Provide the Secretary with any program information or reports required by the Secretary.

(Authority: 20 U.S.C. 1104b, 1104d, 1104i)

Subpart C—How Does the Secretary Make a Grant to a State?

§653.20 How does the Secretary approve a grant application?

The Secretary approves a grant application if it contains all of the information and assurances required in §653.11 and is in compliance with the requirements of this part.

(Authority: 20 U.S.C. 1104b)

§ 653.21 How does the Secretary determine the amount of a grant to a State?

From the funds appropriated for this program, the Secretary determines the amount of the grant to each participating State on the basis of the ratio of the school-age population in that State compared to the school-age population in all participating States. The Secretary determines the number of persons in a State on the basis of the most recently available data from the Bureau of the Census.

(Authority: 20 U.S.C. 1104a)

Subpart D—How Does a Student Apply for a Scholarship?

§ 653.30 What must a student do to apply for a scholarship?

To apply for a scholarship under this program, a student must follow the application procedures established by the SA in the student's State of legal residence.

(Authority: 20 U.S.C. 1104d)

§ 653.31 Where does a student obtain an application?

The SEA shall make applications available to high schools in the State and in other locations convenient to students, parents, and other interested parties.

(Authority: 20 U.S.C. 1104d)

Subpart E—How Does a State Select Scholars?

§ 653.40 How does the selection panel select scholars?

The selection panel identified by a State in its grant application, as provided in § 653.11(a)(2), shall select scholars from among students who meet the eligibility criteria in § 653.41 on the basis of selection criteria and procedures developed in accordance with § 653.42.

(Authority: 20 U.S.C. 1104d)

§ 653.41 Who is eligible to be selected as a scholar?

A student is eligible to be selected as a scholar under this program only if he or she—

(a)(1) Is a United States citizen or national;

(2) Provides evidence from the U.S. Immigration and Naturalization Service that he or she—

(i) Is a permanent resident of the United States; or

(ii) Is in the United States for other than a temporary purpose with the intention of becoming a citizen or permanent resident; or

(3) Is a permanent resident of the Trust Territory of the Pacific Islands (Palau);

(b)(1) Has graduated from secondary school;

(2) Is scheduled to graduate from secondary school by the end of the school term in which the award is made; or

(3) Has received a certificate of high school equivalency for successfully completing the General Educational Development (GED) test;

(c)(1) Ranks in the top 10 percent of his or her graduating class; or

(2) Has received GED test scores that the State recognizes as equivalent to ranking in the top 10 percent of the secondary school graduates in the State, or nationally, in the academic year for which the eligibility determination is being made;

(d) Is not ineligible to receive assistance as a result of default on a Federal student loan or otherwise, as provided under 34 CFR 75.60–75.62; and

(e) Intends to pursue a teaching career at the preschool, elementary, or secondary level.

(Authority: 20 U.S.C. 1104, 1104d)

§ 653.42 What are the selection criteria and procedures?

(a) The SEA shall develop the selection criteria and procedures in cooperation with the State higher education agency and in consideration of the views of local educational agencies (LEAs), private educational institutions, and other interested parties.

(b)(1) The State shall solicit the views of LEAs, private educational institutions, and other interested parties by—

(i) Written comments; and

(ii) Publication of proposed selection criteria and procedures prior to implementation.

(2) The State may also solicit views by—

(i) Public hearings on the teaching needs of elementary and secondary schools in the State (including the number of new teachers needed, the expected supply of new teachers, and the shortages in the State of teachers with specific preparation); or

(ii) Other methods, provided that the SEA documents these methods and the views obtained through these methods.

(c) The selection criteria and procedures developed in accordance with paragraphs (a) and (b) of this section must be designed to—

(1) Ensure that scholars meet the eligibility requirements in § 653.41;

(2) Address the present and projected teacher shortage areas of the State;

(3) Select scholars without regard to whether they plan to attend publicly or privately controlled institutions; and

(4)(i) Select at least 75 percent of the scholars on the basis of selection criteria that include criteria to give special consideration to students who—

(A) Intend to teach or provide related services to students with disabilities;

(B) Intend to teach limited English proficient students;

(C) Intend to teach preschool-age children;

(D) Intend to teach in schools serving inner city, rural, or geographically isolated areas;

(E) Intend to teach in curricular areas or geographic areas that are present teacher shortage areas; or

(F) Are from disadvantaged backgrounds and from groups historically underrepresented in the teaching profession or in the curricular areas in which they are preparing to teach; and

(ii) Select the remaining scholars on the basis of the same selection criteria used to select scholars under paragraph (c)(4)(i) of this section, except that the special consideration criteria may be excluded.

(Authority: 20 U.S.C. 1104b, 1104d)

Subpart F—What Are the Scholarship Conditions?

§ 653.50 What agreement must a scholar have with the State Agency?

(a) To receive scholarship funds, a scholar must enter into an agreement with the SA under which he or she agrees to—

(1) Pursue a course of study leading to certification as a teacher at the preschool, elementary, or secondary level;

(2) Teach on a full-time basis for a period of not less than—

(i) Two years for each year for which scholarship assistance is received in a public or private nonprofit preschool, elementary school, or secondary school in any State, including a private nonprofit school that serves students with disabilities or limited English proficient students; or

(ii) One year for each year for which scholarship assistance is received in a federally approved teacher shortage area;

(3) Fulfill the teaching obligation described in paragraph (a)(2) of this section within ten years after completing the postsecondary education degree program for which the scholarship was awarded;

(4) Provide the SA with the evidence of compliance with paragraph (a)(2) of this section that is required under

§ 653.61, and with evidence of compliance with paragraphs (a)(1) and (3) of this section and § 653.51(a) as required by the SA;

(5) Repay all or part of the scholarship plus interest and reasonable collection fees, if applicable, as specified in § 653.62, if the SA determines that the conditions of paragraph (a) (1), (2), or (3) of this section are not met; and

(6) Provide scholarship information, as requested by the Secretary, for an evaluation of this program.

(b) The agreement must include a description of the procedures under which—

(1) The provisions of § 653.62 (g) through (k) will be implemented; and

(2) A scholar may appeal any determination of noncompliance with any provisions under this part.

(Authority: 20 U.S.C. 1104b)

§ 653.51 What are the requirements for a scholar to receive scholarship payments?

(a) Except as provided in paragraph (b) of this section, the SA shall disburse $5,000 per academic year for a maximum of four academic years to each scholar who—

(1) Is selected in accordance with the criteria established under § 653.42;

(2) Signs a scholarship agreement in accordance with § 653.50;

(3) Is enrolled as a full-time student in an institution of higher education;

(4) Is pursuing a course of study leading to certification as a teacher at the preschool, elementary, or secondary level, as determined by the SA, but not including graduate study that is not required for initial teacher certification; and

(5) Is maintaining satisfactory progress toward a degree, or, if the student already has a degree, toward teacher certification, as determined by the institution of higher education the student is attending.

(b)(1) In no case may a student receive a scholarship under this program that exceeds the cost of attendance at the institution in which the scholar is enrolled.

(2) A scholarship awarded under this part may not be reduced on the basis of the student's receipt of other forms of Federal student financial assistance, but must be taken into account in determining the eligibility of the student for those other forms of Federal student financial assistance.

(Authority: 20 U.S.C. 1104c, 1104e)

Subpart G—What Post-Award Conditions Must Be Met by State Agencies and Scholars?

§ 653.60 What requirements must a State Agency meet in the administration of this program?

(a) To receive payments under this program, an SA must—

(1) Comply with the criteria, procedures, and assurances in the State's approved grant application;

(2) Disburse scholarship funds in accordance with § 653.51;

(3) Collect any scholarship funds improperly disbursed;

(4) Comply with all requests from the Secretary for reports or information necessary to carry out the Secretary's functions under this part;

(5) Establish and implement policies and procedures that are necessary to administer the repayment provisions of § 653.62 and, in cases of noncompliance with these provisions, implement collection and litigation procedures consistent with 34 CFR Part 682; and

(6) Except as provided in paragraph (b) of this section, expend in each award year all—

(i) Scholarship funds received from the Secretary for that award year; and

(ii) Funds received prior to that award year for principal and interest payments collected under the provisions of § 653.62.

(b) After awarding all scholarships for payment during an award year, as required by paragraph (a)(6) of this section, an SA may reserve for expenditure in the following award year any remaining amount of funds that is less than the amount required for a scholarship, as well as any funds that were awarded but were returned or not expended.

(Authority: 20 U.S.C. 1104b, 1104f, 1104i)

§ 653.61 How does a scholar fulfill the teaching obligation under this program?

(a) To fulfill the teaching obligation required under § 653.50(a)(2), a scholar must provide to the SA in the State from which he or she received scholarship funds a statement from the principal of the public or nonprofit private preschool, elementary, or secondary school in which the scholar is teaching, certifying that the scholar is employed as a full-time teacher.

(b) To qualify for a reduction in the teaching obligation for teaching in a federally approved shortage area, as provided under § 653.50(a)(2)(ii)—

(1) A scholar who is teaching in the same State from which he or she received scholarship funds must provide to the SA in that State a statement certifying that the scholar is teaching in a federally approved teacher shortage area, as determined by the SA; and

(2) A scholar who is teaching in a State other than the one from which he or she received scholarship funds must do one of the following:

(i) If the scholar is teaching in a State in which the chief State school officer has complied with paragraph (c) of this section and provides an annual listing of federally approved teacher shortage areas to the principals in the State whose schools are affected by the federally approved list, the scholar may obtain a certification that he or she is teaching in a teacher shortage area from his or her school's principal.

(ii) If a scholar is teaching in a State in which the chief State school officer has not complied with paragraph (c) of this section or does not provide an annual listing of federally approved teacher shortage areas to the principals in the State whose schools are affected by the federally approved list, the scholar must obtain certification that he or she is teaching in a teacher shortage area from the chief State school officer for the State in which the scholar is teaching.

(c) For a scholar to obtain a certification under paragraph (b)(2)(i) of this section, the State's chief state school officer must previously have notified the Secretary, by means of a one-time written assurance, that he or she provides annually a listing of the federally approved teacher shortage areas to the principals in the State whose schools are affected.

(d) If a scholar who receives a reduction in his or her teaching obligation continues to teach in the same area in which he or she was teaching when the teaching obligation was originally reduced, the scholar continues to qualify for the reduction in the teaching obligation even if the area ceases to be designated a teacher shortage area on the federally approved list, provided that the scholar provides the SA with a statement from the principal of the school in which he or she is teaching, certifying that the scholar continues to be employed as a full-time teacher in the same area in which he or she was teaching when the teaching obligation was originally reduced.

(Authority: 20 U.S.C. 1104b, 1104j)

§ 653.62 What are the consequences of a scholar's noncompliance with the scholarship agreement?

(a) A scholar found by an SA to be in noncompliance with the agreement entered into under § 653.50 shall—

(1) Repay the amount of scholarship funds received, prorated according to the fraction of the teaching obligation not completed, as determined by the SA in accordance with paragraph (b) of this section;

(2) Pay a simple, per annum interest charge on the outstanding principal, as determined by the SA in accordance with paragraph (c) of this section; and

(3) Pay all reasonable collection costs as determined by the SA, in accordance with 34 CFR part 682.

(b) A scholar required by paragraph (a) of this section to repay his or her scholarship shall—

(1) Enter repayment status on the first day of the first calendar month after—

(i) The State has determined that the scholar is no longer pursuing a course of study leading to certification as a teacher at the preschool, elementary, or secondary level, but not before six months has elapsed since the scholar was enrolled full-time in a course of study;

(ii) The date the scholar informs the SA that he or she does not plan to fulfill the teaching obligation; or

(iii) The latest date on which the scholar must have begun teaching in order to have completed the teaching obligation within ten years after completing the postsecondary education for which the scholarship was awarded, as determined by the SA; and

(2) Make monthly or quarterly payments to the SA that—

(i) Cover principal, interest, and collection costs according to a schedule established by the SA that calls for complete repayment within ten years after the scholar enters repayment status, except as provided in paragraph (b)(2)(ii) of this section; and

(ii) Amount annually to no less than $1,200 or the unpaid balance, whichever is less, unless the scholar's inability to pay this amount because of his or her financial condition has been established to the SA's satisfaction.

(c) The interest charge referred to in paragraph (a)(2) of this section accrues from—

(1) The date of the initial scholarship payment if the SA has determined that the scholar—

(i) Is no longer pursuing a course of study leading to certification as a teacher at the preschool, elementary, or secondary level; or

(ii) Completed a course of study leading to certification as a teacher at the preschool, elementary, or secondary level, but never taught; or

(2) The day after the last day of the scholarship period for which the teaching obligation has been fulfilled.

(d)(1) The interest charge referred to in paragraph (a)(2) of this section is calculated annually for the program for the twelve-month period extending from July 1 of each year through June 30 of the subsequent year and is set at a rate that is the greater of the following rates established pursuant to section 427A of the HEA for the same twelve-month period:

(i) The rate charged to new borrowers under the Robert T. Stafford Federal Student Loan Program (title IV, part B of the HEA).

(ii) The rate charged to new borrowers under the Federal Supplemental Loans for Students and Federal PLUS Programs (sections 428A and 428B of the HEA, respectively) as published annually in the **Federal Register**.

(2) For a scholar required to repay his or her scholarship—

(i) The interest charge applicable to the period extending from the date on which interest begins to accrue (determined in accordance with paragraph (c) of this section) until the date on which the scholar's repayment period begins (determined in accordance with paragraph (b) of this section) is adjusted annually and is set at the rate established for the program in accordance with paragraph (d)(1) of this section; and

(ii) The interest charge applicable during the repayment period is the rate established for the program in accordance with paragraph (d)(1) of this section that is in effect on the date on which the scholar's repayment period begins.

(e) The SA may not require a scholar to make repayments amounting to more than $1,200 annually unless higher payments are needed to complete the entire repayment within the ten-year period described in paragraph (b)(2) of this section.

(f) The SA shall capitalize any accrued interest at the time it establishes a scholar's repayment schedule.

(g) A scholar is not considered in violation of the repayment schedule established under paragraph (b) of this section during the time he or she is—

(1) Engaging in a full-time course of study at an institution of higher education;

(2) Serving on active duty as a member of the armed services of the United States, or serving as a member of VISTA or the Peace Corps, for a period not in excess of three years;

(3) Temporarily totally disabled, as established by the sworn affidavit of a qualified physician, for a period not in excess of three years;

(4) Unable to secure employment by reason of the care required by a disabled child, spouse, or parent for a period not in excess of twelve months;

(5) Seeking and unable to find full-time employment for a single period not to exceed twelve months; or

(6) Unable to satisfy the terms of the repayment schedule established by the SA under paragraph (b)(2)(i) of this section and is also seeking and unable to find full-time employment as a teacher in a public or private nonprofit preschool, elementary school, or secondary school for a single period not to exceed 27 months.

(h) To qualify for any of the exceptions in paragraph (g) of this section, a scholar must notify the SA of his or her claim to the exception and provide supporting documentation as required by the SA.

(i) During the time a scholar qualifies for any of the exceptions in paragraph (g) of this section, he or she need not make the scholarship repayments required by paragraph (b) of this section and interest does not accrue.

(j) The SA shall extend the ten-year scholarship repayment period established under paragraph (b) of this section by a period equal to the length of time a scholar meets any of the conditions listed in paragraph (g) of this section or if a scholar's inability to complete the scholarship repayments within this ten-year period because of his or her financial condition has been established to the SA's satisfaction.

(k) The SA shall cancel a scholar's repayment obligation if it determines that——

(1) The scholar is unable to teach on a full-time basis because he or she is permanently totally disabled, on the basis of a sworn affidavit of a qualified physician; or

(2) The scholar has died, on the basis of a death certificate or other evidence conclusive under State law.

(Authority: 20 U.S.C. 1104f, 1104g)

[FR Doc. 93–19264 Filed 8–10–93; 8:45 am]

BILLING CODE 4000–01–P

federal register

Wednesday
August 11, 1993

Part VI

Department of Education

Paul Douglas Teacher Scholarship Program; Notice

[CFDA No: 84.176A]

Paul Douglas Teacher Scholarship Program; Inviting Applications for New Grants for Fiscal Year (FY) 1993

Purpose of Program: To provide, through grants to States, scholarships to individuals who are outstanding secondary school graduates and who demonstrate an interest in teaching, in order to enable and encourage those individuals to pursue teaching careers in education at the preschool, elementary and secondary level.

Eligible Applicants: The 50 States, the District of Columbia, American Samoa, Guam, the Northern Mariana Islands, Puerto Rico, the Trust Territory of the Pacific Islands (Palau), and the Virgin Islands are eligible to apply for grants under this program.

Deadline for Transmittal of Applications: 9/10/93.

Deadline for Intergovernmental Review: 9/15/93.

Available Funds: $14,656,200.

Estimated Range of Awards: $1,247 to $1,724,709.

Estimated Average size of Awards: $293,124.

Estimated Number of Awards: 50.

Note: The Department is not bound by any estimates in this notice.

Project Period: Up to 12 months.

Budget Period: 12 months.

Applicable Regulations: (a) The regulations for this program in 34 CFR Part 653, as published in this issue of the **Federal Register**; and (b) The Education Department General Administrative Regulations (EDGAR) in 34 CFR parts 75.60–75.62, 76, 77, 79, 80, 82, 85, and 86.

For Applications or Further Information Contact: Ms. Valerie A. Hurry, U.S. Department of Education, 400 Maryland Avenue, SW., ROB–3, room 3022, Washington, DC 20202–5251. Telephone: (202) 708–9453. 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. 1104 to 1104k.

Dated: August 5, 1993.

David A. Longanecker,

Assistant Secretary for Postsecondary Education.

[FR Doc. 93–19263 Filed 8–10–93; 8:45 am]

BILLING CODE 4000–01–P

federal register

Wednesday
August 11, 1993

Part VII

Department of Education

34 CFR Part 99
Family Educational Rights and Privacy; Notice of Proposed Rulemaking

DEPARTMENT OF EDUCATION

34 CFR Part 99

RIN 1880–AA57

Family Educational Rights and Privacy

AGENCY: Department of Education.

ACTION: Notice of proposed rulemaking.

SUMMARY: The Secretary proposes to amend the regulations implementing the Family Educational Rights and Privacy Act (FERPA). These amendments are needed to implement a provision of the Higher Education Amendments of 1992, which excludes from the definition of "education records," and thereby from the restrictions of FERPA, records that are maintained by a law enforcement unit of an educational agency or institution that were created by that law enforcement unit for the purpose of law enforcement.

DATES: Comments must be received on or before September 27, 1993.

ADDRESSES: All comments concerning these proposed regulations should be addressed to LeRoy Rooker, Family Policy Compliance Office, Office of Human Resources and Administration, U.S. Department of Education, 400 Maryland Avenue SW., Washington, DC 20202–4605.

FOR FURTHER INFORMATION CONTACT: Ellen Campbell, (202) 732–1807. 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: This new provision was created by section 1555 of the Higher Education Amendments of 1992, Pub. L. 102–325, codified at 20 U.S.C. 1232g(a)(4)(B)(ii), which amended FERPA. Under previous law, as reflected in the current FERPA regulations, in order for the records of a law enforcement unit to be excluded from the definition of "education records," certain conditions had to be met. Primarily, the conditions were that officials of an agency or institution's law enforcement unit could not have access to that agency or institution's education records; that the records of the law enforcement unit had to be maintained separately from the education records of the agency or institution and for the sole purpose of law enforcement; and the records of the law enforcement unit could only be disclosed to law enforcement officials of the same jurisdiction. Although the phrase "law enforcement officials of the same jurisdiction" was not defined in the regulations, the Secretary has generally interpreted it to mean other law enforcement officials, in a similar locale, with a need to know.

However, over time it has become increasingly apparent that schools and their respective law enforcement units could not meet these restrictions and still effectively perform their responsibilities relating to ensuring campus safety. For instance, an institution's law enforcement unit would routinely share its records with other school officials involved in enforcement of campus rules and regulations, while also providing local police with crime incident reports and other records. Once the school's law enforcement unit released its records to other school officials, they became "education records" subject to FERPA. Subsequent release of these records to the local police, without first obtaining written consent from the student, as is required for disclosure of education records under FERPA, in effect violated the law.

Additionally, since the time the restrictions regarding law enforcement unit records were adopted, many States have adopted open records laws, several of which potentially conflict with FERPA by requiring disclosure of records maintained by campus law enforcement units at State institutions. As a result, many educational institutions have found themselves in perplexing situations, because of the privacy restrictions of FERPA, when requests for law enforcement unit records were submitted under the State open records law. Moreover, increasing crime and the public's desire to know more about campus crime intensified this conflict for educational agencies and institutions nationwide.

Because of public pressure and growing interest in safety on our Nation's school campuses, Congress amended FERPA to remove these conditions and to exempt from FERPA records that are maintained by a law enforcement unit of an educational agency or institution and were created by that law enforcement unit for the purpose of law enforcement. With this change in the law, educational agencies and institutions can now share education records with their law enforcement units without subjecting the law enforcement unit records to the requirements of FERPA. They may also disclose information about campus crime contained in law enforcement unit records to parents, students, the news media, and a variety of law enforcement authorities not directly associated with the agency or institution.

Specifically, this new provision excludes law enforcement unit records of an educational agency or institution from the above delineated privacy restrictions and other provisions of FERPA by removing the previous conditions imposed on the release of such records. Because law enforcement unit records are now not subject to FERPA's privacy restrictions, they may be disclosed by an educational agency or institution without the prior consent of the eligible students or parents. Educational agencies and institutions can now follow their own policies or applicable State laws regarding the disclosure of law enforcement unit records that are created and maintained by law enforcement units for the purpose of law enforcement.

The proposed regulations provide a definition of "law enforcement unit" and "records of a law enforcement unit." A definition of "disciplinary action or proceeding" has also been added under § 99.3 to provide guidance to an institution in distinguishing law enforcement unit records from disciplinary records, which have always been considered "education records" and not "records of a law enforcement unit" under FERPA. The term "disciplinary proceeding" is currently used in § 99.31(a)(13), which provides that prior consent is not required to disclose to an alleged victim of a crime of violence the results of any disciplinary proceeding conducted by an institution of postsecondary education against the alleged perpetrator of that crime. Otherwise, all other types of records of disciplinary proceedings are subject to FERPA's prior written consent requirement.

Executive Order 12291

These proposed regulations have been reviewed in accordance with Executive Order 12291. They are not classified as major because they do not meet the criteria for major regulations established in the order.

Regulatory Flexibility Act Certification

The Secretary certifies that these proposed regulations would not have a significant economic impact on a substantial number of small entities. The small entities affected would be small local educational agencies and institutions of postsecondary education. However, these regulations will not have any significant economic impact on the entities affected.

Paperwork Reduction Act of 1980

These proposed regulations have been examined under the Paperwork Reduction Act of 1980 and have been

found to contain no information collection requirements.

Invitation to Comment

Interested persons are invited to submit comments and recommendations regarding these proposed regulations.

The Secretary particularly requests comments on whether the new regulatory definitions of "law enforcement unit" and "records of a law enforcement unit" under § 99.3 are sufficiently clear and provide adequate guidance in interpreting and applying the statutory amendment. The Secretary also requests comments on the definition of "disciplinary action or proceeding" under § 99.3, which is provided to distinguish the types of records that are not "records of a law enforcement unit" and thus are not excluded from the definition of "education records" subject to FERPA. These proposed regulations, under the added provisions of § 99.8(c) (1) and (2), also provide guidance on permissible communications and disclosures between an educational agency or institution and its own law enforcement unit under FERPA. The Secretary requests comments on whether these provisions provide adequate guidance.

All comments submitted in response to these proposed regulations will be available for public inspection, during and after the comment period, in the Family Policy Compliance Office, 490 L'Enfant Plaza SW, 2100 Corridor, Washington, DC, between the hours of 8:30 a.m. and 4 p.m., Monday through Friday of each week except Federal holidays.

To assist the Department in complying with the specific requirements of Executive Order 12291 and the Paperwork Reduction Act of 1980 and their overall requirement of reducing regulatory burden, the Secretary invites comments on whether there may be further opportunities to reduce any regulatory burdens found in these proposed regulations.

Assessment of Educational Impact

The Secretary particularly requests comments on whether the proposed regulations in this document would require transmission of information that is being gathered by or is available from any other agency or authority of the United States.

List of Subjects in 34 CFR Part 99

Administrative practice and procedure, Education, Family educational rights, Privacy, Parents, Reporting and recordkeeping requirements, Students.

(Catalog of Federal Domestic Assistance Number does not apply)

Dated: May 4, 1993.

Richard W. Riley,

Secretary of Education.

The Secretary proposes to revise part 99 of title 34 of the Code of Federal Regulations as follows:

PART 99—FAMILY EDUCATIONAL RIGHTS AND PRIVACY

1. The authority citation for part 99 continues to read as follows:

Authority: 20 U.S.C. 1232g, unless otherwise noted.

2. Section 99.3 is amended by revising the definition of "Education records" and by adding a new definition of "Disciplinary action or proceeding" in alphabetical order to read as follows:

§ 99.3 What definitions apply to these regulations?

* * * * *

Disciplinary action or proceeding means the investigation, adjudication, or imposition of sanctions by an educational agency or institution with respect to an infraction or violation of the internal rules of conduct applicable to students of the agency or institution.

* * * * *

Education records.

* * * * *

(b) The term does not include—

* * * * *

(2) Records of the law enforcement unit of an educational agency or institution, subject to the provisions of § 99.8.

* * * * *

3. A new § 99.8 is added to read as follows:

§ 99.8 What provisions apply to records of a law enforcement unit?

(a) *Law enforcement unit* means any individual, office, department, division, or other component of an educational agency or institution that is authorized or designated by that agency or institution to enforce any local, State, or Federal law, or refer to appropriate authorities a matter for enforcement of any local, State, or Federal law. A component of an educational agency or institution does not lose its status as a "law enforcement unit" if it also performs other, non-law enforcement functions for the agency or institution, including investigation of incidents or conduct that might lead to disciplinary action or proceedings against a student.

(b)(1) *Records of a law enforcement unit* means only those records, files, documents, and other materials that are—

(i) Created by a law enforcement unit;

(ii) Created for a law enforcement purpose; and

(iii) Maintained by the law enforcement unit.

(2) "Records of a law enforcement unit" does not mean—

(i) Records relating to law enforcement that are maintained by a component of the educational agency or institution other than the law enforcement unit; and

(ii) Records relating to a disciplinary action or proceeding conducted by the educational agency or institution.

(c)(1) Nothing in the Act prohibits an educational agency or institution from contacting its law enforcement unit, orally or in writing, for the purpose of asking that unit to investigate a possible violation of, or to enforce, any local, State, or Federal law.

(2) Education records, and personally identifiable information contained in education records, do not lose their status as education records and remain subject to the Act, including the disclosure provisions of § 99.30, while in the possession of the law enforcement unit.

(d) The Act neither requires nor prohibits the disclosure by an educational agency or institution of its law enforcement unit records.

(Authority: 20 U.S.C. 1232g)

[FR Doc. 93–19261 Filed 8–10–93; 8:45 am]

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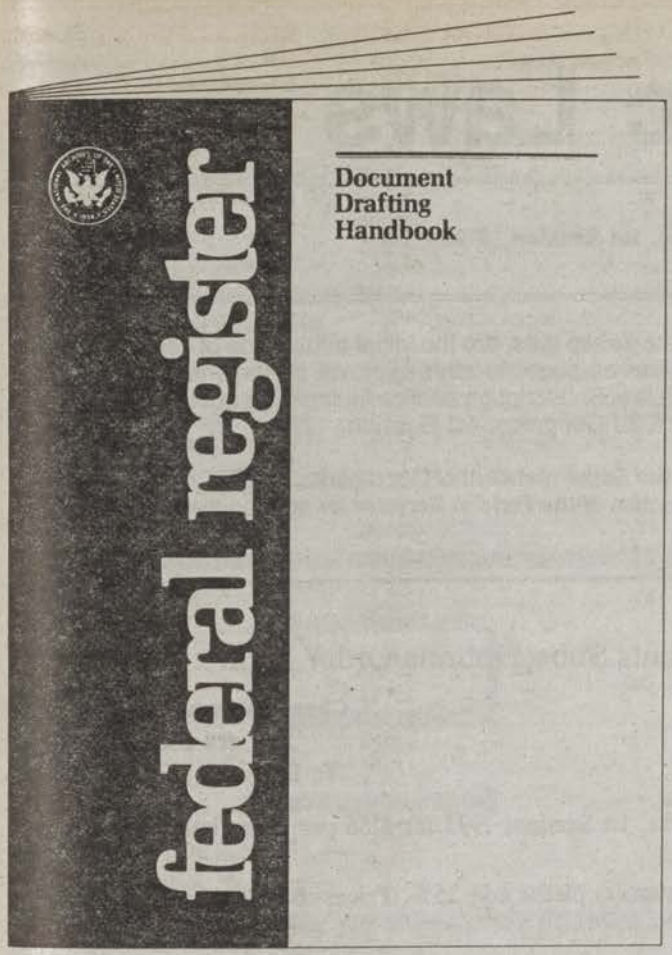
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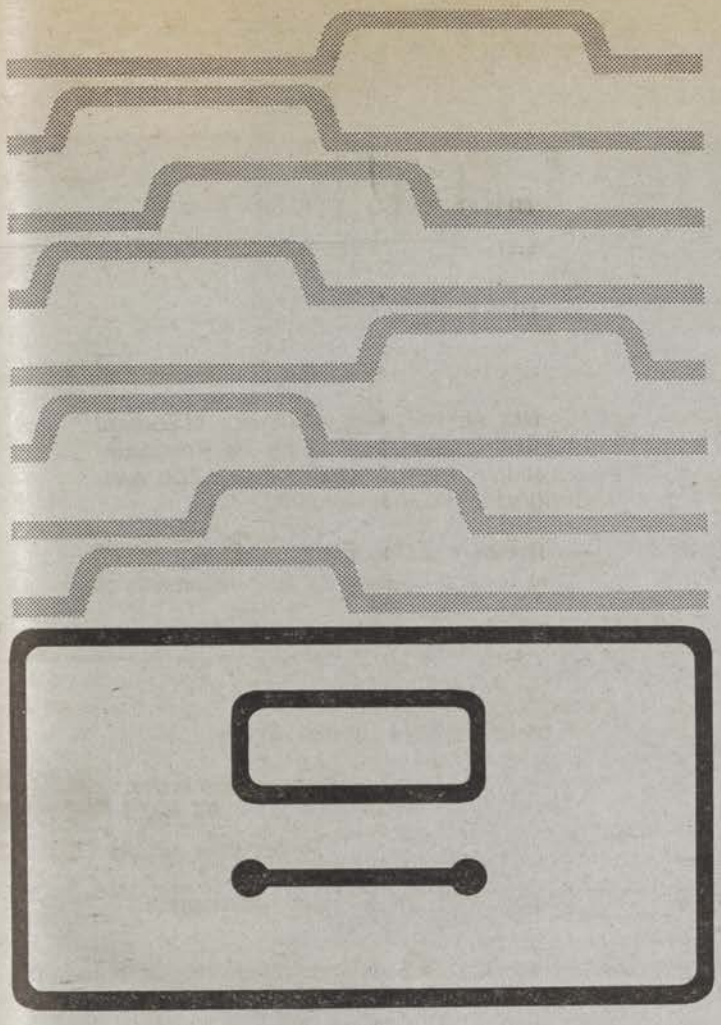
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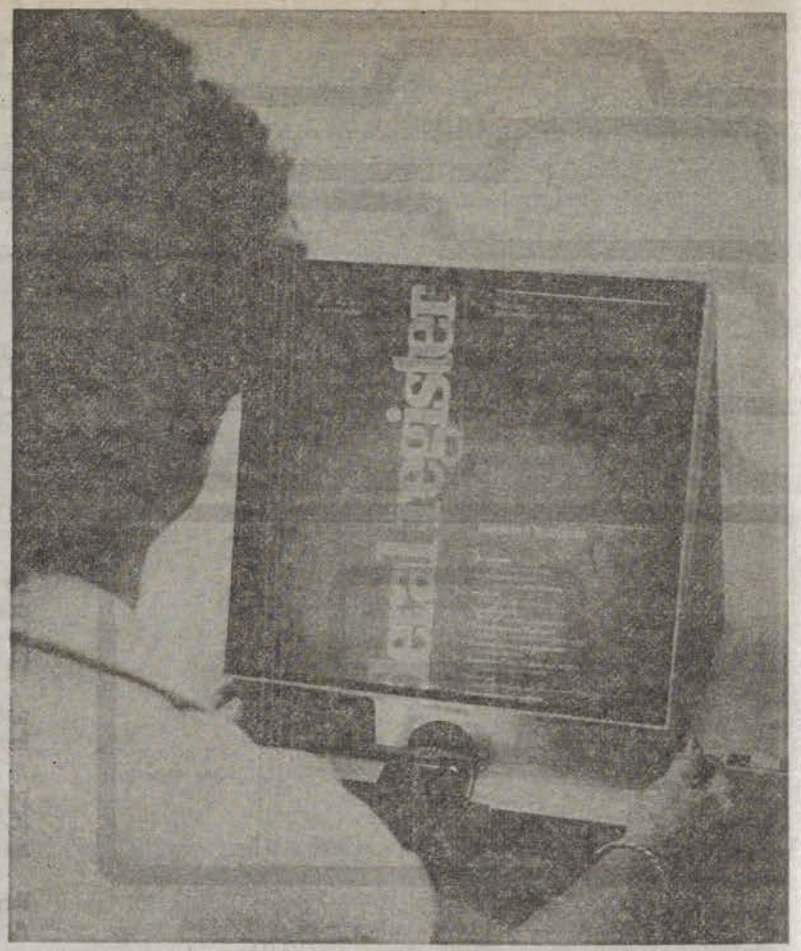
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